

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Ohio Environmental Council, et al.,	:	
Plaintiffs,	:	Case No. 25CV-9387
vs.	:	JUDGE JULIE M. LYNCH
State of Ohio, et al.,	:	
Defendants.	:	

DECISION AND ENTRY

This matter was initially before the Court on the motion of Plaintiffs for a preliminary injunction, which was filed on October 30, 2025. On December 9, 2025, the parties submitted a joint motion to waive and vacate the December 11, 2025, hearing and submit the matter on the briefs, amend the briefing schedule and exceed page limitations. In the motion, it is noted that “the Plaintiffs are seeking both a preliminary and permanent injunction and declaratory judgment.” The parties agreed “that this case presents legal and factual issues that can be fairly and finally resolved on paper and that a final hearing and/or trial on the merits is not necessary.” Therefore, the parties agreed and requested to waive the hearing and trial on the merits and agreed and requested that Plaintiffs’ claims be decided on the briefs.”

On December 15, 2025, the Court largely granted the motion, other than limiting the number of extra pages that would be allowed. Accordingly, the Court vacated the evidentiary hearing and noted that the case shall proceed without an evidentiary hearing and will be decided on the parties' briefs. The matter has been fully briefed. Additionally, Plaintiffs were granted leave to provide supplemental evidence on June 30, 2025. The Court has considered all memoranda and exhibits submitted.

At issue are provisions passed in Am. Sub. H.B. No. 96 (2025) (“H.B. 96), which is the State’s biennial budget bill for 2026-2027. H.B. 96 was enacted by the General Assembly on June 25, 2025, and signed by Governor DeWine on June 30, 2025. Most of H.B. 96 became effective on June 30, 2025. However, the Air Pollution Amendment at issue in this case went into effect on September 30, 2025.

The official title of H.B. 96 states that the purpose of the bill is to “[m]ake state operating appropriations for the biennium beginning July 1, 2025, and ending June 30, 2027, to levy taxes, and to provide authorization and conditions for the operation of state programs.” H.B. 96 spans over 3,000 pages and contains a multitude of provisions devoted to fiscal appropriations.

One of H.B. 96’s changes is that R.C. 3704.0310 directs the Director of the OEPA to remove the Air Nuisance Rule, Adm.Code 3745-15-07, from Ohio’s State Implementation Plan (the “Air Nuisance Rule Recission”). The Air Nuisance Rule is set forth in O.A.C. § 3745-15-07(A). It states that:

The emission or escape into open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances, in such a manner or in such amounts as to endanger the health, safety, or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance.

Additionally, H.B. 96 barred any future Air Nuisance Rules. R.C. 3704.0310.

The federal Clean Air Act provides for citizen suits to redress violations of an “emission standard or limitation.” 42 U.S.C. § 7604(a)(1). An “emission standard or limitation” is defined to include “any other standard [or] limitation . . . established . . . under

any applicable State implementation plan approved by the Administrator[.]” 42 U.S.C. § 7604(f)(4). Because the Air Nuisance Rule is contained in Ohio’s State Implementation Plan, it is federally enforceable under the Clean Air Act. However, because H.B. 96 removes the Air Nuisance Rule from Ohio’s State Implementation Plan, Plaintiffs will no longer have the right to federally enforce the Air Nuisance Rule under the Clean Air Act.

Pursuant to the Air Nuisance Rule Recission, the OEPA has officially requested that the Air Nuisance Rule be removed from Ohio’s State Implementation Plan. Plaintiffs provided the Court with supplemental evidence, which is a proposed rule issued by the United States Environmental Protection Agency (“U.S. EPA”) announcing the agency’s intent to approve Defendants’ request to remove the Air Nuisance Rule from Ohio’s Clean Air Act State Implementation Plan.

Plaintiffs also challenge provisions of Chapter 3704 of the Ohio Revised Code enacted by H.B. 96 which pertain to community air monitoring. They challenge R.C. 3704.01(H), which defines “community air monitoring” and captures nearly all nongovernmental measurements. They challenge the provisions preventing OEPA from considering any data gathered from community air monitoring devices to support the issuance of a fine, violation, civil complaint, other penalty, etc. See R.C. 3704.03(I)-(J); R.C. 3704.09(B) (such data cannot be used as evidence to support a Clean Air Act claim). Plaintiffs also challenge R.C. 3704.09(C), which provides that neither OEPA nor a local air pollution control authority can consider or rely upon any data gathered from community air monitoring devices in any rule making. Finally, Plaintiffs challenge R.C. 3704.031(B), which prohibits the Director from requiring certain applicants seeking the issuance or

renewal of a permit or variance to conduct community air monitoring. The Court will refer to these changes as the “Community Air Monitoring Prohibitions.”

The Air Nuisance Recission (R.C. 3704.0310) as well as the Community Air Monitoring Prohibitions (R.C. 3704.01(H), R.C. 3704.09(B)-(C), R.C. 3704.031(B), R.C. 3704.03(I), and R.C. 3704.03(J)) are referred to together as the “Air Pollution Amendment.” Plaintiffs seek a declaration from the Court that the Air Pollution Amendment is unconstitutional because it was passed in violation of the one-subject rule contained in Article II, Section 15(D) of the Ohio Constitution.

Defendants argue that Air Pollution Amendment directly implicates appropriations through conditioning how the OEPA uses state appropriations and how it can generate funds via fines and fees. Defendants submitted the affidavit of Jennifer Van Vlerah, the Assistant Chief of the OEPA’s Division of Air Pollution Control when opposing Plaintiffs’ motion for a preliminary injunction. In that affidavit, she avers, in pertinent part, that “[m]aintaining a rule like the ANR in the Ohio SIP costs approximately 20-50% more in staff resources than maintain a rule that is not in the SIP; therefore, removal of the ANR from the SIP **could** save the agency several thousand dollars.” (Emphasis added) Van Vlerah Aff. at ¶ 13.

Defendants provided a second affidavit from Van Vlerah with its merit brief. In this affidavit, she states, in pertinent part:

18. In accordance with R.C. 106.03, every five years, the Ohio EPA is required to review all its regulations to ensure they comply with state law.

19. For any regulations that are included in Ohio’s SIP, the Ohio EPA is required to perform additional or more resource intensive steps to ensure the rules will be approvable by the U.S. EPA.

20. This results in a 20-50% increase in staff resources for these rules, as compared to those rules that are not included in Ohio's SIP.

21. Accordingly, the removal of the ANR from Ohio's SIP **will** save the Ohio EPA thousands of dollars in staffing costs.

22. Whereas the removal of the ANR from Ohio's SIP will save the Ohio EPA money, the provisions related to community air monitoring, which are also the subject of this lawsuit, will cause the Ohio EPA to spend tens of thousands of dollars on equipment and equipment related costs, whereas the savings generated from using the less costly alternatives could have been used by Ohio EPA elsewhere.

23. Prior to the changes in Ohio law, the Ohio EPA was able to consider, collect, rely upon, or otherwise use data collected from community air monitoring devices that were cheaper, although less reliable, than devices required by the U.S. EPA when states conduct air monitoring to meet federal requirements.

24. That said, with the definition of community air monitoring being restricted by changes in Ohio law, the Ohio EPA is prohibited from using or relying upon data collected from these cheaper alternatives.

25. Rather, the Ohio EPA is now required to only use those devices which are approved by the U.S. EPA, under federal law.

26. Although the approved devices are state-of-the-art, the equipment is significantly more expensive and requires the Ohio EPA to spend more for maintenance and calibration as the federally approved devices require more quality assurance related activity.

27. Accordingly, instead of being able to purchase the cheaper, now prohibited, equipment for approximately \$300 per unit for a low cost sensor, the Ohio EPA will have to continue to spend approximately \$30,000 per unit, on average, for a methodology that complies with the law.

28. With the change in the law, Ohio EPA can no longer use information from cheaper, community air monitoring systems

to initiate investigations or issue fines or fees and must continue to use more expensive options to collect evidence.

(Emphasis added) 1/9/26 Van Vlerah Aff.

“A declaratory judgment action is a civil proceeding that provides a remedy in addition to other legal and equitable remedies.” *Woodson v. Ohio Adult Parole Auth.*, 2002-Ohio-6630, ¶ 7 (10th Dist.). “The essential elements for declaratory relief are (1) a real controversy exists between the parties, (2) the controversy is justiciable in character, and (3) speedy relief is necessary to preserve the rights of the parties.” *Id.*, quoting *Aust v. Ohio State Dental Bd.*, 136 Ohio App.3d 677, 681 (10th Dist.2000). “The only reasons that might support dismissal of a declaratory judgment action without considering the merits are if no justiciable issue or actual controversy exists between the parties, or if a declaratory judgment will not terminate the uncertainty or controversy.” *Woodson*, 2002-Ohio-6630, at ¶7, citing *Wilburn v. Ohio Dept. of Rehab. and Corr.*, 2001 Ohio App. LEXIS 5253, *4-5 (10th Dist.). “For purposes of a declaratory judgment action, a ‘justiciable issue’ requires the existence of a legal interest or a right, and a ‘controversy’ exists where there is a genuine dispute between parties who have adverse legal interests.” *Woodson*, at ¶7; *Wilburn*, at *5.

“An injunction is an extraordinary remedy in equity where there is no adequate remedy available at law. It is not available as a right but may be granted by a court if it is necessary to prevent a future wrong that the law cannot.” *Toledo v. State*, 154 Ohio St.3d 41, ¶ 15 (2018), quoting *Garono v. State*, 37 Ohio St.3d 171, 173 (1988). Whether to grant an injunction “depends largely on the character of the case, the peculiar facts involved and other pertinent factors, among which are those relating to public policy and

convenience." *Perkins v. Quaker City*, 165 Ohio St. 120, 125 (1956); see *Cementech, Inc. v. Fairlawn*, 109 Ohio St.3d 475, ¶ 10 (2006).

"A party requesting a preliminary injunction must ordinarily show that: '(1) there is a substantial likelihood that the plaintiff will prevail on the merits, (2) the plaintiff will suffer irreparable injury if the injunction is not granted, (3) no third parties will be unjustifiably harmed if the injunction is granted, and (4) the public interest will be served by the injunction.'" *Vineyard Christian Fellowship of Columbus v. Anderson* ("VCFOC"), 2015-Ohio-5083, ¶11, 53 N.E.3d 910 (10th Dist.), citing *Proctor & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267, 747 N.E.2d 268 (2000). "The test for the granting or denying a permanent injunction is substantially the same as that for a preliminary injunction, except instead of proving a substantial likelihood of prevailing on the merits, the plaintiff must prove that he has prevailed on the merits." *VCFOC*, supra, at ¶11, citing *Great Plains Exploration, LLC v. City of Willoughby*, 2006-Ohio-7009, ¶ 12 (11th Dist.).

The Court's analysis must begin with the well-established principle that it is not the function of a reviewing court to assess the wisdom or policy of a statute but, rather, to determine whether the General Assembly acted within its legislative power. *Primes v. Tyler*, 43 Ohio St.2d 195 (1975). Legislation enacted by the General Assembly is presumed to be constitutional, and this Court cannot declare it to be unconstitutional unless it "appears beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible." *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142 (1955).

Plaintiffs allege that the amendments are not constitutional as they were passed in violation of the one-subject rule contained in Article II, Section 15 of the Ohio

Constitution. The rule provides that “no bill shall contain more than one subject, which shall be clearly expressed in its title.” “In order to find a legislative enactment violative of the one-subject rule, a court must determine that various topics contained therein lack a common purpose or relationship so that there is no discernible practical, rational or legitimate reason for combining the provisions in one Act.” *Beagle v. Walden*, 78 Ohio St.3d 59, 62 (1997).

The Ohio Supreme Court has recognized that appropriations bills are different from other acts of the General Assembly, and, out of necessity, “encompass many items, all bound by the thread of appropriations.” *Simmons-Harris v. Goff*, 86 Ohio St.3d 1, 16 (1999). Thus, “the mere fact that a bill embraces more than one topic is not fatal, as long as a common purpose or relationship exists between the topics.” *Id.* “However, where there is a blatant disunity between topics and no rational reason for their combination can be discerned, it may be inferred that the bill is the result of logrolling.” *Id.*

Thus, the Court’s inquiry is whether there is a common purpose and rational reason for inclusion of the Air Pollution Amendment within the appropriations bill at issue. After a careful and thorough review, the Court finds there is not.

In *Simmons-Harris v. Goff*, supra, the Ohio Supreme Court struck down a statute that created a school voucher program within the framework of an appropriations bill. There, the Supreme Court stated:

[t]he School Voucher Program allows parents and students to receive funds from the state and expend them on education at nonpublic schools, including sectarian schools. It is a significant, substantive program. Nevertheless, the School Voucher Program was created in a general appropriations bill consisting of over one thousand pages, of which it comprised only ten pages. * * * The School Voucher Program, which

is leading-edge legislation, was in essence little more than a rider attached to an appropriations bill. Riders are provisions that are included in a bill that is "so certain of adoption that the rider will secure adoption not on its own merits, but on [the merits of] the measure to which it is attached." * * * The danger of riders is particularly evident when a bill as important and likely of passage as an appropriations bill is at issue.

Id. at 16. (Citations omitted). Additionally, the Ohio Supreme Court stated that the principle that a bill be limited to one subject is particularly relevant when the subject matter is inherently controversial and of significant constitutional importance. *Id.*

Furthermore, in *State ex rel. Ohio Civil Serv. Employees Assn. Local 11 v. State Empl. Rels. Bd.*, 104 Ohio St.3d 122, ¶ 33 (2004), the Court rejected the position that "a provision that impacts the state budget, even if only slightly, may be lawfully included in an appropriations bill merely because the other provisions in the bill also impact the budget." It said, "[s]uch a notion, however, renders the one-subject rule meaningless in the context of appropriations bills because virtually any statute arguably impacts the state budget even if only tenuously." The Court noted that it "flatly rejected this position in *Simmons-Harris*, 86 Ohio St.3d at 16, 711 N.E.2d 203." *Id.*

Here, at the outset, Plaintiffs argue that they have standing to challenge the constitutionality of these provisions. Defendants have not argued otherwise. Upon review, the Court agrees that Plaintiffs have standing.

The Court also finds that the Air Pollution Amendment is not rationally related to appropriations or agency operations. First any impact on the Air Pollution Amendment has on the OEPA's agency appropriations are indirect and tenuous at best.

Defendants argue "[a]s Ohio EPA's budget stems in part from fines and fees, the Amendments will impact both the allotment of state appropriations for Ohio EPA and how

the agency uses them in its operations.” Df.Brief p.9. As an example, Defendants argue that “the Community Air Monitoring Provisions eliminate community air monitoring as a source for instigating ‘fine, violation, civil complaint, [or] other penalty,’ the Amendments restrict Ohio EPA’s ability to gain finds through widely available community air monitoring.” *Id.* quoting R.C. 3704.03(I)-(J); 3704.09(B). Defendants further note that “the Amendments now prohibit Ohio EPA from impos[ing] a community air monitoring requirement’ unless required by U.S. EPA.” Df.Brief p.10, quoting R.C. 3704.031. However, as Plaintiffs point out, the Court has no evidence before it related to how often, if at all, the OEPA uses such data for fines or penalties. There also is no fiscal analysis addressing the impact banning community air monitoring will have.

The only evidence the Court has that the Air Pollution Amendment impacts state appropriations are the affidavits from Van Vlerah. In her first affidavit, she states that removal of the Air Nuisance Rule from the State Implementation Plan “**could** save the agency several thousand dollars.” (Emphasis added) Van Vlerah Aff. at ¶ 13. In her second affidavit, she changes her statement to state that “the removal of the ANR from Ohio’s SIP **will** save the Ohio EPA thousands of dollars in staffing costs.” (Emphasis added) 1/9/26 Van Vlerah Aff. at ¶ 21. There are credibility issues with the second affidavit given the changes from the first affidavit. However, even accepting her second statement as true, saving thousands of dollars will have little to no impact on OEPA’s budget.

Furthermore, under Defendants’ theory, any statutory change that potentially or tangentially impacts the day-to-day operations of an agency would be permissible in an appropriations bill. Where operations of a State or agency are only incidentally affected,

the legislation is nothing more than a rider attached to an appropriations bill. See *Simmons-Haris v. Goff*, 86 Ohio St.3d 1, 16, 711 N.E.2d 203, 215 (1999) (Severing a school voucher program which would only incidentally impact the operation and funding of schools, and conceivably the state department of education, and finding it was “little more than a rider attached to any appropriations bill”).

Defendants also argue that the prohibition on community air monitoring data forces OEPA to buy significantly more expensive EPA-approved monitoring devices, which requires expenditures from budgeted money for OEPA. Df. Brief at p.10; see also 1/9/26 Van Vlerah Aff. at ¶¶ 22, 26-28. However, H.B. 96 contains no requirement that the OEPA buy more monitors. Additionally, the OEPA has never been required to use community air monitoring data during enforcement. Defendants have cited nothing to support a finding that such a requirement exists. There also is no evidence about how often OEPA uses community air monitoring data, if it uses such data at all. The Court does not see any fiscal impact upon the State as a result of losing community air monitoring data.

Based on all the foregoing, the Court finds that there is only evidence of indirect and generalized budgetary impacts. The Air Pollution Amendment has nothing to do with appropriations or state operations. Therefore, it violates the Constitution’s one-subject rule.

The Court also finds that the challenged provisions are in complete disunity with the rest of the appropriations bill, which is the exact problem the one-subject rule was designed to prevent. The Air Pollution Amendment is an environmental law change that bears no connection to the appropriations provisions in H.B. 96.

Finally, the Court finds that Plaintiffs have demonstrated entitlement to a permanent injunction under the standard set forth above. However, the Court agrees with Defendants that the injunction must be narrowly tailored to not infringe on OEPA's authority outside of what Plaintiffs have challenged.

Based on all the foregoing, the Court declares that the Air Pollution Amendment in H.B. 96 violates Article II, Section 15(D) of the Ohio Constitution. Accordingly, it hereby severs R.C. 3704.0310, R.C. 3704.01(H), R.C. 3704.03(I)-(J), R.C. 3704.031(B), and R.C. 3704.09(B)-(C) from H.B. 96. The Court also enjoins the OEPA from taking any further action to advance the Air Nuisance Rule's removal from the State Implementation Plan pursuant to the Air Pollution Amendment in H.B. 96. The Court further Orders OEPA to withdraw its request to the U.S. EPA to remove the Air Nuisance Rule from Ohio's State Implementation Plan based on the illegal Air Pollution Amendment in H.B. 96. This is a final appealable order, and there is no just cause for delay.

IT IS SO ORDERED.

Signature page attached.
Judge Julie M. Lynch

Direction to Clerk:

Pursuant to Civ.R.58(B), you are to serve notice of this judgment and its date of entry upon the journal to all parties not in default for failure to appear within three days of the judgment's entry upon the journal and note the service in the appearance docket.

Franklin County Court of Common Pleas

Date: 10-14-2026

Case Title: OHIO ENVIRONMENTAL COUNCIL ET AL -VS- THE STATE OF OHIO ET AL

Case Number: 25CV009387

Type: ENTRY

It Is So Ordered.



/s/ Judge Julie M. Lynch

Court Disposition

Case Number: 25CV009387

Case Style: OHIO ENVIRONMENTAL COUNCIL ET AL -VS- THE STATE OF OHIO
ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 25CV0093872025-10-3099840000

Document Title: 10-30-2025-MOTION FOR PRELIMINARY INJUNCTION -
PLAINTIFF: OHIO ENVIRONMENTAL COUNCIL

Disposition: MOTION GRANTED