



March 18, 2021

Dear Senators:

We are writing to express our organizations' deep concerns over an amendment to S-336, the proposed Senate rules for the 2021-2022 session, that is included in the Sub A of the bill scheduled for a floor vote on Tuesday.

Specifically, a new Rule 5.8 provides: "In the discretion of the chair, any witness may, before testifying, be required to declare that they will testify truthfully, by oath or affirmation."

We believe that requiring members of the public to testify before legislative committees under threat of criminal sanctions will have the inevitable effect of chilling the exercise of First Amendment rights. Some members of the public will understandably be inhibited in speaking before a legislative committee on issues of concern to them, knowing that unless they mark their words extremely carefully, they could potentially be accused of perjury and face criminal charges.

In addition, the proposed rule gives committee chairs complete discretion in deciding when to require testimony to be taken under oath, and which witnesses to require it of. This is a power that could easily be misused.

In addition, implementation of such a rule could encourage the asking of "gotcha" questions designed to rattle or confuse a witness into saying something incorrect that could be considered "untruthful," turning public testimony into courtroom interrogations. Further, since ultimately it would be up to the majority or leaders of the body to decide which "perjurers" warrant referral to the Attorney General, it is those members of the public who believe they are speaking "truth to power" who are most likely to be in the crosshairs, or at least feel that they are. Either way, the effect is the same: discouraging public participation and passionate testimony.

We want to be clear that we do not mean to suggest bad motives behind this proposed rule change. Rather, we want to highlight the inevitable chilling impact it will have, no matter the purpose. This is not a power that need be exercised; the rule's mere presence and the possibility of its invocation will, we submit, be enough to chill the political speech of some constituents.

It is our observation that other state and municipal bodies, unless acting in a quasi-judicial capacity, do not require members of the public to testify under oath at public hearings. There is no reason for the Senate to do so either. Committee hearings on legislation are quintessential public forums, not courtroom proceedings. While we recognize that the General Assembly gave itself the statutory authority to adopt a rule like this over a half-century ago, there is simply no compelling rationale for

implementing it now. In any event, that statute appears to envision the creation of a stenographic record for such testimony, an official process that, as you know, legislative committees do not utilize.

We note that the House of Representatives also adopted a rule this year that governs the swearing in of witnesses, but it is specifically limited to testimony provided by representatives of state agencies. Rule 11(d)(1). Whatever one's view of it, that rule at least is focused solely on government officials who are less likely to be intimidated by such a condition and who are paid by the taxpayers to represent them faithfully.

In conclusion, the right to petition the government for redress of grievances is a fundamental principle of democratic government. Because Rule 5.8, however unintentionally, could undermine that right, we urge the adoption of a floor amendment removing it from the Senate Resolution.

Thank you in advance for considering our views.

Sincerely,

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