



Testimony on House Bill 5108
Alan Smith, R Street Institute Midwest Director
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Michigan Senate Government Operations Committee

Good afternoon Chairman Richardville and members of Senate leadership constituting the Government Operations Committee. Thank you for the opportunity to be heard today. I am Alan Smith, and I am a senior fellow and Midwest Director for the R Street Institute, a national think tank based in Washington, D.C., that supports free markets and limited, effective government. We've been engaged on several issues in Michigan during this session having to do with public policy solutions to challenges for Michigan residents.

As a think tank, we advocate for principles, not particular commercial interests. The first principle is that we have way too many crimes. The states of this nation have devoted much energy lately into refocusing public approbation and punishment on behavior that threatens lives as opposed to preferences. We may have a citizenry that is more prone to violence and more dishonest than we have had in the past, and we have to deal with this; but neither of these underlies Michigan's 80-plus-year-old law that criminalizes certain transfers of property having to do with entertainment venues. As former U. S. Senator and Ambassador Daniel Patrick Moynihan famously observed, we started with a few laws and now we have "catalogs of offenses." Actually, I counted them last night. There are currently 87 chapters of offenses in the Michigan crime catalog spanning Abduction to Weights and Measures.

The Heritage Foundation, the Texas Public Policy Foundation, the *Washington Times*, the *Providence Journal*, the *Economist*, many law review articles and attorney associations, including the American Bar Association have all come to the conclusion that this country is massively oversubscribed to criminal laws. An excellent 2009 book called *One Nation Under Arrest* is available from bookstores and the academics in this field are reading a law review article by Douglas Husak, a Rutgers lawyer and philosophy professor, entitled "*Overcriminalization: The Limits of the Criminal Law*, published in

2008. Husak contends the first principle of criminalization is that criminal liability should not be imposed unless statutes are designed to prohibit a “nontrivial harm or evil.”

The second principle is that good public policy is understandable by the public. When people dole out a portion of their budget for the privilege to attend events they enjoy, it is counterintuitive to imagine that offering up that property, lease, or whatever you call it for resale at whatever price you establish in the marketplace is a crime against the state. Of course, in the overwhelming majority of states, it isn't. To be specific, of the 27 states that have enacted laws regarding ticket resale, only 11 states generally ban selling tickets for more than face value, and all but three allow resellers to charge a service fee. By generally, I mean overall regulation, because several states have laws pertaining to tickets for specific events at universities, NFL games, NASCAR and the like.

A third principle is that good public policy is supported by the general public. What the public supports is the idea that, even when an event is sold out, somebody for the right price will let you go in his or her place. First come, first served is a traditional way to allocate resources, but it is not the only way, or we wouldn't have handicapped parking spaces. How does the government distinguish between the serious Brazilian fans who stood in line all night to buy the extra World Cup soccer tickets last week, and the serious fans around the world who bought out all the major matches online in a couple of hours? One way of developing sound public policy is to allow the person who will ultimately place the most value for sitting in that seat to fund that experience. Moreover, who among us has not purchased something with the idea that it might become more valuable at some point, and that we might convert that value by selling it?

Even though we are a free-market-oriented public policy organization, we are not suggesting that, for instance, universities shouldn't be allowed to organize their events in a way to assure that their students and alumni get preferences for attendance. We support, and you should, anybody's right to draw up agreements that harness the well-traveled law of contracts or property to determine the placement of tickets. We support, and the public clearly understands, that licensees at entertainment venues may be ejected for inappropriate behavior. None of this however, needs to be backed up by Michigan criminal laws describing an offense against the state.

For those of you with backgrounds in economics, you well understand that the markets are much more adept at working out values than are any particular group of government officials. I'm sure many of you read that the average secondary market price for Stanley Cup finals tickets is twice as high as the rematch games between the San Antonio Spurs and Miami Heat for the professional basketball title. This is a product of a functioning market. Should the government be deciding if this is right or wrong? Or too expensive?

We do not suggest that the market can forego protection against automated online scams and misallocations. Limited, efficient government may also mean that laws

targeting fraud may have to be occasionally updated to reflect all the improvisations of electronic age thieves. But the state should be cautious about lawmaking in an area that is essentially a software war.

In summary, we cheer Michigan in its desire to join most other states by opening up secondary markets for both individuals who have decided for whatever reason to resell their tickets, and the businesses who have sprung up to organize these marketplaces.

I will be delighted to discuss any of this in more detail, or to answer any questions you may have for me.