

Senate Bill 316 / House Bill 194

Bill Authorizing Legislature to Intervene in Certain Lawsuits Involving Constitutional Challenges and/or Statutory Construction

Talking Points

PURPOSE OF THE BILL: To protect the people's state and federal constitutions from erosion by *de facto* judicial amendments to them and protect the people against judicial erosion of the "legislative authority" they delegated to the General Assembly, which authority they have an opportunity to control at the ballot box through contested elections.

WHAT THE BILL DOES:

- Allows the legislature, by majority of the members of both houses or approval by both Speakers, to intervene in certain existing legal proceedings where the constitutionality of a state statute is challenged or in which "new" or expanded constitutional rights are being advocated.
- Any action taken under this bill will be indemnified by the state.

SPECIFIC TALKING POINTS:

- Private litigants are increasingly calling on the courts to effectively set public policy through their advocacy for new constitutional rights and through novel "interpretations" of the words used in a statute.
- The Attorney General is not bound to present legal arguments based on the original intent of the language in the state or federal constitutions or the original intent of the General Assembly when defending against novel interpretations of statutes that effectively rewrite them.
- As a result, cases may be decided in a manner that undermines the General Assembly's authority to set public policy in violation of Tennessee's separation of powers doctrine in Article II, Section 2 of the Tennessee Constitution.

This bill simply provides a mechanism to allow the General Assembly to have its day in court to:

- (1) argue for the constitutionality of statutes as written or against arguments that would uphold the constitutionality of the statute but change the intent of the law based on words being given new or unintended meanings being advocated by the Attorney General;

(2) assert its own arguments for opposing the creation or expansion of constitutional rights when those arguments are not made by the Attorney General;

For example, if a lawsuit is based on whether a word in the Tennessee statute or Constitution can be interpreted in a certain novel way (outside its normal meaning) and the Attorney General is advocating for that interpretation, then the legislature—as the lawmakers of the state—should be able to tell the court what they think about the proposed interpretation.

(3) consider pursuing an appeal of a bad judicial decision if the Attorney General chooses not to appeal and accept the court’s ruling.

- For example, a lower court determines that polygamous or incestuous marriages are a constitutional right and the Attorney General decides not to appeal the decision.

For more information about this bill and other bills we are tracking through the General Assembly, please visit [FACTn.org/legislation/bill-tracking/](https://factn.org/legislation/bill-tracking/).