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OHIO
ASSOCIATION for
JUSTICE
TRIAL LAWYERS HELPING PEOPLE

655 Metro Place S., Suite 140
Dublin, OH 43017
614-341-6800

Mike Coughlin, Chief Executive Officer
Brad Ingraham, Director of Government Affairs

Testimony to the House Civil Justice Committee regarding HB 606

Robert Wagoner, Esq. President of the Ohio Association for Justice

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Chairman Hambley, Vice-Chair Patton, Ranking Member Brown and members of the House Civil Justice Committee,

Thank you for the opportunity to provide testimony to House Bill 606. My name is Bob Wagoner. I am a lawyer and business owner, managing my own law firm here in Columbus. I am also the President of the Ohio Association for Justice (OAJ). As a voice of the plaintiff's bar in Ohio, OAJ is dedicated to preserving the Seventh Amendment and Article I of Ohio's Constitution, guaranteeing the citizens of Ohio the right to trial by a jury of their peers in civil cases.

Ohio businesses need confidence to open. Ohioans need confidence to go to businesses again. Immunity from civil liability is dangerous because it will weaken the confidence of businesses and Ohioans at this fragile time. Immunity (1) removes accountability for unsafe actors, (2) encourages unsafe behavior and (3) places those acting safely at a disadvantage.

Accountability to the public leads to safe behaviors. In 2018, when a Chipotle restaurant in Powell, Ohio was found to have been serving unsafe food that was getting people sick, the government did not step in to immunize or protect the business from its negligence. Customers maintained their Seventh Amendment rights and Chipotle put in place better safeguards for customer health. Protection from liability eliminates the constitutional opportunity for accountability.

We all expect the majority of businesses will conduct themselves safely when they re-open. Unfortunately, inevitably, some will not. The fear of economic ruin and fervor to re-open could influence otherwise well-meaning businesses to push the boundaries of protecting their employees and customers. Businesses should be encouraged to re-open with the safety of the citizens of this state in mind, not shielded from liability. Knowing they have immunity, businesses will be encouraged to, certainly not discouraged from, act(ing) unsafely. The message we send to any business by providing them with immunity is "we want you to act safely, but we will not hold you responsible if you don't."

For those businesses conducting safe practices, immunity will place them at a competitive disadvantage to competitor businesses who are not acting safely. What do we say to the businesses who are doing everything right when it comes to safe practices as they watch competitors cut safety corners to conduct business more productively at the expense of people's safety? Why would we allow that?

Ohio's Constitution emphasizes that our right to trial by jury "shall be inviolate." That means it is something so sacred it cannot be harmed or affected by anything. Protecting Seventh Amendment

rights is paramount to protecting and restoring confidence in our institutions and businesses. We encourage the General Assembly to prioritize public safety and to safeguard the rights and safety of all Ohioans. When the state re-opens, it should do so with the certainty that all rights are intact, certainly one that is inviolate.

We appreciate that As Introduced, House Bill 606 is limited to the transmission of COVID-19 and the liability protections it provides are limited to “essential businesses.” Furthermore, we also appreciate that the immunity from civil liability does not apply if the person is acting maliciously or in a wanton or reckless manner.

However, there is an important difference between behavior that is malicious (intentional), wanton (lack of any care) or reckless (substantially greater than negligence) and negligence. For example, just because I was not intentionally trying to cause a car crash, I should still be liable for the damages I negligently caused.

In summary, Ohio has been a global leader in the fight against COVID-19 and every Ohio citizen has personally sacrificed for the good of the state. The Ohio Association for Justice believes our state’s success must continue and not come at the expense of our constitutional rights or the safety of the Ohio public.