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House Bill 27 House Civil Justice Committee March 19, 2019

Good afternoon Chairman Hambley, Vice Chair Patton, Ranking Member Brown, and members of the House Civil Justice Committee. My name is Matt DeTemple, and I am the Executive Director of the Ohio Township Association (OTA). On behalf of Ohio's 1,308 townships, thank you for the opportunity to testify before the committee on House Bill 27. The OTA opposes this legislation because it would dramatically alter the standard of liability for political subdivisions when first responders are operating vehicles in emergency situations.

As you know, townships perform many essential functions of local government. Over 90 townships in Ohio have police departments; over 500 townships have fire departments or participate in joint fire departments. That number includes volunteer fire departments in Ohio, many of which serve township residents. As of 2015, there were 396 EMS districts that operate in townships in Ohio.

First response situations may be the most important work that township employees do. When operating vehicles, some police officers, firefighters, and EMTs are responding to urgent 9-1-1 calls where lives literally hang in the balance. On many occasions, time is of the essence for police officers, and the response time can mean the difference between apprehending a criminal and having them escape justice.

In the early 1980's, a series of decisions by the Supreme Court of Ohio stripped public entities of the sovereign immunity defense. The last decision in this line of cases clarified that the judicial abrogation of sovereign immunity also applied retroactively; consequently, it was as if the doctrine of sovereign immunity never existed (Zagorski v. South Euclid-Lyndhurst Bd. of Educ., 15 Ohio St.3rd 10 (1984)). The liability exposure for political subdivisions exploded and many insurance carriers left the market. There were years where communities did not open their swimming pools and did not have Fourth of July fireworks displays, due to the liability exposure and the inability to obtain insurance coverage.

The General Assembly responded to these court decisions and enacted Chapter 2744 of the Revised Code, which statutorily restored qualified tort immunity to political subdivisions, including townships. In the course of crafting that legislation, the General Assembly was measured in granting immunity and did not do so in all circumstances. Thus, R.C. §2744.02(B)(1) provides that political subdivisions can be liable for injury to persons or property that result from the negligent operation of a motor vehicle by a public employee of that political subdivision, when the employee is driving the vehicle in the scope of their employment.

In defining the scope of liability for the operation of motor vehicles by public employees, this body wisely considered the critical function of first responders driving in emergency situations. However, even first responders in these critical situations were not given blanket immunity. Pursuant to R.C. §2744.02(B)(1), the political subdivision could be held liable if the driver's acts or omissions amounted to willful or wanton misconduct. Moreover, drivers of emergency vehicles (including police, fire, and ambulances) who respond in an emergency are required by R.C. §4511.03 to slow down at traffic lights or stop signs and proceed with caution and due regard for the safety of all persons. Failure

to do so is a misdemeanor. House Bill 27 would dramatically lessen the standard of liability to mere negligence.

Under current law in Ohio, political subdivisions and public employees are sometimes held liable for unfortunate accidents that occur in emergency situations. Under current law, injured persons are not uniformly left with no legal remedy in these cases.

We believe Ohio law currently strikes the right balance between providing some protection to first responders and public entities involved in critical, life-saving functions and the general public they are endeavoring to serve.

As the Supreme Court of Ohio observed in the case of Argabrite v. Neer, “many public employees face the potential for liability...no other public employee faces the potential danger, violence or unique statutory responsibilities a law enforcement officer faces... We expect law-enforcement officers to protect the public, but that expectation does not mean that an officer must sit idly by while a suspect flees the scene of a crime, particularly when the suspect’s flight endangers the general public further.” We believe similar considerations also apply to firefighters and EMTs.

These considerations compel the Ohio Township Association to oppose House Bill 27 and we urge this Committee to oppose the measure as well. Mr. Chairman, thank you for the opportunity to testify this afternoon. I would be happy to answer any questions that you or other Committee members may have.