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Testimony to the House Civil Justice Committee on Substitute HB 606

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

May 27, 2020

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

Thank you for the opportunity to provide testimony on Substitute House Bill 606. My name is Bob Wagoner. I am a lawyer and business owner, managing my own law firm 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.

On May 12, I testified before this Committee and shared the dangerous consequences of immunity, particularly broad and unlimited civil immunity. I reiterate that OAJ can never support legislation granting immunity. However, we acknowledge the unique and uncertain times that the COVID-19 pandemic has caused and the apparent desire on the part of the Ohio legislature to provide legal assurances to medical providers and business owners. As I stated in my earlier testimony, if the House Civil Justice Committee and the General Assembly as a whole decide to move forward with providing civil immunity, certain considerations must be included within any final legislation.

Today, after many drafts and thoughtful conversations, the OAJ is neutral on Substitute HB 606. Throughout this process, we have prioritized and requested five essential improvements to the original proposed legislation: (1) limit the **scope** of the immunity, (2) limit the **duration** of the immunity, (3) do not immunize **recklessness**, (4) do not increase the normal **burden of proof**, and (5) maintain actions for **wrongful death**.

(1) **Scope**: The substitute bill limits the general liability immunity section to damages caused by the transmission or contraction of SARS, MERS, COVID-19 or mutations thereof.

(2) **Duration**: The immunity being provided for health care providers and businesses (under the general liability section), now written as temporary law, will expire on December 31, 2020.

(3) **Recklessness**: The substitute bill no longer immunizes reckless behavior.

(4) **Burden of Proof**: Consistent with a previous substitute bill, the current substitute bill deletes the increased burden of "clear and convincing" and restores the current civil standard for burden of proof as "by a preponderance of the evidence."

(5) **Wrongful Death**: The substitute bill continues to immunize negligent acts or omissions for

wrongful death claims from March 9th through December 31st. However, we agree that the changes to scope and duration will limit the longevity of that immunity.

In summary, while the Ohio Association for Justice cannot support a bill that provides immunity to wrongdoers, under the circumstances OAJ believes the substitute version of H.B. 606 is a rational compromise to achieve limited liability protections for health care providers and businesses while maintaining reasonable protections for employees and the public.