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TO: **House Economic Development, Commerce & Labor Committee**

FROM: **Brian D. Spitz, Esq., Managing Partner of The Spitz Law Firm, LLC**

DATE: **March 6, 2017**

Re: **House Bill 2**

Chairman Young, Vice Chair DeVitis, Ranking Member Lepore-Hagan, and members of the House Economic Development, Commerce & Labor Committee, my name is Brian Spitz, managing partner of the preeminent employment law firm, The Spitz Law Firm, LLC, and I appear to oppose House Bill 2.

For the past ten years, I have vigorously represented hard working Americans in getting back to work and seeking recompense for wrongs committed by previous employers. I have seen firsthand the struggles and internal conflicts faced by these individuals. As you may be aware, Ohio is an at-will state, and already very "pro-employer." This means that an employer may end the employment relationship at any time, and for any legitimate, non-discriminatory reason. Being an at-will state makes it easier for employers and businesses to terminate and mistreat employees. I stand here today, as I am terrified that HB 2 will only make it easier for employers to discriminate against, and harass our working Americans.

Let's put things into perspective. Bringing a lawsuit against an employer is no easy task. A person may fear losing her job in retaliation for filing a law suit. A woman may fear more harassing behavior for making a complaint at work. Indeed, even the United States Supreme Court acknowledged that it is difficult for an employee to find and use direct evidence to support their cases, as employers rarely come out and say, "You're fired because you're black!" or "You're fired because you're a woman!"[1]

But strikingly, HB 2 seeks to protect employers from just that. Under current law, the term "employer" includes supervisors or managers who participate in the alleged adverse action.[2] This allows a woman who has been groped at work to seek personal liability from the supervisor who inappropriately touched her. However, HB 2 redefines the term "employer."[3] This lets that same supervisor who gropes women off the hook. This prevents an employee, who is constantly called

[1] *See Hunt v. Cromartie* (1999), 526 U.S. 541, 553, 119 S.Ct. 1545; *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792, 802, 93 S.Ct. 1817.
[2] Ohio R.C. § 4112.01(A)(2).
[3] H.B. No. 2, P. 7, L. 172-77.

the "n-word" from holding his supervisor liable for causing such harassment. Why would you sign your name to something that protects racists and sexual harassers?

Filing a lawsuit against an employer is a difficult decision—and HB 2 seeks to rush that decision. Ohio currently grants an individual six years to decide whether to bring a race, gender, national origin, or religion discrimination lawsuit against her employer.[4] HB 2 attempts to dramatically cut this timeframe to 365 days.[5] Six years is helpful to employees for many reasons. First, this pushes employees to work out their grievances with employers before filing a lawsuit. This protects both the employer and the employee. In my years of experience, it takes people a long time to decide on an attorney, and to decide whether to file a lawsuit. This may be one of the biggest decisions of a person's life. Why should we rush an employee who has been harassed or discriminated against when attempting to set the record straight?

Not only is the proposed change to 365 days too short, it is also arbitrary. None of the other claims under the anti-discrimination claims have statute of limitations of 365 days. Where is this number coming from? This is a clear attempt to protect businesses, at the expense of hard working individuals. The proposed language attempts to define anti-discrimination claims as torts.[6] When the common torts have statute of limitations of two years, wouldn't it follow that individuals should have at least two years to file these claims?

One of the most difficult and painful cases in employment law is sexual harassment. A woman seeking redress for sexual harassment must relive every moment of the torment she faced. Ohio case law makes these difficult, as an individual must show that the actions were severe or pervasive, and not just a few off hand statements.[7] This has included an Ohio court siding with an employer when a supervisor made at least thirteen statements over seven years about an employee's breasts and thong underwear.[8] If HB 2 is allowed to pass, this will force sexually harassed women to prove that after being harassed, they attempted to resolve the problem before filing a lawsuit.[9] Why should we place such a burden the woman who was wronged, to protect the person who harassed her? The bar is already set too high to provide justice for sexually harassed workers; we should not try to raise the bar even more.

Finally, in a peculiar move, HB 2 seeks to allow temporary employers to discriminate against temporary workers. Current law protects individuals from discrimination who are employed by an employer that employs four or more persons.[10] HB 2 attempts to exempt employers who employ four or more persons for less than each working day in twenty calendar weeks.[11] This change impacts many hardworking Ohioans during this difficult job market. Many Ohioans must

[4] Cosgrove v. Williamsburg of Cincinnati Management Co., Inc., 70 Ohio St.3d 281, 638 N.E.2d 991 (1994).
[5] H.B. No. 2, P. 59, L. 1692-1699.
[6] H.B. No. 2, P. 3, L. 49-57.
[7] *Chapa v. Genpack*, 2014-Ohio-897 (Ohio 10th Dist. 2014); *Bell v. Berryman*, 2004-Ohio-4708 (Ohio 10th Dist. 2004).
[8] *Harter v. Chillicothe Long-Term Care, Inc.*, 2012-Ohio-2464 (Ohio 4th Dist. 2012).
[9] H.B. No. 2, P. 53, L. 1536-41.
[10] Ohio R.C. § 4112.01(A)(2).
[11] H.B. No. 2, P. 7, L. 172-7.

resort to temporary employment, such as short-term construction projects or seasonal jobs. Effectively, this would allow a construction company to come into Ohio for an 18-week project and legally only hire white men and turn away all people of color and women. Is this the message that we want to send to our citizens? Why would we protect foreign companies over our own citizens? Also, why would we allow companies that only operate during summer months to discriminate?

So what are we left with? Who is HB 2 meant to protect? Does forcing an individual to determine whether to file a lawsuit against his racist boss within a year of being fired for his race help the worker, or the business? Should we be shielding a supervisor from liability when he will only grant a woman a raise if she has sex with him? Should we force a sexually harassed woman to prove that she attempted to resolve her problems with her groping, inappropriate supervisor before allowing her to receive justice? During this time of insecurity, we should be taking every action possible to help the hard working American, not making it easier for him or her to be discriminated against or harassed.

It is time for this state to help its people come together and end racism, sexual harassment and all forms of illegal discrimination. This bill makes whoever votes for it a proponent of racism, sexual harassment, and discrimination. Respectfully, I would not want to stand in front of my constituents and say I just voted to let the boss that sexually harassed your wives and daughter or called you husbands and sons the n-word get away with it without any personal consequences whatsoever. Do you?