



**Proponent testimony submitted to the
Ohio Senate Government Oversight & Reform Committee
Senate Bill 206
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Chair Coley, Vice Chair Uecker, Ranking Minority Member Schiavoni, and Members of the Senate Government Oversight and Reform Committee, thank you for the opportunity to provide testimony in support of Senate Bill 206. As Ohio's statewide coalition, the Ohio Alliance to End Sexual Violence (OAESV) advocates for comprehensive responses and rape crisis services for survivors and empowers communities to prevent sexual violence.

I am here today to share with you OAESV's particular interest in this legislation, which, if passed, will create a deterrent for retaliation that is desperately needed in Ohio. OAESV established its legal department in 2015, aiming to provide representation to survivors in landlord/tenant disputes, protection order matters, Title IX issues, custody matters involving child sexual abuse, and crime victim visa applications. These legal areas matched the needs of survivors who called our resource line, and also aligned with the areas of need identified by the federal government and supported by federal grants. From 2015 until early 2017, we were able to meet the needs of the vast majority of survivors who reached out to us with these legal service offering types. At that point, however, something changed.

For context, my agency provides technical assistance to advocates, even in matters where we do not serve the survivor's legal needs. In the early months of 2017, both campus and community-based advocates involved in Title IX processes started to reach out. The increasingly common tale was that their survivor's respondent had hired an attorney with a reputation for naming survivors on lawsuits against universities. Their clients were terrified of being sued, something they could hardly afford to defend, let alone satisfy any resulting damage award. Thankfully, these initial calls did not result in retaliatory lawsuits – largely, in my opinion, because the respondents won their hearings. As I will address in a moment, it is when survivors win their hearings that they are most vulnerable to retaliatory litigation.

As the end of the 2016-17 academic year approached, advocates began reaching out with more troubling requests. Their clients had received complaints, and they did not have the resources to hire an attorney. I ask you, for just a moment, to pause and imagine that you are 19-years-old. You go

through a sexual assault, an arduous Title IX process, and finally get to go home for the summer. You are settling into your routine at your parents' home, and someone knocks at the door. They hand you an envelope and say "you have been served." You know that has something to do with court, but ultimately you do not know what that really means. You do not know what it triggers, you do not know what your responsibilities are. You are not sure if it relates back to the open criminal investigation or something else, and you certainly do not know how much this will cost you – both financially and in any hope of recovery.

That is what three different survivors were facing when they called me over the course of two business weeks in the summer of 2017. Each one received a complaint. The first was a defamation and malicious prosecution lawsuit filed after a defendant was acquitted. He sought his attorney fees. The second was also related to the criminal system, and the third resulted from a survivor engaging in the Title IX process. Notably, reporting to police is covered by judicial privilege, and reporting to a campus is covered by quasi-judicial privilege. However, over the past five years in Ohio, a body of attorneys has developed devoted to representing respondents in Title IX hearings. When those respondents lose, and occasionally when they win, those attorneys sue schools and survivors. Procedurally, survivors should be dismissed early in the process, but this has not uniformly been the case. In fact, only one of the three cases I listed above was dismissed at the stage expected. Two have been allowed to survive the motion to dismiss phase for technical reasons, and are still active in court today.

As I mentioned, our funding supports non-damage generating legal matters. However, our funding strictly prohibits participation in tort, even defense. To that end, we cannot provide representation to survivors defending in a lawsuit. Thankfully, we have been able to connect survivors with large firms who took the cases on a pro bono basis. If we had not, I shudder to think about financial burden these survivors would continue to face. Ultimately, if this practice increases undeterred, we will run out of referral resources and survivors will be on their own.

Across the country, legal experts have connected SLAPP suits with retaliation against survivors of domestic and sexual violence. As this committee knows, sexual violence and domestic violence complaints fall under the "protected communications" provision for "a written or oral statement or communication that is aimed at procuring any governmental or electoral action, result, or outcome." This aligns with precedent classifying reports to campuses and law enforcement as protected under the United States Constitution, specifically under "petition the government for a redress of grievances."

Under existing law, survivors can be subjected to months or even years of litigation. Though they will most certainly win, they still have to pay for and endure a defense. This bill would be beneficial to survivors because it creates an expedited motion to dismiss. Importantly, this bill also creates pathway in which the survivor may recover actual damages caused by the claim, punitive damages, and attorney fees. Importantly, if these sums are not paid within 90 days, the court may impose joint and several liability on the attorney/s who brought the case against the survivor defendant.

This bill not only brings a mechanism that will expedite survivor dismissal from SLAPP suits, it will send a message to law firms increasing this practice model for their own profit – an egregious abuse of the court system and survivors.

Ultimately, SLAPP suits discourage survivors from speaking out about their abuse in any form – whether that be reporting to police, reporting to campus officials, or seeking medical care. Notably, in Title IX instance, survivors can inadvertently trigger an investigation and hearing process – meaning that by simply saying they were assaulted, a survivor can be subjected to months or years of litigation.

OAESV does not want to see an Ohio where survivors of sex crimes are silenced and offenders are free to continue abuse. SB 206 is critical to achieving that, and we fully and enthusiastically support its passage.

Thank you for the opportunity to testify today. I am available to answer any questions today and by email at ccrary@oaesv.org.