**Testimony of Jeff Nye in support of S.B. 206**

Thank you for the opportunity to address the committee on this important bill, and thanks particularly to Senator Huffman and his co-sponsors for introducing the bill in the Senate. As I was reviewing some notes in advance of this hearing I was surprised to realize that I started working on this with some of these other folks you’re hearing from more than four years ago now. A lot has happened since then and I’m very pleased to be here with you today to talk about it.

I would be happy to discuss the technical aspects of this bill with the committee. I can address and explain how it works, why certain provisions were included, why certain terminology was used, where certain provisions were drawn from, and so on, and I can and will field any questions on those issues. But for my prepared remarks today I think it may be more productive to make just three somewhat general points.

First, Ohio is behind the times when it comes to anti-SLAPP legislation. More than half of our sister states have these statutes on the books, with the first having been enacted nearly thirty years ago. Not long ago Congress enacted the Consumer Review Fairness Act, which is not a full-blown anti-SLAPP bill, but which in its own way aims to be a prophylactic against these strategic lawsuits against public participation. What’s troubling about Ohio lagging in terms of an effective anti-SLAPP law is that the Ohio Constitution is actually at the vanguard of protecting free speech. The Ohio Supreme Court has repeatedly explained in case law that the Ohio Constitution gives broader protection to speech than does the First Amendment to the US Constitution. But without a good anti-SLAPP bill, it’s difficult or impossible for people to take advantage of those protections that they already have under the Ohio Constitution. And you don’t just have to take my word for this—the courts have already said it. As I think the committee knows, not long ago the Eighth District Court of Appeals in Cleveland said in a published decision that it sees a need for anti-SLAPP legislation in Ohio: it wrote that “Given Ohio’s particularly strong desire to protect individual speech, as embodied in its Constitution, Ohio should adopt an anti-SLAPP statute to discourage punitive litigation designed to chill constitutionally protected speech.” Think for a moment about how remarkable that is. An Ohio court of appeals is saying to this body, “The Ohio Constitution offers tremendous protection to people in this situation. But even though we have this great Constitution, we need better statutory tools to enforce those constitutional rights.” This bill gives the courts those tools. It’s time for our statutes to catch up with our Constitution.

The second general point I’d like to make is that this bill, if passed, would immediately become a best-of-breed anti-SLAPP law. When we worked on putting this together we looked closely at the provisions in dozens of other states to see what worked and what didn’t, what hurdles litigants found, what tools courts needed to police these cases, and so on. For instance, the Texas Citizen Participation Act has very strong protections for speech, but it includes language that is designed to ensure that litigants with meritorious claims get their day in court. We borrowed heavily from Texas. We also looked closely at Nevada, and at California, where there is a large volume of case law because of their entertainment industry. We looked at recent court decisions in Washington, Kentucky, Delaware, and other jurisdictions, all with an eye to ensuring that this bill is as effective as possible. I think it will be, and I’m not alone—not long after this bill was introduced, the Cato Institute wrote that “If approved by the legislature, it will stand as a new gold standard for anti-SLAPP laws.”

The third and final thing I’d like to point out is what this bill does *not* do. The main thing it does not do is change substantive defamation law. If something is actionable the day before this bill is passed, it will still be actionable the day after this bill is passed. What this bill does instead is take already-existing constitutional rights—the right to speak freely, the right to speak anonymously—and creates more effective mechanisms of enforcement. Existing practice takes what should be threshold constitutional questions and reserves them for the end of litigation. That creates an enormous burden on litigants who are exercising their constitutional rights. On this point I would like to note personally that I am just a lawyer at a relatively small firm in Cincinnati. I don’t represent newspapers or TV stations, I don’t represent Yelp or Google. My clients don’t have deep pockets. I represent people who leave true but negative feedback on eBay. I represent people who truthfully criticize their dentist for having unclean facilities. I represent small businesses who warn others about unscrupulous vendors or unethical suppliers. I represent the blogger who uncovered and publicized the social media posts relating to the Steubenville High School football rape case. For my clients, who were just engaging in speech protected by the Ohio and US Constitutions, this litigation can be absolutely ruinous—they don’t have tens of thousands or hundreds of thousands of dollars to spend on defending meritless claims. And the litigation is harmful and costly to the courts as well. Their dockets are clogged with these cases that can and should be ended early, if only they had the tools to do so. This bill solves that problem and allows for an early determination of constitutional questions. It does this in a fair and even-handed way, much like other laws in other substantive areas that put these threshold questions first—the mechanisms in this bill are not unlike those governing fraud claims, discrimination claims, securities litigation, and many others. Passing this bill will lead to shorter litigation, which means less litigation expense for parties and smaller dockets for our already overburdened courts.

Thank you again to the committee for your time and consideration of this bill. Ohio needs it and I urge its passage. Again, I am more than happy to discuss the text of the bill in more detail and to answer any questions the committee may have about it.