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Testimony to the Senate Judiciary Committee on Substitute HB 606

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

June 24, 2020

Chairman Eklund, Vice-Chair Manning, Ranking Member Thomas, and members of the Senate's Judiciary Committee.

Thank you for the opportunity to provide testimony on Substitute House Bill 606. My name is Bob Wagoner. As you know, 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 protecting and promoting a fair and impartial civil justice system, including the constitutional right to trial by jury.

On May 13, 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 Senate Judiciary Committee and the General Assembly decide to move forward with providing civil immunity, certain considerations must be included within any final legislation.

The OAJ is neutral on Substitute H.B. 606. Throughout the legislative process in the House and Senate, the OAJ has prioritized and requested five essential elements of legislation granting civil immunity for COVID-19 related claims: (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**: H.B. 606 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 bill does not immunize reckless behavior.

(4) **Burden of Proof**: The bill maintains the common civil standard for burden of proof as "by a preponderance of the evidence."

(5) **Wrongful Death**: The bill continues to immunize negligent acts or omissions for wrongful death claims from March 9th through December 31st. While we have concerns about this language, the changes to scope and duration will at least limit the longevity of this provision.

In summary, while the Ohio Association for Justice cannot support a bill that provides immunity to wrongdoers, under the circumstances OAJ believes 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.