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March 14, 2023

The Honorable Brett Hudson Hillyer
Chairman
House Civil Justice Committee
77 South High Street
Columbus, OH 43215

Dear Chairman Hillyer:

My name is Tom Fusonie. I am a partner in the Litigation practice at Vorys, Sater, Seymour and Pease LLP law firm. I have nearly 20 years of experience representing hundreds of various landowners throughout the State of Ohio and trying to protect their constitutional and inviolable property rights from eminent domain abuse, overreach, and gamesmanship.

I am pleased to offer this written testimony today in support of House Bill 64 on behalf of the Ohio Council of Retail Merchants and its more than 7,000 members. For many years, the Council has advocated for and sought to protect its members' property rights.

The Council has had to step in and protect members as it has seen the power of eminent domain repeatedly misused - even instances of takings of property without even compensating the landowners.

Eight years ago, the Council and I worked together for a Council member. With the Council's help, I met with ODOT as it was eliminating access for a Council member on that member's highly successful fast-food store property – without offering any just compensation. I explained to them how ODOT was wrong and violating the Ohio Constitution. ODOT ignored our concerns and closed the access without one dollar in compensation.

The Council member was left with no choice but to sue for the right to just compensation. ODOT's lawyers called it frivolous and wanted the Supreme Court of Ohio to sanction the member for it. Nearly three years later with support from the Council, the Council member's right to just compensation was vindicated by the Supreme Court of Ohio.

The member then sought under ODOT's own regulations reimbursement for its attorney's fees and court costs. A requirement plainly required by federal law for ODOT to receive federal highway funds. ODOT's lawyers, claimed that regulation had no force and effect because the General Assembly did not authorize it – **even though it is a requirement to receive federal highway funds**. The Supreme Court reluctantly agreed, but Justices Fischer and DeWine called for legislative reform as a result. Justice Fischer wrote: "I believe that legislators should specifically at least consider whether Ohioans, or any Americans for that matter, who have had property improperly taken by any government—and who must go to court to correct that problem caused by the government—should be entitled to their attorney fees, which they incurred to uphold their constitutionally protected property rights."

The Council supports this bill because it would put an end to this type of gamesmanship and other forms of it by those using eminent domain.

Eminent domain is a forced sale of property. Today, without reform, entities condemning property forget this key point. This bill brings justice and equity to eminent domain, so that no matter what your resources whether small business or Fortune 100 Company, your fundamental and inviolable property rights are equally treated by those wanting to seize them.

The Council supports progress and development as bedrocks of the growth of its members, but at the same time, that cannot come at the expense of its members' constitutional rights.

Thank you for the opportunity to provide my testimony and please feel free to contact me with any questions.

Sincerely,

Tom Fusonie