OHIO ASSOCIATION for JUSTICE
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Proponent Testimony to HB 179

Sydney McLafferty, Immediate Past President

House Civil Justice Committee

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Chair Hillyer, Vice-Chair Mathews, and Ranking Member Galonski,

My name is Sydney McLafferty. I am a partner at the law firm of Geiser, Bowman & McLafferty here in Columbus. For the past 20 years, I have represented Ohioans who need help obtaining restitution for injuries and damages inflicted upon them due to another's negligence. I now serve as the Immediate Past President for the Ohio Association for Justice ("OAJ"). I am here on behalf of all OAJ members and their clients who protect Ohioan's 7th amendment right to a fair and impartial civil jury trial.

OAJ supports HB 179 because it will correct the evolving damage created by the unintended consequences of a recent Ohio Supreme Court decision in *Clawson v. Heights Chiropractic (Clawson)*.

Before *Clawson*, under the vicarious liability common law, Ohio courts, and all other state courts across the country, provided that an employer could be sued without the need to sue each potentially negligent employee. A main underpinning to the rationale is that because it is the employer who derives the advantage from the employee's activity, it is fair that the risk of that activity should be allocated to the employer as well. In application, vicarious liability common law also prevented extensive business interruption, aggravation and litigation costs for all sides and allowed plaintiff attorneys to exercise restraint to simply sue the employer.

The decision in *Clawson* mandated that in order to prevail in litigation against a chiropractic practice for the negligence of its employee chiropractor, the patient also had to individually name as a defendant and successfully sue the chiropractic employee. Failure to sue the chiropractor caused the Court to dismiss the case against the chiropractic practice. Although the *Clawson* decision solely involved a chiropractic malpractice claim, the Supreme Court added language to the decision that is likely to extend the perceived effect much more broadly than intended.

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Clawson has created confusion of this long standing principle of law by requiring that the Plaintiff not only prove the negligence of the employee, but also actually sue and obtain judgment against them, before the employer could be held liable.

For decades, businesses and employees have substantially avoided the overwhelming experience of "shotgun style" lawsuits because courts required only employers be sued. However, *Clawson* ended the cost containment policy. The broad language used in the decision has sent shockwaves across the Ohio legal community. Now, in order to protect the rights of their clients, plaintiff lawyers are being forced to over-name previously unnecessary defendants, including business owners, managers, employees, and contractors. **The court has now compelled a massive increase in shotgun lawsuits.** This is exactly the type of unnecessary, costly and wasteful litigation that the Ohio Legislature has been working decades to prevent.

Until *Clawson* is fixed, expect substantial increases in business interruption, aggravation, and litigation costs. Due to the newly created uncertainty and out of an abundance of caution, plaintiff lawyers feel compelled to sue every possible individual involved in the negligent action in order to sue the employer for the employee's act. In complex cases since the decision, more than 80 employees have been required to be sued, including managers, supervisors, and company officers are also being sued for the company business decisions.

Employees unnecessarily named in these cases will be personally affected. Employment decisions, adverse credit reporting, the need to attend court hearings and trial, and the unique stress of being sued are known but unintended consequences.

OAJ urges quick resolution to return efficiency and common sense to civil cases for all parties and courts.

Thank you for the opportunity to testify. I am happy to address any questions of the committee.