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**MEMORANDUM**

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**TO:** Ohio House of Representatives, Civil Justice Committee, Chairman Brett Hillyer and Members

**FROM:** John Marshall attorney at law

**SUBJECT:** Testimony Opposing HB 281, Regarding Civil Liability for Criminal Acts, Revised Code Section 2307.60

**DATE:** April 30, 2024

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Dear Mr. Chairman and Committee Members,

I am John Marshall. I run a small law firm in Columbus with five lawyers and support staff. For 40 years, I have represented employees all walks of life. My firm represents CEOs and senior executives negotiating employment contracts and severance agreements. We help people with noncompete agreements. We represent people seeking overtime under the law, or who were discriminated against and lost their jobs. Over the years, we have tried to help people when their employers have committed crimes—because it's not a claim of discrimination or other violation of law they sometimes fall into a gap. Here are some examples from our practice.

On several occasions over the years, I have attempted to assist individuals who were fired because they refused to lie under oath for their employers. If it's connected to a discrimination investigation by the Civil Rights Commission, there is a legal claim for retaliation. But in many other circumstances, there's no legal claim other than under Ohio Revised Code 2307.60. Ohio used to have a fairly strong claim called public policy wrongful discharge, but that claim has been chipped away at so much that only truly viable claim here is under Ohio R. C. 2307.60. Any experienced prosecutor can tell you that proving a charge of suborning perjury beyond a reasonable doubt almost never happens and is extraordinarily difficult to prove because it's one person's word against another.

As you may recall Ohio's laws against discrimination only covers employers who have four or more employees. Over the years, I've represented women who were sexually harassed by their employers, but were not covered by the discrimination statute. I've had

three cases over the years where women worked in bars owned by awful people, but there were only a couple of other employees in the bar— the owners don't count as employees. There was no assault or battery claim, but the harassment was pretty severe. In one instance, the man called the young woman incessantly and went to her home several times to try to coerce her into having sex with him. He was not prosecuted because he claimed that he was just contacting his employee or visiting her home to give her a ride to work. His behavior was provably a crime under the civil standard of proof. She had no remedy under Ohio's discrimination laws, but R.C. 2307.60 helped this young woman to get out of that situation and gave her some economic protection. Another example is the reprehensible employer who steals money from their employees in one way or another, not covered by, for example, the fair labor standards act or other laws. I'll give you a fairly recent example. A pharmaceutical sales person had an amazing year working, he told me, 60+ hour weeks at great cost to he and his family. Under the agreement with his employer he is due several hundred thousand dollars in commissions. This employer gave him a check for half the amount due and told him that they just thought it was too much money and that if he wanted to keep his job he would accept half. Under their commission agreement, we could sue for breach of contract, but he would have to pay what would likely be substantial legal fees just to go get the money he was due because his commission agreement did not include fees. Of course, if he does that he is going to lose his job—he is making that choice, but R.C. 2307.60 would at least allow him to get everything he worked so hard to earn. The employer's conduct here I think meets the standards for theft or at least coercion under Ohio law. But no prosecutor is going to pursue this case— if he wants to get everything he is due and get his legal fees covered the only available remedy is the statute. Requiring a conviction will leave all these gaps and many others for people who suffer injustice at the hands of bad employers. On behalf of my clients I urge you to vote against this proposed legislation.