

Jack Greiner Testimony in Support of SB 237.

Good Morning Chairman Hillyer, Vice Chair Matthews, Ranking Member Isaacsohn, and the members of the Committee.

My name is Jack Greiner. I am an attorney with the Faruki law firm. I have practiced in the area of media law and the First Amendment for nearly 30 years. I do not intend to dwell on the merits of SB 237, as they are obvious, and others have spoken about them better than I could.

I would like to talk today about why this legislation is necessary both now and in the future. Ohio has been a leader in ensuring its citizens have speech protections that extend in some cases even further than those provided by the United States Constitution. For example, in the case of *Milkovich v. Lorain Journal*, the United States Supreme Court held that there is no special constitutional privilege for opinions. But in the case of *Vail v. Plain Dealer Publishing Company*, the Ohio Supreme Court held that its four factor test for determining if speech would be afforded an opinion privilege remained the law in Ohio, despite the *Milkovich* holding.

In addition, the Ohio Constitution, at Article 1, Section 16 sets forth a guarantee that the Courts shall be open to the public. The United States Constitution provides no such express guarantee.

SB 237 continues this tradition of protecting speech. The bill protects the right of citizens to speak to truth to power, free from the fear of crippling litigation. And as appropriate as this legislation is today, it is possible that it will be needed even more in the not too distant future. I say this based on my concern that the protections provided by the 1964 United States Court decision in *New York Times v. Sullivan* may not continue to survive.

For 60 years now, the *New York Times v. Sullivan* case has imposed heightened proof burdens on public officials and public figures who bring defamation lawsuits. But we know from the concurring opinion of Justice Clarence Thomas in the 2019 case of *McKee v. Cosby* that there is concern among certain of the Justices that the *New York Times* decision was "[a] policy driven decision masquerading as constitutional law." More recently, Justice Neil Gorsuch has called for a reexamination of *New York Times v. Sullivan*. Putting aside the merits of those arguments, if *New York Times v. Sullivan* is struck down, the protections afforded by SB 237 will be critical to the rights of Ohio citizens to speak freely.

Thus, for reasons that exist today, and for reasons that may exist in the coming years, I urge the passage of SB 237.