



## Senate Judiciary Committee

Witness Form

Today's Date April 22, 2024 \_\_\_\_\_

Name: Mark R. Chilson \_\_\_\_\_

Address: 2300 Far Hills Avenue Dayton, OH 45419 \_\_\_\_\_  
\_\_\_\_\_

Telephone: 937.286.2989 \_\_\_\_\_

Organization Representing: Chilson Law Office LLC \_\_\_\_\_

Testifying on Bill Number: S B 237 \_\_\_\_\_

Testimony:     Verbal             Written             Both

Testifying As:     Proponent             Opponent             Interested Party

Are you a Registered Lobbyist?     Yes     No

Special Requests: N o n e \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Written testimony is a public record and may be posted on the Ohio Senate's website



My name is Mark Chilson, and I am an attorney from Dayton. I have practiced law for the past 43 years. During my career I have worked with many not-for-profit organizations and have proudly served as pro bono counsel for not for profits. I also serve on the Board of Trustees of Dayton Children's Hospital, Graceworks Lutheran Social Services, and I just concluded service on the Board of Trustees for Pro Bono Partnership of Ohio, which is an organization of attorneys that provide free legal services to small not-for-profit organizations in Southwest Ohio. For the past five years I have also served as an adjunct law professor at the University of Dayton School of Law. My testimony here today is in my individual capacity as a concerned citizen in the state of Ohio and I do not represent any organization.

Strategic Lawsuits Against Public Policy (“SLAPP”) are designed to stop public discussion. I encourage the Ohio General Assembly to enact legislation to protect those who engage in public discussion with our elected officials. Without SLAPP legislation, we all will be confronted with the following:

A Court of Appeal Judge stated:

“Exercise your first amendment rights at your own peril. Our court system should be a place where we are all treated equally in the eyes of the law. It should not be a place for the powerful use their abundance of resources to enact revenge on those who see the world through different eyes. What future is there for freedom of speech if we allow those who speak out to be bled dry and turned an example of what happens when you stand up to speak your mind? SLAPP suits pervert our legal system by turning it into a war of attrition, a place where who is right and who is wrong does not matter nearly as much as who has the most resources.”

Expressing one's view to government officials is foundational to our political system. This fundamental right to petition the government is protected by both United States and Ohio constitutions. Lawsuits that seek to impose liability based upon petitioning activity inevitably chill the exercise of this fundamental right.

Citizens of Ohio must have the right to petition government, without the fear of being sued. SLAPP lawsuits can be devastating to individual defendants or small news organizations. These lawsuits chill criticism and debate. Ohio has a long and strong history to protect individual speech, as embodied in its Constitution.

I have served as pro bono counsel for Epiphany Lutheran Church for many years. In December 2022 the church learned of a proposed development which immediately abutted the church to the north. This development was going to be a convenience store, restaurant, and gas station which would have more than 3000 vehicles per day enter and exit this area. The church has an easement on the development property that gives the church the right to ingress and egress over the entire property and to park vehicles on the property. I spoke with the developer who requested the church give up its easement to allow the development to proceed. The developer indicated to me that if the church decided not to give up its real estate interest, that the development would not proceed. The Church council was convened to discuss this matter, and council voted unanimously to not give up its valuable real estate rights. The developer then advised me it intended to proceed despite the impediment that the real estate easement provided.

The church addressed the city Council advocating that its preschool which serves over 130 children would be directly impacted. The exit out of the proposed Sheetz development, if the driver did not change course, would directly impact the doors where the children enter and exit on a daily basis and enter and exit for activities outside. The Ohio Department of Health provided a letter indicating that it is aware of no test done on children that would set a safe limit for the inhalation of diesel fumes on preschool children. This information was presented to city Council. The church also has an outdoor worship area immediately to the north of this proposed development. The restaurant has a drive through with audible ordering which would interfere with worship services. Also, immediately to the north of the proposed development, is a sacred cremains area where loved one's ashes are scattered. Beautiful flowers, grass, and benches adorned this area where loved ones can gather to respect family members and close friends whose cremains are scattered in this area.

The church gathered over 800 signatures and presented it to city Council objecting to the development.

The church also mobilized the voting precinct to vote this area dry preventing a convenience store from selling hard liquor, beer, and wine in the development. The citizens of this precinct voted 76% to 24% to vote this precinct dry.

The church has been sued for loving Jesus by serving others and standing up to oppose the development because his development is not consistent with the character and nature of the neighborhood. The church has been sued for addressing city Council. The church has been sued for mobilizing the voters to prevent liquor sales at this development.

On January 19, 2024, the lawyers for Sheetz, Inc., Morris Road Development, LLC, and Hemmert Far Hills Properties, LLC, sent a letter to me as legal counsel for the church that it intended to file a lawsuit against the church unless two conditions were met:

1. The church must give up its lawful easement on the property, or be sued for compensatory and punitive damages.
2. The church must immediately vacate its opposition to the proposed development, or be sued for compensatory and punitive damages.

The church responded that it has a lawful easement on the property of the proposed site of the Sheetz development. The church will not accept your first proposed settlement request that it immediately relinquishes its easement to avoid being sued for compensatory and punitive damages.

The church also responded that it will not accept the second proposed settlement request that immediately vacates opposition to the proposed development or face a lawsuit for compensatory and punitive damages.

Three parties had intervened in a state court action to uphold the decision of the Centerville city Council.

On Friday, January 26, 2024, the attorneys for Sheetz, Inc., Morris Road Development, LLC, and Hemmert Far Hills Properties, LLC, demanded that the church withdraw its motion to intervene, not formally oppose the development further, and allow Sheetz, Skilken Gold, and the Hemmerts to represent to the public that Epiphany has agreed not to oppose the development further.

On Tuesday, January 30, 2024, the church responded as follows:

1. The church will not accept your first proposed request that it withdraw its motion to intervene to avoid being sued for compensatory and punitive damages.
2. The church will not accept your second proposed request that it not formally oppose development further to avoid being sued for compensatory and punitive damages.
3. The church will not accept your third proposed request that Sheetz, Skilken Gold, and the Hemmerts be allowed to represent to the public that Epiphany has agreed not to oppose development further to avoid being sued for compensatory and punitive damage damages.

Less than 24 hours later on Wednesday, January 31, 2024, the church was sued for compensatory and punitive damages. The message of Sheetz, Skilken Gold, and the Hemmerts was clear, shut up, let us control the message to the public, and you will not be sued for compensatory and punitive damages.

A Billion-dollar corporation has sued a church, and in the lawsuit where Sheetz quotes “for loving Jesus by serving others”, as having this message is worthy of being sued for compensatory and punitive damages in the state of Ohio. Give up your valuable real estate easement for no consideration or the church will be sued for compensatory and punitive damages.

To prevent me from serving as pro bono counsel for the church, Sheetz, Skilken Gold, and the Hemmerts, sought to disqualify me as legal counsel. We have opposed that the motion and this is presently pending before the court. The efforts to silence the church and its lawyer is shocking. I still remember as my whole body went numb as I read the proposed lawsuit against the church for

compensatory and punitive damages for exercising its right to address government.

As President Lincoln delivered a speech the afternoon of November 19, 1863, in Gettysburg, Pennsylvania, he stated the essence of our democracy,

“that these dead shall have not died in vein - that this nation, under God, shall have a new birth of freedom – and that government of the people, by the people, for the people, shall not perish from this Earth.”

SLAPP Litigation has no place in America. Citizens and those protecting societies most vulnerable, such as churches, must have the right to exercise their First Amendment Rights and have the right to access City Council and the Court System. Our Government is of the people, by the people, and for the people. Billionaires must not be allowed to silence the people with SLAPP Litigation. I request the General Assembly to enact such legislation.