

Chair, Members of the Committee:

My name is James Kresge. I grew up working in my Dad's residential construction company. I have vivid memories of sitting around the kitchen table watching my Dad balance his books and helping him at job sites, and I have seen firsthand the challenges and risks that entrepreneurs face every day. Today, I am proud to serve as outside general counsel for small businesses across Ohio, helping them navigate complex legal issues and protect their livelihoods. I have represented small businesses in litigation and advised them on employment, compliance, and risk management. My perspective is shaped by both my upbringing and my daily work advocating for Ohio's small business community.

Thank you for the opportunity to testify in support of legislation that would clarify and codify Ohio's longstanding rule: the statute of limitations for slander and libel should be one year from the date of publication, not from the date of discovery. I will use the term defamation throughout my testimony which includes both slander and libel.

This rule is not new—it has been the law in Ohio for over 170 years. As Chief Justice Kennedy's dissent in *Weidman v. Hildebrant* makes clear, the General Assembly established in 1853 that defamation claims must be brought within one year of publication, and our courts have consistently held that the injury occurs immediately upon communication, whether or not the injured party is aware of it^[1]. This approach is rooted in sound public policy and historic precedent.

Statutes of limitations serve four vital purposes: they ensure fairness to defendants, encourage prompt prosecution of claims, suppress stale and fraudulent lawsuits, and avoid the difficulties of proof that come with the passage of time^[1]. If we allow defamation claims to be brought years after a statement is made—perhaps only when it is discovered—businesses, organizations, and individuals could face indefinite liability for words spoken or written long ago. This would undermine the stability and repose that statutes of limitations are designed to provide.

For small business owners and human resources departments, the risks are especially acute. Imagine a scenario where a former employee, years after leaving, discovers a negative reference or internal comment and decides to sue for defamation. The business may have changed hands, records may be lost, and witnesses may be unavailable. The cost and uncertainty of defending against such stale claims would be a heavy burden, diverting resources from productive activity and chilling honest communication in the workplace^[1].

The Chief Justice also warned against judicial activism—courts rewriting statutes to create new exceptions like the discovery rule for reputational injuries. The General Assembly

knows how to include a discovery rule in statutes when it intends to do so, as it has for bodily injury, medical malpractice, and fraud. All those causes of action protect Ohio citizens against latent harms which might be festering below the surface or inside our bodies. But it has deliberately chosen not to extend the discovery rule to defamation claims^[1]. Changing this balance is a legislative prerogative, not a judicial one. The General Assembly should restore the historic statute of limitations for defamation.

A one year statute of limitation is common sense. Defamation is meant to compensate a party for damage to their reputation. It's common sense that if you don't notice your reputation has been damaged for over a year, you haven't really been hurt.

Finally, expanding the statute of limitations would expose businesses and individuals to perpetual fear of litigation over ill-chosen words, emails, or references made decades ago. This is not just a theoretical concern—in today's digital age, the volume of written communication is enormous, and the risk of old statements resurfacing is real. The law should not encourage an avalanche of lawsuits over ancient grievances.

In sum, a one-year statute of limitations from publication for defamation claims is fair, clear, and supported by Ohio's history and public policy. It protects defendants from stale claims, supports the stability of our legal system, and shields small businesses and HR professionals from indefinite liability. I urge you to codify this rule and preserve the balance that has served Ohio well for generations.

Thank you for your attention, and I'm happy to answer any questions you might have.^[1]

References

[1] [2024-Ohio-2931](#)

Elements of Defamation (Libel and Slander) in Ohio

Defamation in Ohio includes both **libel** (written or published statements) and **slander** (spoken statements). To prevail in a defamation claim, Ohio courts require proof of the following elements:

1. **A false statement of fact:** The statement must be objectively untrue and not merely an opinion or substantially true with minor inaccuracies.
2. **About the plaintiff:** The statement must concern the person bringing the claim.
3. **Publication to a third party:** The statement must be communicated to someone other than the plaintiff.
4. **At least a negligent level of intent:** The defendant must have acted with at least negligence regarding the truth or falsity of the statement. For public figures, actual malice (knowledge of falsity or reckless disregard for the truth) is required.
5. **Defamatory per se or actual damages:** The statement must either be defamatory per se (presumed damages) or have caused actual harm to the plaintiff's reputation, exposing them to public hatred, contempt, ridicule, shame, or disgrace, or adversely affecting their trade or profession^[1].

Libel vs. Slander

- **Libel** is considered more serious and enduring because it is recorded in a permanent form. Words of ridicule or contempt that lessen a person's reputation may be actionable as libel.
- **Slander** requires a higher standard. Except in cases of special damage, slanderous statements must:
 - Impart a charge of an indictable offense involving moral turpitude,
 - Impute an offensive or contagious disease,
 - Or cause injury to someone in their professional endeavors^{[2][3]}.

Defenses

- **Truth** is a complete defense to a defamation claim.

- **Privilege** (such as qualified privilege for statements made in good faith on a proper occasion) may also apply[4].

Statutory Reference

- See [Ohio Revised Code Chapter 2739](#) for statutory language on libel and slander, including defenses and conditions for liability[5].

Case Law

- Dale v. Ohio Civ. Serv. Emp. Assn., 57 Ohio St. 3d 112, 567 N.E.2d 253 (1991) (elements and standards for public vs. private figures)
- Talley v. WHIO TV-7, 131 Ohio App. 3d 164, 722 N.E.2d 103 (2d Dist 1998) (public figure distinctions)
- Northeast Ohio Elite Gymnastics Ctr., Inc. v. Osborne, 183 Ohio App. 104, 109 (9th Dist. 2009) (qualified privilege)[2].

If you need a more detailed breakdown or want to see how these elements are applied in specific Ohio cases, let me know!

Citations

[1] www.minclaw.com

[2] [SG- 0057398](#)

[3] [SG- 0057427](#)

[4] www.ohiobar.org

[5] codes.ohio.gov