OPPONENT TESTIMONY TO HOUSE BILL 441
Ohio House of Representatives – House Judiciary Committee

Chairman Thomas, Vice Chair Swearingen, Ranking Member Synenberg, and Members of the Committee:

My name is Aaron Minc, attorney and founder of Minc Law, an Ohio-based firm in Orange Village that helps hundreds of victims annually fight online defamation, harassment, extortion, sextortion, and other devastating digital privacy attacks. I've litigated hundreds of defamation cases across 25 states and served pro bono for over a decade on the board of a regional newspaper in northeast Ohio. As both an Ohio business owner and practitioner who works in the trenches daily, I respectfully oppose House Bill 441.

First, let me be clear: I understand and respect the concerns driving this legislation. I share Mr. Kresge's concern for small businesses. I own one. I share broadcasters' need for predictable legal frameworks. I depend on them to advise clients. And I absolutely agree with the bill's proponents that frivolous defamation lawsuits over stale claims serve no one.

However, **HB 441 creates far more problems than it solves**. It protects the worst kind of bad actors, those who plot and conceal malicious acts, while exposing responsible publishers to unclear and indefinite liability through undefined "each publication" language that abandons Ohio's traditionally followed "first publication" rule. Passing HB 441 will make Ohio a national outlier and undermine our otherwise excellent free speech protections.[1]

THE PROBLEM: CONCEALED AND ANONYMOUS DEFAMATION

Last August, our Supreme Court addressed a real problem with Ohio's libel laws: what happens when someone hides a defamatory attack so the victim can't discover it right away? The Court created a narrow rule applying only when publications are "secretive, concealed, or inherently unknowable." Think confidential personnel files, internal corporate memos, or forged documents circulated behind victims' backs. The Court recognized that letting wrongdoers run out the clock through concealment rewards misconduct and leaves victims with no recourse.

Yet rather than protecting Ohioans from these threats, HB 441 protects bad actors**,** including: anonymous cyberstalkers using VPNs and fake accounts, competitors filing false credit reports, corporate actors burying career-destroying statements in sealed files, and abusive ex-partners circulating fabricated accusations in private groups and dating apps.

We live in an era where AI creates deepfake videos, anonymous actors coordinate sophisticated campaigns, and false statements circulate in private forums, groups, and channels, causing real harm that victims often only discover months after the wrongful acts are committed and when the damage is already done. **Ohio needs laws protecting Ohioans from bad actors, not laws protecting bad actors from accountability.**

THE ANONYMOUS DEFAMATION PROBLEM

Perhaps most concerning, HB 441 provides zero remedy for Ohioans defamed by anonymous actors who cannot be identified within one year, despite their best efforts. Ohio law currently

provides no protection to stop the clock for concealed identification, no matter how diligently victims work to unmask their attacker. [2]

When victims discover anonymous defamation (published in secret or publicly) and immediately file a John Doe lawsuit, they face an exhausting process to unmask: subpoenas to Google, web hosts, internet service providers, and sometimes foreign companies. Each step requires court filings, often across multiple jurisdictions. Platforms routinely send objections that can take weeks to months to resolve. Critical IP evidence needed for identification is often deleted on short timelines, while defendants (and platforms) can contest disclosure at every single stage with legal battles that can take many months to resolve. If a defamer appeals a court's decision to reveal their identity, the appeal alone can take over a year to resolve. The statute of limitations keeps running the entire time. The defamer wins automatically.

This happens regularly in my practice. Small businesses targeted by coordinated fake review campaigns.[3] Professionals attacked through anonymous posts on private online groups and forums. Victims of sextortion, revenge porn, and more. **HB 441 tells every one of them that anonymous online predators can successfully run out the clock, and Ohio law will immunize their conduct and reward them for it.**

CONFUSION FOR PUBLISHERS

Beyond harming victims, HB 441 creates dangerous uncertainty for publishers. The bill states "each publication" triggers a new one-year period, but never defines what that means.[4] For decades, Ohio courts have followed the "first-publication" rule—one mass communication equals one publication, period. HB 441, on its face, abandons this without explanation. This will increase frivolous defamation lawsuits against publishers and ordinary citizens, not reduce them.[5]

A BETTER SOLUTION EXISTS

Ohio needs libel laws that protect victims, provide publishers with certainty, and prevent stale claims. This should include: a narrow discovery rule, protection that pauses the clock while plaintiffs identify anonymous defendants, an absolute deadline of repose to prevent stale claims like other civil torts [6], and clear standards for what each "publication" really means.

Ohio already has strong protections for free speech and against frivolous lawsuits, including our new anti-SLAPP law that went into effect earlier this year.[7] We need to build on these protections with laws that help Ohio businesses and citizens, not malicious actors. I respectfully urge this Committee to reject HB 441 and work toward a solution that protects victims, publishers, and Ohio's interests in both free speech and justice.

Thank you. I welcome your questions.

APPENDIX 1

[1] National trend analysis is detailed in Appendix Section 2 (twenty-seven states allow a limited concealment exception for defamation claims).

[2] R.C. 2305.15(A) (current tolling provision addresses only defendants who depart state or conceal themselves from service, not unknown identity).

[3] Small businesses are facing a rise in anonymous fake consumer review schemes and extortion:

- *Zukerman Lear & Murray Co. LPA, et., al., v. John Doe*, CV-23-978514, (Cuy. Cty. CCP, Ohio) (Five criminal defense law firms in Cleveland, Ohio, simultaneously hit with wave of dozens of fake negative Google reviews. At the same time, competing criminal defense firm in Cleveland was receiving hundreds of fake positive testimonials. All reviews connected by identical IP addresses);

- *Amaro v. DeMichael*, 2024-Ohio-3290 (5th App. Dist) (Law firm was flooded with 99 fake one and three-star reviews between February and June 2022. All reviews connected by a single IP address in Licking County, Ohio. None were actual clients);

- Small Business Face a New Threat: Pay Up or Be Flooded With Bad Reviews, **The New York Times**, September 25, 2025, https://www.nytimes.com/2025/09/11/technology/fake-reviews-small-businesses.html

- New Google Business Profile Report Negative Review Extortion Scams, **SEO Roundtable**, October 10, 2025, (Negative Google review extortion scams are so prevalent, Google has now published a new help document on the topic and reporting form). https://www.seroundtable.com/google-business-profile-report-negative-review-extortion-scams-40250.html

[4] HB 441, proposed amendment to R.C. 2305.11 (stating "each publication of such slander or libel" without defining "publication").

[5] For decades, Ohio's appellate courts have followed the **first-publication rule** for defamation claims. This prevents plaintiffs from bringing new claims based on the continued availability of the same content by preventing "endless tolling of the statute of limitations" with each subsequent copy, share, download, or rerun of the same publication. *Miller v. Ohio Rehabilitation Services Commission*, 86 Ohio Misc.2d 97, 100 (Ct. of Cl. 1997) *Guccione v. Hustler Magazine*, 64 Ohio Misc. 59, 60 (C.P. 1978); *T.S. v. Plain Dealer*, 2011-Ohio-2935, ¶ 7 (8th Dist.); *Reimund v. Brown*, 1995 WL 643939, *3 (10th Dist. Nov. 2, 1995); *Rowan v. Schaffe*r, 2019-Ohio-3038, ¶ 3 (8th Dist.).

However, the Ohio Supreme Court has never adopted the first-publication rule or "single-publication rule**."** *Weidman v. Hildebrant, 2024-Ohio-2931,* Dissenting Opinion of Wilken, J.

HB 441 abandons this clarity by introducing undefined "each publication" language without specifying what constitutes a separate publication, triggering new limitations periods. This creates ambiguity:

- Does routine website maintenance constitute republication?
- If a TV show or podcast episode is streamed or downloaded by someone today, is that a fresh publication restarting the clock?
- Does migrating online content to new platforms, websites, or archives restart limitations?
- What level of substantive revision triggers a publication?
- Does sharing identical content on different social media platforms constitute a new publication?
- If the exact same defamatory content is shared on a different platform (e.g. reposted from a website to a social media page), does that constitute a new publication event?

These unanswered questions will generate expensive litigation for professional publishers and individuals alike. Plaintiffs will seek to extend limitations indefinitely through "each publication" arguments.

[6] Statute of Repose Examples: ORC § 2305.131 (Construction Defect; 10 Years); ORC § 2305.113(C) (Medical Malpractice; 4 years); ORC § 2305.10(C) (Product Liability; 10 Years); ORC § 2305.117 (Legal malpractice; 4 years).

[7] Ohio maintains exceptionally strong First Amendment protections guarding against frivolous defamation litigation:

- **Constitutional protections:** Article I, Section 11 of the Ohio Constitution provides broader opinion immunity than federal First Amendment law, extending beyond media defendants. *Scott v. News-Herald*, 25 Ohio St.3d 243 (1986); *Vail v. Plain Dealer Publ'g Co.*, 72 Ohio St.3d 279 (1995).
- **Fair report privilege:** Ohio recognizes expansive privilege for accurate accounts of official proceedings. *Oney v. Dayton Newspapers, Inc.*, 43 Ohio App.2d 13 (1974); *Sullins v. Raycom Media, Inc.*, 135 Ohio St.3d 261 (2013).
- **Anti-SLAPP protection:** Effective April 9, 2025, Ohio's Uniform Public Expression Protection Act (UPEPA) provides early dismissal of meritless claims, automatic discovery stays, mandatory fee-shifting against frivolous suits, and interlocutory appeal rights.
- **Additional protections:** First-publication rule preventing endless re-litigation; truth as complete defense; common-law privileges; retraction statutes (R.C. Chapter 2739); litigation privilege; recognition of abuse-of-process claims. *Yaklevich v. Kemp*, 116 Ohio St.3d 553 (2008).

HB 441 dramatically undercuts this clarity by introducing vague language that **"each publication"** of the defamatory matter triggers a new limitations period. Yet the

bill fails to define what counts as a separate **"publication"** in today's digital media environment.

APPENDIX 2

[1] National Trend Toward Allowing Limited Discovery Exception to Statute of Limitations for Defamation Claims

Courts identify "a decided modern trend to apply the rule of discovery in cases in which the alleged defamatory statements are published under circumstances in which they are likely to be kept secret." *Clark v. AiResearch Mfg. Co.*, 673 P.2d 984, 986 (Ariz. App. 1983).

The most recent states to join the majority in the last two years are: Ohio (2024), Massachusetts (2025), and Iowa (2025).

27 States recognize limited discovery rules for concealed publications:

California (*Shively v. Bozanich*, 31 Cal.4th 1230 (2003)); Illinois (*Tom Olesker's Exciting World of Fashion v. Dun & Bradstreet*, 61 Ill.2d 129 (1975)); Texas (*Kelley v. Rinkle*, 532 S.W.2d 947 (1976)); Pennsylvania (*Galucci v. Phillips & Jacobs*, 418 Pa. Super. 306 (1992)); Maryland (*Sears v. Ulman*, 287 Md. 397 (1980)); North Dakota (*Atkinson v. McLaughlin*, 462 F.Supp.2d 1038, 1056 (D.N.D. 2006)); Oregon (*White v. Gurnsey*, 48 Or. App. 931 (1980)); Washington (*Kittinger v. Boeing Co.*, 21 Wash. App. 484 (1978)); Arizona (*Clark v. AiResearch Mfg. Co.*, 138 Ariz. 240 (1983)); Mississippi (*Staheli v. Smith*, 548 So.2d 1299 (1989)); Massachusetts (*Davalos v. Bay Watch*, 494 Mass. 548 (2024)); Iowa (*Betz v. Mathisen*, 2025 Iowa App. LEXIS 212 (Mar. 5, 2025)); Utah (*Allen v. Ortez*, 802 P.2d 1307 (1991)); Hawaii (*Hoke v. Paul*, 65 Haw. 478 (1982)); West Virginia (*Padon v. Sears*, 186 W.Va. 102 (1991)); Tennessee (*Leedom v. Bell*, 1997 Tenn. App. LEXIS 742); Colorado (Allowed, but not "exception." Rule is that accrual occurs on knowledge of injury (CJI-Civ. Ch. 22)); Oklahoma (*Digital Design Group v. Information Builders*, 2001 OK 21); Louisiana (*Alexander v. State Bd. of Private Investigator Examiners*, 211 So.3d 544); Indiana (*Burks v. Rushmore,* 534 N.E.2d 1101(Ind. 1989); Missouri (*Jones v. Pinkerton's*, 700 S.W.2d 456); Vermont (*Dulude v. Fletcher Allen Health Care*, 174 Vt. 74 (2002)); Wisconsin (*Evers v. Hager*, 1994 Wisc. App. LEXIS 1077); Rhode Island (*Sztulman v. Donabedian*, 2015 R.I. Super. LEXIS 94); Alaska (*Cornelison v. TIG*, 376 P.3d 1255 (2016)), Ohio (*Weidman v. Hildebrant* (2024)); Delaware (*Isaac v. Politico LLC*, 2025 Del. LEXIS 321 (Supreme Court) (applied in analogous context, as to privacy claims).

10 States do not have laws directly addressing the issue: Alabama; South Dakota (although finds Miss., authority persuasive); Minnesota; Arkansas; Kansas - *Taliaferro v. Kleoppel*, 1994 Kan. App. Unpub. LEXIS 733, (1994) ("We express no opinion whether the discovery rule should apply to defamation actions"); Wyoming, Maine, Minnesota, Montana, and New Mexico.

13 States do not allow discovery rule exception for defamation: Virginia; North Carolina; Kentucky; District of Columbia; Florida; Idaho; Nebraska; New Hampshire; New Jersey; Georgia; Nevada; New York; South Carolina.