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Chair Manning, Vice-Chair Reynolds, Ranking Member Hicks-Hudson, and members of the Senate Judiciary committee, thank you for allowing me to provide sponsor testimony on Senate Bill 38.

This bill is simple, but it's urgent. It addresses how we determine liability when someone is injured by negligently prepared food from a restaurant or food supplier. And it's a direct response to a disgraceful Ohio Supreme Court decision in *Berkheimer v. REKM*.

Here's what happened: Michael Berkheimer went to his favorite restaurant and ordered boneless wings, as he always did. But after he ate the wings, he felt that he had swallowed wrong, but went home after assuming everything was fine. Days later, when the pain in his throat got worse, he went to the emergency room, where doctors found a 5-centimeter bone lodged in his esophagus, causing a severe injury and infection. Multiple surgeries followed, and when I spoke to Mr. Berkheimer last year, he said he is still affected by the restaurant's actions. He had to quit refereeing hockey games- something that he had done for decades before- and he cannot walk nearly as far as he used to be able to. His life has undeniably been changed forever.

I hope that everyone in this room can empathize with Mr. Berkheimer. What he went through was horrific, time-consuming, and costly. But his injury itself is not the reason I am testifying before you today; I am here because, on top of the ordeal that Mr. Berkheimer had to go through medically, he then had his legal rights taken away from him, too. The Ohio constitution states that "[t]he right of trial by jury shall be inviolate," the Ohio Supreme Court stated that [t]he right of trial by jury should be as inviolate in the working of our courts as it is in the wording of our Constitutions." (*Gibbs v. Girard*). The United States Supreme Court said that "[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." (*Dimick v. Schiedt*).

But in Mr. Berkheimer's case, he was denied that right. Judges, not a jury, decided his case based on summary judgment. That's right – judges made the final decision without allowing a jury to hear the case. That's not just wrong – it's a direct assault on the very foundation of our legal system. And what is worse is that Justice Joe Deters, who wrote the majority opinion on the case, said that boneless does not mean without bones. According to him and the majority on the State Supreme Court, boneless means a cooking style, which to me and most thinking adults is utterly ridiculous! Because of this ridiculous opinion, Ohio is currently the only state in the union where "boneless" doesn't mean "without bones" and it makes our state a laughingstock to others.

Senate Bill 38 will fix this. It will make sure that future cases like Mr. Berkheimer's are heard by a jury – as our Constitution demands. It will also make sure that when determining liability, we use the reasonable expectations test used by most states, and that was described in Justice Deters majority opinion as, and I quote, "The better test of what is legally defective appears to be what consumers customarily expect and guard against".

This is a matter of common sense. Every person deserves their day in court, with a jury of their peers, and that jury should use common sense – they should decide based on what consumers expect, not some made-up definition of words.

Senate Bill 38 restores fairness. It restores the right to a jury trial. It restores accountability.

Thank you. I'm happy to take any questions.