

**Proponent Testimony Before the  
Ohio Senate Judiciary Committee on House Bill 126**

**Cary Silverman  
On Behalf of the American Tort Reform Association**

**October 22, 2025**

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Chairman Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson, and members of the Senate Judiciary Committee, thank you for the opportunity to testify in support of Sub. H.B. 126, which codifies existing Ohio law governing public nuisance actions. My name is Cary Silverman and I am a partner in the law firm Shook, Hardy & Bacon LLP. I am testifying on behalf of the American Tort Reform Association (ATRA). ATRA is a broad-based coalition of businesses, associations, and professional firms that promote fairness, balance, and predictability in civil litigation.

Ohio has long recognized the importance of fostering a business-friendly legal environment to promote investment and job-creation in the state. Because businesses consider legal risk when planning their future endeavors, clarity and predictability are important. One way Ohio has promoted these values is by enacting the Ohio Product Liability Act,<sup>1</sup> which replaced a patchwork of common law product liability claims with clear statutory causes of action. Sub. H.B. 126 promotes the same values by codifying a recent Ohio Supreme Court decision that correctly applied the language and legislature’s intent when it ruled that, because the Product Liability Act sets the requirements for all lawsuits alleging injuries from products, Ohio law does not permit public nuisance actions based on the design, manufacture, or sale of lawful products.<sup>2</sup>

Governments have long had the power to require people and businesses to “abate” public nuisances.<sup>3</sup> Ohio law defines a “public nuisance” as “an unreasonable interference with a right common to the general public” that is “based on either intentional conduct or an abnormally dangerous condition that cannot be maintained without injury to property, no matter what care is taken.”<sup>4</sup> A public nuisance claim provides a means to address disruptive, unreasonable activities on a person’s property that impact the public’s use of land. Traditional public nuisance lawsuits target activities like blocking public roads, polluting rivers, or using property for gambling, drug-dealing, or prostitution. It is intended to address land-use issues, not issues associated with products, for which we have product liability law.

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<sup>1</sup> R.C. §§ 2307.71-2307.80.

<sup>2</sup> *In re Nat’l Prescription Opiate Litig.*, 2024-Ohio-5744.

<sup>3</sup> Victor E. Schwartz & Phil Goldberg, *The Law of Public Nuisance: Maintaining Rational Boundaries on a Rational Tort*, 45 Washburn L.J. 541 (2006).

<sup>4</sup> *In re Nat’l Prescription Opiate Litig.*, 2024-Ohio-5744, ¶ 4.

In recent years, however, some lawyers have made a concerted effort to radically expand the scope of public nuisance law, moving it away from its proper use as a means to address unlawful interferences with property. Instead, they have attempted to convince courts to endorse an amorphous definition of public nuisance that disregards the established elements of that type of claim, turning it into a “super tort.”<sup>5</sup> In a bevy of cases across the country, state and local governments have argued that manufacturers and distributors of lawful products, like fuel, paint, handguns, medicine, and even beverages sold in plastic bottles, may be held liable through a public nuisance claim for costs associated with addressing societal issues related to the use (or misuse) of the products. Ohio has not been immune from this trend. In a 2002 ruling, the Ohio Supreme Court permitted a public nuisance suit to proceed based on the manufacture, marketing, distribution, and sale of firearms,<sup>6</sup> even as courts in other states found similar claims were not properly brought under public nuisance law.<sup>7</sup>

Following that decision, the General Assembly moved quickly to restore public nuisance law to its proper limits. In 2005, this body added language to the Product Liability Act indicating that the statute is “intended to abrogate all common law product liability claims or causes of action.”<sup>8</sup> The language clarified that all claims alleging that a product caused an injury must be brought in an action under the Product Liability Act and meet its requirements. One year later, the Ohio legislature was even more explicit when it added language to the Product Liability Act’s definition of a “product liability claim,” indicating that the Act “includes any public nuisance claim or cause of action at common law, in which it is alleged that the design, manufacture, supply, marketing, distribution, promotion, advertising, labeling, or sale of a product unreasonably interferes with a right common to the general public.”<sup>9</sup> These amendments remain law to this day.

Despite this clear law, attorneys have continued to press public nuisance claims against manufacturers and sellers of lawful products in Ohio. In *In re National Prescription Opiate Litigation*, 2024-Ohio-5744, the Ohio Supreme Court was asked to consider whether two Ohio counties could pursue a public nuisance claim seeking to shift costs associated with opioid addiction onto pharmacies and retailers that sold the FDA-approved prescription medications. A federal district

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<sup>5</sup> American Tort Reform Ass’n, *The Plaintiffs’ Lawyer Quest for the Holy Grail: The Public Nuisance “Super Tort”* (Mar. 2025). For example, a New York trial court recently dismissed a public nuisance claim against beverage manufacturers for an alleged “plastic pollution crisis,” stating the state’s “theory has never been adopted by a court in this state or any other.” *People by James v. PepsiCo., Inc.*, 222 N.Y.S.3d 907, 916 (N.Y. Sup. Ct. Erie County 2024).

<sup>6</sup> *Cincinnati v. Beretta U.S.A. Corp.*, 2002-Ohio-2480.

<sup>7</sup> See, e.g., *City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1088, 1116 (Ill. 2004). The Ohio Supreme Court recent characterized its decision in *Beretta* as “expanding opportunities for product-based lawsuits” by “endorsing an unorthodox use of the tort of public nuisance.” *In re Nat’l Prescription Opiate Litig.*, 2024-Ohio-5744, at ¶ 12.

<sup>8</sup> *In re Nat’l Prescription Opiate Litig.*, 2024-Ohio-5744, at ¶ 13 (discussing this history).

<sup>9</sup> R.C. § 2307.71(A)(13).

court had allowed these claims to proceed, disregarding the Product Liability Act's language.

The Ohio Supreme Court recognized that public nuisance and product liability lawsuits serve different purposes. It reaffirmed that public nuisance law addresses public rights connected to real property. After exploring the legislative actions discussed above, the court reaffirmed that the Product Liability Act governs product-based lawsuits.<sup>10</sup>

House Bill 126 is needed for two reasons. First, as the 2024 case shows, lawsuits attempting to misuse public nuisance claims to circumvent basic requirements of product liability law have continued, despite the legislature's past actions. The bill will discourage these lawsuits, which are costly for businesses to defend, even if they are meritless and ultimately dismissed. Second, the legislation provides businesses with predictability by ensuring the Ohio Supreme Court's 2024 ruling is lasting. The bill also reaffirms the clear intent of the legislature in passing and amending the Product Liability Act.

Finally, it is important to recognize that, while public nuisance law is not the right way to address product-based lawsuits, Ohioans who are injured by products have remedies available to them. If a product has a manufacturing defect, a design defect, or inadequate instructions or warnings, and that defect causes an injury, the Product Liability Act provides a claim. If a business falsely or deceptively advertises a product, the Ohio Sales Practices Act is the proper mechanism for action. Various state and federal laws provide a means for the government to respond if a business is responsible for pollution. Each of these laws has established elements and remedies, as does public nuisance law.

Thank you for the opportunity to testify today. ATRA respectfully asks for your favorable consideration of House Bill 126.

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<sup>10</sup> See Philip S. Goldberg, *Ohio Joins the Growing List of States to Reject the Public Nuisance Super Tort*, Wash. Legal Found., Jan. 21, 2025.