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Senator William P. Coley, II
Senate Government Oversight and Reform Committee
Ohio Statehouse
1 Capitol Square
Columbus, OH 43215

Re: TESTIMONY OF JOHN C. GREINER RE: S.B. 206

Dear Senator Coley:

Thank you for the opportunity to address the Committee this morning.

The principles underlying the First Amendment – Freedom of Speech, Freedom of the Press, the Right to Petition the Government – not only set our country apart as a bastion of freedom, they are principles upon which Americans almost universally agree.

But these principles are hollow if they can be too easily frustrated in practice. What good is the right to free speech, if that right can be thwarted in practice by powerful interests who disagree with the message? Very little.

And make no mistake, it is not just the individual at risk of being silenced by the threat of litigation. Many media outlets – newspapers, local TV stations, blogs – operate on tight budgets with limited resources. The prospect of time consuming, resource-devouring litigation can stop investigations and publications in their tracks, as a practical matter.

Senate Bill 206 will do much to protect the important principles of free speech, free press and the right to petition the government – in a real and practical way. Several provisions of the bill will have a direct and practical impact:

1. The ability of a defendant to file a motion to strike the claim gives the victim of a frivolous suit immediate protection from the consequences of protracted litigation;

2. The bill's requirement that the plaintiff "put up or shut up" in the sense that the plaintiff present "clear and specific admissible evidence" of a *prima facie* case will allow the public to promptly see when a case lacks merit;

3. The bill's requirement that a court stay discovery in the case until a ruling on the motion to strike insures that a plaintiff cannot use the filing of the frivolous suit merely to engage in



abusive discovery;

4. The bill's requirement that the court award attorney's fees and court costs upon granting the motion to strike eliminates the ability of a well-funded plaintiff from forcing the defendant to incur five, six or even seven-figure expenses to defend the suit.

Each of these provisions, taken together, will limit, if not eliminate abusive litigation while not disturbing in any way the right of a truly aggrieved party to seek a recovery. The ability of a citizen to have a defamation suit promptly dismissed, coupled with the ability to recover attorney fees incurred in that effort will provide needed relief to entities subject to this practical form of censorship and will deter those censors from attacking the messenger because they disagree with the message.

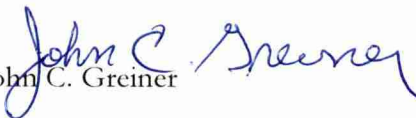
In the *Murray v. Chagrin Valley Publishing* case, Ohio's Eighth District Court of Appeals took the extraordinary step, in its decision affirming summary judgment on behalf of various citizens and media outlets in a frivolous libel suit, of urging the Ohio legislature to adopt anti-SLAPP legislation. The court said this:

"The articles and statements appellants attached to their complaint are protected First Amendment speech or statements published without actual malice. This case illustrates the need for Ohio to join the majority of states in this country that have enacted statutes that provide for quick relief from suits aimed at chilling protected speech. These suits, referred to as strategic lawsuits against public participation ("SLAPP"), can be devastating to individual defendants or small news organizations and act to chill criticism and debate. The fact that the Chagrin Valley Times website has been scrubbed of all mention of Murray or this protest is an example of the chilling effects this has."

The Murray case was a microcosm of the harm a powerful corporation can inflict when it is upset by unflattering news coverage. I would urge this body to heed the words of the Eighth Appellate District, join more than two dozen other states, and adopt this legislation.

Very truly yours,

GRAYDON HEAD & RITCHEY LLP


John C. Greiner

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