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Testimony to the House Civil Justice Committee regarding SB 308

Robert Wagoner, Esq. President of the Ohio Association for Justice

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Chairman Eklund, Vice-Chair Manning, Ranking Member Thomas and members of the Senate Judiciary Committee,

Thank you for the opportunity to provide testimony to Senate Bill 308. My name is Bob Wagoner. I am a lawyer and business owner, managing my own law firm here in Columbus. I am also the President of the Ohio Association for Justice (OAJ). As a voice of the plaintiff's bar in Ohio, OAJ is dedicated to preserving the Seventh Amendment and Article I of Ohio's Constitution, guaranteeing the citizens of Ohio the right to trial by a jury of their peers in civil cases.

Ohio businesses need confidence to open. Ohioans need confidence to go to businesses again. Immunity from civil liability is dangerous because it will weaken the confidence of businesses and Ohioans at this fragile time. Immunity (1) removes accountability for unsafe actors, (2) encourages unsafe behavior and (3) places those acting safely at a disadvantage.

Accountability to the public leads to safe behaviors. In 2018, when a Chipotle restaurant in Powell, Ohio was found to have been serving unsafe food that was getting people sick, the government did not step in to immunize or protect the business from its negligence. Customers maintained their Seventh Amendment rights and Chipotle put in place better safeguards for customer health. Protection from liability eliminates the constitutional opportunity for accountability.

We all expect the majority of businesses will conduct themselves safely when they re-open. Unfortunately, inevitably, some will not. The fear of economic ruin and fervor to re-open could influence otherwise well-meaning businesses to push the boundaries of protecting their employees and customers. Businesses should be encouraged to re-open with the safety of the citizens of this state in mind, not shielded from liability. Knowing they have immunity, businesses will be encouraged to, certainly not discouraged from, act(ing) unsafely. The message we send to any business by providing them with immunity is "we want you to act safely, but we will not hold you responsible if you don't."

For those businesses conducting safe practices, immunity will place them at a competitive disadvantage to competitor businesses who are not acting safely. What do we say to the businesses who are doing everything right when it comes to safe practices as they watch competitors cut safety corners to conduct business more productively at the expense of people's safety? Why would we allow that?

Ohio's Constitution emphasizes that our right to trial by jury "shall be inviolate." That means it is something so sacred it cannot be harmed or affected by anything. Protecting Seventh Amendment rights is paramount to protecting and restoring confidence in our institutions and businesses. We

encourage the General Assembly to prioritize public safety and to safeguard the rights and safety of all Ohioans. When the state re-opens, it should do so with the certainty that all rights are intact, certainly one that is inviolate.

Having stated OAJ's concerns about immunity, if the Committee nevertheless determines that immunity is necessary, then the immunity being afforded should be limited to apply only to the specific exceptional circumstances that we are facing. Specifically, (1) any immunity should be limited in scope so that it would apply only to acts or omissions that are substantially casually related to COVID-19, which is the stated reason this bill was introduced; (2) any afforded immunity should be limited in duration to the period of the exceptional circumstances. For example, a reasonable duration recognizing COVID-19 would be the length of time of the Governor's Executive Order 2020-01D, or some other period of time that is clear in both its beginning and end dates and comes from a reliable governmental authority. (3) Limit the immunity to negligent conduct; reckless conduct should not be immunized. (4) Maintain the normal recognized burden of proof of "by a preponderance of the evidence;" increasing the burden of proof (to "clear and convincing") while also lowering the standard of care (eliminating negligence) creates an unnecessary double hurdle to establish legitimate claims.

In summary, Ohio has been a global leader in the fight against COVID-19 and every Ohio citizen has personally sacrificed for the good of the state. The Ohio Association for Justice believes our state's success must continue and not come at the expense of our constitutional rights or the safety of the Ohio public.