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**House Committee on Judiciary
Neutral Testimony on HB 2510**

Wednesday, January 31, 2024

Chairwoman Humphries and Members of the Committee,

Thank you for the opportunity to provide testimony on House Bill 2510. Although we agree with many of the supporters' concerns about third-party litigation financing—particularly in relation to national security and attorney ethics—we must express our reservations about this proposal.

HB 2510 would allow certain third-party agreements for financing litigation to be obtained through discovery. This forced disclosure, in our view, could open the door to threats, intimidation, and harassment and ultimately reduce donor willingness to support charitable causes and public-interest organizations.

We recognize that HB 2510 is limited in scope. It does not require disclosure of all third-party arrangements but only those where the funder is due to receive some portion of any recovery. Consequently, most of the arrangements it would cover (though not all of them) would only involve ordinary commercial entities. Nonetheless, we still believe that the bill as written could require the disclosure of funding from nonprofits in certain ideological, political, or other public-interest litigation.

The threat of disclosure diminishes the associational and speech rights guaranteed by the First Amendment. The United States Supreme Court has previously struck down an attempt by another state to force nonprofit organizations to disclose their donor lists because doing so violated the First Amendment.

There are various reasons why an individual contributing to an organization advocating for a specific cause might prefer to remain unidentified, such as religious beliefs, a desire for privacy, or the controversial nature of the cause. Every American is entitled to freedom of expression and association, allowing them to support causes they believe in.

There is sometimes an implication in the public discourse that all “transparency” is good. That may be mostly true where government is involved, which is why we have laws like KORA and KOMA and why this hearing today is taking place in public. But the same logic does not necessarily apply to litigation. And American history is full of examples of things that may not have ever happened without anonymity. Lest we not forget: *Common Sense* and *The Federalist Papers*—important documents the Revolutionary and Founding eras, respectively, were written anonymously.

In our role at the Office of the Attorney General, we take the protection of our citizens' privacy and their right to donate to charitable causes anonymously very seriously. Preserving this crucial right to association and speech is vital, as without it, certain causes, particularly conservative ones, may face heightened scrutiny.

We look forward to the opportunity to work with you to explore alternative methods for enhancing our civil justice system while ensuring the confidentiality of a litigant's supporters in appropriate cases.

Respectfully,

Daniel E. Burrows
Chief Deputy Attorney General