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The Honorable William C. Smith, Jr., Chair
Members of the Maryland Senate Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen St.
Annapolis, MD 21401-1991

Re.: **SB 335: Courts—Nongovernmental Corporate Parties-Disclosure Statements**
PLEASE VOTE FAVORABLE

Dear Chairman Smith and Members of the Senate Judicial Proceedings Committee:

On behalf of my clients and your constituents who appear in all Maryland state courts, I provide this **written testimony in support of S.B. 335** and encourage this committee to **VOTE FAVORABLE** on the legislation.

The purpose of this bill is to modernize Maryland civil practice to become more transparent and to conform with the practice of the Federal courts and some of our sister states in ensuring the public's trust that justice in Maryland is fair and impartial in civil proceedings involving corporations and business entities. The legislation addresses this goal by generally requiring business organizations appearing in Maryland courts to disclose who has a financial interest in the litigation. This simple requirement will:

- Modernize Maryland civil proceedings to the same basic requirements in every Federal court across the country.¹
- Create transparency where secrecy now exists in Maryland courts and show Maryland residents that justice in Maryland is fair and impartial to all and does not unfairly favor corporations operating in the shadows.

Such disclosure is desired to ensure there is no conflict or even an appearance of conflict in Maryland court proceedings which are serious matters of public concern. Without disclosure neither judges, parties opposing corporations, or the public have any way of knowing if a conflict exists.

Background: Since at least 1989 the Federal appellate courts have required corporate disclosures “to assist judges in making a determination of whether they have any interests in any of a party’s related corporate entities that would disqualify the judges from hearing the appeal.” 1989 Com. Note to Fed. R. App. P. 26.1. Thereafter, similar minimum information has been required for all

¹ Several other states and territories have similar corporate disclosure requirements. *See e.g.* District of Columbia (Rule 26.1 of the Rules of the District of Columbia Court of Appeals); Massachusetts (MA R S CT Rule 1:21); Guam (Rule 13.1 of the Guam Rules of Appellate procedure); Virgin Islands (Rule 18 of the Guam Rules of Appellate Procedure).

Federal district court judges to assist them in knowing they make “informed disqualification decisions” under the judicial canons. 2002 Com. Note to Fed. R. Civ. P. 7.1. One court has explained the purpose of the Federal disclosure requirements as follows:

Corporate disclosure statements exist “to assist district judges in determining whether they might have a financial interest in a corporate entity that is related to a corporate party in a case before them and therefore requires their recusal.” 5 Wright & Miller, Fed. Prac. & Proc. Civ. § 1197 (3d ed. 2010). Recusal issues involve “[t]he operations of the courts and the judicial conduct of judges,” and thus are “matters of utmost public concern.” *Bradley*, 2007 WL 1703232 at * 1 (quoting *Romero v. Drummond Co.*, 480 F.3d 1234, 1245 (11th Cir.2007)).

Steel Erectors, Inc. v. AIM Steel Int’l, Inc., 312 F.R.D. 673, 675 (S.D. Ga. 2016).

The local Federal district courts are permitted to establish additional disclosure requirements under Fed. R. Civ. P. 7.1 and have done so. *See e.g.* United States District Court of Maryland Local Rule 103(3)(requiring disclosure of “any parent or other affiliate of a corporate party and the description of the relationship between the party and such affiliates...[and] [t]he identity of all members of any party that is a business entity established under state law...[including potentially and] the state of citizenship of each member...[and] [t]he identity of any corporation, unincorporated association, partnership, or other business entity, not a party to the case, which may have any financial interest whatsoever in the outcome of the litigation, and the nature of its financial interest).

Other Benefits to Legislation: S.B. 355 will not prevent businesses from appearing in Maryland courts. It will, however, require those business entities who use Maryland courts to disclose the persons who have a financial stake in the litigation. As explained recently by Senator Sheldon Whitehouse (D-RI):

Today, corporations wield commanding power in our democracy. They do so directly, and through a network of trade associations, think tanks, front groups, and political organizations. That power too often is directed by corporate forces to dodge accountability for harms to the public; to subvert the free market to their advantage; and to protect their own political power by undermining democratic institutions.

Senator Sheldon Whitehouse, *Dark Money and U.S. Courts: The Problem and Solutions*, 57 HARV. J. ON LEGIS. 273 (2020).

S.B. 355 will counter this recent development of dark money invading judicial proceedings by requiring public disclosure of those who are using the court system. Maryland does not need and nor should it permit dark money interests to conceal the identities of persons benefiting from the litigation by using various corporate structures. As Patrick Henry stated:

“The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them.”

PLEASE VOTE FAVORABLE ON SB 355