

# **SB 335 testimony.pdf**

Uploaded by: Bertinelli, Alexa

Position: FAV



January 29, 2021

The Honorable William C. Smith, Jr.  
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 – Favorable Position  
Courts—Nongovernmental Corporate Parties – Disclosure Statements**

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

**The undersigned organizations join together to encourage you to vote favorably on SB 335.** This legislation will have no fiscal impact on the State but will make sure litigants utilizing Maryland courts are transparent about the identity of the parties in interest appearing in the civil litigation.

The Federal Courts and multiple other jurisdictions already require disclosure of such information so this legislation would make Maryland consistent with what is already required in other jurisdictions. *See e.g.* Fed. R. Civ. P. 7.1; Rule 26.1 of the Rules of the District of Columbia Court of Appeals; Rule 1:21 of Massachusetts Rules of Court and Standing Orders; Rule 13.1 of the Guam Rules of Appellate procedure; Rule 18 of the Virgin Island Rules of Appellate Procedure.

We believe Maryland should follow the traditions of other jurisdictions to ensure that those corporate parties utilizing Maryland courts disclose the financial interests of the persons involved. Such disclosure will ensure transparency in Maryland court proceedings and facilitate judges adjudicating claims before them in determining whether recusal is appropriate due to conflict of interest or even an appearance of conflict of interest. Such matters are also of public concern and it is important and necessary for the public to have confidence that its judicial system and its proceedings are carried out in a fair and impartial manner.

Based on the foregoing, we encourage the Senate Judicial Proceedings Committee **to vote favorably on SB 335**. If you have any questions, please contact Alexa Bertinelli at 410-706-5650 or [abertinelli@civiljusticenetwork.org](mailto:abertinelli@civiljusticenetwork.org).

Sincerely,

Alexa Bertinelli  
Senior Staff Attorney  
Civil Justice

Debra Gardner  
Legal Director  
Public Justice Center

Shana Roth-Gormley  
Pro Bono Coordinator & Staff Attorney  
Community Law Center

Marceline White  
Executive Director  
Maryland Consumer Rights Coalition

# **Sydnor Testimony for SB0335 Courts-Disclosure.pdf**

Uploaded by: Clark, Eugene

Position: FAV

CHARLES E. SYDNOR III, ESQ.  
Legislative District 44  
Baltimore City and Baltimore County

Judicial Proceedings Committee

Joint Committees

Children, Youth, and Families

Cybersecurity, Information  
Technology, and Biotechnology

Ending Homelessness



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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Testimony Regarding SB 335 - Courts  
Nongovernmental Corporate Parties – Disclosure Statements  
Before Judicial Proceedings Committee  
February 2, 2021**

*It is desirable that judicial proceedings should take place under the public eye. . . . Because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed. — Massachusetts Supreme Judicial Court Justice Oliver Wendell Holmes, 1894*

Good afternoon Chair Smith, members of the Judicial Proceedings Committee,

Transparency in our justice system, as Massachusetts Supreme Judicial Court Justice Oliver Wendell Holmes noted in 1894, is vital. Rule 7.1 of the Federal Rules of Civil Procedure requires a nongovernmental corporate party in a lawsuit to file a disclosure statement identifying any parent corporation or other publicly held corporation owning more than 10% of its stock.<sup>1</sup> This disclosure requirement allows parties in federal suits to be aware of others that may have a stake in the proceeding. Currently, Maryland does not require the same kind of disclosure for proceedings within our state court system. This bill changes that and bolsters transparency in our state’s civil justice system.

Senate Bill 335 requires nongovernmental corporate parties to file a disclosure statement with its first filing in a state lawsuit. The statement will identify any parent corporation of the party and any publicly held corporation owning 10% or more of its stock. If these do not apply to the party, the party will state that there is no parent corporation in the disclosure statement. The bill is meant to be interpreted in a manner consistent with the Federal Rules of Civil Procedure.

Senate Bill 335 helps ensure transparency in several ways. Often in litigation, some business entities are able to shield who has an interest in the proceeding by refusing to identify its owners. Any corporate entity utilizing Maryland courts should not be able to keep these identities secret. This issue was on display in *Smith v. Westminster Management, LLC*,<sup>2</sup> where the case was sent

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<sup>1</sup> Fed. R. Civ. P. 7.1.

<sup>2</sup> *Smith v. Westminster Management, LLC*, 292 F. Supp. 3d 645 (D. Md. 2018).

back to state court from federal court because the defendant company did not want to disclose its members.<sup>3</sup>

Senate Bill 335 will also help judges better identify conflicts of interest with the parties before them. By requiring disclosure of corporate ownership, judges will have more information about whether they have a conflict of interest with the party. Currently, there is no method for state court judges (or the public) to know if the judge has a financial interest in an entity appearing in a judicial proceeding. This bill's disclosure requirements will allow a judge to know if they have a conflict of interest and should recuse his or her self from the case.

Finally, Senate Bill 335 will benefit Maryland's judicial system because it will make Maryland disclosure procedures consistent with federal procedures. Maryland courts, in this regard, should be as transparent as our federal courts. There is no just policy reason to allow corporate entities to conceal ownership interests in state court but require disclosure in federal court.

Transparency is essential to ensure a fair justice system. Senate Bill 335's disclosure requirements will greatly improve transparency in Maryland courts. Aligning Maryland procedures with federal procedures increases overall consistency in the judicial process, which in this case, will benefit everyone involved.

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<sup>3</sup> *Id.* at 648.

**CLC Letter in Support of SB 335 - FINAL.pdf**

Uploaded by: Robinson, Phillip

Position: FAV

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January 29, 2021

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.<sup>1</sup>
- 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

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<sup>1</sup> 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 (11<sup>th</sup> 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**

# **MD Judiciary - Testimony SB 335.pdf**

Uploaded by: Elalamy, Sara

Position: UNF

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Mary Ellen Barbera  
Chief Judge

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 335  
Courts – Nongovernmental Corporate Parties – Disclosure  
Statements  
**DATE:** January 27, 2021  
(2/2)  
**POSITION:** Oppose, as drafted

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The Maryland Judiciary opposes Senate Bill 335, as drafted. This legislation creates Courts and Judicial Proceedings Article § 6-412, which would require that a nongovernmental corporate party shall, with its first appearance, pleading, petition, motion, response, or other request, file two copies of a disclosure statement that identifies certain corporate ownership details including: (1) any parent corporation and any publicly held corporation owning 10% or more of its stock; (2) any member or owner in a joint venture or LLC; (3) all partners in a partnership or LLP; (4) any corporate member if the party is any other unincorporated association, or (5) a statement that there is no such corporation. If any of the information required to be disclosed changes, the party is required to file a supplemental statement.

In addition, the bill states that “this section shall be interpreted in a manner that is consistent with the Federal Rules of Civil Procedure.” Maryland has its own extensive Rules of Procedure and it would be inappropriate to dictate that Maryland state courts follow the Federal Rules of Civil Procedure, which govern civil proceedings in the United States district courts. Moreover, those Rules are subject to ongoing updates and modification so it would be unusual to codify compliance with a standard that is constantly evolving.

Finally, it is unclear why it is necessary for a nongovernmental corporate party to file two copies with the court.

cc. Hon. Charles Sydnor  
Judicial Council  
Legislative Committee  
Kelley O’Connor

# **SB 335 - MSBA\_MSBA Business Law\_Courts – NongovtCo**

Uploaded by: Montgomery, Richard

Position: UNF



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**To:** Members of the Senate Judicial Proceedings Committee

**From:** Richard A. Montgomery III  
Director of Legislative & Governmental Relations

**Date:** February 2, 2021

**Subject:** **Senate Bill 335 - Courts – Nongovernmental Corporate Parties – Disclosure Statements**

**Position:** **Oppose**

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The **Maryland State Bar Association (MSBA)**, as well as the **Business Law Section of the MSBA**, oppose **Senate Bill 335 - Courts – Nongovernmental Corporate Parties – Disclosure Statements**. Senate Bill 335 would require a nongovernmental corporate party to file, at a first appearance, pleading, petition, motion, response, or other request addressed to the court, and two copies of a certain disclosure statement specifying the identity of certain corporate entities, or the nonexistence of a particular entity. Additionally, the bill specifies the required contents of the disclosure statement, requires a nongovernmental corporate party to file a supplemental statement, with any required information changes. Further, SB 335 requires that this Act shall interpreted in a manner that is consistent with the Federal Rules of Civil Procedure.

While the MSBA expresses no conceptual opposition to the judicial processes set forth in SB 335, the MSBA, and the Business Law Section of the MSBA strongly believe that this set of procedures are more appropriate for the Maryland Rules than the Courts Article of the Annotated Code. Accordingly, we would urge an **Unfavorable Report on SB 335**, on the grounds that the matter should be considered by the Court of Appeals' Committee on Rules and Procedures.

Should you have any questions, please contact Richard Montgomery, MSBA Legislative Director at (410) 269-6464 or [richard@msba.org](mailto:richard@msba.org).