BEKMAN, MARDER, HOPPER, MALARKEY & PERLIN, LLC
A PLAINTIFF'S TRIAL FIRM

EMILY C. MALARKEY
MALARKEY@MDTRIALFIRM.COM
*ALSO ADMITTED IN WASHINGTON, D.C.

April 4, 2025

Dear Members Of The Senate Judicial Proceedings Committee,

My name is Emily Malarkey. I am a trial lawyer and partner at the oldest plaintiffs' personal injury law firm in Maryland. We represent several hundred survivors of child sexual abuse in claims against public and private institutions. I am also a past President of the Maryland Association for Justice.

I urge an unfavorable report on HB 1378. In addition to serious concerns regarding the constitutionality of the bill and the draconian June 1st effective date (which will have a crippling effect on our circuit courts in the near future), I want to spend my written testimony sharing with you the practical effects of caps on damages, and how they work in the real world.

Sexual abuse cases are difficult to prove, very expensive, and take a long time to prosecute. A survivor cannot simply file a lawsuit and automatically get a settlement check. We have to prove not only that the abuse occurred, but that the institution knew that the abuser was perpetrating the abuse, and failed to act to protect the survivor.

Proving liability on the part of institution, whether public or private, requires hiring private investigators to track down witnesses, trying to obtain decades-old documents, hiring experts to testify about safety and prevention standards that applied a long time ago, and other costly and time-intensive work. In addition to time, proving liability involves incurring costs that easily exceeds tens of thousands of dollars per case.

The reality is that no tortfeasor actually pays the cap to settle the case. To earn a recovery of the cap, the case actually has to be tried in court, and a jury has to award the full value of the cap (or more). If our clients want to settle – which most do, given the highly private and sensitive nature of their claims – they have no choice but to settle for less than the cap. Out of that total recovery is deducted the case expenses and an attorneys' fee.

Because recovery of the full damages cap is thus in reality hardly ever attained, the effect of slashing the cap from $1.5 million to $400,000 or $700,000

is to place a **much lower ceiling** on the recovery the vast majority of survivors will receive. This is simply not fair, and does not do justice to the life-altering trauma sexual abuse survivors have endured.

Finally, I want to point out two other manners in which this bill is unprecedented in Maryland law as it relates to claims against private actors. First, passage of the $700,000 cap for private actors would make that the **lowest cap on damages that exists in Maryland law against any private actor**. It would send a message to survivors of child sexual abuse that their claims are worth less than the claims of other injured individuals (such as those hurt in automobile collisions or in a slip and fall).

Second, there is no other place in Maryland law where attorneys' fees are limited for cases against private companies. Not only is this an unfair limitation on the freedom to contract, but limiting attorneys' fees causes an access to justice problem. Law firms like mine may be able to take an occasional case on a reduced attorneys' fee, it is not economically feasible for local firms like mine to pursue these challenging and time-consuming cases on a reduced fee. The practical effect of a cap on attorneys' fees thus makes it difficult or impossible for survivors to obtained skilled representation.

I urge you to vote NO to HB1378.

Sincerely,

Emily C. Malarkey