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Hawaii Attorney General Joins Coalition Supporting Bipartisan Legislation Limiting Corporate Bankruptcy Forum Shopping

HONOLULU – Hawaii Attorney General Clare E. Connors today joined a bipartisan coalition of 42 state and territory attorneys general in supporting H.R. 4421, the Bankruptcy Venue Reform Act of 2019, bipartisan legislation that will prevent a corporation from filing for bankruptcy in a District that it believes would be more favorable on issues to the debtor’s advantage—a practice known as “forum shopping”—when the corporation’s principal place of business or assets are located in a different district, which imposes a burden on states and other creditors who may have to travel and incur significant expenses to pursue their claims.

“Corporations should only be allowed to file for bankruptcy in jurisdictions where they do business or where their assets are located,” said Attorney General Connors. “Anything else allows them to take undue advantage of the system, which disadvantages consumers and other entities that do business with the corporation.”

Under current U.S. law 28 U.S.C. § 1408, individuals must file only in the district in which they have resided for a majority of the 180 days prior to filing. However, corporations are permitted to pursue bankruptcy in *any* district in which the corporation has a minor affiliated interest, no matter how small or recently created. In addition to conferring a distinct advantage to the corporation’s interest, it encourages placing cases in some of the most expensive legal markets in the country, contributing to the ever-growing costs of these cases. Generally, businesses and consumers who interact with the debtor are located in areas where the debtor primarily operates, and having to travel to distant places makes it harder to protect their interests. The same applies to states that may be owed taxes or other payments, and may need to incur expenses to collect, that could wipe out any amounts collected through the bankruptcy.

Furthermore, because each individual court currently sets its own requirements for allowing non-local attorneys to appear, including deciding whether to charge an admission fee in each case, and/or to require that local counsel must be associated to

the case, financial burdens and unnecessary delays in pursuing justice are virtually unavoidable. The attorneys general's letter therefore encourages Congress to ensure that when government attorneys appear on behalf of their governments, they can participate in the bankruptcy without having to pay excessive fees or hire local counsel.

If passed, the Bankruptcy Venue Reform Act of 2019 will:

- Limit where businesses may file bankruptcy by ensuring that they will do so in a jurisdiction in which their "principal assets" or their "principal place of business" are located; and
- Require rules to be prescribed to allow all governmental attorneys (not just U.S. attorneys) to appear without charge and without being required to associate with local counsel.

In the letter, the attorneys general tender support to the Bankruptcy Venue Reform Act of 2019, and contend that passage of the legislation will:

- Reduce forum shopping in the bankruptcy system;
- Strengthen the integrity of, and build public confidence and ensure fairness in, the bankruptcy system;
- Help consumers and other parties to be represented in court without undue burden; and
- Level the playing field for state attorneys general to guard their states' financial interests and enforce consumer protection laws.

In signing the letter co-sponsored by the attorneys general of Maryland, Ohio, Texas, and Washington, Attorney General Connors joins the attorneys general of Alabama, Alaska, Arkansas, Arizona, California, Colorado, the District of Columbia, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia and Wisconsin.

A copy of the letter is available [here](#).

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