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February 20, 2020

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Re: H.R. 4421 – Bankruptcy Venue Reform Act of 2019

We support H.R. 4421, the Bankruptcy Venue Reform Act of 2019, which you are cosponsoring. Under the current venue provisions in 28 U.S.C. § 1408, individuals can file bankruptcy only in the district in which they have resided for a majority of the 180 days prior to filing. Corporations, however, can file in any district in which they are incorporated, have their principal place of business or principal assets – or in any district where an affiliated entity, no matter how small or recently created, has filed bankruptcy using any of these provisions. There have been numerous examples where corporations have taken advantage of this freedom: Eastern Airlines, based in Florida, filed in New York in the 1980s, based on the location of its frequent flyer club subsidiary. Enron and Worldcom similarly were able to file in New York based on single subsidiaries, even though they were based in Texas and Mississippi, respectively; and General Motors used a single dealership based in Harlem to allow it to file there. The Herald newspaper, which had been publishing in Boston since 1846, filed bankruptcy in Delaware in 2017; and Venoco, LLC, a Denver-based company, also filed bankruptcy in Delaware in 2017 following massive losses incurred from an oil spill from its Santa Barbara, CA operations.

In short, merely by incorporating a single subsidiary in a favored jurisdiction, corporations can engage in rampant forum shopping, allowing them to pick a court with favorable law on issues ranging from the merits of the claims

against it to the applicable statutes of limitation, the fees that its lawyers will be able to command, and the releases its officers and insiders will seek to obtain. This degree of control is not allowed in any other area of the law and encourages placing cases in some of the most expensive legal markets in the country, contributing to the ever-growing costs of these cases.

Under the current venue provisions, most significant bankruptcy cases are filed in the Southern District of New York or the District of Delaware. Yet, there is nothing inherent in either district that makes those courts uniquely qualified to handle such cases. While we respect the expertise of the judges in these districts, we reject the argument that judges in other districts are not equally capable of exercising an expertise in handling corporate cases, large or small. In addition, we agree with the bill's premise that "reducing forum shopping in the bankruptcy system will strengthen the integrity of, and build public confidence and ensure fairness in, the bankruptcy system," by requiring corporate debtors to file in jurisdictions where they have their primary business operations.

Under the current rules, those who already have suffered as a result of a corporate debtor's financial collapse must spend substantial additional amounts, travel long distances, and often hire additional local counsel simply to participate on an equal footing with the debtor. While some suggest that distant parties can try to catch up by participating telephonically in court hearings, the inability to appear in person or to engage in face-to-face discussions with those who are in courts puts them at a distinct disadvantage. H.R. 4421 will greatly limit this forum shopping while helping consumers and many other parties, large and small alike – creditors, workers, retirees, shareholders, and small business vendors – to represent themselves without undue burden.

As state attorneys general, we are charged with guarding our states' financial interests, enforcing consumer protection laws, protecting our citizens from environmental contamination, and combating wrongdoing in whatever form it takes. These duties are difficult enough to carry out when corporations file bankruptcy and claim to be financially unable to comply with their legal obligations. The difficulties are multiplied when bankruptcy law allows those debtors to seek relief in distant jurisdictions where the debtors have found rulings that are friendlier to their interests than to those of persons and agencies located far away who will have difficulty affording to appear and be heard.

We agree with the tests set forth in H.R. 4421, limiting where businesses may file by ensuring that they will do so in a jurisdiction in which their "principal assets" or their "principal place of business" are located, and ensuring that it is the parent's status, not that of a minor affiliate, that will determine where the case will be heard. These provisions should go far to ensure that bankruptcies are filed in jurisdictions where debtors have the closest connections and filings will have the largest impacts.

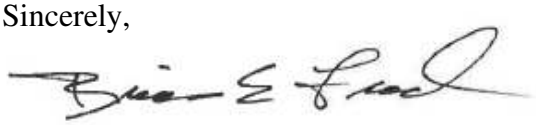
We also support the bill because of its provision providing for a new rule to be drafted dealing with appearances by governmental attorneys. In our role as representatives of both the state and its aggrieved citizens, we often have to appear in distant jurisdictions because bankruptcy cases are administered on a nationwide basis. One consequence of this bill will likely be that we will need to appear in the "home courts" of companies throughout the country, not just Delaware and

New York. Each such 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 we must associate local counsel, even as to matters involving only our own state's laws.

The Rules for Multidistrict Litigation, which similarly pull entities from all over the country into a single forum for decision-making, allow *all* creditors to appear automatically and without local counsel but there are no such provisions generally in the Bankruptcy Rules. The 1994 amendments (Sec. 304 of P.L. 103-394) to the Bankruptcy Code allow governmental child support creditors to appear automatically and without local counsel and this provision has worked without incident. This bill would require rules to be prescribed to allow *all* governmental attorneys to appear without charge and without being required to associate local counsel. Most courts extend those privileges to counsel representing the United States; the bill would simply provide the same treatment for other governmental entities, thus facilitating our ability to appear in bankruptcy courts without delay or unnecessary financial burdens.

For all these reasons, we strongly support this bill and urge you to advance its passage. As the chief legal officers of our states, we have a particular interest in ensuring that we and our citizens can protect our interests by effectively participating in these cases.

Sincerely,



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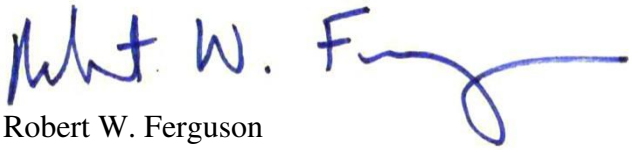

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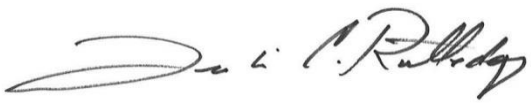

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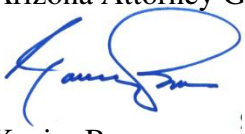

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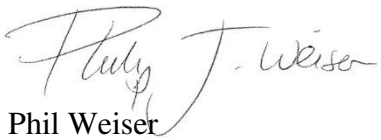

Phil Weiser
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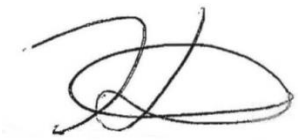

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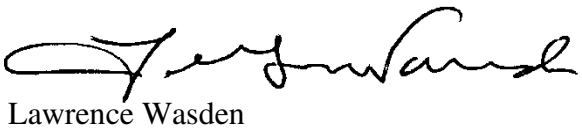

Lawrence Wasden
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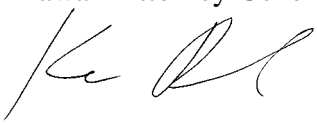

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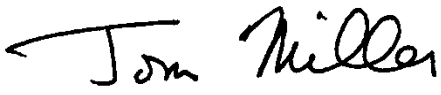

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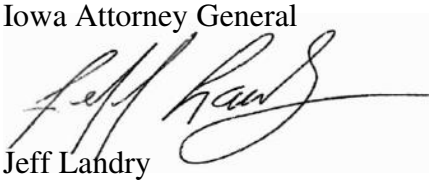
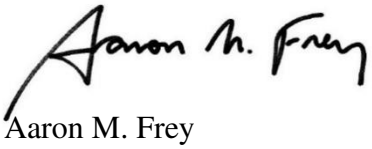


Jeff Landry
Louisiana Attorney General



Aaron M. Frey
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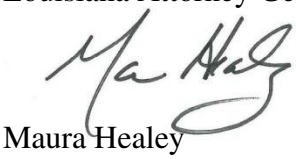

Maura Healey
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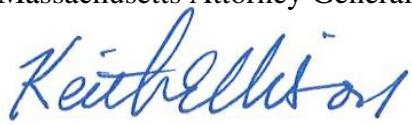

Keith Ellison
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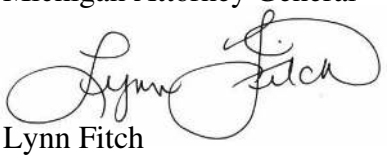

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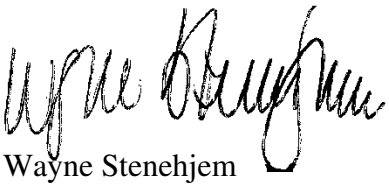

Wayne Stenehjem
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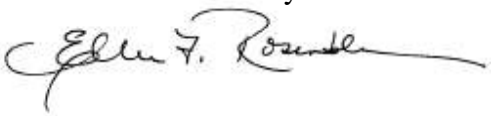

Ellen F. Rosenblum
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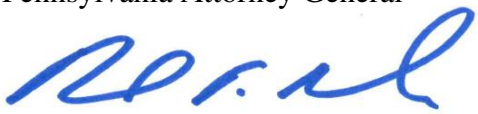

Peter F. Neronha
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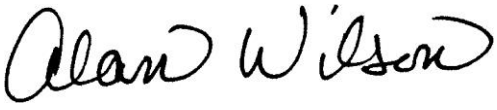

Alan Wilson
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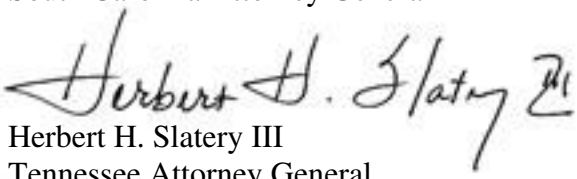

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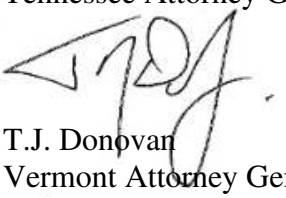

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Patrick Morrisey
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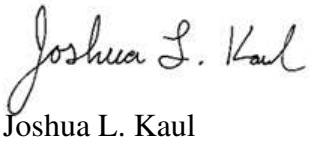

Joshua L. Kaul
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