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Testimony in Opposition to a provision of Senate Bill 94
Ohio Senate Judiciary Committee
Sam Marcellino
March 1, 2022

Chair Manning, Vice-Chair McColley, and Ranking Member Thomas,

Thank you for providing the opportunity to testify on Senate Bill 94. My name is Sam Marcellino, and I am an attorney in Columbus, Ohio. I am here on behalf of the Ohio Association for Justice. OAJ's mission is to support Ohioans' Seventh Amendment right to a civil trial by jury, which is achieved most efficiently when government stays out of disputes between parties.

I, and the OAJ, are deeply concerned about the bill's required disclosure of any nonrecourse civil advance contracts by a plaintiff. In effect, this bill would mandate that one side of a dispute reveal private and unrelated financial information. Not to mention, it may violate attorney/client privilege protections.

Ohio and federal court rules govern what can and cannot be disclosed to juries in a dispute. For the most part, the financial information of both the plaintiff and the defendant is protected to ensure juries only evaluate the facts of liability and injury, not the financial means of either party. For example, in a dispute between Walmart and a customer, it is not appropriate for attorneys to disclose the gross annual revenue of Walmart or the customer's home equity loan. The disclosure of the financial product regulated by SB 94 is equally inappropriate.

Arguments have been made that the bill's required disclosure of the advance contract is similar to the confidential disclosure of insurance policies. However, court rules have long treated insurance policies with special consideration. While insurance policies are disclosed to both parties in a case, the policy, or even the existence of a policy, cannot be mentioned to a jury. According to staff notes from Federal Rule of Civil Procedure 26:

The amendment is limited to insurance coverage, which should be distinguished from any other facts concerning defendant's financial status (1) because insurance is an asset created specifically to satisfy the claim; (2) because the insurance company ordinarily controls the litigation; (3) because information about coverage is available only from defendant or his insurer; and (4) because disclosure does not involve a significant invasion of privacy. [emphasis added]"

The OAJ believes the language in new section 1349.554 would be a new and significant invasion of privacy, create a unique legislative mandate in private disputes, and would stray into the Judicial branch's obligation to ensure balance when hearing those disputes. We request this section be deleted from the bill.

Thank you for the time and opportunity to testify. I am happy to address any questions from the Committee.