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Written Testimony of Bill McCollum, SNR Denton

Submitted on Behalf of the Wisconsin Civil Justice Council

and the U.S. Chamber Institute for Legal Reform

In Support of AB 27/SB 19

Wisconsin Assembly Committee on Judiciary

March 28, 2013

Representative Jim Ott and members of the of the Wisconsin Assembly Judiciary Committee, on behalf of the Wisconsin Civil Justice Council (WCJC) and the U.S. Chamber Institute for Legal Reform (ILR), thank you for allowing me the privilege to submit written testimony on some very important issues facing our legal system.

State attorneys general once held relatively low-profile roles in state government, serving as legal advisers for governors, state agencies and local governments. Over the past decade, there has been a dramatic transformation in the manner in which state attorneys general enforce their traditional consumer protection and antitrust enforcement powers. Nationwide, attorneys general are actively working to expand their subject matter jurisdiction into areas such as environmental policy and financial services regulation. State officials are stepping up their regulation of the business community and are well on their way to displacing federal authorities as the nation's chief consumer protection watchdogs.

As states become more engaged in major consumer protection issues, the ILR has noticed a willingness by states to hire private plaintiff's firms to pursue litigation on behalf of the state. It should be noted that in Wisconsin, the authority to enter into legal contracts with outside counsel resides with the Governor and the Department of Administration. As payment, these attorneys receive a contingency fee, which is a percentage of whatever amount is recovered on behalf of the taxpayer. In the past, some private law firms received excessively high fees in relation to the amount of work they did on behalf of the state. For example, in Wisconsin, private plaintiff attorneys hired by the State in the late 1990s received approximately \$75 million representing the State in the tobacco litigation settlement. (The private plaintiff attorneys originally sought \$847 million before ultimately agreeing to \$75 million.) *The Wisconsin State Journal, June 22nd, 1999.*

In addition to excessive fees, there is a substantial risk of "pay to play" schemes that may appear when political contributions from plaintiffs firms are traded for contingent fee contracts. At the very least, use of such counsel without the proper safeguards can give the appearance of impropriety and undermine confidence in our legal system.

Governor Scott Walker and Attorney General J.B. Van Hollen have been a model of transparency and accountability during their respective times in office and have not engaged in the type of private attorney contracting with contingency fee counsel I have described. Past history and experiences in other states demonstrate that future Governors and Attorneys General in Wisconsin may not have the same restraint, judgment and integrity that Governor Walker and General Van Hollen have demonstrated. For this reason, we urge you to enact AB 27 and SB 19.

The State should only enter into private attorney contingency fee contracts when it does not have the expertise or ability to handle a matter and the State cannot locate appropriate outside counsel to handle the legal matter on an hourly fee basis. Then, only with complete transparency, a competitive bid process and caps on attorneys' fees, should contingency fee counsel be retained.

AB 27 by Representative Mike Kuglitsch and SB 19 by Senator Glenn Grothman require the state contracting agency to make a written determination that contingency fee counsel is cost effective and in the public interest. The legislation promotes competitive bidding by requiring the contracting agency to request proposals from private counsel, with certain exceptions. In order to rein in excessive attorneys' fees, the bill sets tiers for contingency fees as a percent of recovered amounts ranging from 25% to 5%. To ensure that the private plaintiff's firm is acting in the best interests of the state, and not in the interest of their own profit, the legislation requires government attorneys to maintain control of case and any settlement decisions. Transparency is achieved through the requirement that a copy of the executed fee contract be posted online. In addition, the private attorney must maintain time records and keep detailed records of expenses, disbursements, etc. for 4 years after the contract terminates.

Anytime an office hires private contingency fee counsel on behalf of the State, the State owes it to the taxpayers to be transparent and accountable in how and why they do so. They should be able to articulate and demonstrate the value that outside counsel is providing to the State and the taxpayers.

Conclusion

AB 27 and SB 19 were introduced to promote the principles of transparency and accountability in Wisconsin's private attorney contracting process. The bills are based on model legislation known as Transparency in Private Attorney Contracting (TIPAC). TIPAC or related bills have already been introduced in over a dozen state legislatures and successfully implemented in states like Arizona, Florida, Indiana, Iowa, and Mississippi. I urge this committee to join these states and protect the public interest by passing AB 27 and SB 19.