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Testimony of James Budinetz
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In OPPOSITION to

HB 5343
AN ACT CONCERNING COSTS INCURRED BY STATE RESIDENTS
WHEN RESPONDING TO CERTAIN DISCOVERY REQUESTS

Judiciary Committee
March 5, 2014

My name is Jim Budinetz, and I am an attorney at the firm of McElroy Deutsch Mulvaney and Carpenter, and am based in Hartford, Connecticut. I am here today **on behalf of the Connecticut Bar Association** to voice its opposition to Raised Bill No. 5343, "*An Act Concerning Costs Incurred by State Residents When Responding to Certain Discovery Requests*" which would impose significant costs and expenses on a party seeking to obtain discovery from Connecticut residents for use in proceedings pending outside Connecticut.

I am the Chair of the Litigation Section of the Connecticut Bar Association and my section, the Consumer Law Section, and the Commercial Law and Bankruptcy Section have all individually come forward to oppose this bill.

We view this bill as imposing an unreasonable burden on litigants seeking discoverable information that may be highly relevant and, indeed, critical to their claim or defense. As proposed, this bill would allow any Connecticut resident – whether a large corporation or an individual – to incur (or threaten to incur) costs that may not be necessary because they can be imposed on the requesting party. By way of example, the recipient of a subpoena may decide to retain an expensive outside consulting firm to identify responsive electronic information simply because it avoids even the slightest distraction or inconvenience to the non-party. The receiving party would have every incentive to retain an attorney to oversee compliance with a subpoena, and to prepare for and attend a deposition, even when there may be no genuine need to incur such attorneys' fees.

Concern has been expressed that adopting this approach may cause other states to pass reciprocal legislation, which would increase the costs to Connecticut litigants seeking documents or depositions in other states. Finally, the current bill would also appear to require a Connecticut resident who is a party to a case pending outside Connecticut to incur costs and expenses for obtaining discovery from other Connecticut residents.

The current method for addressing third-party subpoenas allows for flexibility in tailoring relief. If the parties cannot negotiate the scope of the subpoena without need of court intervention, the party in receipt of the subpoena may apply to the Court for a protective order that would take into account the costs associated with compliance, the importance of the information sought, the relative size and financial means of the parties, and similar factors.

There will always be some cost and inconvenience caused to non-parties when discovery is sought from them, but this is the price we have historically paid to foster the administration of justice. Connecticut courts can step in when the process is abused. The proposed legislation goes too far in imposing costs – including attorneys’ fees—on a party seeking to prove their claim or defense.

We urge the Committee to vote against this bill.