No. 11-238

IN THE SUPREME COURT OF THE UNITED STATES

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Petitioner,

v.

HONORABLE THOMAS A. BEDELL, JUDGE OF THE CIRCUIT COURT OF HARRISON COUNTY; LANA S. EDDY LUBY; AND CARLA J. BLANK,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of West Virginia

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MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF *AMICUS CURIAE* AMERICAN TORT REFORM ASSOCIATION IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

Pursuant to Rule 37 of the Rules of this Court, *amicus curiae* request leave to file the accompanying brief in support of the above-referenced Petition for a Writ of Certiorari.

Founded in 1986, the American Tort Reform Association ("ATRA") is a broad-based coalition of more than 300 businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring

fairness, balance, and predictability in civil litigation.

As an association that includes businesses and associations of all sizes and their insurers, ATRA has a substantial interest in ensuring that regulated parties operate with a clear understanding of their obligations and are not placed at risk of violating judicial mandates that conflict with statutory and regulatory requirements. ATRA members are particularly concerned with the ability of civil defendants to receive due process in West Virginia courts.

ATRA seeks leave to file a brief in this case because of the important issues it raises with respect to the use of protective orders to impose an burdensome, conflicting layer of regulation upon parties with respect to conduct that is already tightly regulated by federal law, as well as state law and insurance regulations. The proposed brief focuses on the public policy implications that arise when a trial court judge interferes with a comprehensive regulatory scheme by effectively regulating through a protective order. The proposed *amicus* brief expresses concern that judicially-imposed document destruction requirements and ban on reporting suspicious activity that deviate from federal and state law governing this area have the potential to subject regulated parties to conflicting obligations, reduce the ability to detect suspicious insurance claims, and increase regulatory compliance costs. Such costs will inevitably be

passed on to consumers in the form of higher insurance premiums with no corresponding benefit.

In addition, the proposed brief urges the Court to grant certiorari to address the diametrically opposite results, rendered in the course of one year, by the West Virginia Supreme Court of Appeals in considering the validity of a nearly identical protective order. In the second instance, the court disregarded the plaintiff's burden to show good cause demonstrating the need for privacy protections in excess of those already provided by federal and state law and the criteria it had itself established just ten months earlier. Such inconsistent results significantly undermine the integrity of the civil justice system and the public's ability to rely on the judicial system.

Finally, the proposed brief urges this Court to grant certiorari to avoid needless and expensive litigation as plaintiffs withhold medical records in insurance disputes based on privacy concerns that are already fully addressed by federal and state law.

ATRA submits the proposed brief to bring to the Court's attention the importance of these issues, and demonstrate the need for guidance from this Court. ATRA, therefore, respectfully urges this Court to grant the petition for a writ of certiorari.

Accordingly, ATRA asks the Court to grant its Motion.

Respectfully submitted,

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INTEREST OF *AMICUS CURIAE*[1]

Founded in 1986, the American Tort Reform Association ("ATRA") is a broad-based coalition of more than 300 businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation.

As an association that includes businesses and associations of all sizes and their insurers, ATRA has a substantial interest in ensuring that regulated parties operate with a clear understanding of their obligations and are not placed at risk of violating judicial mandates that conflict with statutory and regulatory requirements.

ATRA members are particularly concerned with the ability of civil defendants to receive due process in West Virginia courts. *See, e.g.,* Victor E. Schwartz, Sherman Joyce, & Cary Silverman, *West Virginia as a Judicial Hellhole: Why Businesses Fear Litigating in State Courts*, 111 W. Va. L. Rev. 757

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[1] Per Rule 37.2, counsel of record for all parties received notice at least ten days prior to the due date of ATRA's intention to file this brief. Petitioner, Respondent Lana S. Eddy Luby, and Respondent Hon. Thomas A. Bedell have consented to the filing of any *amicus curiae* brief and lodged letters of consent with the Clerk of the Court. Counsel for Respondent Carla J. Blank did not consent to the filing of an *amicus curiae* brief in this action. Per Rule 37.6, ATRA states that no counsel for a party has authored this brief in whole or in part, and that no person or entity, other than ATRA, its members, or its counsel made a monetary contribution to the preparation or submission of the brief.

(2009). ATRA has filed several *amicus* briefs demonstrating cause for such concern with this Court. *See, e.g., Crown Equipment Corp. v. Morris*, No. 06-503 (filed Nov. 20, 2006) (product liability claims filed by nonresidents with no connection to West Virginia); *Daniel Measurement Services, Inc. v. Eagle Research Corp.*, No. 07-384 (filed Oct. 22, 2007) (multi-million dollar compensatory damage award unsupported by evidence); *Chemtall Inc. v. Stern*, No. 07-1033 (filed Feb. 22, 2008) (reverse bifurcation in punitive damages trials); *NiSource, Inc. v. Tawney*, Nos. 08-219, 08-229, and *Massey Energy v. Wheeling Pittsburg Steel Corp.*, Nos. 08-218, 08-217 (filed Sept. 22, 2008) (lack of meaningful appellate review of punitive damage award).

STATEMENT OF THE CASE

ATRA adopts Petitioner's Statement of the Case.

SUMMARY OF ARGUMENT

Typically, "regulation through litigation" involves situations in which courts, at the urging of plaintiffs' lawyers, impose regulatory requirements on entire industries where legislators and government agencies have not done so, either consciously or through inaction. *See generally* Victor E. Schwartz & Leah Lorber, *State Farm v. Avery: State Court Regulation Through Litigation Has Gone Too Far*, 33 Conn. L. Rev. 1215 (2001). This case raises a different, but also troubling, type of regulation through litigation: state court protective orders that impose obligations on litigants and their insurers in areas already tightly regulated by state and federal governments. Such protective orders, if they become widespread, threaten to create significant confusion

for regulated parties, unravel the ability of regulators to properly monitor the industry and investigate fraud, and increase the cost of insurance for the public.

Specifically at issue here is a West Virginia Circuit Court's issuance of a protective order that imposes document disclosure and destruction requirements that conflict with statutory requirements governing insurers and their fraud prevention obligations. Moreover, the court's protective order is premised on a federal law that is explicitly inapplicable to automobile insurers. (Pet. App. at 47a-48a). This piecemeal regulation-by-protective order has the potential to impose burdensome obligations on an already-regulated party and place a company at risk of liability and civil penalties as it attempts to fulfill competing requirements. The Court should grant certiorari to address the constitutionality of including such provisions in protective orders and to provide regulated parties with clarity as to their legal obligations.

It is also important for the Court to grant certiorari in this case because the appeal presents a stark example of unpredictability and inconsistency in the civil justice system, particularly in West Virginia. As the record shows, the West Virginia Supreme Court of Appeals, in a unanimous decision, initially invalidated a protective order issued by the circuit court due to conflicts between the protective order's requirements and state law. *State ex rel. State Farm Mut. Auto. Ins. Co. v. Bedell*, 697 S.E.2d 730, 737 (W. Va. 2010). The state's highest court also invalidated this first protective order due to the

absence of any showing whatsoever, beyond "vague fears" and generic privacy concerns, that existing laws and regulations were insufficient to protect against disclosure of personally identifiable medical records. *See id.* at 740. Moreover, the plaintiff made no more than conclusory allegations that State Farm would disseminate her private information in the future. *See id.* at 739. Nevertheless, after the trial court made minor revisions to the protective order, the same state high court, less than one year later, reached the opposite conclusion. (Pet. App. at 1a). It did so despite continued conflicts between the order and statutory obligations, and while acknowledging that the plaintiff added no new information to the record demonstrating good cause supporting the need for the order. (Pet. App. at 24a). That order is now before this Court. As one dissenting West Virginia Supreme Court Justice observed, "[b]efore us is a case of déjà vu." (Pet. App. at 58a) (Benjamin, J., dissenting). Such inconsistent rulings undermine the ability of litigants to rely on the civil justice system. The Court should grant certiorari to consider the due process implications of such inconsistent rulings on litigants.

ARGUMENT

I. A THIRD LAYER OF REGULATION IS UNWARRANTED AND RESULTS IN BURDENSOME AND CONFLICTING REGULATORY OBLIGATIONS

The Circuit Court for Harrison County, West Virginia, at the request of the plaintiff, issued a protective order that regulates areas that are already subject to extensive rules: the privacy of personally identifiable information, mandatory reporting to

state and federal governments, and record-keeping by insurers. In so doing, the court has imposed an additional layer of regulation on businesses that is wholly unnecessary to the protection of the plaintiff's interests. Not only is this regulation through protective order needlessly burdensome, it places tightly-regulated parties at a risk of violating wide-ranging federal and state laws that govern these areas.

A. The First Layer: Federal Regulation

Over the past four decades, the federal government has enacted a plethora of rules and regulations to protect confidential or sensitive records of individuals from dissemination. For instance, in the 1970s, Congress enacted laws governing the privacy of consumer credit reports,[2] information maintained by federal agencies,[3] educational records,[4] and financial information.[5] More laws followed in the 1980s and 1990s, including law prohibiting the dissemination of video rental and similar records,[6] motor vehicle records,[7] telephone usage,[8] and internet usage of children.[9]

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[2] Fair Credit Reporting Act, Pub. L. No. 91-508, 84 Stat. 1114 (1970) (codified at 15 U.S.C. §§ 1681 to 1681x).

[3] Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896 (codified at 5 U.S.C. § 552a).

[4] Family Educational Rights and Privacy Act, Pub. L. No. 93-380, tit. V, § 513(a), 88 Stat. 571 (1974) (codified at 20 U.S.C. § 1232g).

[5] Right to Financial Privacy Act, Pub. L. No. 95-630, tit. XI, 92 Stat. 3697 (1978) (codified at 12 U.S.C. §§ 3401 to 3422).

[6] Video Privacy Protection Act, Pub. L. No. 100-618, § 2(a)(2), 102 Stat. 3195 (1988) (codified at 18 U.S.C. § 2710).

Among these areas, Congress carefully considered the privacy of medical information. In 1996, Congress enacted the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191, 110 Stat. 1636 (1996), which prohibits disclosure of confidential health information.[10] Because Congress decided that supplemental or other incidental benefits should not be regulated in the same manner as comprehensive medical plans, HIPAA established several exclusions from the Act's requirements. Congress specifically listed the types of arrangements that do not provide comprehensive medical coverage. These "excepted benefit" plans include automobile liability insurance. 42 U.S.C. § 300gg-91(c)(1); 45 C.F.R. § 160.103.

Automobile insurers are exempt from HIPAA, but subject to other federal privacy protections. While automobile insurers are not health plans, they fall within the broad definition of a financial institution, 15 U.S.C. § 6809(3), and therefore must comply with the privacy protections of Title V of the Gramm-

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[7] Driver's Privacy Protection Act (1994), Pub. L. No. 103-322, tit. XXX, § 300002(a), 108 Stat. 2099 (codified as amended at 18 U.S.C. §§ 2721 to 2725).

[8] Telecommunications Act of 1996, Pub. L. No. 104-104, tit. VII, § 702, 110 Stat. 148 (codified at 47 U.S.C. § 222).

[9] Children's Online Privacy Protection Act, Pub. L. No. 105-277, div. C, tit. XIII, § 1302, 112 Stat. 2681-728 (1998) (codified at 15 U.S.C. §§ 6501 to 6506).

[10] Balanced Budget Act, Pub. L. No. 105-33, tit. IV, § 4001, 111 Stat. 286 (1997) (codified at 42 U.S.C. § 1395w-22) also establish safeguards for the privacy of individually identifiable patient information maintained by Medicare+Choice organizations).

Leach-Bliley Act, Pub. L. No. 106-102, §§ 501 to 510, 113 Stat. 1338, 1436-45 (1999) (GLBA) (codified at 15 U.S.C. §§ 6801 to 6809). GLBA requires financial services institutions to establish privacy policies and deliver notices to their customers informing them of how the company uses and shares nonpublic personal information. *See* 15 U.S.C. § 6802(a). The law prohibits financial institutions from disclosing to a nonaffiliated third party any nonpublic personal information unless permitted by its policy. With respect to insurers, GLBA delegates to state insurance commissioners the authority to enforce safeguards to: "(1) to insure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer." 15 U.S.C. §§ 1601(b), 1605(a)(6); *see* W. Va. Code § 33-6F-1(a) ("No person shall disclose any nonpublic personal information contrary to the provisions of Title V of the Gramm-Leach-Bliley Act, Pub. L. 106-102 (1999).").

Congress recognized that there are circumstances under which insurers must have flexibility to manage policyholder records as needed for their operations or where disclosure of records is in the public interest. For example, GLBA explicitly provides that it does not prohibit the disclosure of nonpublic personal information "to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability." *Id.* § 6802(e)(3)(B). Congress also recognized that insurers must have the ability to release information

when required for compliance with other federal, state, and local laws and regulations, government investigations, and in litigation. *See id.* § 6802(e)(8). Finally, Congress understood that insurers must have the flexibility to disclose a policyholder's information, "as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer," or in connection with "[a]ccount administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law." *Id.* §§ 6802(e)(1), 6809(7)(C).

B. The Second Layer: State Insurance Regulation

GLBA does not supersede state privacy laws that offer greater protection than the federal law, *id.* § 6807. Indeed, the West Virginia legislature has established a comprehensive set of laws governing insurers that operate in the state, *see* W. Va. Code §§ 33-1-1 to 33-48-12. Pursuant to this authority, state insurance regulators prohibit insurers from disclosing the nonpublic personal health information of their policyholders without authorization, W. Va. Code R. §§ 114-57-15.1. West Virginia law, like the GLBA, permits use of nonpublic personal health information to monitor, detect, and report potentially fraudulent claims. *See* W. Va. Code R. § 114-57-15.2. This provision enables insurers to comply with their obligation to report suspected fraud to the state

insurance commissioner. *See* W. Va. Code § 33-41-5(a).

State insurance commissions, while protecting the privacy of health information, also set minimum document retention requirements to protect consumers. West Virginia requires retention of claim files, including medical records, for no less than five to six years, W. Va. Code R. §§ 114-15-4.2(b), 114-15-4.4(a)(1), while Illinois, the Petitioner's home state, requires retention of records until granted authority by regulators to dispose of files, 215 Ill. Comp. Stat. 5/133(2). These state statutory document retention requirements ensure that regulators are able to fulfill their obligations both to monitor insurance industry practices and investigate potential fraud. *See* W. Va. Code R. § 114-15-4.2; W. Va. Code § 33-41-1(b). Such regulations provide *minimum* time periods for *retention* of claim records, not *maximum* periods before requiring *destruction* of documents, as mandated by the protective order. *Amicus curiae* urges this Court to address the significant constitutional questions that arise when an individual state court judge issues an order that directly conflicts with, and effectively supersedes, the reasoned public policy judgments of Congress, state legislatures, and professional insurance regulators.

C. The Protective Order Creates a New, Unnecessary and Conflicting Third Layer of Privacy Regulation

The protective order in this case, and the practice of some courts to enter similar orders, creates a new third layer of regulation. The order disregards the careful balancing of privacy concerns and business practices struck by Congress, state legislatures, and

state insurance commissions.[11] It involves an individual judge in a single case overreaching into this already extensive and complex environment of privacy protections and insurance regulation. Not only is this layer wholly unnecessary given federal and state regulation of healthcare privacy and insurance practices, it creates confusion for businesses as to their regulatory obligations and places them at risk of violating conflicting requirements. For instance, the West Virginia Supreme Court of Appeals' second opinion is premised on HIPAA (*see* Pet. App. at 47a-48a), which, as discussed *supra* at 6-7, is explicitly inapplicable to automobile insurers, rather than the applicable federal law, the GLBA.

Moreover, protective orders requiring destruction of medical information contained in claim files after litigation pose an obstacle to uncovering fraudulent insurance claims. The Insurance Information Institute estimates that fraud accounts for about ten percent of the property/casualty insurance industry's incurred losses and loss adjustment expenses, with healthcare and automobile insurance constituting two of the three areas most vulnerable to such conduct. *See* Ins. Info. Inst., Insurance Fraud (2011), *at* http://www.iii.org/issues_updates/insurance-fraud .html (last visited Sept. 21, 2011). Insurance fraud

[11] The protective order also fails to recognize that when an individual files an insurance claim seeking payment for a personal injury that person loses some expectation of privacy. The claimant must reasonably expect, under the terms of the insurance policy, to submit medical records to the insurer to substantiate the claim. If the claimant files a lawsuit that proceeds to trial, then his or her medical records are subject to the scrutiny of jurors in open court.

results in about $30 billion in losses each year. *Id.* According to the National Insurance Crime Bureau's (NICB) most recent analysis of questionable claims, claims raising suspicion due to potentially inflated damages are on this rise. *See* Nat'l Ins. Crime Bureau, 2008, 2009, 2010 1st Quarter - 3rd Quarter Referral Reason Analysis (2011), *at* https://www.nicb.org/file%20library/public%20affairs/3q-2010-qc-report.pdf (last visited Sept. 21, 2011). Faked or exaggerated injuries increased as the reason for referral by twelve and sixteen percent in 2009 and 2010, respectively, over the previous year. *See id.* at 2. Similarly, claims raising suspicious as related to prior injuries rose by sixteen and nine percent over this period. *See id.*

As regulations requiring the retention of such information demonstrate, maintaining a complete claim file is an important tool for identifying duplicative or questionable insurance claims. Medical information in a claim file, for example, can show that an individual is seeking compensation for an injury for which he or she has already received compensation or a pre-existing health condition. Such information can also identify a pattern of questionable charges by a healthcare provider. The cost of fraudulent claims is unavoidably passed down to consumers in the former of higher rates for insurance premiums.

In addition, protective orders such as that issued by the West Virginia Circuit Court, threaten to significantly increase compliance costs. Not only will insurers need to follow federal and state privacy and document retention requirements, they will need to closely track additional and potentially conflicting

requirements applicable to individual policyholders stemming from protective orders imposed by courts in individual cases. Here, the protective order at issue requires the insurer to either return to the plaintiff's counsel or certify that it has destroyed not only medical *records* disclosed as a result of the litigation, but "*all* . . . *medical information* or any copies of summaries thereof" in the claimant's file. (App. at 32a) (quoting second protective order, emphasis added). The West Virginia Supreme Court of Appeals struggled to clarify the difference between "medical records" and "medical information," concluding that the two phrases are "interchangeable." (App. at 37a-38a) The court's finding that the protective order requires the insurer to scan its claims file and "in some instances it may be necessary to redact" identifying medical information (App. at 43a) belies that assertion.

Under this ruling, and similar protective orders issued by other courts, insurers will have a judicially-imposed obligation to scrub claim files for any material that could be considered "medical information," a far broader term than "medical records" disclosed during litigation. These additional compliance costs, along with the cost of more fraudulent claims, is likely to increase the price of insurance for consumers without any corresponding benefit. (*See* Ketcham, J., dissenting, App. at 55a).

II. THE STARK REVERSAL BY THE COURT, WITHOUT REASONED EXPLANATION, PRESENTS, SIGNIFICANT QUESTIONS OF DUE PROCESS

The protective order at issue, with minor changes, went twice before the same West Virginia Supreme

Court of Appeals in a short period of time – but resulted in two diametrically opposite rulings. Over the course of just one year, the court both found the plaintiffs' proposed protective order improper and then proper. The court's disregard of the plaintiff's obligation to show good cause supporting issuance of a protective order in the second instance indicates that the change in rulings did not simply reflect the circuit court's amendment of the order to eliminate direct conflicts with West Virginia insurance regulations governing document retention and maintenance of electronic files. Rather, as one of the two dissenting justices put it, the majority "experienced a change of heart." (Benjamin, J., dissenting, App. at 58a). Such incompatible results, and squarely conflicting reasoning, hurts the ability of the business community and the broader public to rely on the civil justice system. This Court should grant certiorari to consider the due process implications of such inconsistent outcomes.

When the West Virginia Supreme Court of Appeals first reviewed the proposed protective order, it squarely placed the "burden on the party seeking relief to show some plainly adequate reason therefor" and insisted on "a *particular and specific demonstration of fact*, as distinguished from stereotyped and conclusory statements, in order to establish good cause." *Bedell*, 697 S.E.2d at 739 (emphasis in original). It found that "Mrs. Blank merely alleges, in a conclusory manner, that the electronic storage of her records will allow State Farm to disseminate them to third-parties and 'keep them indefinitely in a manner in which all State Farm employees could access them.'" The court concluded that "[i]n the absence of any factual

support, the vague fears articulated by Mrs. Blank do not constitute the 'particular and specific demonstration of fact' that this Court requires from a party seeking a protective order." *Id*. at 740.

In denying the protective order, the West Virginia Supreme Court instructed that a plaintiff could meet her burden in three ways: (1) presenting evidence that the insurer has failed to comply with its obligation under West Virginia law to prevent the unauthorized disclosure of confidential medical records; (2) presenting a reasonable basis for believing that the insurer intends to disseminate her "nonpublic personal health information" without her consent in the future; or (3) explaining why the Insurance Commissioner's legislative rule governing the confidentiality of a claimant's medical records is insufficient to protect her information. *Id*.

After the trial court, on remand, amended the protective order to eliminate the specific conflicts with West Virginia insurance regulations, the West Virginia Supreme Court again considered the validity of the protective order. This order was, as the state high court recognized, "substantially the same as the previous order" in all other respects. (App. at 9a). Nevertheless, the court engaged in a tortured reading of its prior ruling to find that its reasoning regarding good cause related only to a provision, since removed, prohibiting the insurer from electronically storing information. (App. at 20a-22a). This time, the court found that the circuit court, by expressing generic privacy concerns in the protective order, satisfied good cause. (App. at 23a-24a). That order did nothing more than recite statements that border on meaningless platitudes:

> "[M]edical records are private in nature and are protected by the privilege between the treating physician or care provider and the patient. . . .
>
> [M]edical records have the potential to contain facts that are embarrassing to the patient, and the law recognizes that the dissemination of medical records must be done with the patient's consent. . . .
>
> [N]one of Mrs. Blank's medical records will become public unless she consents to their dissemination or until they are introduced at trial. . . .

(App. 23a, quoting protective order).

Compare this reasoning to the West Virginia Supreme Court's instructions when first considering the protective order. Has the plaintiff made "a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements" to establish good cause? No. Has the plaintiff offered "any factual support," aside from "vague fears," substantiating her privacy concern? She has not. Has the plaintiff presented evidence that State Farm disclosed confidential medical records in violation of state law? No. Has she shown reason to believe that State Farm intends to unlawfully disclose her records? No. Has the plaintiff explained why West Virginia's insurance regulations fail to adequately safeguard her medical information? She has not. In fact, the court acknowledged that the plaintiff did not supplement the record to address any of these issues. (App. at 24a).

Such stark reversal in reasoning by a state high court significantly undermines the integrity of the civil justice system and the public's ability to rely on the judicial system. The inconsistency between the rulings, and lack of reasoned explanation for relieving the plaintiff of her burden to show specific evidence of the need for a protective order, raises significant questions of whether the court's decision is so arbitrary and capricious as to violate due process.

III. CONSIDERATION ON THE MERITS CAN AVOID FUTURE COSTLY, PROLONGED LITIGATION

Finally, this case is an example of unnecessarily prolonged litigation. As the Petition documents, plaintiffs are increasingly seeking restrictive protective orders along the lines of the order at issue in various state courts. (Pet. at 5). Should claimants withhold medical records from insurance companies that they are contractually obligated to provide to substantiate their claims, claim resolution would slow and potentially come to a standstill. As this case aptly illustrates, parties would engage in needless and expensive litigation over privacy concerns that are already fully addressed by law.

This Court should grant certiorari to provide clarity regarding the propriety of including such provisions in protective orders. The Court's guidance would be particularly valuable in addressing instances in which federal and state law already clearly establish and protect the parties' rights, where there is no showing of special need for additional protections, and where the proposed provisions conflict with existing law.

CONCLUSION

For the foregoing reasons, ATRA respectfully requests that this Court grant the Petition for Writ of Certiorari in this action.

Respectfully submitted,

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