

**TESTIMONY OF JENNIFER J. ARTMAN
IN SUPPORT OF S.B. 242
ON BEHALF OF THE
AMERICAN TORT REFORM ASSOCIATION
BEFORE THE KANSAS SENATE COMMITTEE ON JUDICIARY
MARCH 3, 2025**

Madame Chair and members of the Committee, thank you for the opportunity to express support for S.B. 242, which would provide transparency and facilitate coordination between Kansas counties and the state Attorney General in litigation of statewide importance involving outside counsel who will be paid on a contingency-fee basis. I am submitting this testimony on behalf of the American Tort Reform Association (ATRA), a broad-based coalition of businesses, municipalities, associations, and professional firms that have pooled their resources to promote fairness, balance, and predictability in civil litigation.

I am a partner in the Kansas City office of Shook, Hardy & Bacon L.L.P. My practice focuses on product liability litigation, appellate preservation, and civil justice issues. I received my law degree from the University of Missouri in Columbia and clerked for the Honorable William Ray Price, Jr. of the Supreme Court of Missouri after completing my education. I reside with my family in Prairie Village, Kansas.

Lawsuits brought by local governments against private companies have been at the forefront of litigation across the country. Cities, counties, and other local entities – typically at the urging of profit-motivated contingency-fee lawyers¹ – will sue businesses in an attempt to address broad societal problems. While state attorneys general have a history of bringing such claims, local governments are, more and more often, bringing their own lawsuits. Recent examples include lawsuits seeking compensation for costs associated with opioid addiction,² public projects attributed to climate change, litter, data privacy breaches, among other issues.

In the past, a concern might spark as many as fifty lawsuits by state attorneys general and perhaps a local government suit or two. But now dozens, hundreds, or even thousands of copycat lawsuits may be filed by local governments. These lawsuits not only overcrowd courthouses and overwhelm businesses, but reduce the impact of the litigation overall. Inconsistent court rulings create confusion. Money that businesses could use to address a statewide concern is spent on defending duplicative claims. The ability to resolve litigation on a statewide basis can be complicated by the multiple lawsuits, local governments, and private law firms involved, each of which, when operating on a contingency-fee basis, is entitled to a share of the public's recovery. Ultimately, taxpayer money in the state is funding these actions – which may not benefit taxpayers at all.

¹ Enterprising trial lawyers and activists target local municipalities to convince them to bring these copycat lawsuits. Firms advertise specifically to cities, counties and states to bring these suits. *See, e.g.*, <https://www.cohenmilstein.com/service/public-client/>; <https://www.sheredling.com/cases/climate-cases/>.

² *See Kansas Opioids Memorandum of Understanding between the Attorney General, the League of Kansas Municipalities, and the Kansas Association of Counties* (2/1/2022).

This phenomenon has made its way to Kansas. In November 2024, Ford County, Kansas filed a class action lawsuit against ExxonMobil and other oil and gas companies in Kansas federal court.³ Ford County alleged these companies engaged in deceptive business practices surrounding the recyclability of plastics. Copied from a lawsuit filed in California,⁴ the attorneys in the Ford County case argued ExxonMobil and others should be liable for global plastics pollution under Kansas public nuisance law because the companies made, promoted and sold plastics (as well as recycling) even though they knew recycling would not prevent litter around the world. Of course, the media response noted the lawsuit did not advance solutions to plastic waste or pollution.⁵

S.B. 242 seeks to establish balance between the need for municipalities to pursue litigation through use of private contingency-fee lawyers while providing transparency and coordination in litigation efforts.

First, the bill and proposed amendments include safeguards to ensure that when a local government hires private lawyers on a contingency-fee basis, it does so through an open, transparent process. This process includes the local government providing notice to the public; considering the need to hire outside counsel, and the qualifications of the attorney or firm that would represent the government in a public meeting; disclosing any relationship between that attorney or law firm and the officials involved; and making a written finding that it is in the best interest of the residents of the political subdivision to pursue the litigation. During this process, the local government would also consider whether it could pursue the litigation through its own publicly-funded attorneys or outside attorneys charging an hourly rate or other payment structure. Such alternative arrangements, if feasible, could lead to substantially greater recovery for the government, as, under a contingency-fee arrangement, the retained lawyers would siphon a substantial portion of the public's recovery. After considering these issues, the local government would be required to approve the contract in an open meeting.

This process facilitates a system in which local governments hire outside counsel, when needed, based on qualifications and merit, not personal or political connections. It protects Kansas taxpayers. It is simply a good-government law.

Second, the bill facilitates coordination between the Attorney General and local governments. It does so by requiring a local government to share the proposed legal services contract, a description of the legal matter, the meeting notice and written findings with the state Attorney General. Under the proposed amendments, which ATRA supports, the Attorney General would have an opportunity to review the contract and have 45 days to approve or reject it. The Attorney General could refuse to approve the contract only for three specific reasons: (1) the state has already addressed or is addressing the matter in court; (2) the matter would be more appropriately handled by the state as

³ See Class Action Complaint, *Ford County, Kansas v. Exxon Mobil Corp.*, No. 2:24-cv-02547 (D. Kan. filed 11/27/2024).

⁴ See Complaint for Abatement, Equitable Relief, and Civil Penalties; Preliminary and Permanent Injunction, *California v. Exxon Mobil Corp.*, No. CGC24618323 (Cal. Super. Ct., filed 9/23/2024).

⁵ Shawn Logging, [Kansas County Targets Plastics Industry in Class Action Lawsuit](#), 12 News, 12/9/2024.

opposed to a political subdivision; or (3) the contract does not comply with rules of professional conduct for attorneys. If the contract is refused, the Attorney General must provide, in writing, a detailed explanation of his or her basis for taking such action. If the Attorney General does not respond within 45 days, the contract is considered approved and the local government may proceed.

This commonsense process for a political subdivision pursuit of contingency-fee litigation allows for coordinated efforts between the state's legal authority – and among political subdivisions themselves. Notably, this law would not prevent a municipality from pursuing lawsuits; it merely seeks coordination with the Attorney General, when there is a shared state interest in the matter, as part of the process. When a matter is purely one of local concern, the bill requires the Attorney General to promptly review and approve the arrangement. In addition, the amendment's definition of "legal services" carves out several types of local litigation that do not raise issues of statewide concern completely from the review process.

The twin goals of transparency and coordination benefit both the state and Kansas residents. The good-government safeguards proposed by S.B. 242 of requiring notice, discussion in an open meeting, providing information regarding the proposed attorneys, and requiring written findings allow for all involved to evaluate the risks and benefits of the litigation. Other states have passed similar requirements for local governments to encourage transparency and coordination.⁶ For these reasons, ATRA supports S.B. 242 and urges the Committee to favorably report the bill.

⁶ See, e.g., Tex. Gov't Code § 2254.101 (enacted 2021).