



Administrative Office of the Courts

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Judicial Branch testimony neither for nor against LD 1780, An Act to Secure Under Authority of a Subpoena Pretrial Statements from a Witness Other than the Defendant in a Criminal Proceeding:

Senator Carney, Representative Kuhn, members of the Joint Standing Committee on Judiciary, my name is Julie Finn and I represent the Judicial Branch. I would like to provide some brief testimony neither for nor against LD 1780.

These comments are limited to subsection 4 of section 1322 titled, "Remedy." Specifically, both sections 1322(4)(B) and 1322(4)(C) remove the court's authority to make a ruling and determine the appropriate remedy. Section 1322(4)(B) says that "If the court finds by clear and convincing evidence that a properly served person did not appear, *the court shall issue an order* barring that potential witness from any future testimony in the pending matter;" and similarly, section 1322(4)(C) says that "If a court finds by clear and convincing evidence that the statement was not being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass or oppress the person, *the court shall issue an order* barring that person from appearing as a witness in the pending matter" (emphasis added). The Judicial Branch respectfully requests that, in both subsections, the court retain the authority to grant or deny the request/motion while considering whether the standard of review has been met under the circumstances of the case.

Thank you for your time and consideration.