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Colorado Congressional Delegation
Senator John Thune, Senate Majority Leader
Senator Chuck Schumer, Senate Minority
Leader
Representative Mike Johnson, Speaker of the House of Representatives
Representative Hakeem Jeffries, House of Representatives Minority Leader

Re: H.R. 1, the One Big Beautiful Bill Act (“**H.R. 1**”), Section 70302 Restriction of Funds.

Dear Senators/Representatives:

This letter is submitted on behalf of the Colorado Bar Association and in conjunction with the recommendations of the Rule of Law Task Force, which is charged, among other responsibilities, with addressing governmental actions that risk undermining the U.S. Constitution, the defined duties and powers of the Federal Government’s branches (including the Separation of Powers), and the rule of law more broadly.

We write to express urgent concern regarding **Section 70302 – Restriction of Funds**, currently under review in the U.S. Senate as part of H.R. 1. We strongly urge that this provision be removed in its entirety.

We emphasize this position for the following reasons:

1. Unconstitutional Overreach by Congress:

Section 70302 represents an improper—and potentially unconstitutional—attempt by the Legislative Branch to limit the authority of Federal Judges. Specifically, it seeks to curtail their discretion to mandate or waive bond requirements when issuing

lawful injunctions or temporary restraining orders.

2. **Interference with Rule 65(c) Discretion:**

The provision prohibits the use of appropriated funds to enforce any injunction or temporary restraining order issued under Federal Rule of Civil Procedure 65(c) if the judge, in their discretion, did not require a security bond. This directly interferes with judicial autonomy and the traditional equitable powers of the courts.

3. **Retroactive Application:**

Alarming, this enforcement ban would apply not only to future court orders but also to *all* existing federal injunctions and restraining orders, regardless of their date of issuance.¹

Such retroactivity threatens to invalidate ongoing legal protections without due process or judicial review.

4. **Legal and Practical Consequences:**

The retroactive invalidation of prior court orders would create legal chaos, sowing uncertainty and inequity in enforcement actions, particularly by the Executive Branch. This is both improper and potentially unconstitutional.

5. **Retroactivity is Unconstitutional:**

The Constitution bars retroactive laws through multiple provisions. These include:

- The **Ex Post Facto Clause**, which forbids retroactive penal legislation;
- **Article I, § 10, cl. 1**, which prohibits laws impairing contractual obligations;
- The **Fifth Amendment's Takings Clause**, which protects vested property rights;
- The **prohibition on Bills of Attainder** in Article I, §§ 9–10;
- And the **Due Process Clause**, which guards against unfair retroactive applications of law (see *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994); *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976); *United States v. Brown*, 381 U.S. 437 (1965)).

6. **Encouragement of Procedural Gamesmanship:**

The provision invites strategic manipulation by litigants, potentially aimed at circumventing federal court orders. It would effectively deny judges the ability to evaluate equity, fairness, and justice—particularly in cases involving

vulnerable or disadvantaged parties facing governmental overreach.

7. Violation of Separation of Powers:

By undermining the judiciary's inherent contempt authority and enforcement powers, this measure threatens the constitutional balance between the Legislative and Judicial branches. The ability of courts to enforce their own orders is foundational to the Rule of Law.

As early as the Judiciary Act of 1789, Congress recognized the judiciary's authority to punish contempt—a power upheld and refined through statutory and case law over centuries (e.g., *United States v. Barnett*, 376 U.S. 681 (1964); *In re Savin*, 131 U.S. 267 (1889)).

8. Improper Use of Budget Legislation:

Embedding this provision in H.R. 1—a critical government funding bill—represents an inappropriate attempt to strip the Judiciary of one of its core powers: enforcing lawful court orders through contempt. Doing so via the expedited process of budget reconciliation only compounds the procedural impropriety.

Conclusion:

On behalf of the Colorado Bar Association and its members, we respectfully urge you to ensure that Section 70302, or any similar iteration, is fully removed from the final version of any legislation passed by the U.S. Senate or House of Representatives. Preserving the authority and independence of the federal judiciary is not just a legal imperative, it is a constitutional necessity.

Sincerely,
Catherine Chan
President
Colorado Bar Association