

Legislative History for Connecticut Act

Public Act: 01-152	
Bill Number: 5850	
Senate Pages: 3363-3371, 3408-3409	11
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Committee: Judiciary: 1511, 2785-2788, 2804-2807, 2841, 2843, 2956-2963	19
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SENATE

PROCEEDINGS
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3168-3508

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Thank you, Madam President. I would ask that we turn to Page 8, Calendar 554. Would the Clerk call that item that was previously passed temporarily. It should be marked Go. Take it up. And then the Clerk can continue through the Call of the Calendar.

THE CLERK:

Calendar Page 8, Calendar 554, Files 336 and 852, H.B. 5850 An Act Concerning Peremptory Challenges in a Civil Action, as amended by House Amendment Schedule "A". Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Thank you, Madam President. I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the House.

THE CHAIR:

The question is on passage in concurrence. Will you remark?

SEN. COLEMAN:

Madam President, this bill seeks to address the assignment of peremptory challenges in civil jury actions and ordinarily a party would have three peremptory challenges to exercise in the selection of jurors and in some protracted cases four peremptory

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challenges to exercise.

Oftentimes when there are multiple parties on one side, either multiple defendants and one plaintiff, then the defendants have an excessive amount of peremptory challenges to exercise.

And what this bill seeks to do is to equalize and create some fairness in the selection of jurors so one side as opposed to the other side does not have an excessive amount of peremptory challenges in order to exclude jurors from sitting on a jury.

And specifically this bill provides for some clarification concerning the unity of interest rule. Even when there are multiple parties, the unity of interest rule is applied so that if in the example where there are multiple defendants, if two or more of the defendants are found by a judge to have unity of interest, then they would have to, in essence, share peremptory challenges.

This bill specifically provides that a unity of interest between defendants or plaintiffs would be found if the defendants or plaintiffs share the same attorney or same law firm.

Additionally, a unity of interest would be found among parties where there is no cross claim or apportionment complaint.

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Additionally, the bill provides that one side will not have twice, the number of peremptory challenges that one side has would not exceed twice the number of peremptory challenges that the other side has.

This has been an issue that has caused a lot of consternation over the past few years. It's been an issue that's been considered by the Judiciary Committee over those past few years.

We feel in this bill that we have something that is fair to both sides of a civil suit where there is a jury involved and jury selection process involved.

I urge my colleagues to support the bill, Madam President. Thank you.

THE CHAIR:

Thank you, Sir. Will you remark further? Senator Kissel.

SEN. KISSEL:

Thank you very much, Madam President. And at the outset, I'd like to thank Senator Coleman for bringing this bill forward.

It was actually about six years ago, right around this time that I was pleased not only to be at that time in the majority here in the Senate but also to bring forward a bill that had to do with early detection of scoliosis with children. I don't know if any of you

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Senators remember back then, but I was pleased to bring that out.

And what it allowed was for people in schools to help detect that because there was a young lady in my district that was not diagnosed and it resulted in a terrible trauma to her spine.

Well, her mom came and testified before the Judiciary Committee this year because in pursuing a claim for that misdiagnosis to her child, Beth Bania felt it was important to come and let us know here in the Judiciary that in bringing that case, there were numerous peremptory challenges made in the litigation on the defense side and it felt very unfair to her.

And as any of you involved in litigation will recall that if you have a case where you know that there is a, or you believe and you allege that there's negligence or malfeasance or misfeasance or nonfeasance.

It may not be exactly clear at the outset of the litigation exactly where the fault lies, so in a medical malpractice claim you may have to sue the hospital, you may have to sue the physicians, you may have to sue the radiologist, you may have to sue multiple parties.

And what had happened in that particular case was, the judge was not convinced that they had a unity of interest so all the defendants had their peremptory

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challenges to the plaintiff's small handful and Ms. Bania, Beth Bania, felt that in the case regarding her daughter that that just wasn't fair.

Indeed, over the last few years, some judges have tried to better define through their decisions what unity of interest is and try to work within the parameters of the current law, only to find that those decisions were ultimately overturned by the State Supreme Court.

So what this bill does is, it actually forges a better compromise. It allows the judges of our court system better guidance regarding these matters and ultimately for folks like the Bania family that are forced to bring litigation in response to damages that they have suffered, that when they finally get their day in court, they know that as they try their case to the jury that the jury is as fair as can be here in the State of Connecticut.

And so, that was a tragic event that happened to that little girl so many years ago. But I think that it's somewhat pleasantly ironic that maybe two beneficial impacts will have arisen from that tragedy and it's just one of those things that you can't really understand how God works and I think in this way there's a good result.

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So, again, I'd like to thank my constituent, her entire family, and I urge everyone here in the circle to support this reform to our judicial system and our challenges to juries. It's a good bill and it ought to pass. Thank you very much, Madam President.

THE CHAIR:

Thank you, Sir. Will you remark further? Senator McKinney.

SEN. MCKINNEY:

Thank you, Madam President. Madam President, if I could, through you to the proponent of the bill, I'd like to ask a couple of questions for purposes of clarifying legislative intent.

Senator Coleman, I actually listened, I must not have had a busy day, to part of the House debate and I think this was cleared up on the record, but I guess in the abundance of caution I'd like to clarify with respect to the definition of a unity of interest in that a unity of interest shall be deemed to exist if the parties are represented by the same attorney or law firm.

Through you, Madam President, that would be same attorney or law firm at the time of trial and picking of the jury, not at just any time during, from the filing of the case. Is that correct?

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THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Thank you, Madam President. And through you, to Senator McKinney, that would be correct. The unity of interest would be found if, during this particular trial and selection of jury, the parties were represented by the same attorney or the same law firm.

THE CHAIR:

Senator McKinney.

SEN. MCKINNEY:

Thank you, Senator Coleman. And again, Madam President, through you. Therefore, Senator Coleman, if two parties at one point after the filing of the suit were represented by the same attorney but then got separate representation at the time of trial, the fact that they at one point had the same attorney could not be used to claim that there would be a unity of interest. Is that correct?

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Thank you, and through you, Madam President. Most certainly if the parties were represented by the same attorney on different issues there would be no unity of

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interest found.

If the parties were represented at the time of a trial and there was a change of attorneys at that point in time, I cannot say definitively that there would not be unity of interest found if that were the circumstances. Through you, Madam President.

THE CHAIR:

Senator McKinney.

SEN. MCKINNEY:

Thank you, Senator Coleman. Thank you, Madam President. And lastly, although this is probably self-evident, the presumption that a unity of interest exists where no cross claims or apportionment complaints have been filed, is certainly a rebuttable presumption. Is that correct? Through you, Madam President?

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Through you, Madam President, that is, in fact, correct.

THE CHAIR:

Senator McKinney.

SEN. MCKINNEY:

Thank you again, Senator Coleman. Madam President, I stand and rise in support of this legislation.

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Perhaps it is due to the fact that this legislation has come a great deal from where it originally started, but I think this may provide better balance.

If I could, just briefly, editorialize as a one-time trial attorney who did mostly defense related work, I can tell you that as a young associate I sat on jury selection for some five and a half months and I think it may be time to reexamine how we are picking juries in the State of Connecticut because it shouldn't take five and a half months to pick a jury.

Thank you, Madam President.

THE CHAIR:

Thank you, Sir. Will you remark further? Will you remark further? Senator Coleman.

SEN. COLEMAN:

Than you, Madam President. If there is no further remarks to be made, I would move that this item be placed on our Consent Calendar.

THE CHAIR:

Motion is to refer this item to the Consent Calendar. Without objection, so ordered.

THE CLERK:

Calendar Page 14, Calendar 289, File 126, H.B. 5620
An Act Concerning Health Insurance Coverage for Colon
Cancer Screening and Tests. Favorable Report of the

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Mr. Clerk.

THE CLERK:

Madam President, beginning at the top, once again,
Consent Calendar No. 1 begins on Calendar Page 3,
Calendar 287, H.B. 6868.

Calendar Page 4, Calendar 374, Substitute for S.B.
483.

Calendar Page 6, Calendar 519, H.B. 6980.

Calendar Page 7, Calendar 551, Substitute for H.B.
6683.

Calendar 553, Substitute for H.B. 6564.

Calendar Page 8, Calendar 554, H.B. 5850.

Calendar Page 18, Calendar 500, Substitute for H.B.
6615.

Calendar Page 19, Calendar 571, S.R. 27.

Calendar Page 20, Calendar 549, Substitute for H.J.
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Madam President, that completes the First Consent
Calendar.

THE CHAIR:

Thank you, Sir. Would you once again announce a
roll call vote. The machine will be opened.

THE CLERK:

The Senate is now voting by roll call on the
Consent Calendar. Will all Senators please return to

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the Chamber.

The Senate is now voting by roll call on the
Consent Calendar. Will all Senators please return to
the Chamber.

THE CHAIR:

Have all members voted? If all members have voted,
the machine will be locked. The Clerk please announce
the tally.

THE CLERK:

Motion is on adoption of Consent Calendar No.

1.

Total number voting 36; necessary for adoption, 19.
Those voting "yea", 36; those voting "nay", 0. Those
absent and not voting, 0.

THE CHAIR:

The Consent Calendar is adopted. Senator Jepsen.

SEN. JEPSEN:

Thank you, Madam President. I move for suspension
of the rules for the immediate transmittal of all items
acted upon as appropriate to the House of
Representatives.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

M..... Pr....., s t me I would, having been

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DEP. SPEAKER CURREY:

Representative Beals of the 88th. Representative Tonucci of, he's not there. Representative Altobello, your lights are pushed, perhaps you wish to speak, if not. Representative Altobello, you don't wish to speak, thank you. Are there any other points of personal privileges or announcements? If not the Clerk will please call Calendar 254.

CLERK:

State of Connecticut House of Representatives
Calendar for Thursday, May 31, 2001. On page 4,
Calendar 254, H.B. 5850, AN ACT CONCERNING PEREMPTORY
CHALLENGES IN A CIVIL ACTION. Favorable report of the
Committee on Judiciary.

DEP. SPEAKER CURREY:

Representative Lawlor of the 99th.

REP. LAWLOR: (99TH)

Good morning Madam Speaker. Madam Speaker, I move
the acceptance of the Joint Committee's favorable report
and passage of the bill.

DEP. SPEAKER CURREY:

The question before us is on acceptance and
passage, please proceed sir.

REP. LAWLOR: (99TH)

Thank you Madam Speaker. There's a strike

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everything amendment, which in effect rewrites the existing bill. Same topics a different version. The Clerk has LCO 8001, I ask that the Clerk call and I be permitted to summarize.

DEP. SPEAKER CURREY:

Will the Clerk please call LCO 8001 designated House "A."

CLERK:

LCO 8001, House "A" offered by Representatives Lawlor, Farr, etal.

DEP. SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Madam Speaker. As was the case last night we now have the occasion to rewrite and clarify an eight year old law to make clear what the intent was originally. In this particular case we're talking about what was the meaning of a unit --

DEP. SPEAKER CURREY:

One moment. Representative Prelli.

REP. PRELLI: (63RD)

Thank you Madam Speaker. Madam Speaker, we don't have copies of the amendment yet. Could we just wait until we get copies of the amendment?

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Certainly.

REP. PRELLI: (63RD)

Thank you.

DEP. SPEAKER CURREY:

The House will come back to order. Now that all members have the amendment, Representative Lawlor of the 99th.

REP. LAWLOR: (99TH)

Thank you Madam Speaker. As I pointed out a moment ago in 1993 made it, thought that they had made it clear that the purposes of the assignment of peremptory challenges that where there was a unity of interest the plaintiffs or defendants as the case may be, would get the same number of challenges rather than one for each of the plaintiffs. However, a series of court decisions developed a very restrictive definition of what in fact was a unity of interest. I think Madam Speaker, in fairness, most people would concede that it was unnecessarily restrictive and not consistent with the intent of the original law.

The language which appears in this amendment has been through extensive negotiations and I think it's an appropriate compromise. And it makes it clear that where the same attorney represents all of the parties, or a number of the parties on one side, there shall be a

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unity of interest. In other cases where there are a number of plaintiffs or a number of defendants with different attorneys but who are not in effect making claims against one another, there's a presumption that there shall be a unity of interest in that case. And in no event shall there be more than twice as many peremptory challenges on one side than the other side.

This balance applies both ways and the language is inserted in both of the separate statutes which govern this process. I think this is a fair way of resolving this issue, I think it's consistent with the original intent from 1993 and I urge adoption.

DEP. SPEAKER CURREY:

The question before us is on adoption of the amendment. Would you care to remark further? Would you care to remark further on the amendment before us?
Representative Prelli of the 63rd.

REP. PRELLI: (63RD)

Thank you Madam Speaker. Madam Speaker I think that this is a bill that is probably not going to have a lot of discussion. It's one of those bills that is very complicated and the subject matter is not easily understood. But I don't think we have a problem with the way the court system is going now. I think it's working now. I don't think there's a need for a change

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now. The unity of interest has a number of court cases that has already decided what unity of interests are. Rather than changing this now and muddying the waters I don't believe that we need to make this change.

I think what this is going to do is slow down our court process. I think this is going to make it very hard for people to, for us to get more cases through the court system, which is already backlogged on civil cases. Remember this is only on civil liability cases, and that's what we're looking at here, on civil suits.

I don't think there's a need for this. I think it's another effort and in some respects it's a make work for lawyers and I don't think we need this bill. Thank you Madam Speaker.

DEP. SPEAKER CURREY:

Thank you sir. Would you care to remark further on the amendment before us? Representative Rowe of the 123rd.

REP. ROWE: (123RD)

Thank you Madam Speaker. Through you could I direct a question or two to the proponent of the amendment?

DEP. SPEAKER CURREY:

Please proceed sir.

REP. ROWE: (123RD)

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Thank you. With respect to the area of interest issue. And I guess now we have a substantially similar standard. When an apportionment complaint or a cross claim hasn't been filed between defendants or plaintiffs for that matter, this amendment would create a rebuttable presumption presumably that no unity of interest exists? That's clear from the language? Through you Madam Speaker.

DEP. SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Madam Speaker. I'm not sure I heard the question exactly, but what it says is that if there are no cross complaints apportionment motions, etcetera, there's a presumption not necessarily a rebuttable presumption. Simply a presumption that there shall, that there is a unity of interest. Obviously this is in response to a number of court decisions which made it virtually impossible to find a unity of interest in almost any circumstances.

So it does create a presumption where the parties are not filing claims against one another. Through you Madam Speaker.

DEP. SPEAKER CURREY:

Representative Rowe.

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REP. ROWE: (123RD)

Thank you Madam Speaker. Again, through you. Can we flush out a bit that presumption, you said it isn't necessarily a rebuttable presumption but what kind of standard does this amendment contemplate a judge using to overcome that presumption? In other words, if I'm a defendant and I have a co-defendant with me that for whatever reason I haven't brought in with an apportionment complaint or I haven't cross claimed against him -- and I think that happens more often than not in civil litigation -- what kind of standard am I as a defendant going to have to prove or reach rather to show that there is in fact no unity of interest? Through you.

DEP. SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Madam Speaker. I think all we're attempting to do is provide guidance to judges as to what they need to do, in order that there shall be a unity of interest finding. In other words, I think under the current law there's almost a presumption that there's not a unity of interest. At least that's the way it's been interpreted. I don't think that's the way it was intended when it was written. I think this at

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least makes it clear that if there was some type of cross complaint that there's probably not a unity of interest.

If there are no such actions I think you start off saying, well it looks as though there's a unity of interest, now I suppose the parties could make an argument while even though they haven't made any allegations against any of the other parties on the same side as they are that there's still not a unity. I think those are findings that a judge would make on a case by case basis.

Judges have not been reluctant to find no unity of interest. In fact that's been the rule not the exception recently, especially based on some of the Appellate Court decisions. But I think basically in the absence of any cross complaints there's a unity of interest unless a specific assertion is made to the contrary. I think we ought to leave that up to judges to make those decisions on a case by case basis.

Through you Madam Speaker.

DEP. SPEAKER CURREY:

Representative Rowe.

REP. ROWE: (123RD)

Thank you Madam Speaker. And I know this bill has been through a couple different revisions. Is there

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anything, through you Madam Speaker, that changes the number of challenges? In other words, I'm a defendant again and I've got two co-defendants this time, so there's one plaintiff and three defendants. No unity of interest is found amongst the three defendants. Current law, current law would have four challenges for the plaintiff and twelve for the defendants.

Is it fair to say that under this language there would be six for the plaintiff and twelve for the defendants? Through you Madam Speaker.

DEP. SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Madam Speaker. Could you just repeat the question so I can understand it more clearly?

REP. ROWE: (123RD)

Sure. The hypothetical has three defendants with no unity of interest, therefore, presumably twelve challenges. The hypothetical also has one plaintiff with four challenges. Current law I think would have four challenges for the plaintiff and twelve for the defendants. Under this amendment would we have now six challenges for the plaintiff and twelve for the defendants?

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Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Madam Speaker. Well, the amendment is not explicit, but I think that would be the logical outcome, through you Madam Speaker. The answer would be yes.

DEP. SPEAKER CURREY:

Representative Rowe.

REP. ROWE: (123RD)

Okay that would be the log --, Thank you Madam Speaker. That would be the logical outcome. Does the amendment specifically give the court discretion to modify that number if I use the same hypothetical could the court decide, well I'll give the three defendants nine challenges, three each and, or rather four each and the plaintiff, I'm sorry. What I'm getting at through you Madam Speaker, is does this amendment give any discretion to the court to modify the number of challenges that a plaintiff would have relative to several defendants? Through you.

DEP. SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Madam Speaker. The amendment does not in any way change the number of peremptory challenges of

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four that is in the current law. And so I would think that no, there would be no discretion.

DEP. SPEAKER CURREY:

Representative Rowe.

REP. ROWE: (123RD)

Thank you Madam Speaker. Thank you for your answers. To me this is the best that this bill has looked since we saw it in Judiciary. I don't necessarily know that the current situation with respect to peremptory challenges is sufficient to warrant change, however. I can't say how I'm going to vote on this one way or the other. In a way, as Representative Prelli indicated, it may be an insurance defense lawyer work bill to an extent.

And I'm an insurance defense lawyer so maybe that's a good thing. But all in all, I think that we're solving a problem that doesn't really exist. So I suppose I'm talking myself into voting against this amendment. But Representative Stone is standing up and maybe he'll change my mind. Thank you Madam Speaker.

DEP. SPEAKER CURREY:

Representative Googins of the 31st.

REP. GOOGINS: (31ST)

Thank you Madam Speaker. If I may address questions to Representative Lawlor, through you Madam

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Speaker.

DEP. SPEAKER CURREY:

Please proceed madam.

REP. GOOGINS: (31ST)

Representative Lawlor, if I may, we have been informed by Representatives on both sides of this issue and I have been given additional information from a constituent in my town who was involved in these issues a while ago and functions in this area. Which leads me to ask the question of what other factors may have contributed to requesting the change of the situation as it is now.

The number of cases, the number of appeals, and so on, if -- through you Madam Speaker if I may hear an answer.

DEP. SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Madam Speaker. Well there was a number of facts that gave rise to this year's proposal. I'd point out this proposal has been around for a few years, to do something about this problem. In general the problem is that in 1993 the legislature must have meant something when they talked about a unity of interest. As a practical matter as that has ultimately been

defined by the appellate courts, few if any cases actually have given rise to a unity of interest. So rendering the language in the existing law meaningless.

It's an attempt to give the law some meaning, some elaboration. And I think consistent with the original intent in 1993, that this emerged. So number one the appellate court decisions rendering meaningless the concept of a unity of interest. Number two, in real people's lives there was testimony before the Judiciary Committee, one in particular, I forget the woman's name, she was a constituent of Senator Kissel, made a very compelling case of how this affected her situation where there were quite a few defendants -- I forget exactly how many -- but each one of them had four challenges and her lawyer only had four. And she was really out gunned in the jury selection process and that certainly worked out to her significant disadvantage.

In that particular case I think a reasonable interpretation of a unity of interest of a unity of interest in that case would have led at least to the outcome that is called for in this bill. So I think in her case and in many others like her's. And just going back to the reading of the plain language of the law from 1993, there must have meant something when we talked about a unity of interest but as a practical

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matter it has been interpreted to mean nothing. We're trying to put some meaning back into the language. I think the proposal here is as reasonable as you can get.

Through you Madam Speaker.

DEP. SPEAKER CURREY:

Representative Googins.

REP. GOOGINS: (31ST)

If I might continue. I guess I would like to put the number of cases versus the number of appeals in context for all of the number of cases that existed versus the appeals. It is suggested to me that the system in fact has worked and that the appeals situation are far less if you will look at the total number of cases involved in such situations. Which is with Public Act 93-176.

The claim is that the judges were granted the discretion, for the trial court judges, and that the problem of the "over lengthy" jury selections and/or representation of the individuals was, is in fact insured in the system. And I still question, in talking again to both sides, what would make the Judiciary as well as the Judicial Department as well as the Connecticut Trial Lawyers change their mind even with the practice. Because the number of cases that I have been informed about do not seem to justify this. I

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guess I'd be more interested in justice and representation as opposed to just trying to play with numbers. I'm not an attorney, but in the circumstances and the information I've been given, I would suggest that we leave well enough alone.

I question whether it really is broke, that we need to fix it. Thank you Madam Speaker.

DEP. SPEAKER CURREY:

Thank you. Representative Stone of the 9th.

REP. STONE: (9TH)

Thank you Madam Speaker. Just a few comments in support of the proposed amendment. First of all I'd like to associate my remarks with those made by Representative Lawlor, in terms of describing the purpose of the bill. In those situations in which really egregious results have come about under the present system. I think what we're trying to provide here, as expressed by Representative Lawlor, is some guidance to the court as to where those cases, where the court should find as a matter of law a unity of interest.

And where in some circumstances, or in one circumstance the court may have a presumption of a unity of interest.

DEP. SPEAKER CURREY:

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Excuse me Representative Stone. I know that we are down to the final five or six days. And I know there's a lot of negotiating in relation to legislation that has to happen. But I would appreciate it if you would move your conversations outside of the House because I'm having trouble with the speakers right behind me to hear what's going on. So we'll give them just a moment Representative Stone to quiet. Proceed sir.

REP. STONE: (9TH)

Thank you Madam Speaker. I hope my comments are worthy of the silence. The, just in response to some of the, one of the comments from Representative Rowe in terms of the situations that or the facts which a defendant or a group of defendants may want to display or provide to the court to rebut the presumption. I could imagine some situations in which a cross complaint or a apportionment complaint may in fact be available to two or more defendants against one another.

But where in fact they choose not to pursue that cross complaint or that apportionment complaint for one reason or another. Whether the reason exists within the lawsuit itself, or for other reasons they choose not to pursue. So I, at least in one circumstance I can see where the presumption could in fact be rebutted. I would also point out for the purposes of legislative

history that it is merely a presumption, that there would be -- at least I envision -- there would be an opportunity for the defendants, either individually or as a group to provide evidence to the court along the lines for example of what I've suggested, to rebut that presumption.

I know that the court in the past, at least in the cases that I've read, have wrestled with the issue of precisely what is a unity of interest and how do we define that? There was some legislative history back from 1993 when the bill was originally enacted and there were statements from then Representative Knopp and still Representative Knopp from Norwalk who indicated that under some circumstances a unity of interest would be found.

I think in some of those cases the court took those comments to be almost an exclusive list, an exhaustive list of where unity of interest would exist. And in another case the court found that notwithstanding the presence of those factors that a unity of interest did not exist. So I think this bill, although it's a far cry from what was proposed by the Trial Lawyers and by the proponents of this bill to the Judiciary Committee several months ago.

In fact the bill that was initially proposed

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provided that regardless of how many defendants we had and regardless of how many plaintiffs we had, that the number of challenges for the plaintiff would equal the number of challenges allowed to the defendant or defendants. So in Representative Rowe's example of one plaintiff and four defendants, under that scenario under the way the bill existed, or at least as the bill was proposed in Judiciary, those four defendants assuming no unity of interest would have a total number of peremptory challenges of 16, that one plaintiff would also have a total number of challenges of 16. So we've come a long way from where we were.

In fact I initially opposed the bill as proposed before the Judiciary Committee, as reflected for the record on the vote from Committee on this. But there has been some movement from those who proposed the bill.

There's certainly been some movement from the chair, co-chairs of the, the ranking member of the Judiciary Committee. I think its movement in the right direction and I think the bill as it presently stands, or this amendment, excuse me, as it presently stands provides the necessary balance to achieve not only some direction, definitive direction to the court, but also a balance and a fairness within the justice system.

Where no one plaintiff, truly for the sake, or

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merely for the sake of being out numbered by an exorbitant amount of peremptory challenges enjoyed by the defendant, where no one plaintiff is adversely impacted and I move, or I urge my colleagues to join me in supporting this amendment. Thank you Madam Speaker.

DEP. SPEAKER CURREY:

Thank you sir. Representative Blackwell of the 12th.

REP. BLACKWELL: (12TH)

Thank you Madam Speaker. And I want to thank the Chairman for the amendment, because I know a number of us had some problems with the original bill, especially as it dealt with cross claims. But I do have a question for the Chairman Madam Speaker. I'd like to pose a question to the Chairman, the proponent of the amendment.

DEP. SPEAKER CURREY:

Please proceed sir.

REP. BLACKWELL: (12TH)

Through you Madam Speaker to Chairman Lawlor. Are there situations when actually during the trial a cross claim is filed that the presumption of a unity of interest is already there, but a cross claim is filed, how would the court deal with that? Through you Madam Speaker.

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DEP. SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Madam Speaker. I'm not an expert on that particular issue. My gut tells me, probably it's too late at that point, although I defer to some of my colleagues here who might handle these cases on a more frequent basis. But if that were the case, if you could file a cross complaint, for example, during the course of a trial obviously it would be too late. Perhaps that would be an issue that could be raised on appeal, whether or not there was some lack of disclosure during the discovery phase of the proceedings which resulted in the delay in filing the cross complaint, I'm not sure.

But in general it's too late during the trial to file it unless you could maybe show that new evidence has emerged, in which case you could ask for a mistrial and go back and start all over again. I think it would depend on the situation. I suppose it's theoretically possible but someone else might actually know the answer to that question.

DEP. SPEAKER CURREY:

Representative Blackwell.

REP. BLACKWELL: (12TH)

Thank you Madam Speaker. And I thank the gentleman

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for his answer. I recognize that the hypothetical I just posed is probably fairly unlikely that it's going to happen. It does still pose a concern. I really am appreciative of the fact that the amendment before us does make some changes that attempt to deal with this.

I tend to agree with Representative Rowe that the amendment before us is better than the underlying bill.

I still have some questions about whether or not we even need this. I certainly hope someone can answer the question that I posed. Thank you Madam Speaker.

DEP. SPEAKER CURREY:

Thank you sir. Representative Heagney of the 16th.

REP. HEAGNEY: (16TH)

Thank you Madam Speaker. Madam Speaker if I may, through you ask a question to the proponent of the bill?

DEP. SPEAKER CURREY:

Please proceed sir.

REP. HEAGNEY: (16TH)

Representative Lawlor, on lines 12 and 13 the bill discusses when a unity of interest would be found, it talks about utilizing the same attorney or law firm.

Could you just define for legislative intent, whether that would be at the time of the peremptory challenges or would that have been any time up to that point?

Through you Madam Speaker.

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DEP. SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Madam Speaker. I think that would be at the time of the jury selection, the time that the determination is made how many peremptory challenges each side will be allocated. Through you Madam Speaker.

DEP. SPEAKER CURREY:

Representative Heagney.

REP. HEAGNEY: (16TH)

Through you Madam Speaker. One further question. Would it then be clear, so that it would not have mattered at one time the parties had the same counsel and decided that they needed separate counsel? Through you Madam Speaker.

DEP. SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Madam Speaker. Through you, I think it would certainly be relevant, but I don't think the finding of the unity of interest would be required necessarily for that fact alone. It certainly would be relevant in a discussion as to whether or not there in fact is a unity of interest. But the language included

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in the amendment is mandatory where the parties are represented by the same attorney or same law firm.

It doesn't mean that they're not there's no unity of interest it just means that if they currently are, there's a mandatory finding. But presumably if at one point they've been represented by the same attorney then you could at least argue that they have a unity of interest and then the court would have to make a determination. Through you Madam Speaker.

DEP. SPEAKER HYSLOP:

Representative Heagney.

REP. HEAGNEY: (16TH)

Yes, Mr. Speaker, and through you. Could the, Representative Lawlor, contrast this amendment to the process for the selection of juries and peremptory challenges that are used in federal court? Through you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Through you Mr. Speaker. I can't answer that question, perhaps someone else can make that comparison.

DEP. SPEAKER HYSLOP:

Representative Heagney.

REP. HEAGNEY: (16TH)

Thank you Mr. Speaker. I rise in support of this bill as it's being amended. For those who have practiced law and been through our state system of selection of jurors. It is quite unique in this country, that a great deal of personal time, individually interviewing jurors is done so that every prejudice possible can be identified.

Unfortunately where there is a great number of peremptory challenges on one side or the other, it creates a lack of justice in the selection of jury in the end. Because anyone who might have any slight leanings or experience towards one side or the other can be eliminated, when they would never be eliminated in a federal jury selection process, which does not allow this type of interrogation of individuals. I think if you look in the whole perspective with which our jury selection process is done, if you have too many peremptory challenges, these are challenges that they could use for any reason, without cause, that you are going to create a system that does not create fairness.

It will not be one that will be identifiable through an appellate process because you are simply prejudicing the jury by selection. For that reason, Mr. Speaker, I would encourage my colleagues to support this

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bill as it is amended. Thank you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Raczka.

REP. RACZKA: (10TH)

Thank you Mr. Speaker. I rise in support of this bill. I think as we've seen from the debate so far, we can really get bogged in to the complexity of the math of this, and what is unity of interest and what isn't. But I think what we need to focus on, is does this bill make our civil court system a fair place? I think it does. If our citizens are not confident that when they walk in to any courthouse in this state that they are not going to be treated fairly, we do great damage to the fabric of our society.

I urge all of my colleagues to support this legislation.

DEP. SPEAKER HYSLOP:

Representative Brian Flaherty of the 68th.

REP. FLAHERTY: (68TH)

Thank you Mr. Speaker. Mr. Speaker, I guess I have one question through you to the proponent of the amendment if I might sir.

DEP. SPEAKER HYSLOP:

Proceed.

REP. FLAHERTY: (68TH)

Mr. Speaker and Representative Lawlor, starting in line 12 the amendment says that a unity of interest shall be found to exist among parties represented by the same attorney or law firm. Then it goes on and says, in addition there shall be a presumption that a unity of interest exists where no cross claims or apportionment claims are filed. Can you explain to me the difference in the term of, in the import of saying in the first part a unity shall be found in the first case and in the second that there shall be a presumption of unity? Is there a distinction between those two? And could you explain those to me? Through you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Mr. Speaker. Certainly I can. First of all, in the first situation it's in effect mandatory that a judge would not have the discretion not to find a unity of interest if the parties are represented by the same attorney. I think the reason for that is obvious, at least I would think so. I mean there's an ethical responsibility on the part of an attorney representing multiple clients if the attorney feels that there is not a complete unity of interest then it would be unethical to represent more than one party in a matter.

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So in that case it would be mandatory. In the second case where there have been no cross claims or apportionment complaints filed, it's not mandatory that a finding of unity of interest be made, but I think it addresses the problem run into in other cases which went up to the appellate court, where I think in situations like this the appellate court ruled notwithstanding the evidence where you should think they would find a unity of interest the appellate court overturned it. So I think this gives guidance in the future where in the absence of any other evidence being offered one way or the other, that if in fact that's the case, there's no cross complaints, there's no complaints for apportionment, then if that's all there is, then there's probably a unity of interest. And I think that would allow a judge to make a finding of a unity of interest and not risk being overturned in the appellate court for that reason.

I think that's the best I can answer. One's mandatory, one is sort of creating a presumption, perhaps a rebuttable presumption, but nonetheless would allow a judge's finding of unity of interest to survive through the appellate process. Which has not been the case over the past eight years. Through you Mr. Speaker.

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DEP. SPEAKER HYSLOP:

Representative Flaherty.

REP. FLAHERTY: (68TH)

Through you Mr. Speaker. Would it not have been I guess, prudent, to have applied the presumption language to the first case to again provide perhaps some direction to a trial judge, but to allow for some flexibility? Through you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Mr. Speaker. Well, as I said before. I think if in fact there is one attorney for multiple clients, there's going to be all kinds of problems with the case if in fact there's not a true unity of interest, because there'd be a conflict of interest for the attorney to represent more than one client where there wasn't a complete unity of interest. So I think this is just an acknowledgement in that case.

It's inconceivable that one could argue that there's not a unity of interest without there being all kinds of defects in the trial that's going on. So not only would there be a problem with the jury selection in that situation, but there'd be a problem with the outcome as well, because someone could certainly file a

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claim after the fact, ineffective assistance of counsel, unethical behavior on the part of the attorney, etcetera.

So I think in that case, I'm sure if that were the case today that there would be a finding of a unity of interest and that would survive the appellate scrutiny.

But just to make that clear and to save a lot of agonizing, we've included it in the language here.

Through you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Flaherty.

REP. FLAHERTY: (68TH)

Thank you Mr. Speaker. And thank you Representative Lawlor, I appreciate the explanation. I'm one Mr. Speaker, who needed and I guess who needs a lot of explanation on the issues surrounding this legislation. I'm not an attorney, I don't practice law, I don't run into the situations and have not in my career, where I would be able to determine whether or not it's the right thing for the legislature to do to legislate this aspect of civil procedure.

I like Representative Googins had an opportunity to have some advice from a constituent of mine. And I was trying to wrestle with the issues earlier in this bill, over whether, how we define fairness. This bill is

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being brought to us in terms of we need to restore some fairness to the system. And do you determine or do you define that fairness on the two sides in a trial, or should you define fairness in the parties, in the case where there is perhaps one plaintiff and three defendants.

Do you view all the defendants as one side, or do you recognize that each of those three people may have some of their own concerns that may develop where they wouldn't be served in this case. And so I asked this friend of mine and I said look -- and he's an attorney and it so happens he was involved in a case, and I know every time we bring up a bill someone could come up with a case where, well to prove it wrong or to show where it didn't happen.

But there were two doctors in the same medical group. They were sued individually, their practice was sued, they were represented by the same firm. One doctor had treated a patient pre-operatively and had been sued for failure for making a timely diagnosis. The person goes into the hospital, the second doctor of the group picks up the treatment of the patient at that point and later was sued for performing unnecessary surgery.

Now in this case they were represented by the same

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firm. The judge found that, allowed them to have their own peremptory challenges but didn't do so for the medical group, which was also being sued -- in other words Mr. Speaker, there was a case presented here where the trial court exercised the discretion that they have under the law that they wouldn't have if this bill were to pass.

I think that's what finally tipped me over on the edge. And there have been so many different drafts of this legislation. And well first we're going to say both sides get the same number of peremptory challenges, and then it became well no side can have no more than twice the other, which is where I think we are now. Mr. Speaker, at the end of the day, I guess I sign on that I think the courts are in the best position to develop the criteria that should be applied.

We can never in this legislature write a law that will be fair every single time and I don't think we should try. And it's at least one area where this citizen legislator and I give very much deference to my colleagues who have practiced law who know these situations and have seen them. But I find no comfort level in this, in going in and potentially over legislating civil procedure. I feel I'm on very thin ice doing that. And I guess I would side with giving

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the courts the discretion that they have under the current law.

Particularly when I put it up against this legislation. Would I feel a little more comfortable if we had said a presumption of unity would exist in both cases, if your with the same person, maybe there'd be a little more flexibility there. Maybe I feel, maybe I'm totally wrong, it wouldn't be the first time. But at this point Mr. Speaker, I rise in opposition to the amendment and to the bill. Thank you very much.

DEP. SPEAKER HYSLOP:

Will you remark further on House "A?" Will you remark further on House "A?" Representative San Angelo.

REP. SAN ANGELO: (131ST)

Thank you if I could, just a question through you to the Representative Lawlor please.

DEP. SPEAKER HYSLOP:

Please phrase your question.

REP. SAN ANGELO: (131ST)

Representative Lawlor, Representative Heagney asked you a question about if you had the same attorney and at some point during that time prior to picking a jury if you switched attorneys would you still have a unity of interest?

I think your answer, I think it seemed pretty clear

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to me in the language, but I want for purpose of legislative intent, to clean it up a little bit. Seems to me if you haven't picked a jury yet, and you switched attorneys that there is no longer a presumed unity of interest.

Your answer was I think so. For purposes of legislative intent, because a judge i guess will be deciding on this in the future. If you switch attorneys prior to the picking of a jury, under this definition will not be a unity of interest as described in this definition. Through you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Mr. Speaker. The question, your question used a lot of terms that don't necessarily fit together, so I'm just going to be precise, ok? The law says that more than one party has the same attorney then that shall be a unity of interest, not a presumption but it's a man date. You said presumption so I want to be clear about that.

Number two, what I said before is, that if at the time the peremptory challenges are being allocated that's the time that's relevant, logically right? So if at the time the motion is being made and there's one

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attorney, then there is a unity of interest and that's mandatory.

Now, if subsequently, it's not a question of switching attorneys, it's a question of at the time regardless of who your attorney is, if the parties have always had the same attorney, maybe they fired one guy and hired a different woman, or whatever it happens to be. That's the issue. Not the switching, but the single attorney for more than one party.

So that's what matters, it matters at the time the peremptory challenges are being allocated. Now if subsequently another attorney comes in, let's say during the middle of the trial which is theoretically possible, I think it's too late to deal with the peremptory challenges issues.

However if the reason that happened presumably was because of some failure to disclose information that the parties weren't aware that they really did need a separate attorney. Then that might be an issue for an appeal or for subsequent trial or to vacate the verdict or to declare a mistrial, whatever.

But, it's pretty straight forward at the time the judge is making the decision whether or not there is a unity of interest. If there's only one attorney for multiple parties than there is not other option for the

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judge to declare a unity of interest. I hope that is clear Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative San Angelo.

REP. SAN ANGELO: (131TH)

Thank you Mr. Speaker. And it wasn't clear on the first time, I think that is very clear and I just wanted raise the support to the amendment. I think it's a good amendment and I think it's a reasonable compromise on this issue and I think we should put this issue to bed rather quickly. Thank you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Remark further on House "A." Remark further on House "A." Representative Rowe.

REP. ROWE: (124TH)

Thank you Mr. Speaker. Briefly, one final question to the Chairman of the Judiciary. If under this proposed amendment there will be a presumption that a unity exists when there's no cross claims or apportionment complaints filed.

Why was it not included in the drafting of the amendment that there would be, there would be a presumption that there is no unity of interest if there was a cross claim or apportionment complaint filed? Through you Mr. Speaker.

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DEP. SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Mr. Speaker. I think that's sort of the case now. In the absence of this clarifying language, I think that's the way it's been worked out. So I guess that, I suppose that it never occurred to anyone that that could be a problem. I think that's, to make a finding of a unity of interest is to depart from the normal course.

It means there's something unique about this case, and all we've tried to do is give some guidance to judges and to appellate courts in determining how to go about that process. The normal course is that each party gets their own peremptory challenges. The exception is where there's a unity of interest.

To fall into that exception you need to have some sort of evidence, and what we've said is one would be clear cut. Multiple parties, same attorney. The next would be apparent but not clear cut, which would be, the absence of any kind of claims against between the parties on the same side, between the parties on the same side.

So there would be a presumption there, however that could certainly be, that's not conclusive, there could

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be other indications that there's not a unity of interest, which just provides some guidance. To be sure the finding of unity of interest is a departure from the normal course and we've just provided some guidance to judges and to appellate courts in how to go about evaluating that.

The rule is that each party gets their own challenges. The exception is where there's a unity of interest, and what we've tried to do is elaborate on where there is. So, I don't think it's really necessary to put in language where there's a presumption, and there's not. In general there's a presumption, there's not, unless there's a showing that there is. So that's the bottom line. I hope that's clearer Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Rowe.

REP. ROWE: (124TH)

Thank you Mr. Speaker. There is a problem that exists now, I think. I don't think it's a major problem, and I frankly think that on the whole the defendants have the better of things during jury selection. Jury selection to me very important to the outcome of a case.

I have a concern that any time there no cross claim filed or no apportionment complaint filed in a civil

case now, under this proposed amendment, judges will be very reticent to find that there is no unity of interest.

I think a problem exists, as I say now. I think this proposed amendment goes away towards correcting it, but in fact in some ways it goes a bit too far. And I would have liked to have seen there be language in there saying, that notwithstanding what the Chairman stated in response to my question, that there is a presumption when there is a cross claim or an apportionment complaint filed that there is no unity of interest. So I think I will be opposing this proposed amendment. Thank you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Remark further on House "A." Remark further on House "A." If not we'll try your minds. All those that in favor signify by saying aye.

REPRESENTATIVES:

Aye.

DEP. SPEAKER HYSLOP:

Those opposed?

REPRESENTATIVES:

No.

DEP. SPEAKER HYSLOP:

The ayes have it, House "A" is adopted. Mark

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further on the bill as amended. Representative Prelli.

REP. PRELLI: (63RD)

Thank you Mr. Speaker. Mr. Speaker it is very nice to see you in the chair. Mr. Speaker you made a very nice ruling on an amendment that talked about where the underlying bill talked about pistol permits, and the amendment talked about assault weapons, And you ruled that those amendments, the amendment was very much germane to the underlying bill because they both dealt with guns. I noticed that this deals with the selection of juries in civil trials. I have another minor issue with civil trials, civil liability.

With that in mind Mr. Speaker the Clerk has an amendment it's LCO 7736. Could he please call and I be allowed to summarize?

DEP. SPEAKER HYSLOP:

Clerk please call LCO 7736 to be designated House "B" and the Representative has asked to summarize.

CLERK:

LCO 7736 House "B" offered by Representative Prelli.

DEP. SPEAKER HYSLOP:

Representative Prelli.

REP. PRELLI: (63RD)

Thank you Mr. Speaker. Mr. Speaker several years

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ago there was a Supreme Court case that overturned a decision that many of us thought that was part of law. And that's that municipality with their recreational property were held harmless from suit.

The case was Conway versus Wilton and it overturned that. And since that point municipalities have been very concerned that they're opened up to law suit. This amendment would again, would write into law that they are protected from that law suit. And I would move adoption.

DEP. SPEAKER HYSLOP:

Questions on adoption. Will you remark further?

REP. PRELLI: (63RD)

Mr. Speaker, I think that as I brought out in the explanation, this has been a case is something that a lot of us have been very concerned of. A lot of us have been trying to move this bill forward for a number of years. Again as I stated, we're talking about civil law suits.

The underlying bill talks about choosing juries for civil liability. I think that this bill is necessary. I think we need to protect our towns. We as the state don't allow ourselves to be sued without permission. We should be able to give the same types of protection to our municipalities, Mr. Speaker. With that in mind I

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think we should all support this amendment to help our towns. Thank you.

DEP. SPEAKER HYSLOP:

Will you remark further on House "B." Representative Godfrey.

REP. GODFREY: (110TH)

Mr. Speaker I rise to a Point of Order.

DEP. SPEAKER HYSLOP:

What is your Point of Order Sir?

REP. GODFREY: (110TH)

Mr. Speaker I would suggest that this amendment is not properly before us. It is non germane under Mason's 402.

DEP. SPEAKER HYSLOP:

Chamber stand at ease. The Chamber will come back to order. Representative Godfrey your point is well taken. This amendment does not follow in the natural logical sequence of the bill.

This amendment deals with the immunity of liability from recreational land use and the other deals with corporate procedure. At this time I find that the amendment is out of order. It is not germane.

REP. PRELLI: (63RD)

I rise to appeal the ruling of the Chair.

DEP. SPEAKER HYSLOP:

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Chamber stand at ease. Chamber, Representative Sawyer.

REP. SAWYER: (55TH)

I second that Mr. Speaker.

DEP. SPEAKER HYSLOP:

Chamber set at ease. Chamber will come back to order. Representative Prelli.

REP. PRELLI: (63RD)

Mr. Speaker before I start a parliamentary inquiry.

DEP. SPEAKER HYSLOP:

Yes sir, what is your inquiry?

REP. PRELLI: (63RD)

My inquiry is that, just to make sure that I recall correctly the discussion here. That each person has the right to discuss this once on the appeal. Is that correct?

DEP. SPEAKER HYSLOP:

Correct.

REP. PRELLI: (63RD)

Thank you Mr. Speaker. Mr. Speaker in discussion, as I pointed out and I thought it was pointed out very well. And what I am appealing is your exact ruling of yesterday. Your ruling yesterday was of a bill that in one case was a licensing of pistol permits and in the other case was the banning of assault weapons.

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You said that the link that was needed was that they were both concerning guns. The underlying bill in this case talks about selection of juries in a civil liability case. This amendment even though it is the municipality protection, exclusion for municipalities, it also talks about a civil liability case.

Both of them being the exact same. Both of them showing the same nexus as your ruling of yesterday. I understand that sometimes it makes a difference who makes the call of germaneness, but I think that your ruling yesterday and a ruling that was going to be made much earlier yesterday, pointed both of those out.

I'm just trying to find the fairness in this and that's why I moved to appeal the chair. Thank you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Lawlor. Representative Godfrey then.

REP. GODFREY: (110TH)

Thank you Mr. Speaker. In support of the Chair, I believe that you're correct Mr. Speaker that you did note that the underlying bill deals with, strictly court procedures and not with substantive law or questions of substantive liability, and in deed were in different sections of the statutes.

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I would respectfully suggest that Representative Prelli's amendment would be better off drawn to a bill dealing with liability, and there are those on the calendar. We could have the debate there.

It is not germane to an act concerning peremptory challenges in a civil action. Thank you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Heagney.

REP. HEAGNEY: (16TH)

Excuse me Mr. Speaker my button was pushed by accident. I apologize.

DEP. SPEAKER HYSLOP:

Any one else wishes to. Representative Prelli. This is your second time sir.

REP. PRELLI: (63RD)

Mr. Speaker I don't rise to speak on the amendment.

Not to, in these waning days of session to prolong this, I would remove my objection to the chair.

DEP. SPEAKER HYSLOP:

Stand to objection. Representative Sawyer.

REP. SAWYER: (55TH)

I withdraw my second Mr. Speaker.

DEP. SPEAKER HYSLOP:

At this time the appeal has been withdrawn. Will you remark on the bill as amended? Will you remark on

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the bill as amended? Representative Prelli.

REP. PRELLI: (63RD)

Thank you Mr. Speaker. I wish I had another minute. Mr. Speaker, just on the bill. I rise to oppose the bill. I think that as I said on the amendment, I think we have a process that works now. It is a proven process.

Everybody knows how that process works. We are now going to open up the whole procedure of selecting juries. If we're going to do this, why don't we do like so many other states do and just use the jury selections that other states use? We have a much closer line here.

This is, as I said before, this is just a trial attorney's job protection act and I don't think we need it. Thank you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Caron.

REP. CARON: (44TH)

Thank you Mr. Speaker. Mr. Speaker after trying to carefully listen to the debate. It reinforces the fact that I did not want to pursue the law. And I'm very happy I didn't. Trying to get one's arms around an issue that one really has no expertise in is very difficult.

I recall my time as ranking member of the general

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law committee, when we were constantly asked to define the standards for particular trades or professions. Now, I know nothing about engineering and I was asked to determine who should be designing buildings. Whether they should be architects or architectural designers, or interior designers.

It's just hard for lay people and citizen legislatures to know all there is to know. We heard from Representative Raczka that, or at least implied or suggested that Connecticut's civil courts are currently unfair. That people go into court at a severe disadvantage.

That's just hard to believe and frankly I've heard very little here to suggest that that is in fact so. For example a while ago we talked about the fact that this amendment and this bill is trying to give the courts, presumably judges more guidance and yet we use the word shall in telling them in exactly what they will and will not do.

As I read the amendment, which has become the bill, it seems to me that the court currently has the discretion to do the very thing the bill intends to do.

In the final analysis I don't see that the proponents have really made a case that this is really necessary for us to rule on, for us to set the procedures.

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House of Representatives

Thursday, May 31, 2001

In the final analysis I haven't heard anything from the judicial department that feels there is a serious problem here and there's an inherent unfairness to the citizens that go before the courts. Therefore Mr. Speaker I would suggest that we reject the bill.

DEP. SPEAKER HYSLOP:

Representative Knopp.

REP. KNOPP: (137TH)

Thank you Mr. Speaker. Mr. Speaker, this matter of peremptory challenge is just so important because it's obviously an aspect of the right to trial by jury. There is no more important right guaranteed to us by our state and federal constitutions. Connecticut is unique in that it's the only state in which the right to individual verdure is guaranteed in our state constitution.

Because that right is so important, it seems to me that it's critical to clarify the impact of the bill as amended. I heard Representative Lawlor give some responses previously to other questions. So I'm really rising just to ask Representative Lawlor a question just to make sure that we understand the impact of this legislation.

My question is this, in a situation in which the parties are non represented by the same law firm, in

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which there are no cross claims or apportionment complaints filed, non the less, do the parties for whom this presumption will now exist have the right to argue to the trial judge, that in fact the presumption should not be sustained and in fact no unity of interest should be found if indeed the facts of the case warrant the judge making that conclusion. Through you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you Mr. Speaker. The answer is yes.

DEP. SPEAKER HYSLOP:

Representative Knopp.

REP. KNOPP: (137TH)

Thank you Mr. Speaker. As I understand it then, the presumption that a unity of interest exists where parties have the same attorney or law firm is a conclusive or irrebuttable presumption. And the presumption that a unity of interest exists among parties that have not filed cost claims or apportionment complaints, is a rebuttable one.

That the parties have an opportunity to make that case to the trial judge under the discretion that now exists and the purpose of the bill before us to slightly weight the facts to create a presumption but it's not

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one that can not be over written if indeed the facts show it.

I think that gives the court sufficient discretion and for that reason I'll be supporting the bill as amended. Thank you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Raczka.

REP. RACZKA: (100TH)

Thank you Mr. Speaker. I rise in response to Representative Caron's comments. I want to be clear that my remarks were in no way that there is a crisis in our system of civil justice. Rather again I want us to focus on the bill and the purpose of the bill, which is to help guarantee that this system is as fair as we can humanly make it.

That's the important concept here. We must do everything on any given day to make sure that our citizens when they walk into a court room, that they are going to be treated fairly. In any bill that furthers that, I think is just very important. Again as the debates pointed out, once we start getting into the minutia of this, we can get lost in it very easily. I will get back to Representative Rowe's comments, that he doesn't know if this is a big problem. There aren't thousands of people complaining. That isn't the focus

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of our justice system. The focus is that an individual person should always, always feel that when he or she walks into that courtroom he is going to be treated fairly.

And again for that reason I support this legislation.

DEP. SPEAKER HYSLOP:

Will you remark further on the bill as amended? Will you remark further on the bill as amended? If not, staff and guests as well as the house, the machine will be opened.

CLERK:

The House of Representatives is voting by roll call, members to the chamber. The House is voting by roll call, members to the chamber please. Have all members voted? If all members voted, please check the machine and make sure your vote is properly recorded. The machine will be locked and the court will take a tally.

DEP. SPEAKER HYSLOP:

Clerk will announce the tally.

CLERK:

H.B. 5850 is amended by House "A."

Total Number Voting	142
Necessary for Passage	72

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005200

House of Representatives

Thursday, May 31, 2001

Those voting Yea	110
Those voting Nay	32
Those absent and not voting	8

DEP. SPEAKER HYSLOP:

Bill is amended passage. Any announcements or points of personal privileges? Representative Cafero.

REP. CAFERO: (142ND)

Thank you Mr. Speaker. Mr. Speaker for purpose of introduction.

DEP. SPEAKER HYSLOP:

Proceed.

REP. CAFERO: (142ND)

Thank you Mr. Speaker. Ladies and gentlemen of the Chamber, we are very pleased to have a special guest with us this afternoon. In the well of the House we have Tara Sloan, a Brian McMann High School senior, from Norwalk, Connecticut. Who is the proud recipient of the Governor's Coalition on Youth with Disability scholarship award.

Tara was one of nineteen applicants who won the scholarship from the Governor's Coalition on Youth with Disabilities. We are very proud of her. She is accompanied here today by her mother Stephanie Sloan, her teacher Patty Mencuchi from Brian McMann High School and Wendy Johnson a sign language interpreter, also from

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 5
1452-1793

2001

001511

February 20, 2001

Dear Representative,

We are writing to you in regard to legislation being proposed to modify the number of challenges given to each party to a civil lawsuit with regard to jury selection. The bill number is HBO 5850/LCO 1348 which will have a hearing on Wednesday, February 21, 2001, before the judiciary committee. Could you please hand carry or have this letter read into the record at the hearing?

The existing law empowers defendants in a lawsuit where there is more than one defendant, to influence the outcome in their favor before the trial even begins. In our opinions, this practice denies the plaintiff the basic right to a fair and impartial trial, in that the defendants, by combining their challenges, can very easily supply themselves with a jury of eight people that don't even believe in litigation.

While it may seem fair to assign the same number of challenges to each party, we have seen firsthand how the defendant's attorneys can manipulate this law to benefit them.

We were parties to a lawsuit that went to trial about a year ago. The outcome was in our favor, but we can see how it could easily have gone the other way. There were two defendants. Each attorney brought with him a member of his office staff. Every time a potential juror was interviewed, they all left the room together to confer about that person. It was apparent to everyone, including the judge, that this was a team effort to combine their challenges to increase the odds of creating a jury of people that would be sympathetic to their side.

When our attorney called this to the attention of the judge, he laughed about it. Doesn't it make sense to give the plaintiff an equal number of challenges? If the defendants each get four, Give the plaintiff eight. This would at least give the plaintiff a equal shot at having a jury made up of truly impartial people, not just the ones chosen by the opposing side.

Thank you,

Wayne and Penny Fairbanks
13 Filosi Road
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JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 8
2463-2813

2001

thank you for having this public hearing. Do you need me to identify myself?

REP. LAWLOR: Please do that, yes.

BETH BANIA: My name is Beth Bania. I'm in Senator HB 5850 Kissel's district. I'm from Enfield, Connecticut. Do you need a street address?

REP. LAWLOR: No, we don't. That's okay.

BETH BANIA: Thank you. I was involved in a civil suit in 1999. I sat through 3-1/2 weeks of jury picking. It was an infuriating process that had nothing to do with fairness, truth, or the pursuit of justice.

My lawyer and I sat on one side of the table and three attorneys on the other. We had four peremptory challenges. They had a combined total of twelve. I said "combined and total" when referencing the opponents because each time they had to decide on a juror, they put their heads together, conferenced and strategized, and collectively decided if and who would burn a challenge.

The tilt of the perspective jury was immediately obvious. The unfairness of the process was maddening. I asked how this could happen and had separate entity and unity of interest explained to me. While I understand the legal concepts, the practice of jury picking was a contradiction of terms. I couldn't get passed the idea that separate means separate.

While the three attorneys were separate entities by legal definition, their behavior joined them in fact.

I ask for this law not for me, but for every citizen who goes after me seeking justice at a State of Connecticut courthouse. While I understand the legal theories behind today's jury picking practices, the every day guy doesn't necessarily understand. The practice doesn't make it right or fair.

It was explained to me that the inequity in awarding peremptory challenges is an unintended consequence of legislation passed to enhance judiciary economy. The imbalance of challenges prolongs the jury picking process. There's nothing efficient about pending 3-1/2 weeks jury picking.

Serious settlement discussions don't occur until the hyper-enriched parties burn a pre-determined number of challenges.

It's time to correct an unintended consequence. It's time to bring fairness back to the jury picking process. It's time to correct the impression that jury picking is a rigger poker game. To argue otherwise would be to say I don't want to give up the cherry on my sundae or worse yet to argue, but this is how we've always done it.

The goal of a fair and impartial jury should (inaudible) all of their arguments. Please pass this bill to the House and Senate for a vote as soon as possible. Every day that passes, another good citizen of our state faces this abject unfairness and subsequent disillusionment with our judicial system.

While we are a nation of laws, that is a concept. We need to restore the ideal of a fair and impartial jury. We need to make this change so the every day citizen can trust and respect our judicial process.

Thank you.

REP. LAWLOR: Senator Kissel.

SEN. KISSEL: Hi, Beth. I just wanted it on the record to welcome you here and for those on the committee, Beth Bania is familiar with the legislative process and indeed, she and her daughter were champions of legislation which actually made it through this Legislature five or six years ago, four years ago, five years ago?

BETH BANIA: Five.

SEN. KISSEL: Which helped us with the detection of scoliosis in young children and I don't know if you recall that bill going through. That was Beth and her daughter's bill and I'm not sure if these lawsuits are related to that injury. But while I understand your concern, we discussed this or at least you bounced it off myself and Randa early on, there are some difficult legal issues, but I think your overall concern with fundamental fairness, 12 exemptions versus four, if there are distinct entities involved, you'd like to have them separated out. They're sort of ganging up and I think that's at least an issue worthy of discussion here and I'd be interested to hear the testimony, both pro and con, as this hearing moves forward.

Thank you for taking the time to participate. Your past experience and your experience today does show that one individual, not associated with any kind of lobbying group or special interest, can sincerely make a difference in the State of Connecticut.

Thank you, Mr. Chairman.

BETH BANIA: John, can I respond a little bit to that?

SEN. KISSEL: It's up to the Chair.

REP. LAWLOR: Please go ahead, sure.

BETH BANIA: When all the discussions were held and this went back and forth in language, one of things that got dropped and the only way I can do this is to give you my experience, as an example. One party on one side of the table and three on the other. So as the Senator said, four to twelve.

Part of what I envisioned was some language in a prior version of this where we could give some judicial discretion, build in a clause that says in multi-party actions, there are to be no less than a total of twelve and no more than a total of twenty-four to be divided in half and then awarded as the judge sees fit. If that might be going where you're going because I could see without some wording of that kind in here, if you have four parties on one

side of the table and you have one party on the other, four times four is sixteen and sixteen and sixteen is thirty-two. And I'll be very honest, as a taxpayer that would concern me. I'm all for judiciary economy and I would love to see some judicial discretion built in like I just described, you know, a bottom number, a top number, the judge can divide it in half and award them as he sees fit.

Thank you for asking. Thank you for your kind remarks.

REP. LAWLOR: Are there any other questions? If not, thank you very much.

BETH BANIA: Thank you.

REP. LAWLOR: Next is Kathleen Nastri and as Kathleen comes up, I know there are members of the committee listening, I just want to announce that Senator Coleman and I have conferred and we will have our meeting to JF bills on Wednesday at noon. Wednesday at noon, the Judiciary Committee meeting will take action on bills.

So, go ahead.

KATHLEEN NASTRI: Good afternoon. My name is Kathleen Nastri and I practice law with the law firm of Carmody and Torrence which is in Waterbury.

I'm here speaking on behalf of the Connecticut Trial Lawyers Association and I'm going to make some very brief comments about three of the bills that have been raised before this committee.

HB 6970
HB 6982

And I want to thank Chairman Lawlor and Chairman Coleman and the committee for this opportunity.

The first bill I'm going to address is committee S.B. 577 which is entitled AN ACT CONCERNING STATEMENTS OF APOLOGY MADE AFTER AN ACCIDENT. The Trial Lawyers oppose this bill primarily because it's contrary to a long existing and well accepted rule of evidence.

M. PETER KUCK: Thank you.

SEN. COLEMAN: Jim Bartolini.

JAMES BARTOLINI: Good afternoon, Senator Coleman, Senator Kissel, members of the Judiciary. My name is Jim Bartolini. I was the past president of the Connecticut Trial Lawyers and I'm speaking in favor of H.B. 5850, AN ACT CONCERNING PEREMPTORY CHALLENGES IN A CIVIL ACTION.

When the bill, in its current language, was passed in 1993, the belief was that the way the bill was going to be applied would be similar to the way peremptory challenges are applied in federal court, which, quite simply, is the judge looking at the cast of characters and saying, well, you all represent the interests of the plaintiff and therefore you're going to get four peremptory challenges or this group over here, you're all representing the interest of the defendants and you're going to get four peremptory challenges and you've going to divide them up between the two of you.

In other words, the idea of the bill was that it was going to compress the number of peremptory challenges, but have them be equal on both sides. That was the belief of many trial lawyers who practiced in federal court and said no, no, go apply it the same way it's done in federal court, as it's done, as it will be done in state court. That has not proven to be the case.

There are two appellate court decisions which have dealt with this issue of how the statute is to be applied and they're fascinating in their fact pattern.

One involved a 1996 case involving a lady who worked in a school system in food services and there was an area of a sidewalk by the school that had not been shoveled and it was icy. And she took a fall and was injured.

And the lawyer who represented her sued the superintendent of schools, the principal, the chief

custodian, and the head of buildings and grounds. And a lot of times what happens is you don't really know who has the legal responsibility for something like maintaining that sidewalk. So erring on the side of caution, the lawyer sued those four entities.

When the case came up for trial and it was one lawyer representing all four of those entities, the superintendent of schools, the principal, the buildings and grounds, and the chief custodian.

The Trial Judge -- because the plaintiff's lawyer said, well obviously there's a unity of interest. You've got one lawyer representing these interests. They're not adverse to one another. There should be three peremptory challenges permitted.

The Trial Court said no, we're going to give separate challenges for each one of these entities. So it ended up being twelve against three in that particular case. It was a defendant's verdict. The plaintiff appealed up and the Appellate Court said, no, no, the Trial Judge was appropriate, exercised discretion.

May I go on?

SEN. COLEMAN: Please continue.

JAMES BARTOLINI: The second case, just as fascinating, was where a lawsuit was brought against St. Francis Hospital and three physicians. Again, the plaintiff's lawyer not knowing whose in control of the situation, all three doctors were employees of St. Francis Hospital. The case comes up to trial, the Trial Judge who was Judge Douglas Lavine who is one of the brightest trial judges sitting. He said, well it's a unity of interest. Have one lawyer representing the hospital and these three doctors. They had no conflict among themselves, and said you're going to get four challenges. And the plaintiff gets four challenges. It was a plaintiff's verdict.

The defense counsel appealed the verdict up. The

Appellate Court looked at it and said, "Abuse of discretion". This lawyer should have been allowed 16 challenges, four for each one of those individuals.

The point of the matter is that this statute, at is currently exists, has not been applied the way it was thought it would be applied. It has not been applied fairly. What Mrs. Bania told you about of three lawyers huddling up together for the defense exercising their challenges really as if they were one unit, but being entitled to all of these extra challenges, is the way it happens in real life.

This bill would equal the challenges out on both sides. And frankly, as a plaintiff's lawyer, I wouldn't care if you said, well, we're only going to allow a total of two challenges per side.

As long as it was equal in my eyes, it would be a lot more fair than the system that we currently have.

Thank you.

SEN. COLEMAN: Thank you. Are there questions? Senator Kissel.

SEN. KISSEL: Attorney Bartolini, thank you for coming. A couple of things.

First of all, has this concept been shared with the Connecticut Trial Lawyers Association? And I probably should have asked Attorney Nastri, but do they have a position regarding this?

JAMES BARTOLINI: Yes. They are in support of the bill.

SEN. KISSEL: Okay. And my second question would be. As we attempt to parcel this out, would the determinant factor be whether one attorney represented more than one of the defendants or what test would we utilize to make sure that indeed separate defendants who might be entitled to separate challenges would be able to do that?

JAMES BARTOLINI: I think that the bill, as drafted, which is very simple, just saying you're all -- however many we're going to allow, it's going to be equal on each side of the table. We don't care if there's 50 plaintiffs, and two defendants and we don't care if there's two plaintiffs and 50 defendants, we're going to allow you, as a total group, an equal number of challenges.

Because I'll tell you what would happen, Senator Kissel. In the situation that I mentioned to you, you've got a hospital and three employee doctors, if that were the case, the insurance company who was defending that case, they're not stupid, the lawyer is going to say, look, in order for us to get an advantage over the plaintiff, I can't be the sole person on this case. We've got to have four lawyers on this case. We'll each represent a separate entity. We'll each get our challenges and we'll gang up on the plaintiff or vice versa. It could happen either way.

The proper way to do it, which is the way the federal court really does it is to say look, you all have essentially the same interest in mind. You all want a plaintiff's verdict. You're all looking for plaintiff's jurors. You all are defense people. You all are looking for defense jurors. You're going to get an equal number of challenges on each side. You'll parcel it out in that manner.

SEN. KISSEL: Thank you.

SEN. COLEMAN: Further questions? Seeing none, thank you for your testimony.

JAMES BARTOLINI: Thank you.

SEN. COLEMAN: Ron Thomas.

HB 6970 HB 5832
RONALD THOMAS: Good afternoon, Senator Coleman, Representative Lawlor, members of the committee.

My name is Ronald Thomas, Senior Legislative Associate with the Connecticut Conference of Municipalities. I'm here to talk about a few bills

JOINT
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HEARINGS

JUDICIARY
PART 9
2814-3185

2001

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JUDICIARY COMMITTEE

March 19, 2001

002841

committee to get suggestions for sort of the safeguards. (INAUDIBLE-MICROPHONE NOT ON) So, I think that process is underway.

JACK BAILEY: Okay. And Senator Kissel, with that sunset legislation, we have no problem with that either.

REP. LAWLOR: Right. But I think that rather go through the whole thing in the committee meeting, just see if people have concerns that you can live with --

JACK BAILEY: And we are available at any time.

REP. LAWLOR: Right.

JACK BAILEY: Can I see you for one second, Mr. Chairman.

REP. LAWLOR: I'd be happy to leave, but --

REP. FARR: Pass me the thing and I'll call it.

The next person is Bob Handel, Food Share.

UNIDENTIFIED SPEAKER: Mr. Handel had to leave.

REP. FARR: Is somebody here to speak on his behalf?

UNIDENTIFIED SPEAKER: No, I don't think so, but he has submitted written testimony.

REP. FARR: Okay. Susan Giacalone. I'm sorry, Susan.

SUSAN GIACALONE: Good afternoon, Representative Farr. (INAUDIBLE-MICROPHONE NOT ON) I'm Susan Giacalone (INAUDIBLE-MICROPHONE NOT ON) IAC. I'm here to testify on a couple of bills. I have submitted written testimony, so I will keep my comments brief.

(INAUDIBLE-MICROPHONE NOT ON)

REP. LAWLOR: Thank you. Are there questions?
Representative Farr.

REP. FARR: I'm sorry. The last two that you said you

HB5850

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gmh

JUDICIARY COMMITTEE

March 19, 2001

002843

Hamm.

REP. HAMM: Talk to me about peremptory challenges. It HB 5850 seemed to me that if the rep from the Trial Lawyers was accurate, that we have at least the Appellate Courts who were giving us rather diversion opinions on exactly the same judicial discretion argument that you're making, in which case it would be appropriate, it would seem to me, to have some kind of statutory resolution of what the rules are.

SUSAN GIACALONE: (INAUDIBLE-MICROPHONE NOT ON)

REP. HAMM: Well, the only issue, I think, is if there's a unity of interest. Then would you have a disagreement about it at that time we really need to have the equality?

SUSAN GIACALONE: (INAUDIBLE-MICROPHONE NOT ON)

REP. HAMM: But apparently they can't be upheld on appeal. They are or they're not. It's kind of inconsistent.

SUSAN GIACALONE: (INAUDIBLE-MICROPHONE NOT ON)

REP. HAMM: Do you agree that at the time we passed the first bill that we were intending to follow the federal model?

SUSAN GIACALONE: (INAUDIBLE-MICROPHONE NOT ON)

REP. HAMM: Okay. Thank you.

REP. LAWLOR: Are there other questions? If not, thank you very much.

Next is Fernando Betencourt.

FERNANDO BETANCOURT: Good afternoon, Chairman Lawlor, honorable members of the committee. My name is Fernando Betancourt, Executive Director for the Latino and Puerto Rican Affairs Commission and our State Legislative Commission is here today to testify in favor of raised H.B. 6657, AN ACT PROHIBITING EMPLOYMENT EXPLOITATION OF IMMIGRANT LABOR.

002956

Statement

Insurance Association of Connecticut

Judiciary Committee

March 19, 2001

HB 5850, An Act Concerning Preemptory
Challenges in Civil Actions

The Insurance Association of Connecticut opposes HB 5850, An Act Concerning Preemptory Challenges In Civil Actions. This bill seeks to mandate an equal number of preemptory challenges between all plaintiffs and defendants.

HB 5850 eliminates the discretion that trial judges currently have to ensure fairness in the jury selection process and prejudices the rights of individual litigants to a fair trial.

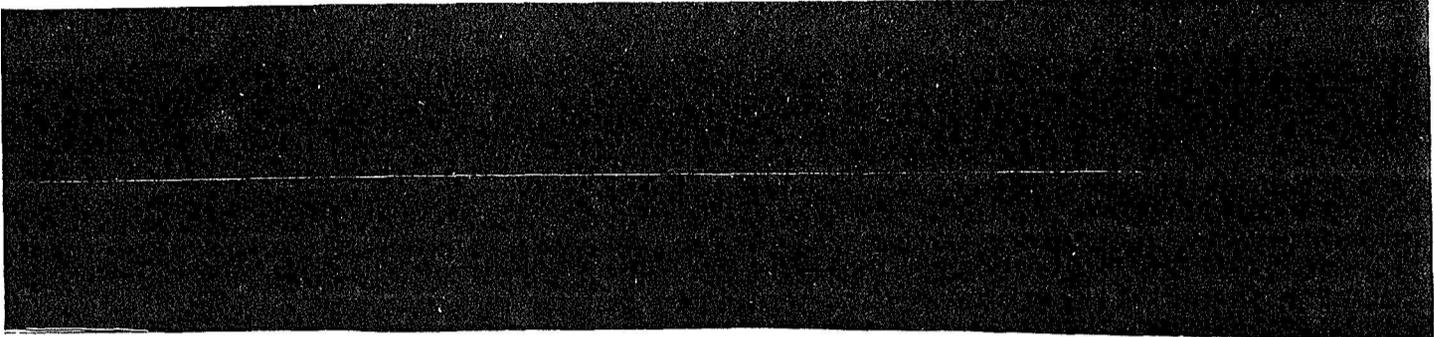
HB 5850 eliminates a compromise agreed to in 1993 concerning the civil jury selection process. Current law grants each litigant four preemptory challenges. If the court finds that a unity of interest exists among several plaintiffs or defendants, the court has the discretion to consider the several plaintiffs or the several defendants as a single party for purposes of making preemptory challenges or to award the other side additional challenges. A unity of interest is defined to mean interests that are substantially similar.

Current law permits the trial court to evaluate the interests of individual litigants on a case-by-case basis and to allocate challenges so as to achieve fairness in the jury selection process. HB 5850 eliminates the trial court's

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discretion and mandates that all plaintiffs and all defendants be given the same number of challenges irrespective of their individual interests in the case and to automatically extend an equal number of challenges to all plaintiffs or defendants which ignores the individual nature of the challenges and places a single party in the position to dominate jury selection.

Finally, both Connecticut General Statutes sections 51-241 and 51-243 were amended in 1993. These amendments were designed to guard against abuse in the voir dire process and permit a judge upon a proper showing to limit or expand the number of preemptory challenges among plaintiff's or defendants.



February 20, 2001

Dear Representative,

We are writing to you in regard to legislation being proposed to modify the number of challenges given to each party to a civil lawsuit with regard to jury selection. The bill number is HBO 5850/LCO 1348 which will have a hearing on Wednesday, February 21, 2001, before the judiciary committee. Could you please hand carry or have this letter read into the record at the hearing?

The existing law empowers defendants in a lawsuit where there is more than one defendant, to influence the outcome in their favor before the trial even begins. In our opinions, this practice denies the plaintiff the basic right to a fair and impartial trial, in that the defendants, by combining their challenges, can very easily supply themselves with a jury of eight people that don't even believe in litigation.

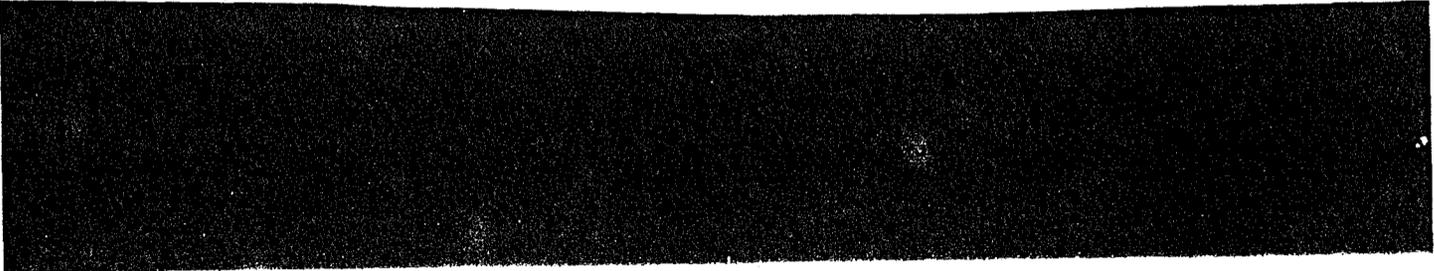
While it may seem fair to assign the same number of challenges to each party, we have seen firsthand how the defendant's attorneys can manipulate this law to benefit them.

We were parties to a lawsuit that went to trial about a year ago. The outcome was in our favor, but we can see how it could easily have gone the other way. There were two defendants. Each attorney brought with him a member of his office staff. Every time a potential juror was interviewed, they all left the room together to confer about that person. It was apparent to everyone, including the judge, that this was a team effort to combine their challenges to increase the odds of creating a jury of people that would be sympathetic to their side.

When our attorney called this to the attention of the judge, he laughed about it. Doesn't it make sense to give the plaintiff an equal number of challenges? If the defendants each get four, Give the plaintiff eight. This would at least give the plaintiff a equal shot at having a jury made up of truly impartial people, not just the ones chosen by the opposing side.

Thank you,

Wayne and Penny Fairbanks
13 Filosi Road
East Lyme, CT 06333
(860) 739-0180



HB5850

Senators, Representatives, Senator Kissel – thank you for having this Public Hearing. I was involved in a civil suit in 1999. I sat through 3 ½ weeks of jury picking. It was an infuriating process that had nothing to do with fairness, truth or the pursuit of justice. My lawyer and I sat on one side of the table and three attorneys on the other. We had 4 peremptory challenges – they had a combined total of twelve. I said combined and total, when referencing the opponents, because each time they had to decide on a juror they put their heads together, conferenced and strategized, and collectively decided if and who would *burn* a challenge.

The tilt of the prospective jury was immediately obvious. The unfairness of the process was maddening. I asked how this could happen and had separate entity and unity of interest explained to me. While I understand the legal concepts the practice of jury picking was a contradiction of terms. I couldn't get past the idea that separate means separate. While the 3 attorneys were separate entities by legal definition, their behavior joined them *in fact*.

I asked for this law, not for me, but for every citizen who goes, after me, seeking justice at a State of Connecticut Courthouse. While I understand the legal theories behind today's jury picking practices, the "everyday guy" doesn't

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necessarily understand. The "everyday guy" does understand fairness.

Understanding the current practice doesn't make it right or fair.

It was explained to me that the inequity in awarding peremptory challenges is an unintended consequence of legislation passed to enhance judicial economy. The imbalance of challenges prolongs the jury picking process. There's nothing efficient about spending 3 ½ weeks jury picking. Serious settlement discussions don't occur until the "*hyper enriched parties*" burn a predetermined number of challenges.

It's time to correct an unintended consequence. It's time to bring fairness back to the jury picking process. It's time to correct the impression that jury picking is a "*rigged poker game*". To argue otherwise would be to say I don't want to give up the cherry on my sundae; or worse yet, to argue "*but this is how we've always done it.*" The goal of a fair and impartial jury should trump all other arguments.

Please pass this bill to the House and Senate for a vote as soon as possible. Every day that passes another good citizen of our State faces this abject unfairness and subsequent disillusionment with our Judicial System. While we are a nation of laws, that is a concept. We need to restore the ideal of a fair and impartial jury.

002961

We need to make this change so the everyday citizen can trust and respect our
Judicial process.

*Thank you,
Beth W. Baris*

002962

TESTIMONY
ELIZABETH E. GARA
ASSOCIATE COUNSEL
CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION
BEFORE THE
JUDICIARY COMMITTEE
LEGISLATIVE OFFICE BUILDING
MARCH 19, 2001

My name is Elizabeth (Betsy) Gara, associate counsel for the Connecticut Business & Industry Association (CBIA). CBIA represents over 10,000 employers across Connecticut, the vast majority of which are small employers with fewer than 100 employees.

I would like to comment on the following bills:

HB-5850, An Act Concerning Peremptory Challenges in a Civil Action
HB-6657, An Act Prohibiting Employer Exploitation of Immigrant Labor

CBIA *opposes* HB-5850, An Act Concerning Peremptory Challenges in a Civil Action, which requires courts to provide plaintiffs and defendants with equal numbers of peremptory challenges in selecting a jury, regardless of whether the defendants share similar interests.

HB-5850 tilts the playing field in favor of plaintiffs in cases where there are multiple defendants. Current law, which permits the courts to weigh the relative unity of interest of the parties in determining whether to limit peremptory challenges or to allow additional challenges, assures that the jury selection process is fair.

Under current law, each party to a lawsuit has historically enjoyed an individual right to exercise peremptory juror challenges (the right to challenge a juror without assigning a reason for challenge), which remains a useful tool in ensuring all parties a fair trial. In

1993, the Connecticut legislature restricted that right where multiple parties are found to have a "unity of interest" – interests that are substantially similar.

The law was amended to limit the lengthy jury selection process and to ensure that the court could prevent a group of parties from overwhelming another, unacceptably tilting the playing field. Under the amended law, if there is actual adversity or hostility between parties on the same side, or cross claims or adverse motions have been filed, the court may allocate peremptory challenges in a way that ensures each party their right to a fair trial. The discretion given to the trial judge in implementing the law is – and should be – extremely broad to meet the requirements of a balanced civil justice system.

HB-5850 would clearly undermine the intent of Public Act 93-176 by 1) lengthening the jury selection process by significantly increasing the number of peremptory challenges; and 2) allowing one party to dominate the jury selection process. We therefore urge members to oppose **HB-5850**.

CBIA opposes Sections 2 and 3 of HB-6657, An Act Prohibiting Employer Exploitation of Immigrant Labor.

Under current law, employers in violation of wage payment laws face severe penalties, including fines, civil liability and criminal prosecution. These penalties are more than adequate to protect immigrant labor as well as other workers and to punish employers that violate the law. Imposing extraordinary penalties against employers under the circumstances outlined in the bill is simply unwarranted.