

PA13-310

HB6692

House	9706-9714	9
Judiciary	4353-4356, 4375-4382, 4420-4434, 4475-4480, 4661-4676, 4678-4681	53
Senate	5427-5428, 5438-5439	4

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2013**

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Those voting Nay 0
Absent and not voting 4

DEPUTY SPEAKER SAYERS:

The bill is amended, passes in concurrence with the Senate.

Will the Clerk please call Calendar Number 517?

THE CLERK:

Calendar Number 517, favorable report of the Joint Standing Committee on Judiciary, Substitute House Bill 6692, AN ACT CONCERNING THE COURT'S AUTHORITY TO DENY AN APPLICATION FOR WAIVER OF COURT FEES.

DEPUTY SPEAKER SAYERS:

Representative Fox.

REP. FOX (146TH):

Thank you, Madam Speaker.

I move for acceptance of the Joint Committee's favorable report and passage of the bill.

DEPUTY SPEAKER SAYERS:

Question before the Chamber is acceptance of Joint Committee's favorable report and passage of the bill.

Representative Fox, you have the floor, sir.

REP. FOX (146TH):

Thank you, Madam Speaker.

The Judiciary Committee passed a bill out after a public hearing where we heard testimony regarding complaints involving repeated actions that are filed without merit generally designed to harass individuals and abusing the process by which we allow for fee waivers.

And what -- now, at the same time we also recognize that there are many and most cases where -- in almost all cases where a fee waiver is legitimate, and we want a fee waiver to be granted because we want to allow access to our courts to -- to all of Connecticut's citizens -- or to all -- all citizens who need to utilize our courts.

But there was testimony and a number of individuals who came forward and said we're hearing that there's also an -- an abuse of that process at times. And Mr. Speaker, the -- the Clerk has an amendment LCO Number 8218. I would ask that that be called and I be given leave to summarize, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Will the Clerk please call LCO Number 8218 or 75 -- did you say 7 --

A VOICE:

18 -- 18.

THE CLERK:

L -- L --

DEPUTY SPEAKER SAYERS:

-- Number 8218 and it shall be designated House
Amendment Schedule "A".

THE CLERK:

House Amendment Schedule "A", LCO 8218 introduced
by Representative Rebimbas, Fox, et al.

DEPUTY SPEAKER SAYERS:

The Representative seeks leave of the -- leave of
the Chamber to summarize. Is there any objection to
summarization? Is there any objection?

Seeing none, Representative Fox, you may proceed
with summarization.

REP. FOX (146TH):

Thank -- thank you, Madam Speaker.

And this amendment is a strike all. And what it
does is it makes it clear with respect to when a -- a
application for waiver of fees may be denied, and it
would -- it would require the court to find that there
had been repeatedly actions filed previously with
respect to the same or similar matters, that such

filings establish an extended pattern of frivolous filings that without merit, and the applications sought in connection with an action before the court that is consistent with the applicants previous pattern of frivolous filings.

And Madam Speaker, this would hopefully, and it's anticipated that it will, should this bill become law, be a benefit to our judicial branch and allow them to utilize their resources in a more efficient and just manner.

It is also, Madam Speaker, important that I -- I do thank the number of co-sponsors who are on this amendment, but particularly I should reach out and thank the Ranking Member Representative Rebimbas, who really spearheaded this bill and -- and the subsequent amendment and has worked with all of the interested parties involved to make sure that, not only can we look for a way to stop frivolous filings and fee waivers associated with frivolous filings, but also to make sure that the rights of those who do need access to your judicial system will still receive that access.

And I move adoption of the amendment.

DEPUTY SPEAKER SAYERS:

The question before the Chamber is adoption of House Amendment Schedule "A". Will you remark on the amendment?

Representative Rebimbas of the 70th.

REP. REBIMBAS (70TH):

Thank you, Madam Speaker.

And Madam Speaker, I just want to take this opportunity to also thank Representative Fox and Vice Chair Representative Ritter for their patience in allowing us to follow in the public hearing to speak with all the interested parties and come with the agreed upon language that is in this amendment.

So I do stand in support of the amendment and also, thank all of the co-sponsors (sic) -- co-sponsors and specifically, Representative Bowles, who had proposed a very similar piece of legislation as well.

So I do think, as Representative Fox had indicated, this strikes a very good balance for all of the interested parties. And I also would like to thank Senator Coleman for his cooperation.

So I do stand in support of the amendment and hope that everyone could support the amendment.

DEPUTY SPEAKER SAYERS:

Thank you, Representative.

Representative Bowles of the 42nd.

REP. BOWLES (42ND):

Yes, thank you, Madam Chair.

Very quickly, I -- I do want to take this opportunity to -- to express my strong support for this legislation.

I'm new here, but I really see this as a victory for democracy in action. The original concept for this legislation came from a constituent of mine. I will shout out his name because it's very public -- Wyatt Kopp who worked in the court system in -- in New London, resident of Ledyard, who brought this issue of frivolous lawsuits to my attention and I -- I filed a proposal way back at the beginning of this session.

But I in particular want to thank the Ranking Member for actually -- essentially taking this bill -- this proposal, running with it, mediating the differences -- significant differences between the parties on this and really want to express my appreciation to her in particular for -- for her assistance in -- in getting us to this particular day.

So again, thank you very much, Madam Chair.

DEPUTY SPEAKER SAYERS:

Thank you, sir.

Will you remark? Will you remark further on the amendment that is before us?

If not, let me try your minds. All those in favor of the (inaudible) by saying, aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER SAYERS:

Those opposed, nay.

REPRESENTATIVES:

Nay.

DEPUTY SPEAKER SAYERS:

The ayes have it.

The amendment passes.

The amendment is adopted.

Will you remark further on the bill as amended?

Will you remark further?

If not, will staff and guests please come to the Well of the House? Will members take their seats and the machine will be open?

THE CLERK:

The House of Representatives is voting by roll.

The House of Representatives is voting by roll. Will members please return to the Chamber immediately?

hac/gbr
HOUSE OF REPRESENTATIVES

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June 4, 2013

DEPUTY SPEAKER SAYERS:

Have all the members voted? Have all the members voted?

Please check the board to see that your vote has been properly cast.

If all the members have voted, then the machine will be locked and the Clerk will take a tally.

THE CLERK:

123, 23, 4.

DEPUTY SPEAKER SAYERS:

Representative Urban, for what purpose do you rise?

REP. URBAN (43rd):

Would you record my vote in the affirmative, please, Madam Speaker?

DEPUTY SPEAKER SAYERS:

It will be so noted.

THE CLERK:

Change or noted? Change. Okay. I'm going to change it.

DEPUTY SPEAKER SAYERS:

The Clerk will announce the tally.

THE CLERK:

Substitute House Bill 6692 as amended by House
"A".

Total Number Voting	147
Necessary for Passage	74
Those voting Yea	124
Those voting Nay	23
Absent and not voting	3

DEPUTY SPEAKER SAYERS:

The bill as amended passes.

Will the Clerk please call Calendar Number 309?

THE CLERK:

On page 42, Calendar Number 309, favorable report
of Joint Standing Committee on Finance, Revenue and
Bonding, Substitute House Bill 6651, AN ACT
IMPLEMENTING THE RECOMMENDATIONS OF THE STATE OF
CONNECTICUT BROWNFIELD WORKING GROUP.

DEPUTY SPEAKER SAYERS:

Representative Perone.

REP. PERONE (137th):

Thank you, Madam Speaker.

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

DEPUTY SPEAKER SAYERS:

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

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THE CHAIR:

Thank you, Senator.

The Senate will stand at ease.

(Chamber at ease.)

THE CHAIR:

The Senate will come back to order.

Senator Looney.

SENATOR LOONEY:

Yes, thank you, Mr. President.

I have two other items to add to the Consent Calendar at this time.

THE CHAIR:

Please proceed.

SENATOR LOONEY:

And there may be some more to add later. One is Calendar page 7, Calendar 570, House Bill 6486.

And the second is Calendar page 16, Calendar 704, and this is an item I believe, Mr. President, that is single starred but would ask for suspension so that we might take it up for purposes of placing on the Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar page 16, Calendar 704, House Bill 6692, also, to place that item on the Consent Calendar, Mr. President.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Now, Mr. President, at this time if the Clerk would call as the next item, Calendar page 5, Calendar 479, Senate Bill 115.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Mr. Clerk.

THE CLERK:

On page 5, Calendar 479, Senate Bill Number 115, AN ACT CONCERNING RESIDENTIAL NURSING HOME FACILITIES SERVING INMATES AND MENTAL HEALTH PATIENTS, favorable report of the Committee on Human Services.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Good evening, Mr. President.

THE CHAIR:

Good evening.

SENATOR DOYLE:

I move acceptance of the joint committee's favorable report and passage of the bill.

THE CHAIR:

Thank you, Mr. President.

Mr. President, if the clerk would now call -- would now list the items on the Consent Calendar so that we might proceed to a vote on the Consent Calendar before taking up additional items.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Page 2 -- sorry -- House Bill 6672, and then on page 2, Calendar 423, House Bill 5907.

On page 4, Calendar 464, House Bill 5601; Calendar 465, House Bill 6630.

On page 5: 485, House Bill 6602; Calendar 503, House Bill 6635.

On page 6: Calendar 19, House Bill 5903; Calendar 522, House Bill 5598.

On page 7: Calendar 570, House Bill 6486; Calendar 571, House Bill 6492.

On page 8: Calendar 601, House Bill 6490; Calendar 606, House Bill 6674.

On page 10, Calendar 644, House Bill 6363.

On page 12, Calendar 668, House Bill 6362; and Calendar 672, House Bill 548.

On page 15: Calendar 695, House Bill 5289; Calendar 696, House Bill 6658.

On page 16: Calendar 704, House Bill 6692; 705, House Bill 6703.

On page 17: Calendar 706, House Bill 6651.

And on page 21: Calendar 431, Senate Resolution Number 15.

HB 5480

THE CHAIR:

Mr. Clerk, please announce the pendency of a roll call vote, the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate.
Senators please return to the chamber. Immediate roll call on Consent Calendar Number 2 has been ordered in the Senate.

THE CHAIR:

Have all members have voted? If all members have voted, please check the board to make sure your vote is accurately recorded.

If all members have recorded, the machine will be closed and the clerk will announce the tally.

THE CLERK:

The second Consent Calendar

Total Number Voting	35
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar Number 2 passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, I just wanted to review and have we adopted Senate Agendas 3 and 4?

THE CHAIR:

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
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2013

we're very happy about that. And I just want to thank them for all their hard work and effort, and this is just another step in that right direction, so, and we also have one of our police officers from the City of Bridgeport here, A.J. Perez, who actually was the one who closed down those illegal massage parlors. So he's sitting in the back here, and he's going to speak as well. But thank you for all your efforts.

TOM MCCARTHY: Representative Grogins, thank you for your leadership.

SENATOR COLEMAN: Are there others with questions? If not, thank you, guys.

TOM MCCARTHY: Thank you very much.

A VOICE: Thank you (inaudible).

SENATOR COLEMAN: Paul Melanson.

PAUL MELANSON: Senator Coleman, Distinguished Members of the Committee, Chief Paul Melanson from the Farmington Police Department, and I'm representing the Town of Farmington and the Connecticut Police Chief's Association in support of Bill 6692, AN ACT CONCERNING PARTICIPATION IN A PROGRAM OF COMMUNITY SERVICE FOR PERSONS SEEKING FEES AND WAIVERS IN CERTAIN MUNICIPAL ACTIONS.

The Town of Farmington has been sued three times by an individual using these fee waivers. Two were dismissed after some court costs, and a third was recently filed for \$2 trillion. And this one was just a month ago that we received that. Defending these suits had become really an unnecessary burden on the financial, the, constricting financials of our municipalities.

We're forced to spend our precious resources to investigate and defend these lawsuits. While we support the right of every person to have equal access to the courts, the current system of fee waivers allows for an abuse.

Individuals who claim indigence are allowed to file suit without paying associated filing and service fees.

We, the CPCA and Town of Farmington, support the implementation of a program that would compel indigent filers to participate in a program of community service. This implementation of such a program would likely curb or at least reduce the number of frivolous suits that come our way. And I'll keep it short.

SENATOR COLEMAN: Are there questions for Chief Melanson? Representative Rebimbas.

REP. REBIMBAS: Thank you, Mr. Chair. Not necessarily a question, just, again, I just wanted to thank you for taking the time, obviously, for coming up here and testifying on behalf of this. It's certainly an issue that's been brought to our attention, not only by different representatives from municipalities but also court staff and judges in the sense of the abuse of power.

And, again, I, as you had indicated, the intent of this bill is not to preclude anyone from exercising their right but certainly not making it so easy that there are frivolous claims that are easily filed in that regard. Thank you.

PAUL MELANSON: Great. Thank you.

SENATOR COLEMAN: Representative Ritter.

REP. RITTER: Yeah, thanks. And I just sort of, I'll say this, that I think we have to be careful though too, because from the other perspective, although I agree that we are a litigious society, and there are a lot of frivolous cases filed, we also don't want to make it so that indigent people cannot file claims that are proper and so forth.

So I know we'll talk to Representative Rebimbas, but the struggle that I have with it is what one determines to be frivolous is a difficult thing. And if we put the community service aspect in there, does that have a chilling effect on people who have actual justifiable claims? And so it's a, as you can imagine, Chief, it's a very difficult balance for us. Through you, Mr. Chairman. Thanks.

PAUL MELANSON: Yes, I agree. And I, and, again, like I stated, nobody wants to prevent people filing lawsuits. I think what we're trying to do here is preclude the abuse of the system that I think the courts have, can attest to.

SENATOR COLEMAN: Representative Verrengia.

REP. VERRENGIA: I just wanted to take a minute to welcome Chief Melanson and thank him for taking the time to come here today and testify. I actually worked with Chief Melanson in West Hartford for many years until he decided to go to nearby Farmington and get promoted. So it's good to see you, Chief.

PAUL MELANSON: Thanks.

SENATOR COLEMAN: In response to your comment that no one wants to prevent individuals from filing lawsuits, I'm going to resist saying maybe some doctors do, but --

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cip/jf/gbr JUDICIARY COMMITTEE

April 15, 2013
10:00 A.M.

PAUL MELANSON: Well, I was talking for the police department and --

SENATOR COLEMAN: I understand. And I don't mean to disparage doctors either, because -- SENATOR COLEMAN: -- I think it's a complicated issue. But thank you for your testimony.

Is there any further follow up?

Seeing none, thank you.

MICHAEL MELANSON: Thank you very much, Senator Coleman.

SENATOR COLEMAN: Michael Bracken, Jr.

MICHAEL BRACKEN JR.: Good afternoon, gentlemen. I'd first like to thank Senator Kissel, his aide, Tate Macavoy, and also Legislative Liaison Wilfred Blanchette, for allowing me the opportunity to come here and assisting me with that task. The reason that I'm here is I'd like to talk to you, the Judiciary Board, regarding the whistleblower statute. And it's a statute that I feel that was overlooked when it came to municipal employees.

And that reason being is that I was a Windsor Locks police officer for 28 years, since the age of 18. And in 2007, I became subject to retaliation from the Windsor Locks police chief at that time, John T. Suchocki, Jr., for an incident involving an automobile accident involving a town vehicle that struck a motorist on Elm Street at the intersection of Ash Drive. The town vehicle struck the civilian's vehicle and pushed it approximately nine feet backwards, pinning the motorist inside her vehicle. And upon my investigation in looking at the accident scene, it appeared that speed was a contributing factor in the accident.

SB 291

one step to, you know, to making a better flow. I think this is critical to support and to pass as it is, and then look as we continue the discussions on mental health, look to how do you, you know, include more people in it. DMHAS has some excellent programs, but I would say that it's maybe the second step.

REP. FOX: Are there other questions?

Thank you very much.

KRISTIE BARBER: Thank you.

REP. FOX: Susan Nofi-Bendici.

SUSAN NOFI-BENDICI: Good afternoon, Senator Coleman, Representative Fox, members of the Committee. I'm Susan Nofi-Bendici, and I'm the Executive Director at New Haven Legal Assistance. We're a nonprofit organization that provides free legal services to low-income people. And I'm here today to oppose Bill 6692.

For people who are living at or below the poverty level, getting that fee waiver can mean the difference between getting access to our courts or being shut out. I understand the purpose of the bill is to prevent a problem with a handful of frequent flyers that repeatedly file frivolous lawsuits. This bill really wouldn't do anything to stop frivolous litigation by people who can afford the filing fee, but it would place a tremendous burden on poor people who need to get into court.

People like our client, Renee, who is -- has gotten a fee waiver because she's seeking a divorce from her abusive husband. She needs custody and child support orders. She's an hourly, minimum wage worker. She doesn't work,

she doesn't get paid. And she -- she can't afford to take 20 hours off from work to do community service. Same with our client, Sharon. After her husband strangled her, he is now out of the house, but he's not paying any child support for their four children. She's working two jobs to support her family and she also could not afford to take 20 hours off from those jobs to do community service.

Many years ago, in 1969, we had a client named Gladys Boddie who could not get a divorce because she couldn't scrape together the money for a filing fee. There wasn't a procedure for a fee waiver in place at that time.

She -- she was told she had to pay, she sued the State of Connecticut, and the case went to the United States Supreme Court. The Supreme Court held that denying her access to a divorce because of her poverty was a denial of due process.

In that decision, the Court did acknowledge that the state has an interest in preserving resources and protecting parties from frivolous litigation, but it pointed out that there are other actions that courts can take to directly address the frivolous litigation. And Connecticut courts today do have other alternatives.

In addition to the constitutional issues raised by this bill, this would place burdens on nonprofit organizations and the courts, the administrative burdens. The nonprofits would presumably have to have a system for tracking and reporting on whether the community service hours were performed. And the courts, having to do an individualized determination in each case of whether someone is able to do the community service or whether they've complied

with a prior order to do community service, that would seem to be a much larger drain on the courts resources than dealing directly with the people that are causing the problem.

This bill is unnecessary. The court has the ability to -- to address those who abuse the system without requiring all poor litigants to provide free labor in order to exercise their fundamental right to access the courts. For these reasons we oppose the bill. And thank you for your time. And if you have any questions, I'd be happy to answer them.

REP. FOX: Thank you.

Are there questions?

Representative Rebimbas.

REP. REBIMBAS: Thank you, Mr. Chair, and good afternoon. My apologies for having missed your testimony as I was out speaking with someone else. It sounded like pretty much you would be completely against this waiver program, is that correct or is there any good components of it or do you see any way it could function?

SUSAN NOFI-BENDICI: Not really, only because the problem that it seeks to solve is with a small number of people. And the way it goes about it would affect all low-income people that need access to the court.

REP. REBIMBAS: Okay. And that's -- so you're just picking the small number of people meaning the frivolous filings?

SUSAN NOFI-BENDICI: Correct.

REP. REBIMBAS: Okay. Do you have a number of identified throughout the State of Connecticut

of how many that would be?

SUSAN NOFI-BENDICI: I do not have access to those numbers, presumably the Judicial Branch would know who the problematic ones are. But the folks that we represent I can tell you are people who have genuine legal problems and, you know, many, many of our clients need the fee waivers to get into court.

REP. REBIMBAS: And I would certainly agree with that because if they're -- they're active enough that they can seek your assistance, they also have the benefit of your guidance.

SUSAN NOFI-BENDICI: Correct.

REP. REBIMBAS: There's many others who do file frivolous claims that unfortunately are self-represented and they do it for many different reasons. The issue that's been brought to my attention specifically, and there's been others that have proposed similar bills, is that it is a huge burden of resources not only by the court staff but then either the individuals or departments that are being sued in that regard.

One of the other issues or reasons, just so you understand why the bill was proposed, was not only for the frivolous filings, but many times there's a lot of participants who file for waivers and that would be a waiver of the filing fee as well as marshals fee, and then never show up in court. And they can represent their legitimate claims, but it's happened often and there doesn't seem to be much of an accountability because of the fact that it's free. But again those are state funds that unfortunately are being not properly utilized.

So that's one of the other reasons, just so you have an understanding of what's been brought to

our attention even by many of the judges. The judges were welcoming of this situation in the sense of analyzing properly when to apply it. It would not be applied in every case. That's already done right now in the criminal court. In the criminal court the judges do have the discretion at times in lieu of a fee, for example, to conduct community service.

Certainly community service would never been applied to someone who had a complete, legitimate inability to do the community service in that regard, but certainly could act, as you had indicated, deterrent for those frivolous claims. One of the other things that I also in my conversations with people is that it's an undue burden or somehow someone would not want to file even a legitimate claim.

Again, certainly the judge would take it upon themselves to make that decision, as they make many decisions from the bench that we entrust them to make those. But, you know, even the residents that go to court to file something, they do take out of their pockets, they do take out of their time from work. We don't know if it's someone who legitimately even could afford, they don't meet the criteria, but they still have to take money away from their daily bills and possibly even groceries and, you know, electrical bills.

And they're making the sacrifices to allocate money for what obviously is their right to exercise in a court of law. By requesting in limited circumstances someone who has the ability to do community service, to actually take the time out of their lives too to make an investment for that, I don't think is overly burdensome. Again, we're not talking about a stay-at-home, you know, moms or single parents, whether it's the mother or the father, who has

no daycare resources or is unemployed, but has, you know, legitimate responsibilities they couldn't conduct this. It would be in limited circumstances.

Again, I just wanted to give you some background. It's not, again, just frivolous claims, there's other situations where it's not being properly utilized, when people aren't showing up after, you know, the State is allocating funds in that regard. So I don't know if you have anything, you know, you wanted to contribute after knowing that information or certainly I'm not asking you to change your position, I just wanted to provide you with that information.

SUSAN NOFI-BENDICI: I understand the problem. I did want to briefly address what you said about the folks that we represent, how they at least have us for guidance when they're seeking a fee waiver and then, of course, that they would show up to court because we're representing them. One number that I do know is I've heard the Judicial Branch quote that there's something like 80 percent of the cases in family court now have at least one unrepresented party.

And so I don't want to leave you with the impression that, you know, that all poor people who have meritorious claims have a legal aid lawyer by their side, they don't. Unfortunately there are not enough of us to go around. And so what I worry about is the, you know, you're saying it's only limited cases where the people would be able to do community service, I really fear for the folks that we're not representing who are going at it on their own. Would they be able to get in there and get in front of a judge and make their case and prove that they really aren't able to do the

community service, then to just be able to file in the first place and then continue with their case.

REP. REBIMBAS: Certainly. We definitely share that same thing. And the only other thing that I just thought as I was writing it down as you had indicated, you know, the burden of having to follow up and supervise the community service at completion. There's a mechanism -- it would mirror the mechanism that's already in place regarding people who are requested to do community service, so it wouldn't be an additional burden. But thank you again for taking the time to testify.

REP. FOX: Are there other -- I guess there's no other questions. That's okay.

Representative Carpino.

REP. CARPINO: Thank you. I have a different perspective and just was hoping you could comment on it. I have a constituent who's been the victim of these frivolous claims time and time again where it's essentially bringing her close to qualifying for your legal services. And repeatedly she's been the victim of what some may call frivolous, I think we can all agree on repetitive claims. Do you represent clients who find themselves to be the victim of these type of cases that we would hope to address by offering community service as an option?

SUSAN NOFI-BENDICI: We do sometimes have cases where we're representing one party and the party on the other side is self-represented or sometimes even represented and engaging in a lot of repetitive, vexatious practice. But our -- our approach is normally to take it up with the judge that's -- that's, you know, hearing

the case or that's presiding over the case and ask them, you know, ask them to dismiss a filing that's frivolous rather than, you know, I wouldn't see the community service requirement as benefiting our clients when they find themselves on the other side of this situation.

REP. CARPINO: Would it benefit your client though, however, when the same party tries to bring the same action yet again?

SUSAN NOFI-BENDICI: Again, I think balancing, well, certainly that's -- it's a problem I think when you balance the relatively small number of fee waivers that are granted for folks that are truly abusing the system, and there are those folks, against the harm it would cause the much larger numbers of poor people who need the fee waiver. It would create a burden for the poor people to have to prove that -- that the community service shouldn't apply in their case.

REP. CARPINO: And I guess -- I do some pro bono work through Statewide Legal Services, so I believe I'm serving the same population that comes through your doors for the most part. And many of my clients would relish the opportunity to give back in some way. And I recognize that if you're a single parent or if you have some particular disabilities of either time or physical requirements or limitations, that perhaps you wouldn't.

And I know this bill would provide for those, but I -- I am struggling with the idea that some of these folks don't have the time or -- or the willingness to give back in each in their own way. And I was just curious if you dealt with the same victims that I dealt with. But thank you.

of how we handle drunk driving convictions. So -- but the statistics do seem to bear out in that this is the way to go if we're going to prevent people from drinking and driving in the future. So thank you for your testimony. I look forward to working with you in the future.

JACK DALTON: Well, to solidify on what you just said, the states that have passed the type of bills that you're proposing right now are seeing a 50 percent reduction in the number of alcohol-related deaths. In Connecticut that would mean you would be saving 50 lives every year if you put this bill through the way it is right now. So keep up the hard work.

REP. FOX: Thank you.

SENATOR COLEMAN: Anne Louise Blanchard.

ANNE LOUISE BLANCHARD: Good afternoon, Senator Coleman, Representative Fox, and distinguished members of the Judiciary Committee. My name is Anne Louise Blanchard, I'm the Litigation Director of Connecticut Legal Services, the state's largest nonprofit civil legal aid law firm. We've been providing free legal services to indigent families and individuals in Connecticut since 1977. And I'm here in opposition to Raised Bill 6692.

Over the last 35 years, Connecticut Legal Services has had the privilege of providing representation to hundreds of thousands of local income families and individuals, abused children, domestic violence victims, families facing homelessness. And throughout that time we've known that it is very hard for low-income families and individuals to gain access to the Connecticut court system and access to justice. Critical to this access is the fact that Connecticut law currently provides that

families falling within -- or individuals within 125 percent of the poverty level will have the right to request a fee waiver from the courts. But right now this Judiciary Committee is looking at placing limitations on that that raise serious constitutional issues and also place an unfair burden on low income people.

The Bill 6692 would significantly change this process and create a barrier to the courts which does not exist now. And it unfortunately also does not raise -- address the problem of repeated frivolous litigation. This bill is extremely troubling as I've mentioned both because of the constitutional issues and the burden placed on indigent people, but also because it places a chilling effect to women and individuals in particular who are facing domestic violence issues.

Although there are some exceptions in the bill, the underlying fact is that for a woman who is looking for a dissolution in marriage to protect her children from an abusive husband is now going to be faced with having to prove that she deserve to be able to bring her lawsuit. And that is exactly what happened in 1971 when the Supreme Court of the United States addressed a similar issue in *Boddie v. Connecticut*.

In that case, the State of Connecticut raised the issue of whether or not it had a legitimate reason to have no fee waivers. You charge fees of people in order for them to come into the courts. And the U.S. Supreme Court said that was not a sufficient reason to require or to deny fee waivers or require fees. So it's very important for this Judiciary Committee to know that already the State of Connecticut has been in front of the U.S. Supreme Court, albeit in 1971, and at that time the Supreme Court found

that as basic due process, the State could not be asking indigent women in this case to pay for fees in order to obtain a dissolution of marriage.

Legal services programs, as was mentioned earlier, have a number of folks who come to us for very serious legal issues. And if this language stands as it's proposed, an 81-year-old person that we're representing right now will have to somehow come up with bus money to get to a nonprofit organization if he's required to do community service. A mother who is struggling to make ends meet will have to miss work which she does not get paid for which means she'll have no access to food for her children.

And so I would ask this Committee on behalf of Connecticut Legal Services to seriously reconsider the proposed language. Connecticut judges already have systems in place, they already deny motions, they already in rare cases have completely prevented frivolous litigation to happen. And I'd be happy to talk about that further, but I know my time has lapsed.

SENATOR COLEMAN: Thank you.

Are there questions Ms. Blanchard?

Representative Rebimbas.

REP. REBIMBAS: Thank you, Mr. Chairman. I'm just curious, your last statement that there's other ways of addressing frivolous lawsuits, what is that?

ANNE LOUISE BLANCHARD: So already Connecticut judges have the -- have the ability. And there are three cases in particular that I can

mention. The Connecticut Supreme Court in *Raymond v. Raymond* held that judges have the discretion to refuse side motions in cases involving frivolous litigants. The Second Circuit in the Connecticut cases upheld a district court judge's injunction on a litigant saying you have been a serial frivolous litigant. Before you can bring any further litigation, it will have to be looked at by the court first. And that was Martin -- in regarding *Martin- Trigona*.

And even in Connecticut, the superior court judges in regarding *Fusari* have also put in place an order saying for a frivolous litigant, the court is going to prescreen litigation. That addresses the problem. That addresses the problem of frivolous litigation without placing a burden on all the other people in the state who are simply poor and are now going to be facing another barrier to access of justice in Connecticut.

REP. REBIMBAS: Thank you for your testimony. I guess then I'm confused a little bit about your statement earlier that refusing is okay under the law, but then asking someone to do community service when the court has deemed that this might be frivolous filings, then wouldn't one be more burdensome than the other, preventing someone from access to the -- to the judicial system?

ANNE LOUISE BLANCHARD: I'm sorry. I think I'm a little bit confused by your statement.

REP. REBIMBAS: Sure. Earlier in your testimony you had indicated that it would be unconstitutional to require someone to do community service --

ANNE LOUISE BLANCHARD: Oh, no.

REP. REBIMBAS: -- in a case even though it's frivolous filings. And then you --

ANNE LOUISE BLANCHARD: No, that's not what I stated.

REP. REBIMBAS: Okay.

ANNE LOUISE BLANCHARD: I'm sorry.

REP. REBIMBAS: Okay. Then if that's not what you stated, then I'll stand corrected in that regard. But during your testimony you indicated that somehow this is going to prevent indigent people from ability to file. That's not the case when it comes to the judge's discretion in giving community service. Community service is not in all cases. Again it's when the judge deems appropriate and that the person is able to do so.

ANNE LOUISE BLANCHARD: Okay. So let me draw a distinction between what I'm trying to talk about which is that chilling effect. So the vast majority of folks that are low income that are looking for a fee waiver that now understand that a judge will be looking at their case and deciding whether or not they have to do community service.

So it's a little bit different from a serial frivolous filer who a court has looked at and said there's going to be prescreening. So that's a situation where a court is making an individual determination regarding prescreening litigation as opposed to placing that burden of community service on someone simply because they're poor.

REP. REBIMBAS: Sure. But they're also looking at whether or not that person has the ability to do the community service. Again when we're

asking people to pay these fees when they don't qualify but legitimately might be considered indigent, they just don't qualify for the established criteria, they too are making a sacrifice to have to go into their pockets and pay for these fees -- for these fees in order to get before the court. I'm just trying to again paint the big picture.

No one is trying, I mean I almost seem like there is a fear factor here, no one is trying to prevent anyone from doing something that they otherwise could not. There's some legitimate claims, and you've identified obviously that there are frivolous filings, there's obviously established law that judges could do certain things. We all know that if a judge from a bench says I have the ability to do this, I find this to be frivolous, I refuse it, is very different from saying how about some community service here. And then take it upon the person to determine whether or not they want to go through the community service to continue filing their ten motions.

Because again that person if we want to, you know, argue regarding an indigent person's ability then to appeal to a higher court, not everyone has those resources or time. And I'm not necessarily thinking that that's necessarily a good public policy to have the judges facing that, because the judges have enough on their docket to deal with in that regard. I just want to establish that there's a burden on everyone who wants to file anything in court. Unfortunately that's just the reality.

The question is whether or not the person qualifies then for the established standard whether that's then you don't qualify for it, you're going into your pockets and that might

be your last dollar that week, and this is just slightly different. And again it's not for every person that comes before a judge. We ask our judges to make many tough decisions from the bench. I think they're absolutely capability also to determine then how to utilize this. But that's certainly just my perspective on it. Nonetheless, I welcome this dialogue because I think it may not be a perfect bill, but it's certainly one that maybe we could work on to assure and make sure that the intent of the bill is carried through. Thank you.

ANNE LOUISE BLANCHARD: Thank you.

SENATOR COLEMAN: Chairman Fox.

REP. FOX: Thank you, Mr. Chairman. We have another bill that we had here and the public hearing was probably a week or two ago and it involved what we do with those who file frivolous lawsuits. And one of the ways it came to our attention was through a -- one of our state representatives whose constituent was -- and their family was a victim of a person who continued to file lawsuits. I believe the person was incarcerated for a while, was getting waiver of fees, and would continue to file various forms of action in the civil context. And they were at their wits end in terms of what they can do to stop it.

That bill has been around for a couple of years. So I recognize this community service for fee waivers is new, but that bill has been around for several years. And we hear, you know, how can we help this family essentially without drafting something that makes it -- that would at least appear as if we're trying to hinder the ability of people to litigate in our courts. And it's a challenge, it's tough

to draft.

ANNE LOUISE BLANCHARD: Absolutely. And we would suggest that again the court already has that inherent capacity. Judges have taken that step in rare cases. And so for repeated frivolous litigants, Connecticut courts have the ability to address those situations whether it's through deciding not to hear motions as I mentioned or, in rare instances, where pre-filing vetting happens for repeated frivolous litigants.

So I don't think that there's anyone that would disagree that this is a problem. The concern that we have is that it's going to have an unfair affect on the vast majority of indigent folks who are looking for -- legitimately looking for fee waivers. And, of course, it doesn't affect anyone who's not looking for a fee waiver from stopping -- from not filing frivolous litigation.

REP. FOX: Well, I mean the case that I'm -- it would probably apply whether or not the person would seek a fee waiver or not.

ANNE LOUISE BLANCHARD: Exactly.

REP. FOX: But I don't know if there's a real mechanism established by which someone can do this. Is it simply the administrative judge in a specific judicial district says I've had enough, you're going to have to vet everything through me, or how does it essentially work?

ANNE LOUISE BLANCHARD: So in the cases that I mentioned, in *Martin-Trigona*, the district court judge in Connecticut issued what was an injunction which said that in filings that came before the district courts in Connecticut, that litigant would have to have his complaints

vetted and the Second Circuit upheld that as being an appropriate response in this case. In *Raymond v. Raymond*, that was the Connecticut Supreme Court case I mentioned, the court said that -- that judges, lower judges have the discretion not to hear motions.

This is part of the inherent ability of the court to administer justice. And in *Fusari*, that was a superior court judge who also held that because of the repeated frivolous litigation, that that litigant's complaints before coming into court, request for fee waivers would actually be prescreened. So there are certainly decisions already in which the judges do this, I'm sure reluctantly or I would expect reluctantly but is the part of the inherent ability of the courts to administer justice throughout the state.

REP. FOX: Okay. I would agree that it should be done rarely, but I don't know if there's an established way of doing it if you're the victim of this type of continued litigation. And the danger in ignoring it, of course, is that the next thing you know there's a judgment against you.

ANNE LOUISE BLANCHARD: Right. We fully understand the problem. Again we're here to talk about our clients, indigent people in the state, where this would be a barrier to accessing justice even though I understand that people that are victims of frivolous litigations, it's a very serious problem. There's no question about that.

REP. FOX: Okay. Well, thank you. Thank you, Mr. Chairman.

SENATOR COLEMAN: Are there others with questions?

If not, thank you for your testimony.

ANNE LOUISE BLANCHARD: Thank you all very much for your time.

SENATOR COLEMAN: Kirk Lowry.

KIRK LOWRY: Representative Fox, Senator Coleman, and members of the Committee, my name is Kirk Lowry, I'm the Legal Director for the Connecticut Legal Rights Project. We're a statewide legal services organization serving primarily individuals with psychiatric disabilities who are low income, and that means 125 percent of the poverty level. Almost all of our clients are eligible for fee waivers and we file many fee waivers on behalf of our clients.

I don't want to just be repetitive of Attorney Blanchard, most of what I've got to say is the same as what she said. So I'll summarize in a little bit different fashion. I think the primary principles that are before the Committee on Raised Bill 6692 is that the court should be open, they should be open to all and not just people with money, and that if there is to be an examination of whether someone is filing frivolous lawsuits, it should be done on an individualized basis with an individualized assessment.

The right of access to the courts is a constitutional right when it's an important fundamental right that's at stake as in *Boddie v. Connecticut*. There's also one other case ten years later in 1981, it's *Little v. Streater* in which the Supreme Court of the United States again struck down a requirement under a statute requiring that a person in a paternity case pay for a blood test under the constitutional provision that people have a

constitutional right of access to the courts. This bill will have a significant impact on people with disabilities and especially people with psychiatric disabilities.

One concern of mine is once the court is concerned about a fee waiver and wants to determine whether someone is able to perform community service and how that's going to happen. The ability to perform the community service may obviously and clearly be for somebody with a physical disability, but once a person has a psychiatric disability which is a disability that can't be seen, I mean is that going to lead to inappropriate, invasive inquiries into the person's disability or may lead to questions where the person may inadvertently or unnecessarily disclose their psychiatric disability or their medications or anything like that.

There is a long history of courts dealing with the filing of frivolous lawsuits because it is an ongoing and substantial problem that's not to be minimized. But I think the Committee could look at numerous court cases including how the United States Supreme Court has dealt with this issue. And in *Ray McDonald*, a 1989 case which was the first case where the U.S. Supreme Court refused -- directed their clerk not to accept extraordinary writs from somebody who had filed dozens and dozens of them. Again they cited the inherent power of the court to both issue leave to file injunctions, that means getting the permission of the court prior to filing, also ordering that -- that litigant may -- must have an attorney before filing, or issuing financial sanctions.

So there are adequate remedies already at law and we feel that those are -- should be considered before requiring people to do

community service especially considering the disparate impact that it will have on people with disabilities. Thank you.

SENATOR COLEMAN: Are there any questions?

Representative Rebimbas.

REP. REBIMBAS: Thank you, Mr. Chair. Thank you for your testimony. I just wanted to clarify. Certainly, because I don't want any misinformation out there, this bill would not apply with people with disabilities or if that's mental illness. If they obviously are not capable of doing the community service, no judge would ask them to do so. I just want to make sure that that's understood.

SENATOR COLEMAN: Are there further questions?

Seeing none, thank you.

Amy Sanders. Amy Sanders.

If she's not present, Wyatt Kopp.

WYATT KOPP: Good afternoon, Chairman Fox and Chairman Coleman, members of the distinguished Committee. I come here proudly in support of H.B. 6692. You know, prior to me you had some people who came up and said, you know, the judges in these cases they already have the ability to stop frivolous litigation. And they'll tell you there are already adequate remedies, and they'll tell you all that stuff, but the reality is it took the Superior Court after 136 cases and 58 appeals by Judith K. Fusari to come up with an order saying that she had to get permission from the court in order to file. That's how reluctant they are to do it.

When they say they're a little reluctant to do it, they waited that long before they came up with an order for her to go through the court before she filed another complaint. And that was 136 suits and 58 appeals that cost a lot of people a lot of money to defend. And I would add Cecelia Lebby, the judge in that case has been so reluctant to do it, she's still litigating after 81 cases and 44 appeals. In fact, she just filed a recent case against Ted -- Ted Nugent because he didn't play enough songs at his recent concert. Okay. The judges are definitely reluctant to bar somebody from filing or to tell them you got to get permission. There's no question. I would suggest to you that that shows you that the remedies are not adequate.

Now the other thing that you ought to know is fees have a dual purpose, they don't just fund the court. Fees encourage self regulation. If I know I have to pay for something, then before I lay out the cash it's got to be important for me to do it. And, in fact, I may prioritize paying for one thing over another. So, in other words, my rent might be more important than my going out to the movies this weekend. It encourages self regulation. That's why you don't see frivolous lawsuits among people who are paying the fees.

You had one lady who said, well, this wouldn't stop people who pay the fees from filing frivolous suits. Where are those suits? They don't exist because -- it is because they put up the money that the claim is important to them. The other thing that they're -- they're not telling you, they're telling you it's an access issue, people are going to be barred from the court. They're talking about the *Boddie* case. If you look at the *Boddie* case, you look at any case law, there is no case law

that's ever been decided that says that money is the exclusive form of payment. *Boddie* did not say that money is the exclusive form of payment, no other case did.

All that money -- all that the community service requirement does, it provides an alternative to money. No case said you have to only pay in money. That's the difference. That's the distinguishing characteristics between *Boddie* and access even under our Connecticut Constitution.

I mean listen, money is considered a bar to access, right? Well, I mean if it is a bar to access, then the only way we can have access is to make it all free. There's a reason why it's not free. In fact, if it was free and you really want to equalize access, you'd really have a problem with frivolous lawsuits.

Now the other thing I want to add is that Representative Ritter mentioned about it's hard to determine whether a claim is frivolous. He's right. This is exactly why this bill is important is because it doesn't require a third party or a judge without the benefit of even discovery, to label someone's case frivolous. What it does is it puts the onus on the litigant themselves to make that determination. So they say, God, do I want to work 20 hours in community service to fund this lawsuit? It puts the burden on them.

And, you know, it's only a matter of time before one of these litigants figures out that they can go to the appellate court and say you know what? That judge dismissed my case without the benefit of discovery, and that violates my right of access to the courts. It's only a matter of time before they make that argument. Now I am hoping you'll give me

tough questions because I really would like to see this bill passed on behalf of a lot of people who are abused by it.

SENATOR COLEMAN: Does anyone have any tough questions for this gentleman?

WYATT KOPP: I thank you for testifying. I hope you'll consider those points.

SENATOR COLEMAN: Jan Trendowski.

Meryl Eaton.

Robin Cullen.

Marcia DuFore.

MARCIA DUFORE: Senator Coleman, Representative Fox, and distinguished members of the Judiciary Committee. My name is Marcia DuFore, and I'm testifying as the Executive Director of the North Central Regional Mental Health Board. Thank you for the opportunity to testify -- offer testimony about House Bill 6884.

(HB 6684)

Last year about this time I testified in opposition to another bill. It was titled AN ACT CONCERNING CARE AND TREATMENT, but most of my constituents referred to it as the outpatient commitment bill and expressed strong opposition to it. In our mind, House Bill 6884 appropriately directs resources and responsibility for engaging people with mental health needs at the foot of the mental health system where it belongs, instead of our courts. And I'm pleased that you're considering it and to be testifying in favor of -- in its favor.

(HB 6684)

We cannot order people to care and treatment if services and supports are not adequate for meeting their needs. Instead we need to permit

then should this section of Connecticut law be so dramatically altered. Thank you. I'll take any questions, if there are any.

REP. FOX: Thank you for your testimony. Thanks for giving us your input on this bill because it is helpful.

Are there questions?

BARRY HOROWITZ: I think one thing I just want to be clear about though is the -- the bill is part of another bill.

REP. FOX: Yeah, it was a bill that was somewhat -- this is our last scheduled public hearing and sometimes there's bills that get combined that just raise issues and this is an example of that.

DANIELA GIORDANO: Because the partition action bill is completely different. That's the main part of the bill and you heard I think Dr. Robert Settupane -- Settupane speak on. Okay. Thank you very much.

REP. FOX: Thank you.

Gail Wincjen.

Raphael Podolsky.

RAPHAEL PODOLSKY: Thank you, Mr. Chairman, members of the Committee. My name is Raphael Podolsky, I'm a Lawyer with the Legal Assistance Resource Center, it's part of the legal aid programs. I'm here to speak in opposition to House Bill Number 6692 which deals with authorizing courts to impose a fee waiver -- impose a community service requirement as a precondition of the fee waiver. I don't want to repeat things other people have said more than necessary, but

I want to give you my perspective on it and why from at least from our perspective, we think this is not a good idea at all.

The first is that what it's really doing is it's imposing a kind of quasi-criminal penalty as a precondition of access to the courts which is a constitutional right. And I understand community service does not have to be viewed as quasi -- as quasi-criminal. But the reality is most of the times it's used in Connecticut courts, it's used as a diversion system on the criminal side. And you're not a criminal because you're poor.

And even something that Representative Rebimbas said earlier in the hearing when she said, well, how would we make this system work administratively? Well, you know, we can use the existing system. But the existing system is a minimal supervision system that has people out on the highways picking up -- picking litter. And this bill doesn't anticipate this. This bill anticipates a much more complicated and supervisory-oriented system.

The second thing is, the bill is really mistargeted. The problem that people have defined is a problem that involves an exceedingly small number of litigants. And, in fact, I do not believe that most of those litigants are using fee waivers. The problem is there are people who are litigious and will sue about anything regardless of the merits, and that some of them may be indigent and may use fee waivers for that.

But what the bill does is it effects thousands and thousands of poor people who have every right to be in the court system because we are trying to deal with this miniscule number of abusers of the system. And the way to do that

is I think to look at other alternatives that focus on the miniscule number of abusers and not have a system that is going to have a major impact on everyone. And I think it's important for you to realize, this will have a powerful disincentive effect on people who have legitimate claims in the court, but happen to be poor from bringing their case at all by throwing barriers in the way.

And the -- and people have -- it is not easy whether you're working or not working, whether you're -- whether you're sort of emotionally stable or not emotionally stable, it is not easy to be doing community service work. And that's a real concern. And the alternatives that exist have been described to you by others.

The third thing, the final area that I want to mention is, it really has a negative effect on the system and should be aware of that also. That -- the way this bill is designed, as a practical matter, fee waiver applications, there are going to be a lot of hearings that are going to have to be held because the judge is not going to have enough information. Now what judges do is they look at the affidavit and unless there's something that's suspicious, they're not even going to hold a hearing at all. They're going to do it on the papers.

But here the message from the Legislature is we don't want people to have -- to be free -- to get free service from the court. If they're not going to pay for it in case, we want them to pay for it with their -- with their time and labor. So it means all these things need to be considered. And how is the judge going to decide who can do it and who can't do it? Well, you need a hearing for that. So that's going to -- that's going to overload the

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system.

For the courts, it requires a heavy supervisor burden. And I have to tell you, I work for a nonprofit, you can't -- even if you want somebody just to file papers, the supervisory time is large. I mean it's one of the reasons a lot of us don't use volunteers, because we can't manage the system well enough because we don't have the staff. And that's going to result in people not -- the entities they're supposed to do these fee -- supervise the work -- provide the work, I think you're going to discover don't want to do it. For all those reasons, but ultimately for the constitutional underlying impact, I hope you will not move forward with this bill.

REP. FOX: Thank you, Raphie.

Are there --

Representative Rebimbas.

REP. REBIMBAS: Thank you, Mr. Chair. And thank you for your testimony. And certainly we've had this discussion and we can, you know, certainly agree to disagree. I guess I just want to clarify again a few points. I don't think anyone is saying that anyone who is poor is criminal. And I think that would actually be unfortunate if that were to ever be the representation. Regarding the current system, this was actually brought to my attention by judges requesting this, so I don't believe, based on their representation, that this would in any way be arduous on them or be a, you know, a negative effect.

Now one of the other things that comes to mind as I'm hearing the testimony, certainly if there's things that we can do to clarify the

intent of the bill, we could certainly do so. There is a current system regarding the community service. If the intent in making it better is to make it more strict or make it more lax, whatever the case is, and that's certainly a discussion that we could also have in that regard. Regarding disincentivizing people to apply, I represent many people including people on -- pro bono, with that said, I mean, even people who have to take the time out of their lives and jobs and file and pay for these fees, they do think twice before doing so because it is an economic financial burden on them.

Whether that's to actually pay the filing fee or take time off from work or decide to hire an attorney. I don't believe, you know, community service on someone who the judge deems appropriate to be requested to do community service, is such a bad thing. It may even, I've seen it on many occasions with my clients, I'm sure you've seen it with many of yours, it might actually foster some communication that should be had, you know, for example, in a case between parents or separated or divorced parents and children. Then hopefully it should incentivize them to have conversations outside the courthouse.

So although I certainly -- we can make examples on both sides in the sense of it might disincentivize one or two people or even more than that arguably in not wanting to pursue then something legally, you know, I don't think that that again is the intent of the bill. I don't think that any judge that we're asking to preside over these would make a decision that would be detrimental either to the applicant or certainly the parties in the best interest of the case at hand. But certainly, again, I'm open to any suggestions moving forward if, but

I don't foresee any as your -- you've already testified and represented to me that you have no support for the bill.

RAPHAEL PODOLSKY: I'm not sure if you're looking for any response from me or not, I don't want to -- there was no question there.

REP. REBIMBAS: You don't have to. Thank you for your testimony.

REP. FOX: Are there other questions?

Well, thank you.

RAPHAEL PODOLSKY: Thank you.

REP. FOX: Peter Berdum.

Deborah Strong.

DEBORAH STRONG: Good afternoon.

REP. FOX: Good afternoon.

DEBORAH STRONG: I think I'm one of the last to testify.

REP. FOX: Not the last, but you're one of the last.

DEBORAH STRONG: My name is Deborah Strong, and I want to thank you, Senator Coleman, Representative Fox, and distinguished members of the Judiciary Committee for allowing me to testify in support on proposed House Bill 6684. I have worked with the national, state, and local level of the National Alliance on Mental Illness, NAMI, for seven years. I am on the Board of Directors for NAMI Farmington Valley, I received a grant from the Regional Consumer Advisory Council, RCAC, with the support of NAMI Connecticut to offer a conference for

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TESTIMONY OF CONNECTICUT LEGAL SERVICES, INC., OPPOSING RAISED BILL 6692 (An Act Concerning Participation In A Program of Community Service for Persons Seeking Fee Waivers In Certain Civil Actions).

Co-Chair Senator Coleman, Co-Chair Representative Fox, and distinguished members of the Judiciary Committee: My name is Anne Louise Blanchard and I am Litigation Director of Connecticut Legal Services Inc. (CLS). CLS is Connecticut's largest private nonprofit law firm providing free legal services to low-income clients in civil matters since 1977.

Over the last 35 years, CLS has represented hundreds of thousands of low-income families in cases involving civil legal issues. We assist children in juvenile justice, education and child protection cases, we help parents in family law cases and families facing homelessness in housing cases, as well as assisting low-income elderly residents of Connecticut in a variety of civil legal matters. During this time both in Connecticut and across the country, low-income individuals have always experienced difficulty obtaining civil access to justice. Connecticut has ensured however, that at a minimum, indigent people with access to Judicial Department-created forms are able to file *pro se* motions and pleadings in Connecticut courts in the same manner as others, regardless of their income. Critical to this access is the fact that Connecticut law permits residents falling under 125% of the poverty level to request a waiver of the fees and court costs which ensure the preservation of their rights and their access to the courts. Unfortunately, Raised Bill 6692 would significantly change this process and create a barrier to the courts which many indigent residents will be unable to overcome.

Raised Bill 6692 would amend Conn. Gen. Stat. §52-259b to require that judges decide whether each indigent person being granted a fee waiver should be compelled to perform up to twenty hours of community services. The bill specifies that this community service would occur at "non-profit or tax-supported" organizations, which will be required to report to the court on the progress of the community service or lack of community service completed.

This bill is extremely troubling in a number of areas and should be opposed. On a practical level, an indigent person who lacks the income to pay court costs may also lack the ability to pay for transportation to a community service location or the funds to pay for child care while attempting to fulfill a community service obligation. Non-profit organizations, already stretched to the limit by their own work, may decline to take on the additional burden of reporting to the court, or be unwilling to accept the liability of a volunteer who could be injured while performing community service.

To the extent this bill is meant to limit the repeated filing of frivolous cases, this bill is unnecessary. Connecticut courts already can and do place limitations on frivolous litigants. In rare cases, Connecticut judges have justifiably denied fee waivers or otherwise limited frivolous litigants in their ability to bring or pursue frivolous litigation. If frivolous litigation is the concern, the bill fails to address the issue of frivolous filings by litigants who are *not* indigent.

Since *Boddie v. Connecticut*, the U.S. Supreme Court and this legislature have required fee waivers as a means for low-income people to access the justice system. This bill



removes that requirement and restricts that access. For example, the bill could prevent a low-income parent from filing for dissolution of marriage or from judicially resolving custody or visitation issues – fundamental due process rights --if community service is made a pre-condition of access to the courts

At a time when Connecticut is trying to improve access to its courts for everyone, this bill is a step backwards. It would limit access to justice by Connecticut's most vulnerable residents. The bill is unnecessary, given the inherent ability of the courts to limit filings in the event of repeated frivolous litigation. More importantly, it raises significant constitutional concerns and therefore it should not be supported.

Anne Louise Blanchard
Litigation Director, Connecticut Legal Services, Inc

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LINE 2WYATT W. KOPP34 Patricia Court ♦ Gales Ferry ♦ Connecticut ♦ 06335
Tel. (860) 464-9458**TESTIMONY IN SUPPORT OF RAISED H.B. 6692
HEARING DATE: APRIL 15, 2013 – JOINT JUDICIARY COMMITTEE**

To the Honorable Members of the Judiciary Committee:

It is a pleasure to provide a written submission and to appear before the committee in support of raised bill H.B. 6692. At the outset, it should be noted that this submission summarizes the issues and arguments favoring H.B. 6692. There are no attachments, but an e-mailed version to judgetestimony@cga.ct.gov has the attachments and is available to the members. Also, it has come to my attention that some proponents of this bill had to e-mail their support to the committee as they were not aware it was raised until recently.

I. INTRODUCTION

The fee waiver, as established by C.G.S. §52-259b, is intended to provide court access to persons who would otherwise be deprived of such access due to lack of funds. Yet, despite its laudable intent, the present court fee waiver system has created a class of persons that have substantially greater access to the courts than those who are not eligible for fee waivers. The court fee waiver system has incentivized frivolous litigation because litigants literally have nothing to lose in filing lawsuits at the “drop of a hat.” The impact of the frivolous litigation encouraged by the present fee waiver system is equally felt in business, non-profit agencies and local governments who have to allocate ever increasingly scarce money and resources toward wasteful litigation instead of allocating it in areas that could really make a significant positive difference in the community and in individual lives.

The sensible reforms of raised bill H.B. 6692 leave the fee waiver intact while, at the same time, providing a simple and fair mechanism to end its abuses. The proposed reform has broad appeal because it advances issues in which there is common ground. All members of the General Assembly, no matter what their politics are, want to see scarce taxpayer resources allocated where they can do the greatest good in individual lives as well as keeping our businesses competitive and giving our municipalities as many tools as possible to provide resources in communities across the state. In short, there is universal agreement that taxpayers should be given the greatest “bang for their buck.” The community service requirement of H.B. 6692 is both flexible and sensible. It empowers the courts with the discretion to weigh individual circumstances and waive community service if it presents an individual hardship. The community service component will withstand legal scrutiny because no court has ever held that money is the exclusive method of payment for court filing fees and service of process fees. It is fitting that the state that established the legal precedent for the waiver should have this unique opportunity to reform it.

Having briefly introduced the issue, it is important to consider specific examples of abuse to illustrate the need to reform C.G.S. 52-259b.

II. ARGUMENTS IN SUPPORT OF RAISED BILL H. B. 6992

The flaws in the present fee waiver system are evidence in the face of abuses that are extremely costly to defendant individuals, businesses and municipalities who are relying on the General Assembly for relief from the unintended consequences of C.G.S. § 52-259b. In order to fully comprehend the impact of abuses in the fee waiver system, and the need for reform, it is important to consider specific cases that illustrate the wasteful litigation that is promoted by the present system.

A. CECELIA LEBBY HAS LITIGATED EIGHTY-ONE SEPARATE CIVIL ACTIONS FOR MONEY DAMAGES AND FORTY-FOUR APPEALS ON FEE WAIVERS.

In the Judicial District of New Britain, Cecelia Lebbby has used fee waivers to file a total of eighty-one civil seeking money damages. In today's value, the lost filing fees, at \$350 for each complaint, are \$28,350. She has also filed forty-four separate appeals which, at \$250 for each appeal, total \$11,000 in lost filing fees. She has sued in excess of two-hundred defendants and service of process fees range from \$30-\$40 for each service. To serve two-hundred defendants at \$30 each costs \$6,000. The state has, therefore, lost about \$45,350 in just filing and service of process fees alone.

In addition to the lost revenue, the state is also having its resources drained on Lebbby's frivolous lawsuits. In a 2010 order, Judge Patty Pittman discussed the impact of Lebbby's suits on the Judicial District of New Britain by writing, "... the plaintiff's filings in new and pending cases have become so numerous and so regular that substantial clerk and judge resources are devoted on an almost daily basis in attempting to sort out and respond to her frequent, vague and often illegible filings "

Recently, Lebbby filed a lawsuit against 1970's rocker Ted Nugent because she felt he didn't play enough songs at a recent concert. She also sued the Bret Michaels fan club for \$22 million because she was only sent one Christmas card by the fan club and felt she should have received more mail for the price of her membership. Bret Michaels was the lead singer for the 1980's hair metal band Poison and wrote its hit, "Every Rose Has Its Thorn." While Lebbby's high-profile lawsuits involving Ted Nugent and Bret Michaels might generate some laughs, she is a costly thorn in the side of many other less high-profile defendants.

Lebbby receives subsidized housing from the New Britain Housing Authority which is a non-profit agency, but her litigation involving the housing authority has caused its counsel, Loo Pacacha, Esq , to write in an e-mailed testimony to the Judiciary Committee that, "As you are aware, sequestration has had a big impact on federal budgets. Voucher holders are in jeopardy of

losing assistance and public housing services may have to be cut. The Authority can ill afford to defend such baseless suits. In fact, they could not afford to send me to the LOB to support this bill in person."

Lebby has also sued several municipalities which also have strained budgets particularly in the economic realities of the present. The towns targeted by Lebby's litigation are New Britain, Torrington, Farmington and Meriden as well as their police departments, boards of education and town employees. In one case, Lebby v. Officer Hunt, et al, she sued New Britain police officers for, among other things, laughing at her because she sued the Bret Michaels fan club. Lebby's litigation, however, generates little humor in municipal town halls, dealing with strained budgets and scarce resources, while having to fund the services of a lawyer to defend against Lebby's lawsuits.

She has also sued numerous businesses and individuals as well. It was in this area that she had her only success. As a recent WFSB investigative piece noted, she received an \$8,000 settlement from the WWE in exchange for an assurance that she would not sue it anymore, but she still continued to file lawsuits against its employees. All of her other cases, that are not still pending, have been eventually dismissed. Despite receiving so many waived filing and service of process fees, Lebby did not even have to reimburse the taxpayers from her \$8,000 settlement for the \$45,350 in fees they subsidized.

Some of Lebby's cases are dismissed as soon as they are filed, but the court is running a risk in finding a case frivolous and dismissing it at filing because no opportunity for discovery has been had. An appeal on that basis might have a chance for success if it were made, but thus far, that has not been an issue in Lebby's appeals.

B. JUDITH K. FUSARI FILED ONE-HUNDRED-THIRTY-SIX SEPARATE LAWSUITS FOR MONEY DAMAGES AND FIFTY-EIGHT APPEALS.

The record for frivolous lawsuits, financed by taxpayer funded fee waivers, is held by Judith K. Fusari who has filed one-hundred-thirty-six separate lawsuits and fifty-eight separate appeals in the Judicial Districts of Hartford, New Britain and New Haven. The waived filing fees alone, at a present value of \$350 for each complaint, totals \$47,600. The waived appellate fees, at present value of \$250 each, total \$19,500.

Fusari never had any success in court, but her defendants, like Lebby's include the New Britain Housing Authority and even the U.S. Post Office which, if you have been following the news, it should be noted that the U.S. Post Office is so short of funds they are canceling Saturday service. She sued numerous individuals and businesses. Her lawsuits were so numerous and frivolous that the court finally took action last year and barred her from filing further lawsuits without permission of the court.

C. KEVIN KLEMONSKI HAS RECEIVED FEE WAIVERS FOR TWENTY-SEVEN CASES INVOLVING SEVENTY-EIGHT DEFENANTS.

Another illustrative case of unchecked fee waiver's is that of Kevin Klemonski who has had a total of \$10,970 in fees and costs waived in twenty-seven civil cases, seeking money damages, involving seventy-eight defendants. Five of those twenty-seven cases were e appeals financed by the taxpayers. The remaining fifteen civil cases the taxpayers financed were after changed his name to Brooklyn Maellaio and was granted fee waivers for all fifteen civil cases.

In the Hartford Judicial District, Klemonski has litigated seven civil cases since his release from prison. In each of those civil cases, court filing fees and service of process fees were waived. He was awarded a \$7,500 judgment in one of his cases, Kevin Klemonski v. Michael Clement, after the pro se defendant was defaulted for failure to plead. The significance of that judgment is that there is no mechanism in place to recover the filing fee that was waived by the court in that case if he ever collects on that judgment.

Kevin Klemonski changed his name to Brooklyn Macellaio and received fee waivers for an additional fifteen civil cases under that name. For one individual, Kevin Klemonski, now known as Brooklyn Macellaio, the State of Connecticut has lost a total of \$10,970 in filing fees that it has waived and service of process fees it has paid. Additionally, many of the seventy-eight defendants had to pay legal fees to defend these cases which have been encouraged by the fee waivers Klemonski has been given.

D. IN THE NEW LONDON JUDICIAL DISTRICT SYLVESTOR TRAYLOR HAS BEEN ENCOURAGED TO FILE PROTRACTED AND WASTEFUL LITIGATION BY THE FEE WAIVER SYSTEM.

In the New London Judicial District Court, Sylvester Traylor is an example of the abuse that results from unchecked fee waivers. Mr. Traylor has filed numerous civil cases associated with an alleged medical malpractice that is claimed to have resulted in the death of his wife, Roberta Traylor. He has filed a Writ of Mandamus against the State and another Writ of Mandamus against eighteen other state officials. He has recently also filed a tort case resulting from his arrest at Connecticut College in a case that the state clearly did not prosecute which is a reasonable conclusion due to the absence of that case on the public criminal system. He has had a total of seven cases in New London Judicial District Court. In each case his filing fees were waived. At present value, the total court filing fees waived for each of his six cases is \$2,150.

In those six cases there have been a total of fifty-two defendants. In each case, Traylor has also received waivers for the service of process. He also filed six appeals. At present value, the filing fees for those appeals total \$1,500. Additionally, Mr. Traylor has filed numerous cases in the federal district court and at the U.S. Court of Appeals. In all of his federal cases, Mr. Traylor has paid no fees. Mr. Traylor is so litigious at the federal court that the U.S. Court of Appeals issued a warning stating:

“Traylor is hereby warned that the continued filing of duplicative, vexatious, or frivolous appeals, mandamus petitions, or motions may result in the imposition of sanctions, including a leave-to-file sanction requiring Traylor to obtain permission from this Court prior to filing further submissions in this Court.”

The U.S. Court of Appeals determined that Traylor was abusing the judicial process. A copy of the warning from the U.S. Court of Appeals was actually filed in his separate state case. Recently, there was a judgment against Traylor in that state case in which the court issued a memorandum dismissing Traylor’s case. While the warning of the U.S. Court of Appeals put the brakes on the judicial abuse engaged in by Traylor, it did not address the fee waiver system that encourages and promotes such abuse at the expense of the State of Connecticut and the defendants who have to pay for legal representation to defend cases that are litigated by indigents who have substantially greater access to the courts than persons with income.

The fee waiver system has encouraged wasteful and protracted civil litigation by Traylor. His case against several state officials, *Traylor v. Gerratana*, was recently dismissed. In its memorandum of decision, the court noted that the plaintiff’s litigious fervor “...has clearly reached the point of becoming unnecessarily costly, wasteful, and fruitless.” Mr. Traylor was then granted a fee waiver to file yet another appeal which will be financed by the taxpayers. The issue on appeal in this latest case is whether the trial court should have granted his writ of mandamus. Traylor has already previously taken a failed writ of mandamus to the Appellate court and lost because his case did not meet the standard for the issuance of a writ of mandamus. The taxpayers will now have to again pay for the appellate court to articulate the very same standard to Mr. Traylor. He has, however, nothing to lose in filing yet another appeal.

E. THE FEE WAIVER SYSTEM ENCOURAGES A MISALLOCATION OF SCARCE RESOURCES THAT COULD BETTER SERVE THE CITIZENS OF CONNECTICUT.

The present fee waiver system encourages a misallocation of scarce resources that could be better directed at making a real difference in the lives of our citizens. When a business has to retain the services of an attorney to defend against frivolous litigation, which is encouraged by fee waivers, that business then has less money to reinvest in new technology, to hire new employees, develop new products, and upgrade buildings and equipment. The resources wasted by businesses to defend against frivolous litigation would be better allocated toward resources that make such a business more competitive in an increasingly competitive market. Keeping businesses competitive in Connecticut should be a priority since a 2011 survey of 500 corporate CEO’s listed Connecticut nearly last, 44th place, in the states most friendly to do business in

If frivolous lawsuits are directed at doctors and insurance companies, then the impact is equally felt outside of court. The expenses of litigation are usually passed on to the consumer in the form of higher insurance rates and service costs

Finally, the impact is felt most in municipalities. Many of Connecticut's municipalities are hurting in the present economy and are having to make hard choices just to fund the retirements of their employees. Each of these municipalities provides services to the elderly and to others in the community who are in need. Scarce resources wasted on defending against frivolous litigation results in less money for the communities these municipalities serve. Moreover, these costs have to be passed on to taxpayers and the result could be that a business leaves or a citizen cannot afford to retire in the state in which that citizen was born.

F. THE PRESENT FEE WAIVER SYSTEM IS DISCRIMINATORY BECAUSE INDIGENTS HAVE SUBSTANTIALLY GREATER ACCESS TO THE COURTS.

The present fee waiver system is discriminatory, particularly against lower middle income persons, because indigents have substantially greater access to the courts. Indigent litigants can file any number of lawsuits against an unlimited number of defendants simply because they have nothing to lose. Working poor litigants do not have such unrestricted access to the courts because they have to pay the fees.

A litigant even with a modest middle class income, at the national average of \$40,000 a year, would not be entitled to a fee waiver and would be required to pay a \$300 filing fee for each lawsuit and \$30-\$40 to serve each defendant. Such a litigant could not afford the nearly \$48,350 in filing and service of process fees that would be required to finance Cecelia Lebby's avalanche of litigation since 2007. In the absence of eligibility for a fee waiver, a middle class litigant has to self-regulate by balancing whether the lawsuit is worth the fees to file it. Fees associated with filing a lawsuit serve a dual purpose of funding the court and, at the same time, discourage frivolous litigation by encouraging serious evaluation of whether a lawsuit is worth the fees to file it.

Under the Connecticut Constitution, Art. I, Sec. 9, there is a fundamental right of access to the courts that has existed since 1818. The present fee waiver system appears to be intended to buttress this constitutional provision by promoting equal access to the courts so that no one is barred entry due to fees. In reality, however, the existence of a fee waiver actually promotes unequal access to the courts.

A person who pays the fees and costs of service does not just get the money to pay those costs out of thin air. Such an individual has to work for the money and the presence of fees encourage that litigant to self-regulate whether it is worth the initial investment to file a case. The concept of self-regulation is particularly important when it comes to the frivolous lawsuits filed by indigents. These cases are filed pro se because attorneys will not take these cases

because they are frivolous. The simple determination is whether a lawsuit is worth the initial investment to pay the filing and service fees and the time to litigate it. Indigents such as Leppy, Fusari, Klemonski and Traylor have no incentive to self-regulate what they file simply because the taxpayers are funding their litigation. In fact, under the present system, they have everything to gain because on the off chance they get a judgment they don't even have to reimburse the taxpayers for the waived fees.

Finally, it should be noted that the present system is discriminatory because a litigant paying filing fees and service of process fees loses those initial investments permanently. An indigent, on the other hand, can collect a judgment having never paid those fees and, even more egregiously, can collect without having to reimburse the taxpayers.

G. NO LAW OR CASE LAW INDICATES THAT MONEY HAS TO BE THE EXCLUSIVE FORM OF PAYMENT FOR COURT FILING AND SERVICE OF PROCESS FEES.

A reformed fee waiver system will pass legal scrutiny because the law is drafted in a way that access is preserved because no one is being barred under H.B. 6692 due to lack of money. Community service simply substitutes for money in cases where a person is indigent. Under the proposed legislation, the courts have the ability to even waive the community service requirement if it presents a hardship.

The fee waiver system was instituted as a result of a Connecticut case, Boddie v. Connecticut, that went all the way to the U.S. Supreme Court and was decided in 1971. The Boddie case was a class action on behalf of a number of females who were on welfare and could not afford to pay the filing fees to get a divorce. The Court held that due process prohibited a state from denying access to the courts solely based on inability to pay. However, the Court did not hold that money is the exclusive form of payment and that is why the proposal is reasonable, defensible and likely to withstand constitutional scrutiny. In Boddie, the litigants had no money and were told by the court clerks that they could not file without money. The present proposal simply provides an alternative form of payment to those who have no money.

A litigant such as Cecelia Leppy would still have access to the fee waiver if H.B. 6692 becomes law. The only difference is that she would have to do up to 20 hours of community service. If the community service presents a hardship, she can ask the court to even waive it. However, she would unlikely get a waiver of community service unless she could present a compelling reason why she can file eight-one lawsuits and forty-four appeals and yet cannot, for example, stuff envelopes at a hospital for 20 hours to get a waiver. The proposed reform would encourage indigents like Leppy to self-regulate and ask themselves if filing the lawsuit is really worth the expense of 20 hours of community service. In that sense, the proposed reform equalizes the system because those who have to pay the fees have to work for that money. They also have to ask themselves if the lawsuit they intend to file is worth the initial investment.

H. OPPONENTS OF THIS BILL WILL NOT TAKE THESE FRIVOLOUS CASES THEMSELVES.

There will, nevertheless, be opponents of this bill. Some of those opponents may be from agencies that provide legal services to indigents. It is, however, not unfair to ask those opponents if they will take the cases of Connecticut's serial filers of lawsuits under the fee waiver system. These agencies equally have stretched and scarce resources. While they may oppose H.B. 6692, they are not squandering their own resources to litigate the bizarre claims filed by the serial filers who are encouraged by fee waivers. On the contrary, these agencies carefully evaluate and scrutinize claims before they file a lawsuit on behalf of an indigent. The reasoning is simple, if a legal service agency provided resources to Connecticut's serial filers they would have no resources available to litigate cases in which someone has a valid claim. If the opponents are lawyers, then it is not unfair to ask them if they would take the cases of Connecticut's serial filers in their own private practices. The likely answer is that they could not do it without impairing their business because these cases are frivolous and will not generate any monies to pay for the initial investment or the staff required for the filings and research.

Opponents of this bill will claim that the issue is about equalizing access to the courts. Yet, this argument fails to recognize that indigents now have greater access to the courts than most. The only true way to equalize access to the courts is to either implement H.B. 6692 or to drop all fees entirely and make access to the courts entirely free for everyone. To do that, however, would increase the problem of serial filers. Presently, there is no data to suggest that those paying the fees account for Connecticut's serial filers of frivolous claims. The reason for that is that they have to self-regulate their claims because they are making an initial investment.

I. THE PRESENT FEE WAIVER SYSTEM TARNISHES THE REPUTATION OF THE JUDICIAL BRANCH.

The reputation of Connecticut's Judicial Branch is tarnished by the present fee waiver system. Indigents brining these frivolous claims are not persuaded that their cases have no merit by virtue of the fact that no legal service agency or private attorney will take their cases. As a result, they file them pro se on fee waivers because they truly believe in them. When their cases lose or are dismissed, some have taken to the Internet to rail against the courts and the judges who made the rulings. Sylvester Traylor has a site in which he blames Judge Parker and the court system for the dismissal of his medical malpractice case. He has filed numerous complaints against court clerks, court marshals, judges and private attorneys. This system has encouraged him to believe that everyone is against him. As a result, employees of the Judicial Branch are made to suffer because the system provides an incentive to bring frivolous claims and when those claims fail the litigants are blaming the state and its staff for the results in a case that had no merit at the outset.

J. THE STATE IS ENCOURAGING PEOPLE TO WASTE THEIR LIVES ON FRIVOLOUS LITIGATION.

The present fee waiver system results in the unintended consequence of the state encouraging litigants to waste their lives on frivolous litigation. Time is equally a scarce resource. President Lincoln once characterized his time as his "stock and trade." The serial filers are being given false hope under the present system to waste their lives on the unproductive and fruitless pursuit of frivolous litigation. The serial filers have wasted years of their lives on frivolous lawsuits and that time could have been directed at more productive pursuits. The present system encourages not only false hope, but it encouraged beating the dead horse of a losing case all the way up to the highest courts. It is a disservice to the indigents themselves to give them this false hope.

K. THE PRESENT FEE WAIVER SYSTEM INSTILLS FEAR AND CHILLS FREE SPEECH.

The most egregious unintended consequence of the present fee waiver system is that it instills fear and chills free speech. In attempting to get support for this bill, I spoke with one head of a town and was told that this person would like to provide testimony to the committee, but fears that it will just result in yet another lawsuit. This is a response I have received time and again in making contact with the various victims of the serial filers. This was also the same response that Eric Parker and Monica Buchanan received in researching for their investigative stories that appeared on WFSB and WVIT. It is troubling that in a state which gave birth to fundamental freedoms the present fee waiver system instills such fear. It is not a fear based on the fact that these individuals have done wrong. Rather, it is a fear that they will have to bare costs they can ill afford.

III. CONCLUSION

The wisdom of the proposed reform is to put indigents on an equal footing with all others who do not have such unrestricted access to the courts as indigents have under the present system. A community service requirement will encourage self-regulation and self-reflection before filing a lawsuit. It provides a disincentive to file frivolous lawsuits. The proposed bill will benefit local communities and charities. It will ensure that the courts and state businesses are better directing their limited resources and not wasting them.

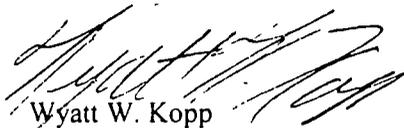
The fee waiver will still be available to litigants seeking it in cases where they want to file for money damages. If the community service requirement presents a hardship to an indigent litigant, there is even a provision for a waiver of the community service.

A prior bill to reform fee waivers failed when it was put up by the Judicial Branch last year. That bill would have allowed a judge to weigh the merits of the case before making a decision on a fee waiver application. The present proposal is superior to the one put up by the

Judicial Branch because it places the burden of evaluating a case on the litigant. Those who have to pay the filing fees already have to self-regulate and evaluate the merits of their own cases by virtue of the fact that they have to pony something up. The proposed reform puts indigents in that same position. In that sense the proposed reform advances equal access to the courts.

It is fitting for Connecticut to reform the very system that was inspired by Connecticut. The proposal is a creative and unique approach to address a problem that exist both here and nationally. The halls of the Connecticut capitol are decorated with history around every corner detailing the men and women here who took risks on new ideas and took creative and innovative approaches to solve unique problems. The proposed reform is unique and it will no doubt be watched nationally where it might also inspire reforms elsewhere. More importantly, the proposed reform is reasonable. Thank you for your time and please support advancing H.B. 6692 to become law.

RESPECTFULLY SUBMITTED,



Wyatt W. Kopp

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Testimony of Kirk W. Lowry
Before the Judiciary Committee
Raised Bill 6692 Regarding Community Service for Fee Waivers
April 15, 2013

The Connecticut Legal Rights Project is a state-wide, non-profit legal services organization serving patients at all state psychiatric inpatient hospitals and low-income people with psychiatric disabilities. I am CLRP's legal director. In order to be eligible for our legal representation a client must have a psychiatric disability and income below 125% of the federal poverty level, which is \$14,362 for one person. Almost all of our clients are eligible for fee waivers under the C.G.S. §52-259b. CLRP is opposed to community service in order to obtain a fee waiver.

The Fourteenth Amendment Due Process Clause of United States Constitution and Article First, Section 20 of the Connecticut Constitution provide for a fundamental right of access to the courts. Connecticut General Statutes §52-259b provides for waiver of fees and payment of costs of service of process for indigent parties. In 1971, the United States Supreme Court, in *Boddie v. Connecticut*, 401 U.S. 371 (1971), struck down a §52-259 as an unconstitutional violation of a class of women's right of access to the courts by denying them divorces because they could not pay the filing fee. Again, in 1981, in *Little v. Streater*, 452 U.S. 1 (1981), the Supreme Court struck down a Connecticut statute that required the party requesting a blood test in a paternity action to pay for it violated their due process right of access to the Courts

Giving the Court discretion to order an indigent person to complete up to twenty hours of community service has a disparate impact on people with disabilities and particularly on people with psychiatric disabilities. The bill requires the Court to consider the person's ability to perform community service. Such a mandatory inquiry will probably often lead to disclosure of a person's disability and psychiatric history, diagnosis, symptoms and medication. Such an inquiry is especially problematic for people with psychiatric disabilities who may appear quite physically able-bodied, but may not be able to perform community service. The long and undeniable history of discrimination against people with psychiatric disabilities and denial of state services, programs and activities should inform us to proceed with great caution. In *Lane v. Tennessee*, 541 U.S. 509, 523-527 (2004), the United States Supreme Court catalogued the long and unfortunate history of discrimination against people with psychiatric disabilities in access to the courts, voting, zoning, involuntary commitment and abuse and neglect in state mental health hospitals.

If the problem is a few people who have significant histories of use of fee waivers and are filing what are claimed to be frivolous, vexatious or malicious cases, that problem should be addressed using the tools available to the opposing party and at the court's disposal: dismissal, orders of costs, and claims for vexatious litigation. This legislative proposal is overbroad because it punishes poor people with valid claims and unduly burdens the constitutional right of access to the courts. The legislation indiscriminately targets all poor people and singles them out for community service, even if their claims and defenses are factually and legally valid.

Chief SALVATORE
Chief REED



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Testimony to the Joint Committee on Judiciary, April 15, 2013
Chiefs Anthony Salvatore & Matthew Reed, Connecticut Police Chiefs Association

Senator Coleman, Representative Fox and distinguished members of the Committee, The Connecticut Police Chiefs Association **SUPPORTS** Raised Bill 6692 – An Act Concerning Participation in a Program of Community Service for Persons Seeking Fee Waivers in Certain Civil Actions.

Municipalities are forced to spend precious resources to investigate and defend nonsense law suits. While we support the right of every person to have equal access to the courts, the current system of fee waivers actually creates unequal access.

Individuals who claim indigence are allowed to file suit without paying associated filing and service fees. This allows for a somewhat unequal and unregulated use of the civil litigation system.

The Association supports the implementation of a program that would compel indigent filers to participate in program of community service, thus allowing the State to recoup some of the costs associated with civil litigation.

The implementation of such a program is likely to curb or at least reduce the number of nonsense, vexatious, or otherwise frivolous suits that cost our state and municipalities time and resources to defend.

END



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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Testimony of
Deborah Del Prete Sullivan, Legal Counsel, Director
Office of Chief Public Defender

Raised Bill 6692
*An Act Concerning Participation in a Program of Community Service
for Persons Seeking Fee Waivers in Certain Civil Actions*

The Office of Chief Public Defender is opposed to *Raised Bill 6692, An Act Concerning Participation in a Program of Community Service for Persons Seeking Fee Waivers in Certain Civil Actions*. The proposed bill would permit the court the discretion to order a person to perform community service in lieu of paying any fees payable to the court, including diversionary program fees in criminal proceedings. It would also permit the court to order a person to participate in community service if requesting a fee waiver for the issuance of a restraining order or protective order. Passage of this bill would be unfair to indigent persons and permit persons who have the financial resources to access diversionary programs much quicker than those who are indigent who are ordered to complete community service.

This office has proposed a fee waiver for any diversionary fees that are imposed on any person determined indigent who has been appointed a public defender. This office has submitted testimony in support of S B No. 1165, An Act Concerning Diversionary Programs which is on today's agenda.

Diversionary programs provide persons access to counseling and treatment programs which assist them in not recidivating and ending up in the criminal justice system again. As a result, access to and participation in the diversionary program as soon as possible can assist persons so charged to succeed and not have a criminal conviction. However, indigent persons in the criminal justice system are already burdened daily with trying to find food, housing, employment, transportation and if possible providing for their families. Ordering persons who may be struggling with physical and mental health issues and/or substance abuse issues to perform community service before they can access the treatment and services they vitally need can set persons up for failure. Persons with physical and mental health issues and/or substance

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LINE 10

NEW HAVEN LEGAL ASSISTANCE ASSOCIATION, INC

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TELEPHONE (203) 946-4811
FAX (203) 498-9271**Testimony Opposing Raised Bill 6692
(An Act Concerning Participation In A Program of Community
Service for Persons Seeking Fee Waivers In Certain Civil Actions)****Susan Nofi-Bendici, New Haven Legal Assistance Association, Inc.**

Good afternoon Senator Coleman, Representative Fox and members of the Judiciary Committee My name is Susan Nofi-Bendici and I am the Executive Director of New Haven Legal Assistance We are a nonprofit law firm that provides legal services to low-income people

For people living below 125% of the poverty level, a fee waiver can be the difference between having access to our state's courts or being shut out It has been reported that this bill seeks to cut down on repeated frivolous lawsuits by a handful of people who abuse the system This bill not only fails to address frivolous litigation by those who can afford to pay the filing fees, but would effectively deny access to the courts to thousands of low-income people

Most people seeking waivers are people like our client Renee She needs a divorce and child support from her spouse, who subjected Renee and their children to horrific physical abuse She must work as many hours as her employer will give her because she is an hourly employee if she doesn't work, she doesn't get paid At minimum wage, even when she works full-time she is still well below the poverty guidelines and eligible for a fee waiver. She and her children simply could not afford for her to give up any of her meager income – not to mention arranging child care and paying for transportation to a volunteer site - to perform 20 hours of community service

Another client of ours who received a fee waiver was Sharon After her husband strangled her until she passed out, Sharon called the police who arrested her husband A protective order issued, he was ordered to leave their apartment and the landlord started an eviction action against Sharon and their four children Sharon got a fee waiver so she could file for divorce, custody and child support She is not currently receiving any child support at all, which is why she is working two low-wage jobs Renee and Sharon are typical examples of those who seek fee waivers

In 1969, our former client Gladys Boddie could not get a divorce from her husband because she could not scrape together the money to pay the filing fee She sued the State of Connecticut The United States Supreme Court held that denying her access to a divorce, because of her poverty, was a denial of due process The Court acknowledged the public interest in allocating scarce resources and preventing frivolous litigation, but held that access to the courts was paramount As the Court observed,

"other alternatives exist to fees and cost requirements as a means for conserving the time of courts and protecting parties from frivolous litigation, such as penalties for false pleadings or affidavits, and actions for malicious prosecution or abuse of process, to mention only a few "

Connecticut courts today have other alternatives to protect against frivolous litigation. See *Ramin v. Ramin*, 281 Conn. 324, 338-339, 915 A.2d 790, 799 (Conn. 2007)(court has discretion to refuse to decide motions, to prevent vexatious litigation); and *In re Fusari*, 2012 WL 1139197, 1 (Conn Super. 2012) (requiring prior court screening of cases before granting fee waiver from repeated frivolous litigant).

In addition to the serious constitutional issues raised by this bill, it would place burdens on nonprofit organizations and the courts. Charitable organizations would need to devote scarce resources to monitoring and reporting community service hours. Deciding whether each of the thousands of people applying for fee waivers are able to perform community service, and whether they have complied with a community service order, would be more of a drain on the court's resources than contending with a vexing but small number of frivolous filers.

This bill is unnecessary. The court has the ability to directly address those who abuse the system without requiring all poor litigants to provide free labor in order to exercise their fundamental right to access our courts. For these reasons, we oppose Raised Bill 6692. Thank you for your time today.

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H.B. 6692 -- Community service for fee waivers

Judiciary Committee public hearing -- April 15, 2013

Testimony of Raphael L. Podolsky

Recommended Committee action: REJECTION OF THE BILL

The right of access to the courts is protected by both the Connecticut Constitution and the Due Process Clause of the federal Constitution. That right cannot be denied because a person is indigent. The fee waiver provisions of both the Connecticut Practice Book and the Connecticut General Statutes derive directly from constitutional litigation that challenged the absence of fee waivers prior to 1971. Since then, Connecticut to its credit has successfully made it possible for those with the least resources to be heard in court. H.B. 6692 would reverse those gains of the past 40 years.

More specifically, H.B. 6692 proposes to allow courts to condition the waiver of a filing fee and the cost of service of process on the performance of mandatory unpaid "community service." The proposal raises very serious constitutional questions, effectively denies access to the courts for those who are poor, mistargets the problem it claims to address and is unnecessary to address that problem, and is administratively unworkable. **We strongly urge you to reject H.B. 6692.**

- Access to the courts is a constitutional right, and fee waivers are an essential aspect of the protection of that right. In many cases, from divorce to custody to recovery for wrongful injury, there is no method for obtaining a binding decision except through the courts. In criminal cases, a defendant may need waiver of a fee in order to obtain documents or to take an appeal. This bill broadly authorizes the imposition of an unpaid work requirement in every aspect of the judicial system.
- The practical effect of H.B. 6692 will be to deny large numbers of poor people access to the judicial system. For a wide variety of reasons -- inability to take time off from a job, physical or emotional limitations, lack of transportation, child care responsibilities, and many other reasons -- this requirement will become a significant obstacle for low-income people and a significant deterrent to exercising their rights in court. Moreover, mandatory unpaid community service is usually an alternative penalty for criminal conduct. Being too poor to pay a filing fee is not criminal in nature, and its use as a precondition for filing a court case is not appropriate.
- H.B. 6692 is mistargeted The bill is an apparent response to an extremely small number of troublesome litigants who have filed a series of repeated frivolous action. This bill,

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however, is not about such litigants. It applies to every low-income person who seeks to bring or is involved in a court case in Connecticut. It covers the most fundamental kind of case -- dissolution of marriage -- that led the courts in the 1970s to require the availability of fee waivers. It covers criminal cases as well as civil cases. It responds to frivolous litigation by a few by imposing heavy burdens on everyone. In reality, it focuses on poverty, not frivolous litigation.

- H.B. 6692 is unnecessary. To the extent that there is a problem of repeated frivolous litigation, the courts have already devised a way to deal with it on a case-by-case basis that focuses on the actual problem. See, for example, In re Fusari, 2012 WL 1139197 (CT Superior Court, 2012), where the court ordered review of fee waiver applications by an applicant with a long track record of improper litigation.
- H.B. 6692 is administratively unworkable. It requires extensive planning, monitoring, and record-keeping by the Judicial Branch and, because of its detailed requirements, will require a hearing for almost every application. It also assumes -- erroneously -- that financially-stressed non-profits will have the time, staff, and resources to train 20-hour workers and supervise them. Even the community courts, which impose work that does not require training (such as picking up litter) in lieu of a criminal conviction, require significant investment in supervisory staff.
- H.B. 6692 is simply not a good idea. It takes a simple, effective, constitutional, fair, and successful system and converts it into a complicated, unfair system that is administratively extremely burdensome. It treats poor people who have legal needs -- e.g., to obtain a divorce or to obtain custody or modify a support order -- as if they were criminals and introduces unpaid work requirements into an area where they do not belong.