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**TO: Senator Andrew McDonald Co-Chair
Representative Michael Lawlor Co-Chair**

FROM: Arnold H. Rutkin

DATE: March 12, 2006

**RE: House Bill #5600 - An Act Concerning Parenting Time And Parental
Responsibility With Respect To The Custody Of A Minor Child**

I have been a practicing attorney for 40 years; much of that time has been in divorce and family law, having limited my practice to family law for about 20 years. I am here today as an individual, although now and in the past I have held numerous offices and positions in the Family Law Sections of the Connecticut Bar Association and American Bar Association and am an active member of the Connecticut Chapter of the American Academy of Matrimonial Lawyers and in the national organization.

I am co-author of Connecticut Family Law and Practice, Volumes 7,8 and 8A of the Connecticut Practice Series published by West Group. In addition, I have been a volunteer Special Master in the Regional Family Trial Docket since its inception, as well as the Judicial Districts of Bridgeport and Stamford since the inception of the Special Master pretrials.

I am sorry I cannot be with you for the public hearing on this bill. I had a trip planned to attend a convention that I could not cancel. If you have any questions upon reviewing this paper, I would be more than happy to answer them in person or on the telephone.

Throughout my career I have handled numerous custody cases probably representing an equal number of mothers and fathers. Many fathers I have represented gained primary residence or custody as well as legal custody. I have fought throughout my career for father's rights and

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have written and lectured throughout the United States on the subject. That was because there were circumstances in a particular family when it was appropriate for one parent or the other, **NOT SIMPLY BASED UPON GENDER**, to have primary residence. Those circumstances are:

1. One parent is unfit for a number of reasons such as alcohol or drug abuse or addiction or mental health issues;
2. One parent is and has always been the primary at home parent and the other one the income producing parent;
3. One parent never really cared about parenting except once a divorce was commenced.

I am opposed to House Bill #5600

I must be candid with you and admit that at a much earlier time in my career, probably 30 years ago, I supported the notion of a presumption in favor of joint custody. California had passed it then and thought it could work. In time, my colleagues reported to me that it did not work and in fact fostered more litigation.

The issue surrounding a presumption is really quite simple. When people are litigating something, there are sometimes presumptions. For example, you are well acquainted with the presumption of innocence in criminal cases. Since there is a (1) presumption of innocence, the state then has the (2) burden of proof, to prove (3) beyond a reasonable doubt, the guilt of the defendant. In civil law like custody cases, the standard of proof is (4) by a fair preponderance.

A way to look at the family is to freeze-frame the family for a period of time before any notion of divorce and a potential custody fight and ask this question: What is the parenting arrangement? Is the parenting arrangement that one parent is a stay at home parent and one person goes to work outside the home each day? If so, then by creating a presumption of 50/50 parenting time, you are automatically causing a profound change in the parenting arrangement of most families not based upon any reason. That will, I guarantee you, dramatically increase the

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amount of litigation. What should and usually does happen, in the absence of state or judicial interference with family arrangements, is to CONTINUE what the family has always done – in the absence of some overriding reason such as substance addiction or mental illness. By not creating a presumption of 50/50, you are sustaining the status quo and the stability of families.

This should not be viewed as a parent's RIGHT to half the time. It should only be viewed as a child's right to access to both parents (assuming there is no reason to restrict a particular parent's rights). If you create a presumption of 50/50 physical custody when there was no such thing before, it will automatically cause a controversy and increased litigation clogging up already overburdened family courts.

When you create legislation which changes how the children are being cared for pre-divorce to a presumption of 50/50, you are taking away from one parent and giving to another, and absolutely and clearly taking away stability. It is not enough to say one parent can simply choose not to have 50/50 parenting time. That conclusion is why we already have one parent having primary custody most of the time. Instead, the creation of a presumption of 50/50 artificially gives an angry and dissatisfied parent or one who wants to gain financial advantage unfairly, a great ability to do so.

We all know that more women than men are stay at home parents. Those of us who do divorce and custody work also know that sometimes the fear of loss of family makes men more interested in spending more time with their children. Clearly no one is opposed to a parent, usually the man, becoming a better or more available parent. The problem comes from a law which encourages litigation rather than simply educating parents with a better way. We already have parents who are mandated to have parenting education classes as part of a divorce case. That was a very good idea and has helped thousands of people in Connecticut.

In closing, I encourage you to remember that this should be about children and not their parents' rights. If you have any questions, please call upon me. Thank you.