

CCDLA
"Ready in the Defense of Liberty"
Founded in 1988

Connecticut Criminal Defense
Lawyers Association
P.O. Box 1766
Waterbury, CT 07621-1776
(860) 283-5070 Phone/Facsimile
www.ccdla.com
Conrad O. Seifert, President

March 26, 2010

Hon. Andrew J. McDonald, Senator
Hon. Michael P. Lawlor, House Representative
Chairmen, Judiciary Committee
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: **Raised Bill No. 486**
An Act Concerning Supreme Court and Appellate Court Decisions

Dear Chairmen and Committee Members:

The Connecticut Criminal Defense Lawyers Association ("CCDLA") is a statewide organization of approximately 350 attorneys, both private and public, who are dedicated to defending people accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally, and that those rights are not diminished. CCDLA also strives to improve legislative enactments that apply to the criminal justice system by either supporting or opposing bills such as Raised Bill No. 486.

**CCDLA OPPOSES RAISED BILL NO. 486, AN ACT
CONCERNING SUPREME COURT AND APPELLATE COURT DECISIONS**

Raised Bill 486 is fundamentally unfair to litigants appealing lower court decisions because it denies them the opportunity to have their case adjudicated on the merits. As a result, appellants are denied due process, access to the courts, and equal protection under the

law.¹ Raised Bill 486 also violates the separation of powers doctrine because it encroaches on the long standing practice of the Connecticut Supreme Court and Appellate Court to decide appeals before them in the time deemed appropriate by the Courts, and not by statutory or practice book rules.

I. Raised Bill 486 Violates Due Process

By statute, aggrieved parties in this state have the right to appeal final decisions. Once the statutory right is conferred, litigants are entitled to due process.² Raised Bill 486 denies appellants the fair opportunity to obtain adjudication on the merits of their appeal - this is a clear deprivation of the right to due process. See *Evitts v. Lucey*, 469 U.S. 387 (1985). Raised Bill 486 deprives litigants of their right to appeal for circumstances completely beyond their control. Most egregiously, it makes no exception for criminal defendants appealing criminal convictions - many of which result in the deprivation of liberty, some of which result in a death sentence. Frequently, our appellate courts have reversed and remanded convictions after finding the underlying trial fundamentally unfair - sometimes based on egregious misconduct by prosecutors and/or jurors.³

Raised Bill 486 deprives the criminal defendant of the ability to seek a fair trial on direct appeal, and limits her avenue of redress to filing a habeas corpus petition - the majority of which are unsuccessful. All litigants, criminal and civil, seeking to appeal a final judgment

¹ CCDLA thanks Sheila Huddleston, Esq. for her valuable insight in formulating some of the arguments herein.

² See Conn. Const. Art. First, § 8; United States Const. Amend. XIV, § 1.

³ Over the past five years, in cases where a year or more has passed between argument and decision, the Connecticut Supreme and Appellate Courts have reversed more than 20 cases (civil and criminal).

have no redress whatsoever if the appellate courts take longer than one year to decide their case. Raised Bill 486 does not enable them to re-file their appeal, it merely provides that the final judgment being appealed will be affirmed. Raised Bill 486 is short sighted and fundamentally unfair.

II. Raised Bill 486 Deprives Litigants Of Their Right of Access To The Courts and Their Right to Equal Protection Under The Law.

“All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.” See Conn. Const. Art. I., Sec. 10. As stated previously, it is well settled law that once the legislature establishes “avenues of appellate review . . . it is now fundamental that . . . these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts.” See North Carolina v. Pearce, 395 U.S. 711, 724-725 (1969).

The right of access to the courts is not limited to defendants during trial, but extends to litigants who have filed a direct appeal, including “convicted individuals ‘seeking new trials, release from confinement, or vindication of fundamental civil rights.’” See Bounds v. Smith, 430 U.S. 817, 827 (1977). Raised Bill 486 deprives certain litigants of their right to access the courts. It also deprives those litigants of equal protection under the law.

Equal protection concerns are implicated when the state treats a class of litigants differently for purposes of offering them a meaningful appeal. Evitts v. Lucey, 469 U.S. 387.⁴ The United States Supreme Court has found that statutes limiting certain litigants from

⁴ “No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his civil or political rights because of religion, race, color, ancestry or national origin.” Conn. Const. Art. I., Sec. 20.

appealing, may violate the equal protection clause of the United States constitution. For example, in MLB v. SLJ, 519 U.S. 102, 119-21 (1996), the United States Supreme Court held that a statutory scheme conditioning a parent's right to appeal from a termination of parental rights decree on prepayment of record preparation fees was unconstitutional because without valid justification it deprived certain parents of the right to appeal. Similarly, in Mayer v. Chicago, 404 U.S. 189, 196-197 (1971), the United States Supreme Court held unconstitutional the rule that conditioned appeals from felony convictions on procurement of trial transcripts. The rule violated the equal protection clause because it made it impossible for indigent litigants to appeal their convictions because they could not afford to order their trial transcript.

Raised Bill 486 deprives certain litigants of their right to appeal without any reasonable justification. The deprivation is not based on any factors the litigant can control, but entirely on the actions of the Appellate or Supreme Court. The Bill provides for no redress after the underlying decision is affirmed due to an untimely appellate decision. The unfortunate litigants in these circumstances are left out in the cold. Raised Bill 486 does not benefit or protect the citizens of Connecticut, instead, it denies them the most fundamental and basic constitutional rights.

III. Raised Bill 486 Violates the Separation of Powers Doctrine.

The execution and administration of the business of the Court lies in the judicial department.⁵ Raised Bill No. 486 significantly interferes with the Court's inherent power over the administration of justice in this state. The Bill represents an impermissible intrusion by the

⁵ See Daley v. Warden, 20 Conn. Supp. 384, 386 (1957).

legislature into the function of the judiciary and thereby constitutes a violation of the separation of powers doctrine.⁶ A statute violates the separation of powers doctrine when it significantly interferes with the orderly functioning of the Court's judicial role. Consequently, legislature may not prescribe a rule imposing time limits on the Appellate and Supreme Courts rendering decisions if the rule conflicts with the practice of those Courts. The judiciary has established no practice book rule that imposes such time limits. Although Raised Bill 486 may not violate a specific *rule* of practice, it violates the long established practice and procedure of the Appellate and Supreme Courts to decide a case *when ready* to render a decision.

In Sanchez v. Prestia, 29 Conn. App. 157 (1992), the Appellate Court held that Conn. Gen. Stats. § 51-183b, which requires Superior Court judges to render judgment in a civil case "no later than 120 days from completion of trial," did not violate the separation of powers doctrine. Section 51-183b is distinguishable from Raised Bill 486. Section 51-183b did not violate the separation of powers clause because it did not conflict with any rule or procedure or practice established by the judiciary. See Sanchez v. Prestia, 29 Conn. App. 157 (1992). The statute essentially tracks a similar Practice Book Rule, 11-19, which requires courts to render decisions in short calendar matters within 120 days of argument.

Furthermore § 51-183b does not run afoul of the separation of powers doctrine, or the other constitutional protections discussed herein, because it does not prescribe a remedy for violation of the statute that would deny litigants their day in court. In fact, as noted in Sanchez, the typical remedy for late judgment in a civil trial would be to open the judgment and grant a new trial. This remedy is not prescribed by statute, but was judicially created.

⁶ See Conn. Const. Art. Second.

See Jacques v. Bridgeport Horse-Railroad Co., 43 Conn. 32 (1875). Contrarily, Raised Bill 486 contains a legislatively prescribed sanction that penalizes the appellant for the Court's tardiness.

IV. There Are Compelling Reasons Why The Appellate and Supreme Courts May Need More Than One Year To Decide A Case.

Raised Bill 486 fails to contemplate the realities of appellate practice. Many appellate cases, especially on the criminal side where litigants are challenging convictions after trial, involve lengthy transcripts and numerous issues. The Courts must read these transcripts and consider each issue raised by litigants. The length of time it takes the Court to decide a matter is certainly dictated by the complexity of the matter before them. In death penalty cases particularly, Court must not be limited by time constraints. Ultimately the Connecticut Supreme Court's decision in these matters will determine whether someone lives or dies. Death penalty cases involve essentially two trials, the guilt phase and the penalty phase. The transcripts are long, the litigants' briefs are long, and frequently, the Court's decisions exceed 100 pages.

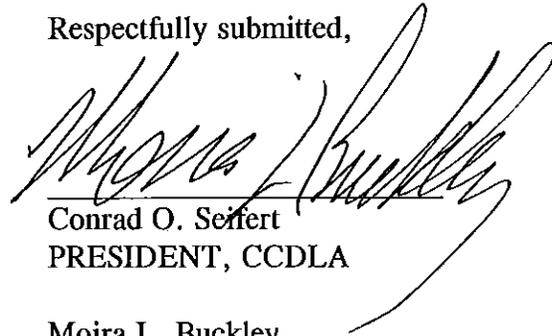
Raised Bill 486 does not account for the fact that appellate jurists do not always agree with each other and file concurring and/or dissenting opinion, especially on more controversial and complex matters. It fails to contemplate that Courts, after reviewing litigants' briefs and listening to arguments, might request that litigants file supplemental briefs on issues that arise during oral argument. Raised Bill 486 would also damage the Courts' attempts to develop a uniform jurisprudence in this state. Frequently, similar issues may be pending before our Appellate Court and Supreme Court. It may be that the Appellate Court is awaiting our

Supreme Court's determination of an issue before it renders a decision on a similar, if not the same issue. The same applies to our Supreme Court awaiting a decision from the United States Supreme Court that could control the Connecticut Supreme Court's decision on a similar issue.

CONCLUSION

CCDLA opposes Raised Bill 486 based on the grounds asserted herein.

Respectfully submitted,



Conrad O. Seifert
PRESIDENT, CCDLA

Moira L. Buckley
SECRETARY, CCDLA

ON BEHALF OF THE CONNECTICUT
CRIMINAL DEFENSE LAWYERS
ASSOCIATION