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To: Judicial Committee Members

From: David McGuire, ACLU-CT Staff Attorney

**Written Testimony Opposing
Raised Bill No. 6423
An Act Concerning Subpoenas for Property**

Good afternoon Senator Coleman, Representative Fox and members of the Judiciary Committee. My name is David McGuire. As the Staff Attorney for the ACLU of Connecticut, I am here to oppose Raised Bill No. 6423, An Act Concerning Subpoenas for Property.

If this bill becomes law, subpoenas can be issued to compel the production of property for search and inspection without any of the safeguards or standards required by due process and the Fourth Amendment.

Under this bill, prosecutors can subpoena the production of any private property without requiring notice to and an opportunity to be heard by the owner of the property. The prosecutor need not seek advance review of the subpoena for property by an independent magistrate and the bill instead shifts the burden of seeking judicial review to the person served with the subpoena. When the person served with the subpoena is not the owner of the property, there will be no incentive for the custodian of the property to seek to quash the subpoena and obtain impartial judicial review.

By comparison, legislation regarding subpoena powers in the area of financial records, Connecticut General Statute 36a-43, contains provisions that meet the requirements of due process that are missing in this bill. Where a subpoena is issued to a financial institution for financial records, the customer whose records are requested must be given notice and an opportunity to challenge the subpoena to the financial institution.

The provision in this bill relating to medical and psychiatric records that requires notice to the person whose records are subpoenaed also shows by comparison the process that is missing for all other types of property subject to this bill, even though other types of property are equally subject to the requirements of due process. The bill disregards the requirements of due process and will not withstand constitutional scrutiny.

This bill does not require the state to show probable cause to issue the subpoena for the production of property and yet the effect of the subpoena will be to allow the state access to inspect and search private property. Under this proposal, the state only needs to show that the property is relevant to the investigation. The bill disregards the Fourth Amendment of the U.S. Constitution and also Section 7 of Article I of the Connecticut Constitution:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures and no warrant to search any place or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.

The bill lacks appropriate judicial oversight and involvement and will not withstand scrutiny under constitutional search and seizure principles.

This bill is not necessary. If needed for criminal prosecution, investigatory subpoena power is already available to prosecutors pursuant to our Investigatory Grand Jury Act.

The ACLU-CT urges this committee to reject Raised Bill 6423.