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Testimony of Representative Linda Schofield
Judiciary Committee
April 1, 2011

**HB 6426: AN ACT CONCERNING THE APPOINTMENT OF FAMILY SUPPORT
MAGISTRATES**

Thank you for the opportunity to lend my support to HB 6426, requiring that appointments and re-appointments of family support magistrates be subject to legislative review and approval.

I am not typically one to advocate the diminishment of executive powers relative to legislative power. And I must say that I have enormous trust and respect for those in the Governor's office who are currently responsible for appointing magistrates. However, I don't know who will be making those appointments in future years and my recent experiences with a constituent have led me to feel strongly that we need a more transparent process for appointing magistrates.

Having never had any cause to interact with family court magistrates in the past, I have had quite an education recently as I have tried to help a constituent deal with a family support order. I can tell you honestly that I never would have believed that such things as have happened to this man, could happen in America. But I now see that we have at least one magistrate who is re-creating the debtors' prisons of Dickens novels.

My constituent's case is complex, and involves an allegation, from a California ex-spouse, that substantial child support is owed for a child who is now 26 years old. Because California lumped all child support and alimony figures together some years back during a systems conversion, the California courts are unable to say definitively whether the amount "owed" is indeed even child support, which would be appropriately subject to interstate enforcement. Alimony is not subject to interstate enforcement and in

this case the alimony owed is more than cancelled out by a judgment the husband has against the ex-wife for her theft of his funds during the divorce.

I am not a judge and have not seen all of the evidence in this case, but I think it is fair to say that the question of WHETHER my constituent owes any child support is not resolved. But regardless, it is important to recognize that the case is quite old and there is no child welfare immediately at stake, given that the child is 26 and gainfully employed. Therefore, it would seem to me that there is no urgency calling for extraordinary enforcement efforts.

My constituent, a 63 year old former executive of a dot com start-up company, lost all his money in a dot-com disaster. He has been unemployed for over 2 years and could not pay the child support even if any is really owed. He did however have a written job offer, which he showed to the magistrate.

Never-the less the magistrate incarcerated my constituent for over two months, starting just before Christmas, and kept him in jail in spite of pleas for his release due to a serious and life-threatening medical condition, which was not well-controlled in jail and therefore worsened substantially. Ultimately the magistrate finally did let him out temporarily because his clotting disorder resulted in the necrosis of one toe, which was expected to need amputation.

As a fiscal conservative, I was appalled. Our taxpayer dollars were used to jail someone for an extraordinary length of time, 64 days, and to pay for his hospitalization for 6 days and for two trips to the ER, when he could have simply been allowed to start his new job and have his wages garnished. I think this showed very poor judgment, and a wanton disregard for the efficient management of tax payer funds.

In addition, this magistrate did several things that struck me – admittedly a non-lawyer – as inappropriate:

- He opened the hearings on this child support case, before even hearing any evidence by saying “He’s going to have to pay.” (That’s in the transcript.)
- After receiving a letter from the man’s pro-bono attorney informing the judge that he would be out of the country for the holidays and asking him to take no action until his return, the judge sent a marshal to arrest my constituent that day on Dec 23rd.
- He had the marshal bring him directly to court where he raised his bond to \$80,000 in cash, so that he could not even get a surety bond to be released.
- When my constituent pointed out that he did not have the benefit of counsel the magistrate was unsympathetic.
- The magistrate essentially threatened the man with incarceration for the rest of his life until he paid up...which of course is impossible to do when you are in jail and have no money in the bank.
- Witnesses who went to testify regarding the man’s lack of funds all wrote me that they were insulted by the magistrate’s imperious and dismissive demeanor.

After learning about this case, I have asked around about the magistrate's reputation. I have heard from other lawyers in and out of state government that "he does not care about due process", that he's a "Napoleonic dictator", and that he is moody and difficult to deal with.

One other child support case observed by my constituent and his lawyer while in court was that of a man who paid \$450 of his \$600 monthly child support, but failed to pay the last \$150 because he lost one of his three jobs. He was jailed by this magistrate until his relatives came up with the other \$150. Of course, by then he probably lost his other jobs as well – leaving him even less able to make the next month's support payment.

The job of a magistrate is not easy. I support their vigorous efforts to collect child support on behalf of mothers and children, and I recognize that many so-called "deadbeat parents" lie about their situations. I'm sure it is difficult to correctly assess who is truthful and deserving in every case.

But I do believe we need magistrates who show reasonable judgment, who act as judges not prosecutors, and who recognize the impact of their decisions on not only families, but on taxpayers and on citizens' trust of the system. We, as a state, have not benefitted from this particular magistrate's performance, at least in this case.

Unfortunately there is no open process for hearing and considering the input of anyone who has dealt with any of the magistrates. Were it not for the fact that in this case the newspaper has gotten involved, then I suspect his re-appointment would have gone off without a second glance. Even at that it may well work out that way.

And, perhaps there are many good things about this magistrate about which I am unaware. A public hearing would air those as well, as is only fair.

But without a process by which we can publicly consider the pro's and con's of each magistrate, I know I for one will not have confidence that appointments and re-appointments are made purely on the basis of competence and performance.

I strongly urge your support for this bill.

State Representative Linda Schofield

