

CCDLA
"Ready in the Defense of Liberty"
Founded 1988

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March 28, 2012

The Honorable Co-Chairs of the Judiciary Committee
Senator Eric D. Coleman
Representative Gerald M. Fox and
Members of the Judiciary Committee
Legislative Office Building
Hartford, CT 06106

Re: Raised House Bill 5554, An Act Concerning Habeas Corpus Reform

Dear Chairmen and Committee Members,

My name is Conrad Ost Seifert. I am an attorney practicing in Old Lyme and mostly handle appeals and criminal defense. Since 1982, I have represented inmates in habeas corpus litigation and habeas corpus appeals, and have testified as a legal expert witness regarding the ineffectiveness of counsel standard required under Strickland. I am a past president of the Connecticut Criminal Defense Lawyers Association, CCDLA, and I am submitting this testimony on behalf of the CCDLA, as well as on behalf of myself.

The CCDLA is a statewide organization of over 300 lawyers in both the public and private sectors dedicated to defending persons 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.

On behalf of the CCDLA, I was privileged and honored to serve on the Habeas Corpus

Reform Committee with two distinguished judges, Judge Elliot Solomon and Judge Carl Schuman and with members of the Chief States Attorneys Office and the Office of the Chief Public Defender. The committee members put in many hours and worked very hard. Raised Bill 5554 is the result. All committee members support it, to my best knowledge.

“Habeas corpus,” roughly translated from Latin into English, means “to have the body.” After all appeals are over, habeas corpus is the last chance that an innocent person convicted of a crime has to be freed regarding a crime he or she did not commit. It not only serves to protect factually innocent inmates. Habeas corpus also exists to protect convicted people who were incompetently and ineffectively represented by their attorney.

Mr. Chief Justice Chase, writing for the United States Supreme Court in Ex Parte Yerger, 75 U.S. 85 at 95 (1868) stated the following: “The great writ of *habeas corpus* has been for centuries esteemed the best and only sufficient defense of personal freedom.” Id. Justice Brennan once wrote that the writ of habeas corpus is, “that most important writ to a free people, affording as it does a swift and imperative remedy in cases of illegal restraint or confinement.”¹ Charles Pinckney, a founding father and signer of the Declaration of Independence, was the first delegate to the Constitutional Convention to propose that our new Constitution provide for the writ of habeas corpus. At the Constitutional Convention, the debate was not whether or not to provide for the writ in our Constitution. Rather, the debate was over whether or not the “Great Writ” should ever subject to suspension. In the end, it was decided that it would be. The final version is contained in Article 1, Section 9, Clause 2 of the Constitution and states: “[t]he *Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of*

¹ William J. Brennan, Jr., *Landmarks of Legal Liberty*, in THE FOURTEENTH AMENDMENT: CENTENNIAL VOLUME 4, p. 4 (Bernard Schwartz ed. 1970).

Rebellion or Invasion the public Safety may require it.” *Id.* This is known as “The Suspension Clause.” During a few extraordinary circumstances in our nation’s history, the right to habeas corpus has been suspended by an act of Congress such as when the Territory of Hawaii was placed under martial law on December 7, 1941 in the Hawaii Organic Act, ch. 339, § 31 Stat. 141. More commonly known is that President Lincoln suspended the writ of habeas corpus several times during the Civil War. But these are extraordinary exceptions and it is not an exaggeration to say that the constitutional right to the writ of habeas corpus is a bedrock, fundamental right, a right the founding fathers fought for.

It is with this sense of our nation’s history and with this sense of constitutional history that I had testified in prior years against earlier versions of habeas corpus reform bills promulgated by the Chief States Attorneys Office. Those earlier versions unduly restricted the right of habeas corpus.

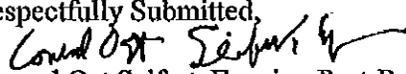
Aware of the constitutional importance of preserving the right to habeas corpus but also aware that Connecticut’s current habeas corpus courts are clogged with a very large number of habeas corpus cases, the Habeas Reform Committee members were in agreement that statutory reform is necessary. Section 1.(c) creates a five year period of time within which a petitioner may bring his or her first habeas corpus case without any time barrier concerns. After that, there is a presumption of delay. But, the presumption of delay is rebuttable. Similarly, as regards subsequent petitions for habeas corpus, there is a two year period measured from the date of final judgment on the first habeas case. Within that two year period there is no time barrier concern. After that, there is again a rebuttable presumption of delay. Also note that these provisions do not apply to actual innocence claims or to those inmates sentenced to death. (See Section (f)). As regards these habeas claims, there is no time barrier.

The other major statutory change is that all newly filed habeas corpus petitions are subject

to a screening process as a means of weeding out bogus and frivolous petitions early on. (Section (b) (1).) You will note that in (b) (3), whether a petition demonstrates "good cause" for a habeas trial requires the pleading of facts that would, if proven, afford the petitioner habeas "relief" and there must be some "factual basis" upon which the court can conclude there will be evidence which supports the petition's allegations. If the court decides the petition and preliminary evidence do not "establish such good cause", there is then a preliminary hearing at which time additional preliminary evidence can be presented. (Id.) The statutory purpose is to have a procedure whereby completely unprovable habeas cases do not linger in the system for months and sometimes years on end, only to end up withdrawn or summarily dismissed once the case is reached for habeas trial. CCDLA had testified in the past that some form screening mechanism would be beneficial and this is that mechanism. Weeding out bogus and unprovable cases earlier in the litigation should also allow meritorious habeas claims to go to trial sooner than the current average waiting time of over 16 months.

For all of these reasons, CCDLA believes that if Raised Bill 5554 is passed it will serve and facilitate justice and will not hamper a petitioner's constitutional right to the Great Writ of habeas corpus.

Respectfully Submitted,


Conrad Ost Seifert, Esquire, Past-President, Connecticut Criminal Defense Lawyers Association

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