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## H.B. 6692 -- Community service for fee waivers

Judiciary Committee public hearing -- April 15, 2013

Testimony of Raphael L. Podolsky

**Recommended Committee action: REJECTION OF THE BILL**

The right of access to the courts is protected by both the Connecticut Constitution and the Due Process Clause of the federal Constitution. That right cannot be denied because a person is indigent. The fee waiver provisions of both the Connecticut Practice Book and the Connecticut General Statutes derive directly from constitutional litigation that challenged the absence of fee waivers prior to 1971. Since then, Connecticut to its credit has successfully made it possible for those with the least resources to be heard in court. H.B. 6692 would reverse those gains of the past 40 years.

More specifically, H.B. 6692 proposes to allow courts to condition the waiver of a filing fee and the cost of service of process on the performance of mandatory unpaid "community service." The proposal raises very serious constitutional questions, effectively denies access to the courts for those who are poor, mistargets the problem it claims to address and is unnecessary to address that problem, and is administratively unworkable. **We strongly urge you to reject H.B. 6692.**

- Access to the courts is a constitutional right, and fee waivers are an essential aspect of the protection of that right. In many cases, from divorce to custody to recovery for wrongful injury, there is no method for obtaining a binding decision except through the courts. In criminal cases, a defendant may need waiver of a fee in order to obtain documents or to take an appeal. This bill broadly authorizes the imposition of an unpaid work requirement in every aspect of the judicial system.
- The practical effect of H.B. 6692 will be to deny large numbers of poor people access to the judicial system. For a wide variety of reasons -- inability to take time off from a job, physical or emotional limitations, lack of transportation, child care responsibilities, and many other reasons -- this requirement will become a significant obstacle for low-income people and a significant deterrent to exercising their rights in court. Moreover, mandatory unpaid community service is usually an alternative penalty for criminal conduct. Being too poor to pay a filing fee is not criminal in nature, and its use as a pre-condition for filing a court case is not appropriate.
- H.B. 6692 is mistargeted. The bill is an apparent response to an extremely small number of troublesome litigants who have filed a series of repeated frivolous action. This bill,

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however, is not about such litigants. It applies to every low-income person who seeks to bring or is involved in a court case in Connecticut. It covers the most fundamental kind of case -- dissolution of marriage -- that led the courts in the 1970s to require the availability of fee waivers. It covers criminal cases as well as civil cases. It responds to frivolous litigation by a few by imposing heavy burdens on everyone. In reality, it focuses on poverty, not frivolous litigation.

- H.B. 6692 is unnecessary. To the extent that there is a problem of repeated frivolous litigation, the courts have already devised a way to deal with it on a case-by-case basis that focuses on the actual problem. See, for example, In re Fusari, 2012 WL 1139197 (CT Superior Court, 2012), where the court ordered review of fee waiver applications by an applicant with a long track record of improper litigation.
- H.B. 6692 is administratively unworkable. It requires extensive planning, monitoring, and record-keeping by the Judicial Branch and, because of its detailed requirements, will require a hearing for almost every application. It also assumes -- erroneously -- that financially-stressed non-profits will have the time, staff, and resources to train 20-hour workers and supervise them. Even the community courts, which impose work that does not require training (such as picking up litter) in lieu of a criminal conviction, require significant investment in supervisory staff.
- H.B. 6692 is simply not a good idea. It takes a simple, effective, constitutional, fair, and successful system and converts it into a complicated, unfair system that is administratively extremely burdensome. It treats poor people who have legal needs -- e.g., to obtain a divorce or to obtain custody or modify a support order -- as if they were criminals and introduces unpaid work requirements into an area where they do not belong.