

WYATT W. KOPP

34 Patricia Court ♦ Gales Ferry ♦ Connecticut ♦ 06335
Tel. (860) 464-9458

TESTIMONY IN SUPPORT OF RAISED H.B. 6692
HEARING DATE: APRIL 15, 2013 – JOINT JUDICIARY COMMITTEE

To the Honorable Members of the Judiciary Committee:

It is a pleasure to provide a written submission and to appear before the committee in support of raised bill H.B. 6692. At the outset, it should be noted that this submission summarizes the issues and arguments favoring H.B. 6692. There are no attachments, but an e-mailed version to judgetestimony@cga.ct.gov has the attachments and is available to the members. Also, it has come to my attention that some proponents of this bill had to e-mail their support to the committee as they were not aware it was raised until recently.

I. INTRODUCTION

The fee waiver, as established by C.G.S. §52-259b, is intended to provide court access to persons who would otherwise be deprived of such access due to lack of funds. Yet, despite its laudable intent, the present court fee waiver system has created a class of persons that have substantially greater access to the courts than those who are not eligible for fee waivers. The court fee waiver system has incentivized frivolous litigation because litigants literally have nothing to lose in filing lawsuits at the “drop of a hat.” The impact of the frivolous litigation encouraged by the present fee waiver system is equally felt in business, non-profit agencies and local governments who have to allocate ever increasingly scarce money and resources toward wasteful litigation instead of allocating it in areas that could really make a significant positive difference in the community and in individual lives.

The sensible reforms of raised bill H.B. 6692 leave the fee waiver intact while, at the same time, providing a simple and fair mechanism to end its abuses. The proposed reform has broad appeal because it advances issues in which there is common ground. All members of the General Assembly, no matter what their politics are, want to see scarce taxpayer resources allocated where they can do the greatest good in individual lives as well as keeping our businesses competitive and giving our municipalities as many tools as possible to provide resources in communities across the state. In short, there is universal agreement that taxpayers should be given the greatest “bang for their buck.” The community service requirement of H.B. 6692 is both flexible and sensible. It empowers the courts with the discretion to weigh individual circumstances and waive community service if it presents an individual hardship. The community service component will withstand legal scrutiny because no court has ever held that money is the exclusive method of payment for court filing fees and service of process fees. It is fitting that the state that established the legal precedent for the waiver should have this unique opportunity to reform it.

Having briefly introduced the issue, it is important to consider specific examples of abuse to illustrate the need to reform C.G.S. 52-259b.

II. ARGUMENTS IN SUPPORT OF RAISED BILL H. B. 6992

The flaws in the present fee waiver system are evidence in the face of abuses that are extremely costly to defendant individuals, businesses and municipalities who are relying on the General Assembly for relief from the unintended consequences of C.G.S. § 52-259b. In order to fully comprehend the impact of abuses in the fee waiver system, and the need for reform, it is important to consider specific cases that illustrate the wasteful litigation that is promoted by the present system.

A. CECELIA LEBBY HAS LITIGATED EIGHTY-ONE SEPARATE CIVIL ACTIONS FOR MONEY DAMAGES AND FORTY-FOUR APPEALS ON FEE WAIVERS.

In the Judicial District of New Britain, Cecelia Lebbly has used fee waivers to file a total of eighty-one civil seeking money damages. In today's value, the lost filing fees, at \$350 for each complaint, are \$28,350. She has also filed forty-four separate appeals which, at \$250 for each appeal, total \$11,000 in lost filing fees. She has sued in excess of two-hundred defendants and service of process fees range from \$30-\$40 for each service. To serve two-hundred defendants at \$30 each costs \$6,000. The state has, therefore, lost about \$45,350 in just filing and service of process fees alone.

In addition to the lost revenue, the state is also having its resources drained on Lebbly's frivolous lawsuits. In a 2010 order, Judge Patty Pittman discussed the impact of Lebbly's suits on the Judicial District of New Britain by writing, "...the plaintiff's filings in new and pending cases have become so numerous and so regular that substantial clerk and judge resources are devoted on an almost daily basis in attempting to sort out and respond to her frequent, vague and often illegible filings."

Recently, Lebbly filed a lawsuit against 1970's rocker Ted Nugent because she felt he didn't play enough songs at a recent concert. She also sued the Bret Michaels fan club for \$22 million because she was only sent one Christmas card by the fan club and felt she should have received more mail for the price of her membership. Bret Michaels was the lead singer for the 1980's hair metal band Poison and wrote its hit, "Every Rose Has Its Thorn." While Lebbly's high-profile lawsuits involving Ted Nugent and Bret Michaels might generate some laughs, she is a costly thorn in the side of many other less high-profile defendants.

Lebbly receives subsidized housing from the New Britain Housing Authority which is a non-profit agency, but her litigation involving the housing authority has caused its counsel, Loo Pacacha, Esq., to write in an e-mailed testimony to the Judiciary Committee that, "As you are aware, sequestration has had a big impact on federal budgets. Voucher holders are in jeopardy of

losing assistance and public housing services may have to be cut. The Authority can ill afford to defend such baseless suits. In fact, they could not afford to send me to the LOB to support this bill in person.”

Lebby has also sued several municipalities which also have strained budgets particularly in the economic realities of the present. The towns targeted by Lebby’s litigation are New Britain, Torrington, Farmington and Meriden as well as their police departments, boards of education and town employees. In one case, Lebby v. Officer Hunt, et al, she sued New Britain police officers for, among other things, laughing at her because she sued the Bret Michaels fan club. Lebby’s litigation, however, generates little humor in municipal town halls, dealing with strained budgets and scarce resources, while having to fund the services of a lawyer to defend against Lebby’s lawsuits.

She has also sued numerous businesses and individuals as well. It was in this area that she had her only success. As a recent WFSB investigative piece noted, she received an \$8,000 settlement from the WWE in exchange for an assurance that she would not sue it anymore, but she still continued to file lawsuits against its employees. All of her other cases, that are not still pending, have been eventually dismissed. Despite receiving so many waived filing and service of process fees, Lebby did not even have to reimburse the taxpayers from her \$8,000 settlement for the \$45,350 in fees they subsidized.

Some of Lebby’s cases are dismissed as soon as they are filed, but the court is running a risk in finding a case frivolous and dismissing it at filing because no opportunity for discovery has been had. An appeal on that basis might have a chance for success if it were made, but thus far, that has not been an issue in Lebby’s appeals.

B. JUDITH K. FUSARI FILED ONE-HUNDRED-THIRTY-SIX SEPARATE LAWSUITS FOR MONEY DAMAGES AND FIFTY-EIGHT APPEALS.

The record for frivolous lawsuits, financed by taxpayer funded fee waivers, is held by Judith K. Fusari who has filed one-hundred-thirty-six separate lawsuits and fifty-eight separate appeals in the Judicial Districts of Hartford, New Britain and New Haven. The waived filing fees alone, at a present value of \$350 for each complaint, totals \$47,600. The waived appellate fees, at present value of \$250 each, total \$19,500.

Fusari never had any success in court, but her defendants, like Lebby’s include the New Britain Housing Authority and even the U.S. Post Office which, if you have been following the news, it should be noted that the U.S. Post Office is so short of funds they are canceling Saturday service. She sued numerous individuals and businesses. Her lawsuits were so numerous and frivolous that the court finally took action last year and barred her from filing further lawsuits without permission of the court.

C. KEVIN KLEMONSKI HAS RECEIVED FEE WAIVERS FOR TWENTY-SEVEN CASES INVOLVING SEVENTY-EIGHT DEFENANTS.

Another illustrative case of unchecked fee waiver's is that of Kevin Klemonski who has had a total of \$10,970 in fees and costs waived in twenty-seven civil cases, seeking money damages, involving seventy-eight defendants. Five of those twenty-seven cases were e appeals financed by the taxpayers. The remaining fifteen civil cases the taxpayers financed were after changed his name to Brooklyn Maellaio and was granted fee waivers for all fifteen civil cases.

In the Hartford Judicial District, Klemonski has litigated seven civil cases since his release from prison. In each of those civil cases, court filing fees and service of process fees were waived. He was awarded a \$7,500 judgment in one of his cases, Kevin Klemonski v. Michael Clement, after the pro se defendant was defaulted for failure to plead. The significance of that judgment is that there is no mechanism in place to recover the filing fee that was waived by the court in that case if he ever collects on that judgment.

Kevin Klemonski changed his name to Brooklyn Macellaio and received fee waivers for an additional fifteen civil cases under that name. For one individual, Kevin Klemonski, now known as Brooklyn Macellaio, the State of Connecticut has lost a total of \$10,970 in filing fees that it has waived and service of process fees it has paid. Additionally, many of the seventy-eight defendants had to pay legal fees to defend these cases which have been encouraged by the fee waivers Klemonski has been given.

D. IN THE NEW LONDON JUDICIAL DISTRICT SYLVESTER TRAYLOR HAS BEEN ENCOURAGED TO FILE PROTRACTED AND WASTEFUL LITIGATION BY THE FEE WAIVER SYSTEM.

In the New London Judicial District Court, Sylvester Traylor is an example of the abuse that results from unchecked fee waivers. Mr. Traylor has filed numerous civil cases associated with an alleged medical malpractice that is claimed to have resulted in the death of his wife, Roberta Traylor. He has filed a Writ of Mandamus against the State and another Writ of Mandamus against eighteen other state officials. He has recently also filed a tort case resulting from his arrest at Connecticut College in a case that the state clearly did not prosecute which is a reasonable conclusion due to the absence of that case on the public criminal system. He has had a total of seven cases in New London Judicial District Court. In each case his filing fees were waived. At present value, the total court filing fees waived for each of his six cases is \$2,150.

In those six cases there have been a total of fifty-two defendants. In each case, Traylor has also received waivers for the service of process. He also filed six appeals. At present value, the filing fees for those appeals total \$1,500. Additionally, Mr. Traylor has filed numerous cases in the federal district court and at the U.S. Court of Appeals. In all of his federal cases, Mr. Traylor has paid no fees. Mr. Traylor is so litigious at the federal court that the U.S. Court of Appeals issued a warning stating:

“Traylor is hereby warned that the continued filing of duplicative, vexatious, or frivolous appeals, mandamus petitions, or motions may result in the imposition of sanctions, including a leave-to-file sanction requiring Traylor to obtain permission from this Court prior to filing further submissions in this Court.”

The U.S. Court of Appeals determined that Traylor was abusing the judicial process. A copy of the warning from the U.S. Court of appeals was actually filed in his separate state case. Recently, there was a judgment against Traylor in that state case in which the court issued a memorandum dismissing Traylor’s case. While the warning of the U.S. Court of Appeals put the brakes on the judicial abuse engaged in by Traylor, it did not address the fee waiver system that encourages and promotes such abuse at the expense of the State of Connecticut and the defendants who have to pay for legal representation to defend cases that are litigated by indigents who have substantially greater access to the courts than persons with income.

The fee waiver system has encouraged wasteful and protracted civil litigation by Traylor. His case against several state officials, *Traylor v. Gerratana*, was recently dismissed. In its memorandum of decision, the court noted that the plaintiff’s litigious fervor “...has clearly reached the point of becoming unnecessarily costly, wasteful, and fruitless.” Mr. Traylor was then granted a fee waiver to file yet another appeal which will be financed by the taxpayers. The issue on appeal in this latest case is whether the trial court should have granted his writ of mandamus. Traylor has already previously taken a failed writ of mandamus to the Appellate court and lost because his case did not meet the standard for the issuance of a writ of mandamus. The taxpayers will now have to again pay for the appellate court to articulate the very same standard to Mr. Traylor. He has, however, nothing to lose in filing yet another appeal.

E. THE FEE WAIVER SYSTEM ENCOURAGES A MISALLOCATION OF SCARCE RESOURCES THAT COULD BETTER SERVE THE CITIZENS OF CONNECTICUT.

The present fee waiver system encourages a misallocation of scarce resources that could be better directed at making a real difference in the lives of our citizens. When a business has to retain the services of an attorney to defend against frivolous litigation, which is encouraged by fee waivers, that business then has less money to reinvest in new technology, to hire new employees, develop new products, and upgrade buildings and equipment. The resources wasted by businesses to defend against frivolous litigation would be better allocated toward resources that make such a business more competitive in an increasingly competitive market. Keeping businesses competitive in Connecticut should be a priority since a 2011 survey of 500 corporate CEO’s listed Connecticut nearly last, 44th place, in the states most friendly to do business in.

If frivolous lawsuits are directed at doctors and insurance companies, then the impact is equally felt outside of court. The expenses of litigation are usually passed on to the consumer in the form of higher insurance rates and service costs

Finally, the impact is felt most in municipalities. Many of Connecticut's municipalities are hurting in the present economy and are having to make hard choices just to fund the retirements of their employees. Each of these municipalities provides services to the elderly and to others in the community who are in need. Scarce resources wasted on defending against frivolous litigation results in less money for the communities these municipalities serve. Moreover, these costs have to be passed on to taxpayers and the result could be that a business leaves or a citizen cannot afford to retire in the state in which that citizen was born.

F. THE PRESENT FEE WAIVER SYSTEM IS DISCRIMINATORY BECAUSE INDIGENTS HAVE SUBSTANTIALLY GREATER ACCESS TO THE COURTS.

The present fee waiver system is discriminatory, particularly against lower middle income persons, because indigents have substantially greater access to the courts. Indigent litigants can file any number of lawsuits against an unlimited number of defendants simply because they have nothing to lose. Working poor litigants do not have such unrestricted access to the courts because they have to pay the fees.

A litigant even with a modest middle class income, at the national average of \$40,000 a year, would not be entitled to a fee waiver and would be required to pay a \$300 filing fee for each lawsuit and \$30-\$40 to serve each defendant. Such a litigant could not afford the nearly \$48,350 in filing and service of process fees that would be required to finance Cecelia Lebby's avalanche of litigation since 2007. In the absence of eligibility for a fee waiver, a middle class litigant has to self-regulate by balancing whether the lawsuit is worth the fees to file it. Fees associated with filing a lawsuit serve a dual purpose of funding the court and, at the same time, discourage frivolous litigation by encouraging serious evaluation of whether a lawsuit is worth the fees to file it.

Under the Connecticut Constitution, Art. I, Sec. 9, there is a fundamental right of access to the courts that has existed since 1818. The present fee waiver system appears to be intended to buttress this constitutional provision by promoting equal access to the courts so that no one is barred entry due to fees. In reality, however, the existence of a fee waiver actually promotes unequal access to the courts.

A person who pays the fees and costs of service does not just get the money to pay those costs out of thin air. Such an individual has to work for the money and the presence of fees encourage that litigant to self-regulate whether it is worth the initial investment to file a case. The concept of self-regulation is particularly important when it comes to the frivolous lawsuits filed by indigents. These cases are filed pro se because attorneys will not take these cases

because they are frivolous. The simple determination is whether a lawsuit is worth the initial investment to pay the filing and service fees and the time to litigate it. Indigents such as Lebby, Fusari, Klemonski and Traylor have no incentive to self-regulate what they file simply because the taxpayers are funding their litigation. In fact, under the present system, they have everything to gain because on the off chance they get a judgment they don't even have to reimburse the taxpayers for the waived fees.

Finally, it should be noted that the present system is discriminatory because a litigant paying filing fees and service of process fees loses those initial investments permanently. An indigent, on the other hand, can collect a judgment having never paid those fees and, even more egregiously, can collect without having to reimburse the taxpayers.

G. NO LAW OR CASE LAW INDICATES THAT MONEY HAS TO BE THE EXCLUSIVE FORM OF PAYMENT FOR COURT FILING AND SERVICE OF PROCESS FEES.

A reformed fee waiver system will pass legal scrutiny because the law is drafted in a way that access is preserved because no one is being barred under H.B. 6692 due to lack of money. Community service simply substitutes for money in cases where a person is indigent. Under the proposed legislation, the courts have the ability to even waive the community service requirement if it presents a hardship.

The fee waiver system was instituted as a result of a Connecticut case, Boddie v. Connecticut, that went all the way to the U.S. Supreme Court and was decided in 1971. The Boddie case was a class action on behalf of a number of females who were on welfare and could not afford to pay the filing fees to get a divorce. The Court held that due process prohibited a state from denying access to the courts solely based on inability to pay. However, the Court did not hold that money is the exclusive form of payment and that is why the proposal is reasonable, defensible and likely to withstand constitutional scrutiny. In Boddie, the litigants had no money and were told by the court clerks that they could not file without money. The present proposal simply provides an alternative form of payment to those who have no money.

A litigant such as Cecelia Lebby would still have access to the fee waiver if H.B. 6692 becomes law. The only difference is that she would have to do up to 20 hours of community service. If the community service presents a hardship, she can ask the court to even waive it. However, she would unlikely get a waiver of community service unless she could present a compelling reason why she can file eight-one lawsuits and forty-four appeals and yet cannot, for example, stuff envelopes at a hospital for 20 hours to get a waiver. The proposed reform would encourage indigents like Lebby to self-regulate and ask themselves if filing the lawsuit is really worth the expense of 20 hours of community service. In that sense, the proposed reform equalizes the system because those who have to pay the fees have to work for that money. They also have to ask themselves if the lawsuit they intend to file is worth the initial investment.

H. OPPONENTS OF THIS BILL WILL NOT TAKE THESE FRIVOLOUS CASES THEMSELVES.

There will, nevertheless, be opponents of this bill. Some of those opponents may be from agencies that provide legal services to indigents. It is, however, not unfair to ask those opponents if they will take the cases of Connecticut's serial filers of lawsuits under the fee waiver system. These agencies equally have stretched and scarce resources. While they may oppose H.B. 6692, they are not squandering their own resources to litigate the bizarre claims filed by the serial filers who are encouraged by fee waivers. On the contrary, these agencies carefully evaluate and scrutinize claims before they file a lawsuit on behalf of an indigent. The reasoning is simple, if a legal service agency provided resources to Connecticut's serial filers they would have no resources available to litigate cases in which someone has a valid claim. If the opponents are lawyers, then it is not unfair to ask them if they would take the cases of Connecticut's serial filers in their own private practices. The likely answer is that they could not do it without impairing their business because these cases are frivolous and will not generate any monies to pay for the initial investment or the staff required for the filings and research.

Opponents of this bill will claim that the issue is about equalizing access to the courts. Yet, this argument fails to recognize that indigents now have greater access to the courts than most. The only true way to equalize access to the courts is to either implement H.B. 6692 or to drop all fees entirely and make access to the courts entirely free for everyone. To do that, however, would increase the problem of serial filers. Presently, there is no data to suggest that those paying the fees account for Connecticut's serial filers of frivolous claims. The reason for that is that they have to self-regulate their claims because they are making an initial investment.

I. THE PRESENT FEE WAIVER SYSTEM TARNISHES THE REPUTATION OF THE JUDICIAL BRANCH.

The reputation of Connecticut's Judicial Branch is tarnished by the present fee waiver system. Indigents bringing these frivolous claims are not persuaded that their cases have no merit by virtue of the fact that no legal service agency or private attorney will take their cases. As a result, they file them pro se on fee waivers because they truly believe in them. When their cases lose or are dismissed, some have taken to the Internet to rail against the courts and the judges who made the rulings. Sylvester Traylor has a site in which he blames Judge Parker and the court system for the dismissal of his medical malpractice case. He has filed numerous complaints against court clerks, court marshals, judges and private attorneys. This system has encouraged him to believe that everyone is against him. As a result, employees of the Judicial Branch are made to suffer because the system provides an incentive to bring frivolous claims and when those claims fail the litigants are blaming the state and its staff for the results in a case that had no merit at the outset.

J. THE STATE IS ENCOURAGING PEOPLE TO WASTE THEIR LIVES ON FRIVOLOUS LITIGATION.

The present fee waiver system results in the unintended consequence of the state encouraging litigants to waste their lives on frivolous litigation. Time is equally a scarce resource. President Lincoln once characterized his time as his "stock and trade." The serial filers are being given false hope under the present system to waste their lives on the unproductive and fruitless pursuit of frivolous litigation. The serial filers have wasted years of their lives on frivolous lawsuits and that time could have been directed at more productive pursuits. The present system encourages not only false hope, but it encouraged beating the dead horse of a losing case all the way up to the highest courts. It is a disservice to the indigents themselves to give them this false hope.

K. THE PRESENT FEE WAIVER SYSTEM INSTILLS FEAR AND CHILLS FREE SPEECH.

The most egregious unintended consequence of the present fee waiver system is that it instills fear and chills free speech. In attempting to get support for this bill, I spoke with one head of a town and was told that this person would like to provide testimony to the committee, but fears that it will just result in yet another lawsuit. This is a response I have received time and again in making contact with the various victims of the serial filers. This was also the same response that Eric Parker and Monica Buchanan received in researching for their investigative stories that appeared on WFSB and WVIT. It is troubling that in a state which gave birth to fundamental freedoms the present fee waiver system instills such fear. It is not a fear based on the fact that these individuals have done wrong. Rather, it is a fear that they will have to bare costs they can ill afford.

III. CONCLUSION

The wisdom of the proposed reform is to put indigents on an equal footing with all others who do not have such unrestricted access to the courts as indigents have under the present system. A community service requirement will encourage self-regulation and self-reflection before filing a lawsuit. It provides a disincentive to file frivolous lawsuits. The proposed bill will benefit local communities and charities. It will ensure that the courts and state businesses are better directing their limited resources and not wasting them.

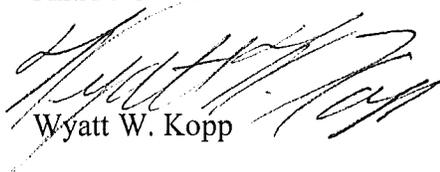
The fee waiver will still be available to litigants seeking it in cases where they want to file for money damages. If the community service requirement presents a hardship to an indigent litigant, there is even a provision for a waiver of the community service.

A prior bill to reform fee waivers failed when it was put up by the Judicial Branch last year. That bill would have allowed a judge to weigh the merits of the case before making a decision on a fee waiver application. The present proposal is superior to the one put up by the

Judicial Branch because it places the burden of evaluating a case on the litigant. Those who have to pay the filing fees already have to self-regulate and evaluate the merits of their own cases by virtue of the fact that they have to pony something up. The proposed reform puts indigents in that same position. In that sense the proposed reform advances equal access to the courts.

It is fitting for Connecticut to reform the very system that was inspired by Connecticut. The proposal is a creative and unique approach to address a problem that exist both here and nationally. The halls of the Connecticut capitol are decorated with history around every corner detailing the men and women here who took risks on new ideas and took creative and innovative approaches to solve unique problems. The proposed reform is unique and it will no doubt be watched nationally where it might also inspire reforms elsewhere. More importantly, the proposed reform is reasonable. Thank you for your time and please support advancing H.B. 6692 to become law.

RESPECTFULLY SUBMITTED,



Wyatt W. Kopp