

TESTIMONY OF SUE A. COUSINEAU RE: HB5505
BEFORE THE JUDICIARY COMMITTEE, MARCH 11, 2015

Representative Tong, Senator Coleman and Members of the Judiciary Committee,

My name is Sue Cousineau and I am offering testimony in opposition to Committee Bill Number 5505. The effect of this bill would be to significantly limit the Court in exercising its responsibility to independently serve the best interests of the children caught in the middle of their parents' conflict. This bill does NOT serve the children of the State of Connecticut.

The research is clear; parental conflict is not good for children. The State as *parens patriae* has an obligation to protect its most vulnerable citizens, to protect them from their parents who are so embroiled in conflict that they are unable to see the harm they are causing their children. Our Supreme Court has found that, "in a custody dispute, parents lack the necessary professional and emotional judgment to further the best interests of their children. Neither parent could be relied on to communicate to the court the children's interests where those interests differed from his or her own. . . . A parent's judgment is or may be clouded with emotion and prejudice due to the estrangement of husband and wife." (Internal quotation marks omitted.) Carrubba v. Moskowitz, 274 Conn 533 (2005) citing Carrubba v. Moskowitz, 81 Conn. App. 382, 402-403 (2004).

The primary goal of the Family Court System, which includes Judges, Counsel for Children, Guardians ad litem, Custody Evaluators and Family Relations Officers, is to protect the interests of children, children who are the victims of their parents inability to put their children's interests above their own, to act as reasonable parents do. This bill is not about those children, it is about their parents who, for a variety of reasons, are unable or unwilling to focus on their children's best interest, the minority of parents who can not or will not stop fighting for the benefit of their children.

Section 1 of this bill takes away the ability of the Court to independently assess the best interests of a child. It is focused solely on very specific, limited behaviors of the parent rather than the child. It is unnecessary as the Court is already bound to consider any or all of the four factors set forth in the proposed bill along with all other relevant information when determining the child's best interests regarding parental access of any type.

Section 2 is not intended to improve the Family Court System. It is merely a vehicle to gut the Supreme Court's very detailed and systematic analysis in *Carrubba*, regarding immunity granted to Counsel for Children and Guardians ad litem in custody disputes:

the primary reason that led the court to conclude that court-appointed attorneys for minor children are entitled to quasi-judicial immunity was that they perform functions integral to the judicial process in carrying out the purpose of § 46b-54—to assist the court in determining and serving the best interests of the child. *Id.*, 392–93. We traditionally have recognized that individuals who perform such functions should be accorded absolute, not qualified immunity.

...a grant of absolute immunity is both appropriate and necessary in order to ensure that the guardian will be able to "function without the worry of possible later harassment and intimidation from dissatisfied parents." ... One court noted its concern that "[w]ithout immunity, guardians ad litem would act like litigation lightning rods. Lawsuits would, in the words of Learned Hand, 'dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties.'

Carrubba v. Moskowitz, 274 Conn 533 (2005) internal citations omitted. This can not be the intended goal of the Legislature, to further empower a very litigious minority with another vehicle to continue the conflict that victimizes their children and prevents them from moving on with their lives.

There is no need to eliminate the immunity currently afforded Counsel for Children and Guardians ad litem because it is not available as a defense to actions outside the scope of their assigned duties. "Absolute immunity would not be available, however, when persons who would normally be accorded immunity "perform acts which are clearly outside the scope of their jurisdiction." *Cok v. Cosentino*, 876 F.2d 1, 3 (1st Cir. 1989)."
Carrubba v. Moskowitz, 274 Conn 533 (2005).

Additionally, the provisions in Section 2 regarding payment of costs and fees based on the outcome of a particular case interfere with the Court's equitable powers. Enactment of Section 2 would result in Counsel for Children and Guardians ad litem having to come out of pocket to challenge a vexatious or frivolous suit with no ability to recoup their costs and fees, a right every other civil defendant has.

Section 3 would result in litigants spending money on "evaluations" that would be of little use to a Court. There are very specific professional guidelines for Psychologists conducting custody evaluations. Stripping the Court of its ability to appoint evaluators that are trained, experienced and have the confidence of the Court is certainly not in a child's best interest.

Section 4 will increase the cost associated with litigation and lengthen the duration of the litigation, neither of which is in a child's best . Last session the Legislature put into effect requirements regarding a Guardian ad litem's ability to testify about a child's medical conditions. There has not been enough time to assess the outcome of that change never mind make additional changes. Enactment of Section 4 would put an unnecessary burden on the families to bring professionals in to testify about a child's health at a financial cost to them and an increase in the length of any trial. The testimony of any witness, including a Guardian ad litem is subject to the rules of evidence. These rules of evidence together with last year's legislation are sufficient to ensure protection for the parents while allowing the Court to hear important information about the children it is tasked to protect.

As someone who regularly acts as a Guardian ad litem and who co-chaired this Committee's Task Force To Study Legal Disputes Involving The Care And Custody Of Minor Children, I ask you to review the extensive report filed by the Task Force. The most important finding of the Task Force was the same as The Governor's Commission on Divorce, Custody and Children in their December 2002 report: "The divorce and custody determination process often takes too long and costs too much. Children are particularly vulnerable to harm during the divorce and custody determination process and often suffer afterwards from its economic and emotional costs." The proposals in HB5505 do not solve either of those problems. In fact, the proposals in HB5505 exacerbate those problems.

Thank you for your consideration and feel free to contact me if I can be of further assistance to the Committee.

Respectfully submitted,

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