

Hon. Lisa K. Wexler
Westport-Weston Probate Court
110 Myrtle Street
Westport, CT 06880
(203) 341-1100

Testimony

In Support of

SB 13- AN ACT REDUCING CERTAIN PROBATE COURT FEES.

To implement the Governor's budget recommendations

Finance Committee

February 26, 2016

Good afternoon, Senator Fanfara, Representative Berger, Senator Frantz, Representative Davis, Representative Steinberg, those members of the Finance Committee who have introduced similar bills and all the distinguished members of this committee. Thank you for this opportunity to deliver testimony on SB 13, An Act Reducing Certain Probate Court Fees, to implement the Governor's budget recommendations.

My name is Lisa Wexler and I am the Probate Judge for the Westport/ Weston District. While I support the proposal to restore a cap on probate fees, in good conscience I cannot do so without a restoration of the \$14,000,000 in funds which were removed in last June's budget, which was the reason the cap was lifted in the first place. It would be like biting off one's nose to spite one's face- a feel good measure that would consign the probate courts to slow starvation. I am here to explain why both measures are necessary as you deliberate over the entire budget.

You should know that I am passionately committed to the probate court system, to the way in which we operate- accessible to the public, with as little bureaucracy as possible, that delivers justice and guidance to those most in need every single day. It's why I ran for office, and why I am proud to serve.

The removal of the cap on probate fees was a shortsighted policy, necessitated by the complete defunding of the probate court system. The system needed to support itself somehow, so the legislature's answer was to lift the cap of \$12,500 and substitute it with a half percent fee on all estates, without any cap at all. There are at least three significant problems with this policy:

1. Lawyers are now advising their affluent clients to leave Connecticut, which in turn is depleting the overall tax base, because the people who leave are those who pay property taxes, income taxes, gasoline taxes, occupational fees- in short, the backbone of the Connecticut economy. This probate fee is being described as the tipping point. We simply cannot afford this exodus- it is a brain drain as well as an economic one.
2. 57 percent of our probate court docket consists of non-estate matters. The majority of what we do now consists of matters involving mental health proceedings, the intellectually disabled, those with dementia, guardianships and a variety of children's

matters. It is neither equitable nor reasonable to place the entire burden of this system on probate fees when they represent a diminishing amount of the kind of work we do. Please look at the attached chart.

3. It turns out that the legislative estimate of the amount of probate fees we would actually receive has fallen far short. For the period of June, 2015 through December, 2015, we are already millions behind schedule, as Paul Knierim testified. We are already in the process of slowly starving our system, and this is without any cap at all.

Funding the structure of a judicial branch of government is a little different than other governmental functions. Courts, and specifically the probate courts, existed in this state long before most other agencies were ever created. The functions of our probate courts are not discretionary. As a part of a co-equal third branch of government, probate courts have distinctive constitutional authority and significance.

Our problem in the probate court system is that most people really have no understanding of what we do. Any one of us may find ourselves in probate court one day for reasons we could not anticipate and which are beyond our control. I fundamentally believe that all the taxpayers of the state have a moral obligation to support this essential branch of our judicial system, not merely those who happen to die and owe probate fees.

People are in probate court because they are recently bereaved, or have a family member who is ill or disabled and cannot care for themselves. Or they have a baby grandchild with a mother who is addicted to drugs and they need to step in and ask us to appoint them to be guardians.

Probate Courts in CT have exclusive jurisdiction over mental health matters. For me, that means I am in St Vincent's Hospital in Westport on average once a week to preside over involuntary commitments, conservatorships, probable cause hearings where patients admitted in an emergency wish to be released, as well as hearings to compel medicines over the objection of a patient. In each hearing, that patient is entitled to a lawyer because grave civil rights are at stake. These people are often the poorest of the poor, cycling in and out of mental hospitals, often bereft of family and friends, and subsisting on state benefits.

Looking at the attached chart, you can see that in 2011, the probate courts waived fees of \$800,000; by 2016, the number is estimated to be \$1,500,000, almost double. In terms of the total mental health matters, we handled 14,434 cases in 2011; by 2015, the number of cases was 20,465, representing 22 percent of our workload.

Another area of growth in our caseload has involved children- including those with intellectual disabilities. These children are living longer and better. By the time they are 18, they are in our court so that the parents can become their guardians and conservators. If the parents are divorced, there is sometimes a full-blown custody fight.

Our population is aging; more people need conservators to manage their affairs. Many elderly find themselves without family or friends to serve on their behalf, necessitating the appointment of a stranger. Between the elderly and the mentally ill, conservator payments increased from \$2,100,000 in 2011 to \$4,500,000 estimated for 2016. The number of indigent conserved persons has increased by 75 percent.

In the past two weeks alone I had the following cases on my docket:

1. A 20 year old young man who is in a coma from an accidental drug overdose, whose parents were in my court to become conservators.

2. A young schizophrenic man who applied to get out of the hospital against medical advice. When that was denied, the hospital petitioned for involuntary commitment.
3. A child in a car accident whose mother felt the insurance company was not paying the proper amount of damages for her claim.
4. Two transgender name changes, one a minor.
5. A teenager who had smuggled himself into Texas from Honduras to live with his grandparents who were now applying to be his guardians.
6. An elderly man in a nursing home who wants to live in Utah with his son, but whose conservator here was concerned that the environment there was not suitable.

Because the social service aspect of our docket is actually the majority of what we do, the health of the probate court system should not depend upon the affluent and the fees their estates generate. The vast majority of the users of the probate court system are people who find themselves in situations that are terribly sad and over which they have no control. They have civil rights which must be protected under our constitution and cannot afford their own lawyers.

The legislature over time has increased the administrative burden of the probate court. We are required to review 706nts, the estate tax forms, for all decedents, regardless of whether the estate is even taxable. For name changes, our clerks have to ensure that the databases of deadly weapons and sex offender status have been checked and verified. The recent gun control legislation requires probate judges to inform conservators that it is now their responsibility to remove all guns from a conserved person's residence.

Since 2011, the probate court system returned money to the budget every year. The superior court system skews the opposite way from probate: 90 percent of their budget comes from the legislature, only 10 percent from fees. In probate court, we managed with 75 percent of our budget coming from fees at the old cap, and were only asking you for 25 percent. My total operating expense budget for my court is only \$14,000 per year, exclusive of salaries, and shared between two towns. By occupying space in our local town hall, we minimize expense while we are maximizing our accessibility to the public.

While this bill attempts to remove the most egregious and offensive piece of the June legislation, which is the cap on fees, if it is passed without restoration of funding it is basically consigning the probate system to a slow starvation, forcing us to beg for fees each year just to survive. Therefore, I urge you to fix what is wrong here: By all means, pass this bill to restore a funding cap so our probate fees can be removed from the conversation about all the reasons people want to leave our beloved state. And at the same time, restore the modest funding required to enable us to do our essential work, because the probate court is truly the people's court- and the people of our state need the system to be healthy.

