

**TESTIMONY OF**  
**ATTORNEY GENERAL GEORGE JEPSEN**  
**BEFORE THE JUDICIARY COMMITTEE**  
*February 24, 2016*

Good morning Senator Coleman, Representative Tong and distinguished members of the Committee. I am presenting testimony today in opposition to Senate Bill 143, *An Act Concerning State Agency Compliance With Probate Court Orders*. This bill, if enacted, would pose significant problems for state agencies and would have a direct, adverse impact on the case load burden borne by the Office of the Attorney General. It proposes an unprecedented expansion of probate court jurisdiction without sufficient consideration of the possible impacts. In particular, the bill would alter current law as to administrative agency proceedings under the Uniform Administrative Procedures Act (UAPA).

Section 1 of the proposed legislation provides that "[e]ach state agency shall recognize, apply, and enforce any order, denial or decree of a probate court that is applicable to any determination made by the state agency in a contested case." The potential effect of this provision is that if someone is aggrieved by an action of a state agency in a contested case, instead of complying with the statutory requirements of the UAPA and appealing the agency action to the Superior Court, the aggrieved person can, at some unspecified time, file an open ended petition -- not necessarily just an appeal of the agency action -- with the probate court, which would then decide whether or not the agency acted correctly.

It is well-established at common law that sovereign immunity bars all suits against the State except when the legislature has expressly and unequivocally waived immunity or when permission to sue has been granted by the Claims Commissioner in accordance with applicable statutory criteria and procedures. This bill, however, potentially gives probate courts the power to render a decree against the State through the reversal of an agency action in a contested case, which decree could include obligating the state to incur financial obligations for benefits to individuals. It is likely, therefore, that this bill will encourage many more litigants to proceed in probate court rather than follow the procedures of the UAPA. This process would alter the comprehensive administrative procedures enacted by the General Assembly through the UAPA and create confusion over the procedure for contesting a decision a state agency is statutorily authorized or directed to make.

The bill also appears to make state agencies the enforcement arms of the probate courts, without full consideration of the potential consequences. For example, the Department of Social Services ("DSS") is currently vested with the statutory authority to independently determine eligibility for public or medical assistance by interpreting the relevant state and federal statutes and regulations. This proposal raises the problem that a probate court decree -- which this proposed legislation requires DSS to follow -- could contravene a federal or state law or regulation with which DSS is equally obligated to comply. Moreover, the federal Medicaid statute requires Connecticut's Department of Social Services, as the state's "single state agency", to determine eligibility for the federally funded and regulated Medicaid benefits. If probate court determinations displace agency decision-making in such situations, it places the State at risk of violating federal law and losing federal funding. In other words, the result of these potential conflicts could threaten an agency's ability to comply with federal law, thereby potentially jeopardizing the State's ability to receive federal funding under certain programs.

The conflict which this bill would create is not hypothetical. Currently pending before the Connecticut Supreme Court is *Pikula v Department of Social Services* in which the plaintiff in the midst of a hearing on her eligibility for Medicaid before a department hearing officer went to probate court and secured a decision on the critical issue in its administrative hearing. The plaintiff then sought to require the Department to follow the Probate Court's decision. On appeal to the Superior Court from the hearing officer's refusal to do so, the court correctly found that the Department had primary jurisdiction over the issue in accord with state law and was not bound by the Probate Court's determination. The case is now awaiting a decision by the Supreme Court.

The proposal also would lead to a substantial increase in the probate courts' caseloads, as well as that of my office, and potentially make the State vulnerable to new monetary liabilities. Increased probate court proceedings may result in hearings that are duplicative of the contested case hearings held by the agencies and will inevitably increase expenses to the state by virtue of the allocation and expenditure of additional agency resources in connection with duplicative proceedings.

Another problem with enabling private parties to evade the requirements of the UAPA by pursuing relief in probate courts is that, under current probate procedures, this may all be accomplished without giving reasonable or timely notice to state agencies. In probate proceedings, state agencies are not always served with copies of complaints or summoned to appear and defend. Often, the agency will receive only a notice of hearing without being provided with a copy of the probate application or complaint that is the subject of the hearing. Petitioners in probate proceedings often do not contact agencies to inform them about petitions. As a result, if an agency is given notice of a proceeding in which it has no current involvement, with nothing more, it may not perceive the need to participate. For example, prior to submitting an application for agency determination, persons can seek a favorable decision from the probate court on issues critical to the agency's determination and within its legal and expert authority to resolve. The probate court determines the issue without the state agency's knowledge or participation. The probate court's decision under this bill would then be binding upon the agency. Even if notice was provided, where no application is pending before the agency, there would be no basis for the agency to know that the matter would have an impact on the agency's responsibilities. These relaxed notice requirements for initiating probate proceedings, as compared to superior court practice requirements and UAPA procedures, could deprive the state of adequate due process in probate proceedings, which under this bill could result in an order or decree with which the state agency is required to comply.

Lastly, the right to appeal a probate order does not adequately address these concerns. A state agency provided with a probate court decree or order with a demand for compliance or enforcement, or which adversely affects an action taken by an agency in a contested case, will be forced to appeal a decision based upon a record of proceedings in which it had no meaningful opportunity to participate. There may not even be a record at all, as records are not required in all probate proceedings.

In summary, this bill has the potential to significantly disrupt the careful mosaic of laws enacted by the General Assembly under the UAPA, as well as the jurisdiction and operation of the probate courts. The unintended consequences of the bill have not been fully assessed. Given the potential impact on the state and the state budget, it should be tabled until the full implications of the bill are identified in consultation with the state agencies that are implicated by its scope.

Thank you once again for the opportunity to comment on this proposal.