



Legislative Testimony  
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**Written Testimony Supporting House Bill 6531, An Act Concerning the Right to Counsel in Eviction Proceedings**

Senator Lopes, Representative McGee, Ranking Members Polletta and Cicarella, and distinguished members of the Housing Committee:

My name is Kelly McConney Moore, and I am the interim senior policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am submitting this testimony in support of House Bill 6531, An Act Concerning the Right to Counsel in Eviction Proceedings.

The ACLU-CT fights to protect access to fair and equal justice for all Connecticut residents. Every person, of every financial background, has fundamental human and legal rights that deserve protection and respect. Many fundamental rights protected by the Constitution are impacted by the criminal legal system, in which indigent defendants do indeed have a right to counsel. There are perhaps even more constitutionally protected rights which people assert or defend in civil courts, though; in these legal proceedings, people without significant assets are left to protect their rights unassisted.

In *Johnson v. Zerbst*, the U.S. Supreme Court held that the Sixth Amendment right to counsel in criminal proceedings included the right to have a lawyer appointed if the criminal defendant could not afford a lawyer.<sup>1</sup> In reaching this conclusion, the Court held that the purpose of the Sixth Amendment guarantee of counsel was to ensure that a person is not deprived of “his legal and constitutional rights” due to “his own ignorance” of them.<sup>2</sup> When the U.S. Supreme Court expanded this requirement to states in *Gideon v. Wainwright*,<sup>3</sup> it observed that “any person haled into court, who is

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<sup>1</sup> *Johnson v. Zerbst*, 304 U.S. 458 (1938).

<sup>2</sup> *Id.* at 465.

<sup>3</sup> *Gideon v. Wainwright*, 372 U.S. 335, 343-45 (1963).

too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”<sup>4</sup> This, the Court stated, is the only way to ensure the “noble ideal” of the U.S. that every person “stands equal before the law.”<sup>5</sup>

This safeguard of fundamental rights, though, has not been extended beyond the right to counsel in a criminal trial. Even in situations where everyday people are “haled into court” at the behest of the government, they are not provided with a lawyer. There is no right to counsel, for example, in

- immigration proceedings which can result in detention and/or deportation;<sup>6</sup>
- proceedings where the government seeks to separate parents and children;<sup>7</sup>
- numerous civil court proceedings wherein failure to meet obligations can result in criminal liability and incarceration;<sup>8</sup>
- domestic violence protective orders where lives are literally on the line;<sup>9</sup>
- guardianship cases, where older people or people with disabilities can have many of their liberties stripped from them;<sup>10</sup> and
- eviction cases, where people can lose the roof over their families’ heads.<sup>11</sup>

In 2016, Connecticut Supreme Court Chief Justice Rogers testified to the Judiciary Committee that in 85% of family cases, at least one party was not represented by an attorney, with 38% of appellate court cases and 25% of civil court cases having at least one *pro se* party.<sup>12</sup> Nationwide, experts estimate that 80% of civil legal needs for the

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<sup>4</sup> *Id.* at 344.

<sup>5</sup> *Id.*

<sup>6</sup> Ingrid Eagly & Steven Shafer, “Access to counsel in immigration court.” American Immigration Council Special Report, Sept. 28, 2016, *available at* <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>.

<sup>7</sup> *See, e.g.*, Washington Post Editorial Board, “You can lose your kids, home and freedom without ever seeing a lawyer. It’s a profound injustice.” Washington Post, Feb. 26, 2021, *available at* <https://www.washingtonpost.com/opinions/2021/02/26/noncriminal-cases-right-to-lawyer-representation/?arc404=true>.

<sup>8</sup> *See id.*

<sup>9</sup> *See id.*

<sup>10</sup> *See id.*

<sup>11</sup> *See id.*

<sup>12</sup> Testimony of Chief Justice Chase T. Rogers on S.B. 426, An Act Creating a Task Force to Improve Access to Legal Counsel in Civil Matters, Mar. 18, 2016, *available at* <https://www.cga.ct.gov/2016/JUDdata/Tmy/2016SB-00426-R000318-Chief%20Justice%20Chase%20T.%20Rogers%20-%20State%20of%20Connecticut%20Supreme%20Court-TMY.PDF>.

poor go unmet.<sup>13</sup> While many legal services organizations provide legal support for people who would otherwise not be able to have an attorney, their resources are limited and they cannot be asked to step into the role that the State should truly be filling – providing everyone with an attorney when fundamental rights are on the line.

The necessity of a lawyer is clear when comparing outcomes of self-represented people against people with attorneys. In immigration cases, for example, people with lawyers are 4 times more likely to be released from detention, 11 times more likely to seek relief from deportation, and twice as likely to obtain the immigration relief they sought.<sup>14</sup> In eviction proceedings, where 90% of landlords have legal counsel and only 10% of tenants do, tenants overwhelmingly lose cases, with lifelong effects.<sup>15</sup>

The right to housing is an important one in for Connecticut residents and one where the deck is stacked against tenants. Mandating that the state provide counsel to those who cannot afford it would go a long way towards establishing more equitable outcomes. We fully support that effort. Housing, though, is not the only place where a right to counsel should be established in this state. To the contrary, a right to counsel in immigration proceedings and a number of other civil legal proceedings that implicate fundamental rights like parenting, privacy, and autonomy, should also be established. We encourage this Committee, and the entire legislature, to work towards establishing that right.

Our justice system is not just – it is a truth that does not get spoken often enough. One step towards remaking our society as a more just one is to ensure that people can access lawyers when their fundamental rights are on the line. As one small step in that direction, we support House Bill 6531 and encourage this Committee to do the same.

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<sup>13</sup> “The next frontier in the criminal justice conversation.” Washington University in St. Louis School of Law, Aug. 8, 2016, *available at* <https://onlinelaw.wustl.edu/blog/right-to-counsel-criminal-justice/#Understanding>.

<sup>14</sup> Ingrid Eagly & Steven Shafer, “Access to counsel in immigration court.” American Immigration Council Special Report, Sept. 28, 2016, *available at* <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>.

<sup>15</sup> Heidi Schultheis & Caitlin Rooney, “A right to counsel is a right to a fighting chance.” Center for American Progress, Oct. 2, 2019, *available at* <https://www.americanprogress.org/issues/poverty/reports/2019/10/02/475263/right-counsel-right-fighting-chance/>.