



Testimony on House Bill 7222 (an act expanding the powers of the office of the attorney general)

Submitted by Scott Shepard, Policy Director

March 15, 2019

Good afternoon. My name is Scott Shepard. I am the Policy & Research Director for the Yankee Institute for Public Policy, Connecticut's free-market think tank. I submit this note in opposition to **House Bill 7222**.

Rights secured to the people of Connecticut by the state and federal constitutions are necessarily vital rights; they should be and are protected. It would not necessarily be illegitimate to extend to Connecticut's attorney general the power to intervene in some civil cases on behalf of plaintiffs in some set of narrowly constrained and objective and unbiased circumstances.

That is not what this bill proposes. Rather it appears to grant the attorney general a plenary power to intervene in civil and administrative cases and settlement proceedings between private parties without limitation or guidance about when to intervene and when to abstain.

This will open the door to potential bias and abuse. The power of the state is mighty. The legal firepower and financial weight of the state will put a heavy thumb on the scale in favor of plaintiffs when it is employed, and against the defendants against whom it is employed.

The concern is particularly pressing – and the power particularly subject to potential abuse – in this proposed bill, because this bill provides that should the Attorney General's Office prove successful upon bringing or intervening in a private suit, the office may seek, above and beyond any damages or penalties otherwise provided by law, “civil penalties not to exceed ten thousand dollars per violation, reasonable attorney's fees, investigation costs, [and] litigation costs in an amount to be determined by the court[.]”¹ This provision effectively swaps the American Rule of litigation costs – that each party bears its own – for the English Rule, which is that the loser pays. But it does so *only in one direction*, which is to say that defendants found liable in these civil actions will be burdened with these costs, but where judgment is in favor of the defendant and against the plaintiff and the Attorney General, the defendant will still have to bear the costs of having to mount a defense. This is grossly unfair and one-sided, and it therefore entirely undermines basic principles of the American justice system: a level playing field with rules applying equally in both directions.

¹ See House Bill 7222, at 2.

This unfairness is extended by the provision of the proposal that would make “*any*” evidence of a violation of a settlement agreement between the state and the party accused of wrongdoing “*prima facie* proof of violation of the applicable law or right in any action commenced by the Attorney General.” That is to say, if the Attorney General can adduce or plausibly assert *any* evidence of a violation of a settlement agreement, however feeble, then the court would presume a violation of *the underlying law* to have occurred, and *require the party accused to establish its innocence of the charge*. This absolutely flips the presumptions of innocence and non-liability – of law-abidingness – that are the keystones to the American justice system entirely on its head.

If the power to intervene or to stand in the shoes of plaintiffs, with all of the resources of the state aimed at a defendant, is to be granted to the attorney general, it must come with explicit restraints that will ensure that the attorney general uses this mighty power in constrained and objective ways, without any attention to political or any other extraneous considerations. The attorney general’s office cannot be granted a plenary writ to sue or to protect whomever it chooses at its sole discretion.

Moreover, it must respect the basic rules of American justice by offering the same cost shifting to successful defendants that would in this bill be awarded to the state should it persevere. And above all things it cannot make parties accused of wrongdoing responsible to carry the burden of proof that they have not violated the law.

The unconstrained, lop-sided and potentially punitive grant of power contemplated in this measure would be a stark retreat from a government of objective law into a government of subjective favoritism. It undermines the basic presumptions of the American legal system. It must be opposed.