



STATE OF CONNECTICUT
ATTORNEY GENERAL WILLIAM TONG

TESTIMONY IN SUPPORT OF HB 7222

Chairman Stafstrom, Ranking Member Rebimbas, Chairman Winfield, Ranking Member Kissel and distinguished members of the Judiciary Committee, thank you for the opportunity to testify before you today in strong support of HB 7222, *An Act Concerning the Duties of the Office of the Attorney General*.

At a time of increased anxiety and concern over widespread discrimination, hate crimes, and civil rights violations, Connecticut needs to take a stand. We can do that by passing HB 7222.

HB 7222 formally recognizes the Attorney General's role in combating hate and defending civil rights. It brings Connecticut into line with our sister states by formalizing the ability of the Attorney General to investigate and – where the evidence warrants – bring civil rights lawsuits to stop large-scale, systematic violations of existing constitutional and statutory rights.

HB 7222 helps make justice a reality for the residents of the Constitution State. The bill does not create any new substantive rights. Instead, it authorizes the Attorney General to enforce civil rights that have already been recognized by this legislature, by Congress, or by the courts. We have important civil rights protections on the books – like the Fair Housing Act, the Americans with Disabilities Act, the Civil Rights Act of 1866, and our state hate crimes provisions – all of which define what it means to be free people living in a society that values fairness and equal justice for all. But rights are only as meaningful as the remedies that we create for them. Without enforcement, our civil rights are just words on a page.

Across the Country, States Are Stepping Up to Protect Civil Rights

We are witnessing an erosion of federal civil rights protections.¹ The U.S. Department of Justice's Civil Rights Division – which used to investigate and litigate to protect civil rights in areas ranging from juvenile justice to voting rights – is opening fewer new investigations than at any time in the last 18 years.² The Department of Housing and Urban Development, too, is virtually out of the enforcement business: In fact, the Washington Post reports that HUD

¹ See, e.g., Vanita Gupta, Statement to the U.S. Commission on Human Rights (Nov. 2, 2018) ("Not only has this administration abdicated its responsibility to enforce federal civil rights laws, in many instances, President Trump has appointed individuals to lead federal civil rights offices who have devoted their careers to restricting civil rights or defending those who promote discrimination.").

² Rob Arthur, *Trump's Justice Department Isn't Enforcing Civil Rights*, Vice News (Feb. 23, 2018), https://news.vice.com/en_us/article/wj44y4/trumps-justice-department-isnt-enforcing-civil-rights.

Secretary Ben Carson "has only once used his authority as HUD secretary to scrutinize widespread housing discrimination..."³

In the face of the federal government's abdication of responsibility for civil rights enforcement, it is more important than ever for states like Connecticut to protect those whose lives and liberties are under threat.

Unfortunately, our ability to protect Connecticut residents is constrained because Connecticut lacks a statute explicitly recognizing the Attorney General's unique role in civil rights enforcement. We are an outlier compared to our neighboring states of New York, Massachusetts, and Rhode Island – all of which are among at least 22 states, ranging geographically and politically from Washington to Florida, that have recognized the authority of their Attorneys General to use civil litigation tools to combat discrimination, protect fundamental freedoms, and stand up for vulnerable residents.⁴ The trend is towards action, as states increasingly have realized that they can and must play a key role in protecting the rights of their residents. For example, Washington launched its civil rights division in 2015, and New Hampshire followed suit in 2017.⁵

When civil rights violations take place just across the state line in New York, Massachusetts, or Rhode Island, there is robust capacity to act. Our residents' rights deserve the same level of protection here in Connecticut.

How HB 7222 Works: Empowering the Attorney General to Protecting Civil Rights

HB 7222 clarifies the Attorney General's standing to conduct civil rights investigations, and where appropriate, initiate civil actions in state and federal court seeking damages and injunctions against bad actors who intimidate, discriminate, harass, and threaten our civil rights and freedoms. The Appendix to this testimony is an annotated version of the bill that explains the language, paragraph by paragraph.

Formally, HB 7222 is patterned after some of our sister states' most important and time-tested civil rights enforcement laws:

- Subsection (a), paragraph (1), positions the Attorney General to respond to hate crimes with civil suits for injunctions and damages. As we have discussed and agreed with the

³ Tracy Jan, *Ben Carson's HUD Dials Back Investigations into Housing Discrimination*, Wash. Post, Dec. 24, 2018, https://www.washingtonpost.com/business/economy/ben-carsons-hud-dials-back-investigations-into-housing-discrimination/2018/12/21/65510cea-f743-11e8-863c-9e2f864d47e7_story.html?noredirect=on&utm_term=.ae76b106cf40.

⁴ States whose Attorneys General have established civil rights divisions include AZ, CA, CO, DE, FL, IA, IL, MA, MD, NC, NH, NJ, NM, NY, OH, OR, PA, RI, VA, VT, WA, and WV. Washington, DC, also has a civil rights division.

⁵ Press Release, Attorney General Ferguson Dedicates Civil Rights Unit to Trailblazer Wing Luke (Sept. 15, 2015), <https://www.atg.wa.gov/news/news-releases/attorney-general-ferguson-dedicates-civil-rights-unit-trailblazer-wing-luke>; Holly Ramer, *New Hampshire Attorney General Adds Civil Rights Unit*, Concord Monitor, Dec. 14, 2017, <https://www.concordmonitor.com/New-Hampshire-attorney-general-adds-civil-rights-unit-14346836>.

State's Attorney, no part of HB 7222 would give the Attorney General criminal jurisdiction. Paragraph (1) closely tracks Massachusetts General Law Chapter 12 § 11h.

- Subsection (a), paragraph (2) authorizes the Attorney General to sue on behalf of groups of individuals who have suffered civil rights violations, helping to ensure that justice for vulnerable people in Connecticut does not depend on whether you can hire a lawyer. This subsection is intended to grant authority that parallels the New York Attorney General's powers under New York Executive Law § 63(12).

Importantly, engaging in civil rights work – which the Office can do within existing appropriations – is entirely consistent with the Attorney General's existing responsibilities. The Attorney General is the people's lawyer, responsible for using the law to fight for the rights, freedoms, and interests of Connecticut's people and its government. Sometimes, that means protecting the state in litigation that threatens to divert taxpayer dollars. And sometimes it means using government's power to protect our residents against civil rights violations.⁶

With HB 7222, the Attorney General Can Complement Existing Civil Rights Work

HB 7222 positions the Attorney General's Office to leverage its unique expertise and capacity as Connecticut's largest law firm to complement important ongoing civil rights enforcement efforts. The Office looks forward to actively partnering with our state's civil rights organizations and stakeholders in opportunities to advance and protect rights through litigation and policy development.

In particular, we look forward to further strengthening our strong partnership with the Commission on Human Rights and Opportunities (CHRO), even as we each have our own area of expertise and focus. As a rule, the CHRO holds administrative hearings in response to individual complaints of discrimination. Notably, under existing law, the Attorney General is already empowered to bring cases at those administrative hearings.⁷ But, traditionally, the CHRO's legal staff has investigated and prosecuted CHRO cases – and that tradition should continue.

Under HB 7222, the Attorney General's Office will bring new, complementary tools to the fight for civil rights. It will proactively investigate and litigate in state and federal court in response to patterns of large-scale civil rights violations and weigh in on national civil rights issues that affect Connecticut and our residents.

Protecting the Rights of All Connecticut Residents

⁶ The Attorney General's Office can engage in affirmative civil rights enforcement without detracting from its existing defensive work. Like any large law office – and like the many Attorneys General across the country that practice civil rights enforcement – the Attorney General's Office has internal rules and processes to identify and respond to ethical conflicts under the rules of professional responsibility.

⁷ See Conn. Gen. Stat. § 46a-84(d) (2018) (“The case in support of the complaint shall be presented at the hearing by the Attorney General, who shall be counsel for the commission, or by a commission legal counsel...”).

HB 7222 positions us to respond meaningfully to some of the most pressing issues of our day. We need to be able to investigate and – where appropriate – act when, to cite just a few recent examples from the news:

- The Islamic Center in New London receives fake poison in the mail, or Klansmen ride in Stafford Springs.⁸
- African-American and Latinx people in Hartford are denied safe, quality housing while the federal Department of Housing and Urban Development sits on its hands.⁹
- Immigrants in our cities and towns are subjected to large-scale, systematic wage theft.¹⁰
- Connecticut residents with disabilities fear being pushed out of jobs because a big box store has decided to reclassify their position without accommodation.¹¹

These are not hypotheticals. They are the kinds of threats to civil rights faced by people across Connecticut. And they are situations where investigation and civil action by a large, experienced law office are important to bringing justice and healing communities.

We cannot predict exactly what situations might call for intervention and enforcement by the Attorney General. But it may be helpful to look at some of the ways that Attorneys General in other states have enforced civil rights:

- *Religious Rights*: The Washington Attorney General reached a settlement that required the payment of damages and a change to hiring practices after an investigation revealed that an aerospace company "refused to hire Muslim applicants, engaged in religious and/or national origin harassment, discriminated against employees based on marital status, and retaliated against employees who opposed such unfair practices."
- *Disability Rights*: The California Attorney General entered into a settlement agreement with the University of Southern California, a private research university, to improve access to its campus transportation system for individuals with disabilities following an investigation into allegations that the transportation system failed to comply with state and federal law.

⁸Press Release, Council on American-Islamic Relations, CAIR-CT Urges Stepped Up Security Measures After White Substance, Hate Mail Sent to Connecticut Mosque (Sept. 21, 2018), https://www.cair.com/cair_ct_urges_stepped_up_security_measures_after_white_substance_hate_mail_sent_to_connecticut_mosque; Tina Detelj, *Hate Incidents Continue to Rise in Connecticut*, WTNH.com (Jan. 3, 2019), <https://www.wtnh.com/news/connecticut/new-london/hate-incidents-continue-to-rise-in-connecticut/1685304443>.

⁹Rebecca Lurye, *Lawmakers Say HUD Is Complicit in 'Inhumane' Conditions at Hartford Housing Project*, Hartford Courant, Mar. 11, 2019, <https://www.courant.com/community/hartford/hc-news-senators-touring-barbour-gardens-20190311-cbxcsurbyjfopiy7jugufxzjci-story.html>;

¹⁰See Megan Fountain, Unidad Latina en Accion, *The Connecticut Wage Theft Crisis: Stories and Solutions* (2015), available at <https://ulanewhaven.org/wp-content/uploads/2015/03/Wage-Theft-Report.pdf>.

¹¹R.J. Scofield, *Walmart, With Stores Throughout Connecticut, Eliminating Greeters*, Patch.com (Feb. 28, 2019), <https://patch.com/connecticut/westport/walmart-stores-throughout-connecticut-eliminating-greeters>.

- *Racial Discrimination:* The Washington State Attorney General signed an agreement with Facebook that legally binds the company to block the use of its ad-targeting tools to discriminate based on race, religion, sexual orientation, and other protected classes.
- *Gender Discrimination:* The New York Attorney General partnered with the Equal Employment Opportunity Commission to reach a settlement with Con Edison over gender discrimination and sexual harassment against women in field positions. Under the terms of the agreement, Con Edison agreed to reserve up to \$3.8 million to be distributed among eligible settlement group members; hired an independent consultant to evaluate compliance; and provided training on sex discrimination and harassment.
- *Workers' Rights:* In Massachusetts last year, the Attorney General won restitution exceeding \$1.47 million for more than 1,030 employees who had been subjected to wage theft, and the companies were fined a total of more than \$1.23 million.

Today, I ask you to join me in sending a clear message to victims of civil rights abuses across Connecticut: The Office of the Attorney General is your advocate, and we are on your side. The Constitution State should continue to stake our claim as a leader in protecting rights. HB 7222 is a step towards fulfilling our government's promise and responsibility to protect our residents.

Thank you once again for the opportunity to offer testimony about these important matters. Please do not hesitate to contact me with any questions or concerns.

Appendix: Annotated Language to HB 7222

Language	Notes
<p>(a) The Attorney General may investigate any allegation that a person has:</p> <p>(1) Interfered with or attempted to interfere with, by threat, intimidation or coercion, another person's exercise or enjoyment of rights secured by the state Constitution or the United States Constitution or by the laws of this state or of the United States, including, but not limited to, through the commission of an act that constitutes a violation of section 53a-181j, 53a-181k or 53a-181l of the general statutes; or</p> <p>(2) Repeatedly or, in a manner violating the public interest, subjected, or caused to be subjected, another person to the deprivation of rights, privileges or immunities secured or protected by the state Constitution or the United States Constitution or by the laws of this state or of the United States.</p>	<p>Subsection (a) authorizes action to protect the civil rights of Connecticut residents under limited and specific circumstances.</p> <p>Paragraph (1) empowers the Attorney General ("AG") to seek injunctions or damages to stop hate crimes and help victims. It largely tracks Massachusetts' General Law Chapter 12 § 11h, adding a specific reference to Connecticut's laws on hate crimes by intimidation.</p> <p>Paragraph (2) authorizes action when a Connecticut resident is subjected to repeated or especially significant violations of civil rights. This provision would not have the AG engaging with the run of complaints that are appropriately brought to the Connecticut Commission on Human Rights and Opportunities. Instead, the AG would focus on patterns and practices of violations with significant systemic impact.</p> <p>Paragraph (2) largely tracks 42 U.S.C. § 1983, the most widely-known civil rights cause of action under federal law. The AG's authority under this Paragraph would be similar to the authority granted by New York Executive Law § 63(12), which authorizes enforcement action for "repeated fraudulent or illegal acts." Like its New York equivalent, this Act does not create new substantive rights, but instead simply provides for enforcement action when an existing right is violated.</p>

<p>(b) In conducting investigations under this section, the Attorney General may issue subpoenas and interrogatories, and otherwise gather information, to the extent provided in, and subject to the provisions of, section 35-42 of the general statutes.</p>	<p>It is important for the AG to make educated enforcement decisions. That means carefully investigating before deciding whether to act.</p> <p>Subsection (b) empowers the AG to use common investigation tools – the exact same tools that the AG can already use when investigating possible antitrust violations under C.G.S. § 35-42 – before initiating a civil rights enforcement action.</p>
<p>(c) Whenever a person is alleged to be committing an act described in subdivision (1) or (2) of subsection (a) of this section, the Attorney General, in his or her discretion, may (1) intervene in or bring a proceeding before any appropriate agency, board or commission, and (2) intervene in or bring a civil action seeking appropriate relief.</p>	<p>Subsection (c) provides that civil rights enforcement actions can be brought in any forum that is otherwise available under existing law. This means the AG will have access to courts and administrative agencies that would normally be available to private plaintiffs raising the same claims.</p>
<p>(d) If the Attorney General brings a civil action pursuant to subsection (c) of this section, the Attorney General may (1) file such action in the name of the state and on behalf of persons affected in this state, and (2) seek injunctive or declaratory relief, compensatory or punitive damages on behalf of any aggrieved person to the extent authorized by applicable law, civil penalties not to exceed ten thousand dollars per violation, reasonable attorney's fees, investigation costs, litigation costs in an amount to be determined by the court and such other relief as may be available under the law.</p>	<p>Subsection (d) provides for the types of relief that the AG can seek in a civil rights lawsuit. The language here largely tracks Florida's civil rights enforcement provisions, Fla. Stat. § 760.021.</p>
<p>(e) In lieu of bringing a civil action under this section, the Attorney General may accept an assurance of the discontinuance of any allegedly unlawful or unconstitutional practice. Thereafter, any evidence of a violation of such assurance shall constitute prima facie proof of violation of the applicable law or right in any action commenced by the Attorney General.</p>	<p>Sometimes, the AG and the subject of the investigation may be able to come to an agreement on changes or reforms without the need for expensive and time-consuming litigation. This subsection would allow the AG to negotiate binding resolutions without filing suit. The language is adapted from New York Executive Law § 63(15), which gives the New York AG similar powers.</p>