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Rep. Maida Townshend  
Chairperson, House Government Operations Committee  
VIA E-Mail

Re: S.131 – Department of State's Attorneys Insurance Benefits & Collective Bargaining

Dear Representative Townshend,

It is my pleasure to offer both written and oral testimony regarding S.131. I am in the unique position of having started our unionization push as a Deputy State's Attorney (2006-2014), having administered our budget as SAS Executive Director (2014-2016), and now serving as the Windsor County State's Attorney (2016-present).

On balance, I support S.131, particularly as it applies to granting Deputy State's Attorneys, Victim Advocates, and Secretaries the right to bargain collectively with the SAS Executive Director on economic issues. Our employees are typically burdened by high student debt (it takes seven years of tertiary education to earn a J.D.), long office hours without overtime compensation, and after-hours duties again without compensation. They have, in years past, been subject to pay freezes at times when classified employees earned regular step increases. S.131 has the potential to remedy many of these economic problems.

The trick is to accomplish these goals without causing collateral damage to the criminal justice system. Firstly, one must recognize that the SAS Budget is already spread thin and cannot be expected to absorb increased payroll costs due to collective bargaining. A Fiscal Note is needed to identify the magnitude of the inevitable payroll increase, and a funding source needs to be identified to pay for that increase. Secondly, one must create a collective bargaining system that can be effectively administered. The two-tier bargaining system proposed by S.131 in which economic and non-economic issues are bifurcated and separately bargained at the state and local level, respectively, will not function in practice because the consideration for a non-financial concession (say, additional hours worked) is often financial (overtime pay). Lastly, we are still near the peak of the opiate and child protection crisis. More than ever, State's Attorneys need flexibility in the operation of their offices. Adding red tape at the local level will only make things worse. I will now discuss these topics in greater detail, referring to specific page and line numbers in the "Official as Passed by Senate" version of S.131:

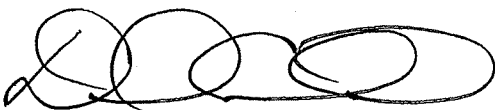
- **Request a Fiscal Note and Develop a Plan to Fund SAS Compensation Needs.** The FY2017 Budget for the State's Attorneys (SAS) is already approximately 85% personal services. Increased compensation costs due to collective bargaining would easily reach \$500,000 in FY18 if S.131 passes this year, assuming that annual step movement on our pay plan is implemented and afterhours pay is offered at each employee's prevailing hourly rate. These costs cannot be absorbed by the SAS non-payroll budget because the non-payroll budget is primarily nondiscretionary (ex: rent, fee for space, witness fees, required training). It is noteworthy that in FY17 our

counterparts at the Defender General had a \$3.5m (26%) higher budget, which allows them to administer a partially unionized workforce while preserving essential non-payroll budget priorities such as expert witnesses and specialized contract (non-union) legal services. *This Committee should obtain a Fiscal Note and develop a plan to fund the anticipated costs of collective bargaining before passing S.131.*

- **Develop a One-Track Bargaining System Focused on Economic Issues.** S.131 as proposed includes an economic bargaining track at the State level between the SAS Executive Director and all SAS employees statewide (p.9 lines 5-20). It then proposes a non-economic bargaining track between individual State's Attorneys and the employees within their respective offices (p. 9, line 21 through p.10 line 10). This two track system is bound to fail because the consideration for a non-economic concession is likely to be financial remuneration and vice-versa. One cannot bargain regarding "working hours" at the local level (p. 10, line 5) without also bargaining about compensation for those hours at the state level. Additionally, the non-economic bargaining items listed on Page 10 have the potential to seriously impact the operation of small and mid-sized offices in delivering essential services to crime victims, the court system, and the public. *This Committee should pass S.131 with p. 9, line 21, through p.10, line 10, stricken.*
- **Preserve Oversight of Deputy State's Attorneys.** Deputy State's Attorneys (DSAs) hold enormous power. They decide whom to prosecute and whom not to prosecute. They decide when to offer a plea bargain. They decide when to seek a period of imprisonment for a criminal defendant. They also decide when children need to be removed from a home that is believed to be unsafe. It is hard to understate the enormity of their power. Because DSAs are not elected, they are not directly accountable to the People. Rather, under current law DSAs are directly accountable to the State's Attorney (SA) and, by operation of statute, serve at the pleasure of the SA as political appointees. See 24 V.S.A. 363. As proposed, S.131 erodes the SA's power to remove and discipline DSAs by making reduction-of-force and disciplinary procedures a topic for local, non-economic bargaining. (Page 10, lines 6-10). Although I personally have great confidence in each of the employees in my office and the quality of their judgment, it is important as a policy matter for there to be a check-and-balance on the power of the unelected DSA by the elected SA. When, in a truly rare moment, a DSA engages in conduct that is unethical, unjust, or simply exercises extremely poor judgment, the SA must be able to respond immediately and remedy the situation. One cannot bargain for "the exercise of consistently impeccable professional judgment," but that is exactly what the system requires of DSAs. *For these reasons, the Committee should pass S.131 with p. 10, lines 6-10, stricken.*

In conclusion, S.131 has many positive features. In passing it, you will honor the hard work of our Deputy State's Attorneys, Victim Advocates, and Secretaries who – for quite some time – have not enjoyed the full suite of benefits and regular pay increases available to classified employees. It is my hope, however, that you can find your way to ensuring that we accomplish this goal in a manner that neither imperils the ability of SAS to meet its nondiscretionary financial obligations nor erodes our check-and-balance system on the power of employee prosecutors.

Best Wishes,



David J. Cahill  
Windsor County State's Attorney