



Re: HB2640.John Pollock.2-15-22.Pro

Date: February 15, 2022

To Chair Patton, Vice-Chair Ralph, Ranking Minority Member Carmichael, and the members of the Kansas House Judiciary Committee:

I am writing on behalf of the National Coalition for a Civil Right to Counsel (NCCRC) in support of HB 2640, which would abolish civil forfeiture and ensure that defendants are provided counsel for forfeiture proceedings. The NCCRC is an association of over 600 participants from 41 states, some of whom are in Kansas. The NCCRC works to advance and protect the right to counsel in cases involving basic human needs, and forfeiture proceedings implicate such human needs by putting at risk primary residences or money needed for subsistence living.

The stakes are undeniably high for defendants in these proceedings: when the federal government enacted H.R. 1658 (the Civil Asset Forfeiture Reform Act of 2000) to provide a right to counsel in federal civil forfeiture cases involving a primary residence, the House Judiciary Committee's report recommending passage observed that civil forfeiture is "so punitive in nature that appointed counsel should be made available for those who are indigent, or made indigent by seizure in appropriate circumstances."¹ The interplay between the criminal conviction and the civil forfeiture action creates complex legal issues that pro se defendants are ill equipped to address. The low burden of proof typically used in civil forfeiture proceedings and the fact that some forfeiture proceedings can precede a criminal conviction heighten the need for counsel to ensure the protection of essential rights. Yet such proceedings often fall in the gap between civil legal services and public defender services, leaving indigent claimants (who in many states are disproportionately people of color) to fend for themselves.

Recently, the Michigan Advisory Committee to the U.S. Commission on Civil Rights issued a report, [*Civil Rights and Civil Asset Forfeiture in Michigan*](#). The report recommended that "all property owners be afforded the right to court-appointed counsel in civil forfeiture cases where basic needs are at risk, such as shelter, sustenance, safety, health, or child custody" and that "the Department should require partnering state and local jurisdictions to uphold this right, and recommend the same of all law enforcement agencies." The report added that the lack of counsel in forfeiture proceedings significantly increases the risk of an erroneous deprivation and is likely to disproportionately impact communities of color.

Such a right to counsel is growing as a best practice. As shown on our website's [interactive map](#), West Virginia and South Dakota already provide such a right, and [bills similar to HB 2640](#) are pending this year in Massachusetts, South Carolina, and Tennessee. Moreover, other forfeiture

¹ H. Rept. 106-192 at 54.

bills containing right to counsel provisions have been introduced in recent years in Alabama, Arizona, Delaware, Illinois, Indiana, Pennsylvania, and at the federal level. Additionally, one indication that a right to counsel in forfeiture proceedings has gained broad bipartisan approach is the fact that the American Legislative Exchange Council (ALEC) has released [model legislation](#) urging not just the abolition of civil forfeiture, but the right to counsel in the resulting criminal forfeiture cases.

We thank you for this opportunity to provide this testimony and are happy to answer any questions the Committee may have.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Pollock".

John Pollock

Coordinator, National Coalition for a Civil Right to Counsel