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Representative Zack Fields
State Capitol Room 114
Juneau, AK 99801

Dear Representative Fields:

The problems with Secretary Arduin's proposal to substantially privatize the operation of Alaska's prisons are twofold:

- Abuses are systematically generated by the combination of private ownership, the profit motive, and the huge scale of national corporations such as CoreCivic, GEO, and a few others: absorbing smaller enterprises and re-inventing themselves, sometimes when their names (Wackenhut) are sullied by terrible publicity. The findings reported in the *New Yorker* article establish that for such corporations, cutting costs is the business model, and that paying settlements for inmates whose right to care has been violated appears less expensive than providing adequate care.
- Nevertheless, using private corporations for health care in jails and prison is far easier to defend than using such corporations to lock people up. The first is a service, the second punishment, which is not legitimately carried out for private gain.

The research assembled for this hearing demonstrates that inadequate medical treatment, violence among inmates and between staff and inmates, covering up abuses, and profiteering are rife in the private prison industry, and that there's no clear evidence that governments normally save money. Of particular note is a U.S. DOJ Inspector General report, a nonpartisan document that led the Department to discontinue using them, until Jeff Sessions reversed the decision. Despite this reversal, we know that criminal justice reform is not a partisan issue these days, nor should partisan interests affect how Alaska manages its prison populations.

Let us begin by conceding that many services for prisoners and other people in trouble are appropriately delivered by private contractors. I have worked in and around prisons for forty years--teaching, counseling, consulting, developing and evaluating programs, and publishing research--without being directly employed by a Department of Corrections. Early on I worked for my uncle, who had a private contract to treat prisoners in one prison where he had established good working relationships throughout the facility, under conditions of confidentiality that are often harder to achieve for prison employees. Many private service agencies are started and staffed by dedicated professionals—in most cases *non-profits*—and they play a vital role in our society and especially in caring for the most vulnerable among us. I met a few such professionals while evaluating the work of a *for-profit* offender treatment agency, which was swallowed up by GEO not long afterwards.

It is vital to understand that at the ground level, where the keys are turned, buttons pushed, and occasionally inmates are counseled and treated, prison work is not easy. (This is one reason governments are tempted to hire it out.) A small number of people are in charge of managing a much larger group of people who are locked up against their will and in most cases would rather be someplace else; generally from impoverished or distressed backgrounds and poorly educated, they're prone to using violence and manipulation to compete for respect and resources, and many of them have a long-standing hatred of authority. The work can be tedious, but serious risk is always in the air. For these reasons, there is no immunity from abuse and violence in state-run institutions, as history amply demonstrates. So we're not saying that staff and counselors in private prisons are, as people, more prone to incompetence or abusiveness than government employees. (Although it doesn't help if they're paid less, qualifications are lower, and supervision is minimal or incompetent or governed only by cost rather than effectiveness.) *Accountability* is the issue.

The state has a well-established legal duty and liability to protect people from injury while they are wards of the state, known as the *DeShaney* principle (*DeShaney vs. Winnebago Department of Social Services*, 1989). It's inherently difficult, however, to hold prison systems accountable for what happens to inmates: first, prison systems are constrained by their budgets and the state's sentencing laws, so they find themselves coping with conditions that can't control and they are the only agency that can't send their tough cases elsewhere. Second, prison systems are managing a high-risk situation, and courts have generally deferred to officials' judgment about how to do so. These problems are aggravated by placing a layer of corporate interests between us, our representatives, and what happens to prisoners; as we have seen in the reports we cite, abuses have gone unchecked, private prison corporations have tried to hide the evidence, and opportunities to pass the buck multiply.

Legal arguments against private prisons are based on the incidence of abuses, not on the fact that they're private. From a constitutional and philosophical perspective, however, abusiveness is intimately connected to the questionable constitutional legitimacy of private criminal punishment. "We, the People" adopt a democratic form of government to protect our freedoms. In exchange for the government's protection, we turn over to the government the power to punish and deter criminal behavior, so that all can be protected equally from criminals as well as from uncurbed vigilantism; rather, the power to punish is turned over to agents of the government, acting on our behalf, bound by solemn oath to protect our liberties. Next to capital punishment, putting someone in prison is the most severe deprivation the government is licensed to impose on people. For this reason, five of the ten amendments in the Bill of Rights—Four through Eight—restrict the government's powers to seize, confine, and punish. Criminal punishment is legitimate only if it follows due process and is *carried out* by agents of the state—the Executive Branch—acting on behalf of "We, the People," not private gain.

The connection between the doubtful legitimacy of for-profit private prison systems and their record of corruption and abuse is clear if we remember why our constitution places such an emphasis on due process when the state exercises its power to punish. The writers of our Constitution understood human imperfection and recognized that private motives, such as greed and personal vengeance, lend themselves to abuses of power. This is why the record of private prisons is so abusive: their very existence undermines the rule of law.

We haven't yet touched on the worst aspect of Secretary Arduin's proposal: that Alaska will be shipping more and more of its inmates to far-off locations, not just across a huge state but across a continent. To whom should their families address themselves if they hear their son is being coerced into joining a prison gang, their daughter is being sexually harassed by staff, their mentally ill brother is being held in solitary confinement rather than treated? Is their suffering included in an analysis of the likely costs of keeping people here rather than sending them to a private facility in what is, perhaps especially for Alaska Natives, an entirely alien world? Here lies the greatest potential for lasting damage, not only to prisoners but to Alaskan communities.

Describing the problems of private prisons doesn't put out the fire when you're strapped for cash, and don't know where to find the resources to scale up or improve your prisons. It's not easy to find alternative dispositions for prisoners while developing home-grown solutions, but other states have recently done so in response to the recession or court orders, while crime rates have continued downward. There are other ways to respond to a prison bed shortage than handing off your problem to an out-of-state national firm, with little understanding or concern for what makes Alaska special.

Alaska is both vast and small. People know each other, and have to rely on each other not only to survive but to get along, particularly in village communities. Running prisons is not easy, and it does take serious leadership and commitment to learning; but in Alaska there is a feeling that we have to depend on our neighbors. Prisoners will fare much better when prison staff know something about what their lives are like, and prisoners can maintain some connection with their families. Whom do we really want to lock up, for how long, what should we do with them while they're confined, what are our alternatives, and how do we bring them back into our communities? GEO is not going to answer those questions for you, but I'm confident that nobody is better equipped to find solutions that fit your communities than the honest people of Alaska.

Sincerely,

A handwritten signature in blue ink that reads "David Lovell". The signature is written in a cursive, flowing style.

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