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Public Testimony on HB 75

Chairperson, and Honorable Members of the Committee,

Thank you for allowing me to testify today regarding HB 75. I am here to highlight serious constitutional, legal, and policy concerns with this bill, including violations of privacy, due process, and equal protection, as well as conflicts with federal law and enforcement overreach. This bill, if enacted, is likely to face immediate legal challenges and could result in costly litigation for the state.

Key Issues and Legal Challenges

1. Fourth Amendment Violations – Privacy & Unreasonable Searches

Fingerprinting & Background Checks (Sec. 3, Point 12)

Legal Challenge: The requirement for fingerprinting and background checks for PFD administration staff constitutes an unreasonable search under the Fourth Amendment (*Katz v. United States*, 1967).

Argument: Courts have consistently ruled that mandatory fingerprinting must be tied to a compelling state interest and cannot be imposed without suspicion of wrongdoing (*Chandler v. Miller*, 1997).

Remedy: The state must limit fingerprinting to high-security positions and ensure strict procedural safeguards to protect privacy.

Confidentiality & Data Sharing (Sec. 4)

Legal Challenge: This bill expands the government's access to confidential PFD application data, allowing it to be shared with state and federal agencies without proper oversight.

Argument: The Fourth Amendment and federal privacy laws (e.g., Privacy Act of 1974) protect against unrestricted data collection and sharing. Courts have struck down laws that enable excessive government access to personal data (*Carpenter v. United States*, 2018).

Remedy: The bill must explicitly limit data sharing to only essential agencies and require encryption, security measures, and opt-out provisions for non-essential disclosures.

2. First Amendment Violations – Freedom of Association

Legal Challenge: The mandatory fingerprinting and background checks could be viewed as an infringement on the First Amendment right to freely associate. If certain organizations or political entities are disproportionately affected or targeted, employees might argue that their ability to freely associate or participate in certain activities (e.g., political affiliations or advocacy) is being hindered.

Legal Precedent:

NAACP v. Alabama, 357 U.S. 449 (1958): The Supreme Court ruled that forced disclosure of the identities of group members could violate the freedom of association.

Solution: Ensure that these background checks and data collection requirements do not disproportionately target individuals based on political affiliations or activities.

3. Fourteenth Amendment Violations – Equal Protection & Due Process

Discriminatory Absence Allowances (Sec. 2, Points 4, 17A-C)

Legal Challenge: The bill grants preferential treatment to certain professions (e.g., Congress members, Olympic athletes, Merchant Marine workers) while denying similar residency benefits to other citizens.

Argument: Courts have ruled that state benefit programs must be applied equally unless there is a compelling and non-arbitrary reason for distinctions (Reed v. Reed, 1971). The current absence rules are arbitrary and violate equal protection under the Fourteenth Amendment.

Remedy: The state must eliminate arbitrary absence classifications and apply uniform residency standards to avoid discrimination.

Lack of Due Process in Fraud Investigations (Sec. 3, Point 10)

Legal Challenge: The bill creates a fraud investigation unit with broad enforcement powers but fails to include procedural safeguards to protect individuals from wrongful accusations.

Argument: The Supreme Court has ruled that government enforcement mechanisms must have procedural protections (Goldberg v. Kelly, 1970). Without clear due process rights, the fraud unit could unlawfully target individuals and violate basic constitutional protections.

Remedy: The bill must include a formal appeals process, require written notifications of fraud accusations, and ensure independent review mechanisms before benefits are denied.

4. Supremacy Clause Conflicts – Federal Law Preemption

Merchant Marine Residency Preferences (Sec. 2, Point 4)

Legal Challenge: The bill extends state benefits based on employment in a federally regulated profession (the Merchant Marine), which may conflict with federal maritime laws.

Argument: The Supremacy Clause (Gibbons v. Ogden, 1824) prohibits states from enacting laws that interfere with federally controlled industries. Courts have ruled that states cannot impose additional residency requirements on federally regulated professions.

Remedy: The bill must remove or modify this provision to comply with federal maritime law.

Residency Definitions Conflicting with Federal Tax Laws

Legal Challenge: The bill modifies residency definitions for PFD eligibility, potentially conflicting with federal tax and benefit laws.

Argument: The Supreme Court has ruled that state residency laws cannot override federal tax definitions (*McCulloch v. Maryland*, 1819). By creating a unique state residency definition, this bill could cause conflicts with federal tax codes and result in legal challenges from federal agencies.

Remedy: The state must align residency requirements with federal tax laws to avoid legal conflicts.

5. Eighth Amendment Issues – Excessive Fines or Punishments

Potential Issue: If the bill introduces penalties or fines for failure to comply with the provisions, it could run afoul of the Eighth Amendment prohibitions against excessive fines or cruel and unusual punishment.

Legal Precedent:

Solem v. Helm, 463 U.S. 277 (1983): The Court ruled that the punishment for a crime must not be grossly disproportionate to the offense.

Solution: Ensure that any penalties are proportionate to the violation and do not impose excessive or unduly harsh consequences for noncompliance.

6. Impact on Public Employees' Union Rights

Potential Issue: If the bill significantly impacts public employees' privacy, employment terms, or investigations, it could have implications for their union rights under labor laws. Public sector employees are often protected by collective bargaining agreements, and any significant changes in their terms of employment (e.g., new fingerprinting or surveillance requirements) might violate those agreements.

Legal Precedent:

Abood v. Detroit Board of Education, 431 U.S. 209 (1977): Public sector employees have union protections related to their employment conditions.

Solution: Review whether the bill could conflict with public employees' rights under collective bargaining agreements or broader labor laws.

7. Vagueness and Overreach of Fraud Investigations

Potential Issue: The fraud investigation provisions, while discussed under the Fourteenth Amendment, might also face challenges for vagueness or overreach. If the bill doesn't clearly define "fraud," "misrepresentation," or the procedures for investigation, it could be argued that these provisions are overly vague and grant too much discretion to investigators without clear guidelines, violating due process.

Legal Precedent:

Kolender v. Lawson, 461 U.S. 352 (1983): The Supreme Court ruled that laws must be clear enough to provide notice to individuals of what is prohibited, and to avoid arbitrary enforcement.

Solution: Clarify the scope and procedures for fraud investigations to avoid arbitrary enforcement or confusion.

8. Potential Unintended Consequences for Vulnerable Populations

Potential Issue: Consider whether the bill might disproportionately impact vulnerable populations (e.g., low-income individuals, minorities, immigrants, etc.). For instance, certain requirements for fingerprinting or background checks could be difficult to comply with for people without access to necessary resources or identification.

Legal Precedent:

Griggs v. Duke Power Co., 401 U.S. 424 (1971): The Supreme Court ruled that employment practices that disproportionately impact certain minority groups can be discriminatory unless they are justified by a legitimate business interest.

Solution: Evaluate whether any provision in the bill might disproportionately impact historically marginalized groups and consider remedies to mitigate these effects.

Summary

This bill, as written, is unconstitutional, legally indefensible and highly vulnerable to constitutional challenges. If passed, it will face immediate litigation. It's legally problematic, and financially risky. If enacted, it will likely face immediate court challenges, including:

Fourth Amendment lawsuits over privacy violations.

First Amendment challenges concerning freedom of association.

Fourteenth Amendment lawsuits for unequal treatment and due process violations.

Eighth Amendment concerns regarding excessive penalties.

Supremacy Clause challenges for conflicts with federal law.

Legal actions against enforcement provisions, leading to significant legal costs for the state.

Public employees' union rights and potential conflicts with collective bargaining agreements.

Potential disproportionate impacts on vulnerable populations.

Supremacy Clause challenges for conflicts with federal law.

Civil rights lawsuits against the fraud investigation unit and employee rights violations.

If enacted, the state could waste taxpayer dollars defending lawsuits instead of improving PFD administration. I urge this committee to reject this bill or significantly revise it to comply with constitutional protections, federal laws, and equal treatment principles.

I ask challenge any of you to answer how is this a cost saving bill? Or how does this shrink the cost or size of government without overburdening the taxpayers?
If we have a budget issue now, this will not lower it.

I urge this committee to reject or significantly revise this bill to ensure it complies with constitutional protections, federal laws, and basic principles of fairness. It is blatantly unconstitutional, violates civil rights, and the Supremacy Clause.

I remind you, you are supposed to protect and defend the Constitution and your constituency, not overthrow the Constitution and violate our rights.

Thank you for your time.

Susan Allmeroth

Two Rivers

As always, Myself