Senate State Affairs Committee

Friday, March 15, 2024 - 8:00 A.M.

TESTIMONY ON: All Subjects

Written Testimony

Name (First & Last)	Subject	Manner Testifying	Representing Company/Organization	City	For / Against	Wish to Testify	District #
Dave Krick	S 1421	IP	Fare Idaho	Boise	For	Y	19

Thank you Chairman Guthrie and Committee Members
My name is Dave Krick, I reside at 175 Horizon Drive in Boise Idaho.
I am here today representing FARE Idaho, our association supports this bill.
FARE Idaho is a non-profit membership of farmers, independent food and beverage producers and independent retailers.
I am a partner in a couple of Boise restaurants, our businesses are members of FARE.
Our association participated in a collaborative effort to draft this bill with other stakeholder groups interested in this legislation. This bill keeps the intent of Senate Bill 1120 in place while making technical changes to the code that add clarity to questions that have been raised since the passage of S.1120.
We urge you to pass this bill out of committee and help to see it become law.

Thank you, I stand for any questions.

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Jim Manley	H 626	V	Pacific Legal Foundation	Boise	For	Y	19

THE IMPERATIVE TO END WRONGFUL JUDICIAL BIAS THE PROBLEM: SYSTEMIC COURT BIAS AGAINST CITIZENS

Courthouses around the country feature statues of the iconic Lady Justice. She is blindfolded and holds the scales of justice, signaling to those who enter the courthouse that the law is applied impartially, without regard to wealth, power, or other status. In other words, each party is equal before the law and all arguments will be given fair, unbiased consideration.

But when it comes to government regulatory agencies in most states, Lady Justice's promise falls flat. A truer depiction would be Lady Justice peeking from her blindfold with her thumb on the scale to favor government regulatory agencies and against ordinary people. For much of the past 75 years, judges have wrongly deferred to a regulatory agency's interpretation of laws it is charged with

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carrying out, regulations it created, and its factual determinations when it brings enforcement actions against ordinary Americans. In showing "deference," judges abdicate their duty to "say what the law is."

Judges also fail to render independent, impartial judgments when they put a thumb on the scale in favor of the government. This subverts the adversarial system of adjudication that has been central to Anglo-American legal tradition for centuries. Judges must not only hear both sides of a case before making a decision, they must listen without systematically favoring the government.

Although unlawful judicial deference, or bias, toward the government originated as a federal mistake, many state courts, including the Idaho Supreme Court, followed the federal lead and adopted the practice of overly deferring to state regulatory agencies. As the doctrine has been increasingly criticized and is losing favor on the national level, some states have already abolished improper judicial deference through state Supreme Court decisions and legislative action.

THE SOLUTION: STATE LEGISLATURES CAN END THE BIAS WITH TWO SENTENCES

H626 is a short bill that accomplishes much.

The first sentence simply instructs courts to interpret statutes and regulations de novo (legalese for anew or without bias). The second sentence instructs courts to first use customary tools of judicial interpretation (instead of presumptions in favor of the government), and then to interpret truly vague statutes or regulations in favor of liberty.

THREE REASONS FOR THE PRESUMPTION OF LIBERTY

Ending unlawful and unfair bias favoring the government (the first sentence above) would be a huge victory for state citizens, but there are three reasons why courts' resolving any remaining doubt in favor of individual liberty is justified.

1. It is a bedrock principle in law that vague contract provisions are interpreted against the drafter, who, in most cases, is the more powerful party. That also incentivizes the drafter to be clear in the future. The government is the drafter of laws and regulations.

2. The courts traditionally interpret vague criminal laws against the government because it would be unfair to imprison someone for an unclear law that didn't provide fair notice of what it required. Complex civil laws and regulations can just as easily become a snare for the unwary. There is no criminal or civil justice in penalizing someone for an unknowable rule.

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3. The end of government should be the protection of individual liberty. If the tie goes to the runner in baseball, the tie should also go to the people's residual rights. If the government wasn't clear about its command, individuals shouldn't suffer.

Brian Norman	H 626	V	Goldwater Institute	Boise	For	Y	19

My name is Brian Norman, and I'm the Director of State Affairs at the Goldwater Institute. The Goldwater Institute works in courtrooms, capitols, and communities nationwide to protect constitutional rights and empower individuals to live freer lives. I'm here today to speak in support of House Bill 626, which states that judges shall not defer to state agency interpretations of statutes or regulations and must instead interpret the law's meaning and effect do novo. Further, in such cases, the legislation also establishes a presumption favoring reasonable interpretations which limit agency power and maximize individual liberty if ambiguity still exists after exhausting the customary tools of statutory interpretation.

Across the nation, government agencies often apply overzealous interpretations of their own statutes and regulations that expand their power and trample on individual liberties. These generous interpretations are then upheld by exceedingly deferential administrative law judges and courts. This dynamic effectively turns administrative agencies into law-making entities that step into the constitutional domain of the legislative branch.

Even worse, many Americans do not have the resources or legal knowledge to adequately defend themselves in administrative hearings. Administrative law hearings can be intimidating venues, and negative outcomes in administrative hearings often have a permanent impact when a deferential decision is predictably upheld on appeal. This status quo is woefully biased in favor of the government, and it can irreparably harm Americans from all walks of life.

House Bill 626 levels the playing field by requiring courts to review agency actions without deference and interpret the relevant legal texts de novo. This provision will ensure that judicial officers are neutral arbiters of justice rather than parties biased in favor of administrative power. The legislation's presumption in favor of maximizing individual liberty will create a necessary check on the administrative state's ever-expanding shadow over our individual liberties.

In 2018, based on legislation developed by the Goldwater Institute, Arizona became the first state in the country to adopt this reform, and numerous other states have followed suit.

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Adopting House Bill 626 will protect your constituents' constitutional rights before deferential judges, reclaim the legislative branch's sole authority to create law and cement the proper separation of powers. The Goldwater Institute applauds the Idaho legislature for considering this necessary reform, and we urge you to vote yes on HB 626.