



Testimony Regarding House Bills 2576 and 2578
Holly Weatherford, Program Director
3601 Main Street Kansas City, MO 64111

Thank you Mr. Chairman, and members of the committee, for this opportunity to testify before you today in opposition of House Bills 2576 and 2578. My name is Holly Weatherford and I am the Program Director for the ACLU of Kansas and Western Missouri. The ACLU is a nonpartisan public interest organization representing members and supporters from across the state of Kansas dedicated to protecting the principles of freedom and equality set forth in the Constitution and in our nation's civil rights laws.

HB 2576 and HB 2578 seek to enhance the enforcement of federal immigration laws. In doing so, it raises serious constitutional and other legal questions, particularly about the extent to which federal law requires a uniform approach to immigration issues and preempts state laws interfering with federal immigration policymaking.

If enacted right now, these bills are virtually certain to be met with legal challenges brought by the federal government and/or other entities and individuals. One of the central arguments will be that the federal government has preeminent authority to regulate immigration matters, the federal immigration laws reflect a careful balance of many important considerations, and states should not be able to intrude on that and disrupt the delicate balance of competing interests that the federal laws strive to achieve.

Whether one likes that argument or not, it is an important and potent contention that courts will take very seriously. At this point, no one can reasonably say with any high degree of confidence whether HB 2576 and HB 2578 would be upheld or invalidated in the courts. The one thing that can be guaranteed, however, is that the litigation will be complex and expensive, and it will consume a significant amount of the time, energy, attention, and financial resources of Kansas state and local governments and officials. As a result, Kansas taxpayers ultimately will pay a substantial price for the legal fight over this legislation if it is enacted now.

Since Arizona passed its anti-immigrant law in 2010, five other states have enacted Arizona-style laws – Georgia, Utah, Indiana, Alabama and South Carolina. Lawsuits have been filed in all six states and the U.S. Department of Justice has also filed complaints in Arizona and Alabama.

(Please see chart documenting key provisions of these laws, their litigation status, and relevance to Kansas bills.)

There is a simple, sensible way to avoid litigation. Rather than hastily jumping into a costly legal tangle, Kansas can wait and see what happens in cases that involve similar laws enacted by other states. These cases are already well underway in courts, including the U.S. Supreme Court, and they will soon generate decisions shedding crucial light on the validity of laws like House Bills 2576 and 2578. No matter which way the courts rule, Kansas will gain valuable information that will enable a more informed decision to be made about the legal risks and questions surrounding this type of legislation.

In summary, the ACLU of Kansas and Western Missouri would respectfully urge members of this committee to approach this issue with shrewd caution and restraint. House Bills 2576 and 2578 reflect understandable frustration with the federal government's handling of immigration policy issues. But the fact that the federal government is undeniably meant to have a preeminent role in setting immigration policy for the nation is exactly what makes the validity of HB 2576 and HB 2578 so uncertain. Rather than rushing to enact these laws and steering the state and its taxpayers into an expensive storm of litigation, the wiser and more responsible course would be to wait for the benefit of the greater clarity that upcoming court decisions will bring.

House Fed & State Affairs

Date: 2-16-12

14

Main Provisions of State Anti-Immigrant Laws

Key Provision	AZ	AL	GA	IN	SC	UT
1. LEAs may/must check immigration status during any lawful stop or arrest (HB 2578) Before the U.S. Supreme Court	§2(B) (enjoined by district court; affirmed by 9th Circuit)	§12 (MPI denied by district court and 11th Circuit)	§8 (enjoined by district court)		§6(A) (enjoined by district court)	§3 (TRO by district court)
2. LEAs must check immigration status of people who are confined/convicted (or before their release from custody) (HB 2578)	§2(C) (MPI denied by district court in <i>US v. AZ</i>)	§§18, 19, 20 (MPI denied by district court and 11th Cir.)			§7 (MPI moot)	§3(1) (TRO by district court)
3. LEAs authorized to make warrantless arrests (*or transfer to ICE custody) (HB 2578) Before the Supreme Court	§6 (enjoined by district court, affirmed by 9th Circuit)		§8(e)* (enjoined by district court)	§20 (enjoined by district court)		§11 (TRO by district court)
4. Crime for failing to carry immigration registration docs (HB 2576) Before the U.S. Supreme Court	§3 (enjoined by district court, affirmed by 9th Circuit)	§10 (MPI denied by district court, but granted by 11th Circuit)			§5 (enjoined by district court)	
5. Crime for transporting or harboring an undocumented immigrant (HB 2576)	§4 Amending preexisting harboring & transporting statute; was challenged and on appeal (MTD)	§13 (enjoined by district court)	§7 (enjoined by district court)	§24 For purpose of commercial advantage or private financial gain.	§4 (enjoined by district court)	§10 (TRO by district court)

MPI = Motion for Preliminary Injunction TRO=Temporary Restraining Order MTD=Motion to Dismiss

14-2