



LATE
Testimony

BY EMAIL: HUSTestimony@Capitol.hawaii.gov
Committee: Human Services Committee
Hearing Date/Time: Thursday, February 12, 2009, 8:00 a.m.
Place: Room 329
Re: *Testimony of the ACLU of Hawaii in Strong Opposition to H.B. 661, Relating to Random Drug Testing*

Dear Chair Mizuno and Members of the Human Services Committee:

The American Civil Liberties Union of Hawaii (ACLU of Hawaii) writes in strong opposition to H.B. 661, which seeks to direct the Department of Human Services (DHS) to “undertake a study to determine the costs and benefits of instituting random drug tests as a requirement for participating in public assistance programs.”

Drug testing welfare recipients as a condition of eligibility is a policy that is scientifically, fiscally, and constitutionally unsound. In short, any such imposition of random drug testing would very likely be found to be unconstitutional and subject to legal challenge by the ACLU of Hawaii. Thus, we respectfully submit that there is no need for DHS to spend any of its resources studying this issue.

Random drug testing of welfare recipients is scientifically and medically unsound:

- **Welfare recipients are no more likely to use drugs than the rest of the population.**
 - According to a 1996 study by the National Institute of Alcohol Abuse and Alcoholism, differences between the proportion of welfare and non-welfare recipients using illegal drugs are statistically insignificant.¹
 - Before the Michigan policy was halted, only 10% of recipients tested positive for illicit drugs. Only 3% tested positive for hard drugs, such as cocaine and

¹ National Institutes of Health Press Release, *NIAAA Researchers Estimate Alcohol and Drug Use, Abuse, and Dependence Among Welfare Recipients* (1996), available at <http://www.nih.gov/news/pr/oct96/niaaa-23.htm>.

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amphetamines² – rates that are in line with the drug use rates of the general population.³

- Seventy percent of all illicit drug users (and presumably a much higher percentage of alcohol users), ages 18-49, are employed full-time.⁴
- **Science and medical experts overwhelmingly oppose the drug testing of welfare recipients.**
 - The Center for Addiction and Mental Health (CAMH) recommended against implementing random drug testing of welfare recipients. CAMH believes that there was little benefit to testing and that the stigma associated with testing impacted those on welfare negatively. They recommended that resources be allocated towards better training for government workers to detect signs of substance abuse and mental disorders, as well as to greater assistance and treatment to those who need help.⁵
 - In addition, mandatory drug testing of welfare recipients is opposed by the American Public Health Association, National Association of Social Workers, Inc., National Association of Alcoholism and Drug Abuse Counselors, American College of Obstetricians and Gynecologists, National Council on Alcoholism and Drug Dependence, Association of Maternal and Child Health Programs, National Health Law Project, National Association on Alcohol, Drugs and Disability, Inc., National Advocates for Pregnant Women, National Black Women's Health Project, Legal

² Brief of Plaintiffs-Appellees, *Marchwinski v. Howard*, 309 F.3d 330 (6th Cir. 2002) (No. 00-2115), *rev'd en banc*, 2003 WL 1870916 (Apr. 7, 2003).

³ Substance Abuse and Mental Health Servs. Admin., *2006 National Survey on Drug Use and Health*, available at <http://www.drugabusestatistics.samhsa.gov/nsduh/2k6nsduh/2k6Results.cfm#Fig2-1>.

⁴ Substance Abuse and Mental Health Servs. Admin., *Worker Drug Use and Workplace Policies and Programs: Results from the 1994 and 1997 National Household Survey on Drug Abuse 1* (1999).

⁵ Ctr. for Addiction and Mental Health, *Position Statement on Mandatory Drug Testing and Treatment of Welfare Recipients* (2000), available at http://www.camh.net/best_advice/mandatory_drug_tests2000.html.

Action Center, National Welfare Rights Union, Youth Law Center, Juvenile Law Center, and National Coalition for Child Protection Reform.⁶

Random drug testing of welfare recipients is fiscally irresponsible:

- **Drug testing is expensive.**
 - The average cost of a drug test is about \$42 per person tested,⁷ not including the costs of hiring personnel to administer the tests, to ensure confidentiality of results and to run confirmatory tests to guard against false positives resulting from passive drug exposure, cross-identification with legal, prescription drugs such as codeine and legal substances such as poppy seeds.
 - Another way to measure the cost is by counting what it costs to “catch” each drug user. Drug testing is not used by many private employers because of the exorbitant cost of catching each person who tests positive. One electronics manufacturer, for example, estimated that the cost of finding each person who tested positive was \$20,000, since after testing 10,000 employees, only 49 tested positive. A congressional committee also estimated that the cost of each positive drug test of government employees was \$77,000, because the positive rate was only 0.5%.⁸

⁶ Brief of Amici Am. Pub. Health Ass’n et al., *Marchwinski v. Howard*, 309 F.3d 330 (6th Cir. 2002) (No. 00-2115), *rev’d en banc*, 2003 WL 1870916 (Apr. 7, 2003) (available at http://www.aclu.org/FilesPDFs/marchwinskiamicusbrief1_22_01.pdf).

⁷ U.S. Dep’t of Educ., Robert L. DuPont, Teresa G. Campbell and Jacqueline J. Mazza, *Report of a Preliminary Study: Elements of a Successful School-Based Student Drug Testing Program* 8 (2002).

⁸ R. Brinkley Smithers Inst., Cornell Univ., *Workplace Substance Abuse Testing, Drug Testing: Cost and Effect* (Jan. 1992).

- **Mandatory drug testing is an ineffective means to uncover drug abuse.**
 - An Oklahoma study found that a questionnaire was able to accurately detect 94 out of 100 drug abusers. The questionnaire was also useful in detecting alcohol abusers, something drug tests fail to accomplish.⁹
 - Certain counties in Oregon experimented with drug testing on some welfare recipients, but the process was halted when it was found that drug testing was less effective in identifying drug abuse than less invasive, cheaper methods.¹⁰
 - Most types of drug tests fail to detect alcohol abuse – the most commonly abused substance among Americans – and are most likely to detect marijuana use since the active ingredient in marijuana stays in the body’s system longer than any other illicit substance. Therefore, drug tests often fail to identify people who are using more powerful, more addictive and more dangerous drugs like methamphetamine or cocaine, which exit the body’s system in a matter of hours or days.¹¹
- **Many states have rejected random drug testing of welfare recipients as impractical and fiscally unjustifiable.**
 - For example, New York and Maryland each considered a program to randomly drug test those receiving welfare, but abandoned the plan as not cost-effective, given that urinalysis is almost exclusively a barometer of marijuana use and that welfare recipients are required to undergo regular supervision, allowing for effective monitoring absent the cost and intrusion of mandatory drug testing.¹²

⁹ Oklahoma Dept. of Human Servs, “TANF: Focus on Substance Abuse” (March 5, 1998).

¹⁰ Ctr. for Addiction and Mental Health, *Forcing Welfare Recipients into Drug Testing and Treatment*, (2001) (available at http://www.camh.net/journal/journalv4no2/forcing_welfare_drugtests.html).

¹¹ LabCorp Inc., *Drugs of Abuse Reference Guide*, available at http://www.labcorpsolutions.com/images/Drugs_of_Abuse_Reference_Guide_Flyer_3166.pdf.

¹² Nancy Young and Sidney Gardner, *Implementing Welfare Reform: Solutions to the Substance Abuse Problem* (1997).

- Louisiana passed a law in 1997 requiring drug testing for welfare recipients. However, a task force set up to implement the law found more limited drug testing of individuals identified by a questionnaire to be more cost-effective than mandatory drug testing.¹³
- Alabama decided against drug testing because it found that focusing on job training programs was a more effective method of moving individuals off of welfare.¹⁴

Random drug testing of welfare recipients is very likely unconstitutional under both the U.S. Constitution and the Hawaii Constitution

- Michigan is the only state to attempt to impose drug testing of welfare recipients – a policy that was struck down as unconstitutional in 2003. The national ACLU challenged the mandatory drug testing program as unconstitutional, arguing that drug testing of welfare recipients violates the Fourth Amendment’s protection against unreasonable searches. The case, *Marchwinski v. Howard*, concluded when the U.S. Court of Appeals for the Sixth Circuit upheld a lower court’s decision striking down the policy as unconstitutional.¹⁵
- At the time Michigan’s drug testing scheme was struck down, the 49 other states had rejected such a program for a variety of fiscal and practical reasons: at least 21 states concluded that such a program “may be unlawful”; 17 states cited cost concerns; 11 states had not considered drug testing at all; and 11 gave a variety of practical/operational reasons.¹⁶

¹³ Robyn Meredith, *Opposition to Plan to Test Welfare Applicants For Drugs*, N.Y. Times, May 30, 1999.

¹⁴ The Lindesmith Ctr., *Drug Testing Welfare Applicants: A Nationwide Survey of Policies, Practices, and Rationales* (Nov. 1999).

¹⁵ *Marchwinski v. Howard*, 113 F. Supp. 2d 1134 (E.D. Mich. 2000), *aff’d*, 60 F. App’x 601 (6th Cir. 2003).

¹⁶ The Lindesmith Ctr., *Drug Testing Welfare Applicants: A Nationwide Survey of Policies, Practices, and Rationales* (Nov. 1999).

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- In halting the implementation of Michigan's drug testing law, U.S. District Court Judge Victoria Roberts ruled that the state's rationale for testing welfare recipients "could be used for testing the parents of all children who received Medicaid, State Emergency Relief, educational grants or loans, public education or any other benefit from that State."¹⁷ Indeed, any of the justifications put forth to subject welfare recipients to random drug testing would also by logical extension apply to *the entirety of our population that receives some public benefit and/or that is a parent*. It is clear that our constitution – and common sense – would object to the random drug testing of this large group of people, making the drug testing of an equally absurd category of people – welfare recipients – unconstitutional as well.
- Finally, the Hawaii Constitution provides greater privacy protection to individuals than does the U.S. Constitution. The ACLU of Hawaii is confident that any imposition of random drug testing of welfare recipients would run afoul of these state-specific protections.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,



Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii

¹⁷ Marchwinski v. Howard, 113 F. Supp. 2d 1134, 1142 (E.D. Mich. 2000), *aff'd*, 2003 WL 1870916 (6th Cir. Apr. 7, 2003).

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LATE
Testimony

TO: HOUSE COMMITTEE ON HUMAN SERVICES

FROM: PAMELA LICHTY, MPH, PRESIDENT

RE: HB 661 RELATING TO RANDOM DRUG TESTING – **IN OPPOSITION**

DATE: FEBRUARY 12, 2009

The Drug Policy Action Group opposes this bill which would mandate a study to explore the costs and benefits of drug testing welfare recipients.

This bill is likely unconstitutional, but we will leave it to the ACLU (on whose legislative working group I serve) and others to detail the potential legal problems.

As a matter of public policy, common sense, and smart allocation of resources, it's hard to believe that in this time of severe economic downturn where more people will undoubtedly be added to the welfare rolls, this body would consider instituting this new hurdle.

The saga of the proposed drug testing of teachers shows what any incredibly complex and costly endeavor this is. No matter what the purported benefits, this bill is mean spirited. The funding required would be better expended in training case workers to identify people with alcohol and or drug problems and assisting them in obtaining help.

For that matter our state still has a crying need for treatment of all kinds for all populations. If instituted, the proposed testing would likely find more marijuana users than anything else – and then what would be done to them? It would not even test for users of alcohol which is arguably far more problematic than many other drugs. – especially marijuana.

We urge this Committee to hold this measure and not venture down this road which would create enormous difficulties for DHS, cost the state thousands of scare dollars, and fail to address the legitimate drug and alcohol problems that many in our state - most of them not on welfare struggle with.

Thank you for the opportunity to testify.