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TESTIMONY IN OPPOSITION TO SENATE BILL 901

This bill is unconstitutional. It is contrary to the system of federalism to which this state, and all states are a part. The preamble to the Constitution spells out the duties of the federal government. One of them is to provide for the general welfare. Hence, in the event of an emergency or disaster, natural or man-made, this state would look to the federal government for aid, assistance, and protection

One of the other duties is to provide for the common defense. That means national security. Whether the threat to national security is due to the actions of one state or more, the federal government has the power and duty to act. There have been several acts of terrorism planned by both domestic and foreign nationals which have been prevented because of information shared by state officials and employees with the federal government. Likewise, there are such actions that could have been prevented if such sharing had taken place, such as 9/11. Those situations are matters of national security which is the province of the federal government. States and localities that have failed to cooperate endanger national security as well as that of their own citizens.

The posture of this state, as exemplified in this bill, is that it can set and clarify parameters in what it calls local and state participation in federal immigration enforcement efforts. The state and counties have taken the position that they are not required to cooperate or assist the federal government in the enforcement of immigration law.

However, there is a distinct difference between cooperating or assisting and impeding or obstructing the enforcement of federal law. This bill and several others codify impeding or obstructing enforcement by formalizing already existing policy. There is nothing in the Constitution that allows states or localities to pick and choose which federal laws it is going to facilitate or cooperate with.

Furthermore, under the supremacy clause found at Article VI of the Constitution, where there is conflict between the state law and the federal law, the latter takes precedence.

Neither this state or any state can give federal civil and criminal immunity to nor indemnify state employees who refuse to act in keeping with federal law. Therefore, neither state civil and criminal immunity nor indemnity will shield a person from federal sanction for refusing to provide information.

There are many examples of that fact. In 1957 Governor Faubus of Arkansas refused to follow a federal order to desegregate Central High School in Little Rock, Arkansas. President Eisenhower federalized the state national guard to facilitate the admission of nine Black students. In 1963 Governor George Wallace stood for days in front of the Foster Auditorium, then serving as the Administration Building at the University of Alabama, refusing to allow students Vivian Malone and James Hood to register.

After Wallace was asked twice by Assistant Attorney General Nicolas Katzenbach to move and he refused, President Kennedy federalized the state national guard. Upon that General Henry Graham was called to the University. He approached Governor Wallace, saluted him and said, "Sir, it is my sad duty to ask you to step aside under orders of the President of the United States. As is known, Wallace did so. Neither governor wanted to be jailed for contempt.

If this bill is passed and acted upon, the federal government, not the state, will have the last word.