



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

**LATE
Testimony**

**ON THE FOLLOWING MEASURE:
H.B. NO. 2792, RELATING TO MEDICAID.**

**BEFORE THE:
HOUSE COMMITTEES ON HUMAN SERVICES AND ON HEALTH**

DATE: Thursday, February 2, 2012 **TIME:** 10:00 a.m.
LOCATION: State Capitol, Room 329
TESTIFIER(S): David M. Louie, Attorney General, or
Lee-Ann N.M. Brewer, Deputy Attorney General

Chairs Mizuno and Yamane and Members of the Committees:

The Department of the Attorney General opposes this measure.

House Bill No. 2792 authorizes the Department of Human Services to provide certain specified medical assistance benefits to United States citizens who do not receive those same benefits through a “medical assistance program as provided under federal law.” It appears that this measure intends to provide a limited benefit package to United States citizens who are not receiving benefits from the federal Medicare or federal-state Medicaid programs, and excludes by omission similarly situated non-citizens.

This measure, if implemented, is likely unconstitutional because it appears to discriminate against non-citizens by denying them state-funded medical assistance solely on the basis of their citizenship or alienage.

The Fourteenth Amendment of the United States Constitution provides that “[n]o state . . . shall deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. Similarly, article I, section 5 of the Hawaii State Constitution provides that “[n]o person shall . . . be denied the equal protection of the laws.” The word “person” in this context includes “lawfully admitted resident aliens as well as citizens of the United States.” Graham v. Richardson, 403 U.S. 365, 371 (1971). “Under traditional equal protection principles, a State retains broad discretion to classify as long as its classification has a reasonable basis [i.e. rational basis review].” Graham, 403 U.S. at 371 (citations omitted). However, “classifications based on alienage, like those based on nationality or race, are inherently suspect

and subject to close judicial scrutiny” [i.e. strict scrutiny]. Id. at 372; Nyquist v. Mauclet, 432 U.S. 1, 7 (1977); Takahashi v. Fish and Game Comm’n., 334 U.S. 410, 420 (1948).

In undertaking this scrutiny, “the governmental interest claimed to justify the discrimination is to be carefully examined in order to determine whether that interest is legitimate and substantial, and inquiry must be made whether the means adopted to achieve the goal are necessary and precisely drawn.” . . . Alienage classifications by a State that do not withstand this stringent examination cannot stand.

Nyquist, 432 U.S. at 7 (citations omitted).

The plain language of this measure excludes non-citizens from a state-funded medical assistance benefit that is available to citizens. This is a classification based on nationality or alienage that is inherently suspect and subject to strict scrutiny. Therefore, if challenged, this measure would likely be struck down unless the State could show that its interest in excluding non-citizens from the benefit is legitimate and substantial, and that the means embodied in this measure are necessary and precisely drawn. We believe it is very unlikely that the State would be able to meet this burden.

Accordingly, we respectfully request that this measure be held in committee.