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DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
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February 4, 2015

MEMORANDUM

TO: The Honorable Dee Morikawa, Chairperson
Committee on Human Services

FROM: Rachael Wong, DrPH, Director

SUBJECT: **H.B. 1045 – PUBLIC ASSISTANCE; RESIDENCY REQUIREMENT**

Hearing: Thursday, February 05, 2015, 8:30 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of this bill is to require applicants and recipients of public assistance to be a resident of the State for at least 4 months.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) must oppose this bill due to the unconstitutionality of a durational residency requirement to receive public benefits as the provision violates the doctrine of "right to travel" guaranteed by the U.S. Constitution.

In *Saenz v. Roe*, 526 U.S. 489 (1999), the United States Supreme Court ruled that states were not free to condition receipt of financial assistance through the imposition of residency tests that limited benefits for newly arrived residents.

The Department defers to the Department of the Attorney General to provide further clarification on the constitutional issues involved.

Thank you for the opportunity to provide testimony on this bill.

Committee:	Committee on Human Services
Hearing Date/Time:	Wednesday, February 5, 2015, 8:30 a.m.
Place:	Conference Room 329
Re:	Testimony of the ACLU of Hawaii **in Opposition to H.B. 1045**, Relating to Public Assistance

Dear Chair Morikawa and Members of the Committee on Human Services,

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in **opposition to** H.B. 1045, Relating to Public Assistance.

This bill is unconstitutional. The United States Supreme Court has been clear that the government may not deny benefits – or offer less generous benefits – to recent arrivals to the State. *See Saenz v. Roe*, 526 U.S. 489, 505-06 (1999) (striking as unconstitutional a California law that denied TANF benefits to recent arrivals in the State); *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969) ("We do not doubt that the one-year waiting period device is well suited to discourage the influx of poor families in need of assistance. An indigent who desires to migrate, resettle, find a new job, and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute. But the purpose of inhibiting migration by needy persons into the State is constitutionally impermissible."), *overruled in part on other grounds by Edelman v. Jordan*, 415 U.S. 651 (1974).

The Supreme Court has unwaveringly held that any law that is enacted with the purpose of deterring in-migration faces insurmountable constitutional difficulties. *Hooper v. Bernalillo Cty. Assessor*, 472 U.S. 612, 620 n. 9 (1985) (quoting *Zobel v. Williams*, 457 U.S. 55, 62 n.9 (1982)); *Mem. Hosp. v. Maricopa Cty*., 415 U.S. 250, 263-64 (1974); *Saenz*, 526 U.S. at 506 ("such a purpose would be unequivocally impermissible"). H.B. 1045 is unconstitutional, and the ACLU of Hawaii respectfully requests that the Committee defer this measure.

Thank you for this opportunity to testify.

Daniel M. Gluck
Legal Director
ACLU of Hawaii

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 50 years.

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TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015

LATE

ON THE FOLLOWING MEASURE:
H.B. NO. 1045, RELATING TO PUBLIC ASSISTANCE.

BEFORE THE:
HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, February 5, 2015 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): RUSSELL A. SUZUKI, Attorney General, or
JAMES W. WALTHER, Deputy Attorney General

Chair Morikawa and Members of the Committee:

This bill would require that a person must be a resident of the State for four months before the person is eligible for public assistance or public housing benefits. The residency requirement created by this bill, if challenged, would likely be found to violate the Fourteenth Amendment of the United States Constitution and, therefore, the bill should be held.

In *Saenz v. Roe*, 526 U.S. 489 (1999), the U.S. Supreme Court held that a state cannot condition eligibility for public assistance on a durational residency requirement. The plaintiffs in *Saenz* were California residents who had newly arrived from other states. California's Temporary Assistance for Needy Families (TANF) program limited these new residents, for the year after their arrival, to the amount of financial assistance they would have received in their state of prior residence, if that amount was less than what California would provide. The court held that the restriction was a violation of the Fourteenth Amendment of the U.S. Constitution as an infringement on the right to travel.

Although the right to travel is not explicitly mentioned in the U.S. Constitution, the *Saenz* Court found that the concept was "firmly embedded in our jurisprudence." Id. at 498. The concept embraces three components:

> It protects the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.

Id. at 500. The right is so important as to be a "virtually unconditional personal right, guaranteed by the Constitution to us all[,]" and any restrictions on it would violate the equal protection clause "unless shown to be necessary to promote a *compelling* governmental interest." Id. at 498-499, quoting *Shapiro v. Thompson*, 394 U.S. 618 (1969) (emphasis in the original) (internal cites omitted).

Under the strict scrutiny standard applied by the court in *Saenz*, there would appear to be no compelling reason to justify a state's actions when it discriminates against a new resident. The Court rejected the idea that "a partial withholding of benefits constitutes a lesser incursion on the right to travel than an outright denial of all benefits" because "the discriminatory classification is itself a penalty." Id. at 504-505.

The Court also rejected any comparison to other areas in which a resident classification was upheld, such as when a state requires nonresidents to pay more for a hunting license, or restricts enrollment in a public college. Id. at 502 (internal cites omitted).

> Permissible justifications for discrimination between residents and nonresidents are simply inapplicable to a nonresident's exercise of the right to move into another State and become a resident of that State.

Id. at 502.

The plaintiffs in *Saenz* were new to the state of California but intended to reside there. The Court held that they had the right to be treated the same as long-time residents, especially given that their need for welfare benefits was neither related to the amount of time they had spent in the state, nor to the identity of their states of prior residence. Id. at 507.

The restriction created in this bill, although shorter in duration, may nonetheless be seen as more restrictive than the one year "penalty" imposed by California as described in the *Saenz* case. This is so because a family just moving to Hawaii would be ineligible for any public assistance at all for a four-month period during which they are trying to establish a new residence. Such a complete restriction would be even more likely to be seen as an impermissible penalty under the holding in *Saenz*. See, id. at 504.

It is fairly certain that any durational requirement of residency, as this bill would impose, would run afoul of the constitutional right found by the Court in the *Saenz* case. We respectfully recommend that this bill be held.