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Sent: Sunday, March 22, 2015 6:46 PM
To: JudTestimony
Subject: Response to Rep. Tong's question regarding H.B. 7028

22-Mar-2015

To: Representative Tong, Judiciary Committee

RE: Follow up to Public Testimony on H.B. 7028, Response to Rep. Tong's question

Thank you again for the opportunity to speak at the public hearing 20-Mar-2015.

Representative Tong - great question regarding what the difference is between asking (demanding) to see someone's pistol permit vs. a fishing license.

I responded to your question regarding how producing a pistol permit would be any different than producing a fishing license in the hearing that I believed that fish and game laws are administered differently and held to a different standard, though was not well versed on those differences. I researched what I could find on-line and consulted with a Conservation Officer. I was told that in purchasing your license to participate in that regulated activity, you consent to having to produce your license as well as search and seizure rules not applied outside this area. An example of the differences vs. regular law enforcement is found in SCOTUS' refusal to review *People v. Maikhio* in which the California Supreme Court upheld the use of evidence obtained from Maikhio's vehicle without a warrant.

In ruling against *Maikhio*, Chief Justice Tani Cantil-Sakauye noted that hunters and anglers engage in highly-regulated sports, so they have a diminished expectation of privacy. The court reasoned that the "intrusion upon privacy engendered by a game warden's stop of an angler or hunter to demand the display of his or her catch or take is relatively minor," and furthers the state's interest in conservation. A notable point is that fish and game are considered property of the state, so harvest is inherently a highly regulated activity, unlike simply appearing in public.

The California Supreme Court believes that there is a distinction between warrantless searches conducted for conservation purposes and warrantless searches conducted for the ordinary enforcement of criminal laws.

That was California, however from what I can determine the principles apply across states with minor variations.

As an aside, I do become uneasy when the justification offered for a new law is that of an existing law. Clearly not all laws withstand judicial scrutiny.

Without tracking too far off topic, I would like to reiterate that my objection to the proposed amendment in H.B. 7028 was never that of inconvenience. During the course of the hearing we heard some very compelling and emotional stories of being stopped by police. Not once did I hear anyone say "and what bothered me the most was that I was 15' late for an appointment". It was the principle that someone in a position of authority, with no RAS could put you in a position where you have to prove your innocence for your participation in a legal activity.

While this amendment targets legal gun owners I strongly encourage the committee to consider that it sets a precedence of granting unjustified powers to Law Enforcement that could well extend beyond someone obviously carrying a firearm. I fully understand the concerns of law enforcement officers and as I expressed, it makes perfect sense to want to vet someone carrying a gun. Unfortunately the same logic has been used to justify that it makes sense to stop and frisk in high crime areas or have officers stop people that have a bad "feeling" about. As we know, the 4th Amendment was to keep that balance of personal freedom and public safety.

In closing, let me say that during the course of the hearing, we heard considerable discussion around perception, frames of reference, and what it felt like to know you were doing no wrong and yet it didn't matter. The reason I included the

statistics comparing crime rates of carry permit holders versus police in my testimony was to emphasize a frame of reference of gun owners. When we use the term "legal gun owner" the data substantiates this claim. Yet this topic goes far deeper than statistics. When you are constantly treated with suspicion, mistrust, and irrational fear and generally held to standards not applied to the general public, something as seemingly innocuous as having to produce a permit for an officer really does become a matter of principle.

Best regards,

Thomas Maloney

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