



Administrative Office of the Courts

P.O. Box 4820, Portland, Maine 04112-4820

Tel: (207) 822-0792 FAX: (207) 822-0781 TTY: (207) 822-0701

Julia Finn, Esq.
Legislative Analyst

Tel: (207) 822-0767
julia.finn@courts.maine.gov

Judicial Branch testimony in opposition to LD 1656, An Act to Facilitate Compliance with Federal Immigration Law by State and Local Governments:

Senator Carney, Representative Kuhn, members of the Joint Standing Committee on Judiciary, my name is Julie Finn and I represent the Judicial Branch. I would like to provide testimony in opposition to LD 1656. Although the Judicial Branch is not opining on the immigration policy behind the bill, we are concerned enough about the complaint process outlined in the bill and the potential involvement of judicial marshals in being tasked with enforcing immigration law that we oppose this bill.

Our first concern is the problematic legal process outlined in § 26044 of the bill. It would require the Attorney General to investigate and then issue a legal "opinion" as to whether a violation of the statute has occurred. There does not appear to be any kind of adjudicatory process described or contemplated. The bill does not specify any consequences of a finding of a violation by the Attorney General. Moreover, the Attorney General's ability to issue legal opinions is contained in 5 M.R.S. § 195; the statute empowers the Attorney General to issue opinions on a question of *law* to certain entities, but it does not entitle the Attorney General to issue an opinion on a question of *fact*.

In addition, the bill purports to create a process by which the Attorney General's opinion may be appealed to the Superior Court. Appeals of agency action are generally governed by Maine Administrative Procedure Act and Rule 80C of the Maine Rules of Civil Procedure. Only "final agency action" as defined by 5 M.R.S. § 8002(4) is generally appealable. "Final agency action" is not only dispositive of all issues but must also be a decision "which affects the legal rights, duties or privileges of specific persons." *Id.* A mere opinion has no such effect. Indeed, the Maine Administrative Procedure Act makes separate provision for advisory rulings by agencies which are non-binding and not appealable. *See* 5 M.R.S. § 9001.

We also note that because the Attorney General's opinion appears to be only advisory, an appeal appears to ask the Superior Court to issue an advisory opinion, something the Superior Court cannot do. Only the Supreme Judicial Court is empowered to issue advisory opinions, and only "upon important questions of law, and upon solemn occasions, when required by the Governor, Senate or House of Representatives." Me. Const. art VI, § 3.

Our second concern is that the wording of the bill is not clear as to whether Judicial Marshals are included in the definition of “law enforcement agency” as written in the bill. The Judicial Branch respectfully requests that Judicial Marshals, including all law enforcement officers from other agencies when acting as Judicial Marshals, be specifically excluded from this bill.

Although Judicial Marshals are full law enforcement officers under Maine law, the primary purpose of the Office of the Judicial Marshals is to provide protection and security for judges, Judicial Branch employees and members of the public in a courthouse. Their function is not to investigate, apprehend people, or enforce criminal violations. Judicial marshals have no capacity to maintain custodial control of anyone while they wait for federal response. They also do not have the ability to directly access information systems such as “Triple I” (the Interstate Identification Index maintained by the FBI), the METRO system maintained by the state, or any other database containing the necessary information to appropriately detain anyone. For these reasons, the Judicial Branch submits this testimony in opposition to LD 1656.

Thank you for your consideration.