

Cato's expert witnesses inform committees on better policy

Congressional Testimony Brings Liberty to Capitol Hill

Part of Cato's mission is to provide a voice for the policies of liberty in Washington, DC, ensuring that freedom has a seat at the table. In April, numerous Cato policy experts provided testimony to congressional committees across a range of important topics.

On one day alone, April 28, Cato was represented before three different committees. Research fellow David Bier explained to the House Judiciary Committee's Subcommittee on Immigration and Border Security the byzantine labyrinth of barriers to legal immigration and the need to liberalize and rationalize these restrictive laws. As Bier noted, he was not new to the subcommittee, having previously worked to draft immigration bills for Rep. Raúl Labrador (R-ID), who was at the time vice chair (and later became chair) of the panel charged with overseeing America's immigration laws.

Bier addressed a common but uninformed question about immigration: Why don't immigrants simply "get in line" to come legally instead of becoming illegal immigrants? The answer is that they can't. Unlike almost all other areas of law, "all immigration is presumptively illegal unless immigrants prove that they fall within a few narrow exceptions based on U.S. sponsorship or selection, and most exceptions have hard numerical limits."

With prohibition as the default, it should be no surprise that those who have no legal pathway to follow resort to illegally crossing the border or overstaying their visas. The economic and moral costs are severe, including an aging population and the separation of American families through deportation.

The same day, Neal McCluskey, director of Cato's Center for Educational Freedom, testified before the House Committee on Education and Labor about federal education spending, particularly the large increase that has been seen during the pandemic.



In addition to noting the dubious constitutional basis for federal involvement, the bulk of McCluskey's testimony focused on the effectiveness of federal education spending and its dismal record of producing desirable outcomes. "Contrary to what may be a common impression, funding for American education has risen appreciably over time," he explained. Despite a tripling of per-student spending on K-12 since federal funding began in 1965, results as measured by test scores and other outcome metrics have remained stagnant at best.

While Bier and McCluskey were speaking to House committees, on the other side of the Hill Cato adjunct scholar David Kopel appeared before the Senate Judiciary Committee's Subcommittee on the Constitution to address the constitutionality of so-called red flag laws. These laws, enacted in 19 states and the District of Columbia, enable judicial orders for confiscation of firearms from individuals deemed dangerous.

While there may be some role for genuine cases of immediate danger, Kopel explained, these laws are severely deficient in respecting both Second Amendment rights and due process rights: "There are no states that have sufficient due process from start to finish."

The day before these three appearances, Ilya Shapiro, director of Cato's Robert A. Levy Center for Constitutional Studies, testified before the Senate Judiciary Committee's Sub-

committee on Federal Courts, Oversight, Agency Action and Federal Rights.

The hearing, called by Chairman Sen. Sheldon Whitehouse (D-RI), was largely aimed at criticizing some of the Supreme Court's decisions striking down some laws favored by Democrats, such as campaign finance restrictions that ran afoul of the First Amendment. Whitehouse has recently focused on denouncing conservative and libertarian filers of amicus briefs and strategic litigators, and the hearing was in particular targeting a supposedly improper use of "fact-finding" by the Court. Shapiro noted that, in his view, this reflects how "progressives are frustrated that there's a major institution they don't control."

As he explained, the Supreme Court taking cognizance of underlying facts is neither new nor improper and has generally been uncontroversial. Though as an appellate court, the justices do not engage in fact-finding in the sense usually understood for trial courts, it is not uncommon "to explore the practical consequences of potential rulings, to develop doctrine that goes beyond the case at hand, and just rhetorically to buttress arguments."

In testifying before Congress, Cato's scholars not only help inform legislators but also bring their research and analysis to a broader audience with an impact on the national debate. ■