

# **TESTIMONY**

of

**Chuck Canterbury**  
**National President**  
**of the**  
**Grand Lodge, Fraternal Order of Police**

on

**H.R. 4391, the “Public Servant Retirement Protection Act”**

before the  
**Subcommittee on Social Security**  
**Committee on Ways and Means**

**20 July 2004**

Good morning, Mr. Chairman, Ranking Member Matsui, and distinguished Members of the House Subcommittee on Social Security. My name is Chuck Canterbury, National President of the Fraternal Order of Police. I am the elected spokesperson of more than 318,000 rank-and-file police officers—the largest law enforcement labor organization in the United States. I am here this morning to advise you of our support for H.R. 4391, the “Public Servant Retirement Protection Act,” which would repeal the Windfall Elimination Provision (WEP) and replace it with a more equitable, individualized calculation of Social Security benefits.

The Fraternal Order of Police has been at the forefront of an important effort by public employees to repeal both the WEP and the Government Pension Offset (GPO). In May of last year, I appeared before this Subcommittee to testify in favor of one of the F.O.P.’s top legislative priorities, H.R. 594, the “Social Security Fairness Act,” which would repeal both of these inequitable provisions in current law.

This morning I want to confine my remarks to the Windfall Elimination Provision and its effect on retired law enforcement officers to demonstrate the importance of the “Public Servant Retirement Protection Act”—why it is needed and how it will help law enforcement officers.

Under the current WEP formula, law enforcement officers who served communities which are not included in the Social Security system may lose up to sixty percent (60%) of the Social Security benefit to which they are entitled by virtue of secondary or post-retirement employment which required them to pay into the Social Security system. This sixty percent (60%) is a lot of money, especially when you consider that the officer and his family were likely counting on that benefit when they planned for retirement.

While this provision affects all public employees who are outside the Social Security system, the F.O.P. has always maintained that the WEP has a disparate impact on law enforcement officers for several reasons. First of all, law enforcement officers retire earlier than employees in many other professions. Owing to the physical demands of the job, a law enforcement officer is likely to retire between the ages of 45 and 60. Secondly, after 20 or 25 years on the job, many law enforcement officers are likely to begin second careers and hold jobs that do pay into the Social Security system. Even more officers are likely to “moonlight”—that is, hold second or even third jobs throughout their law enforcement career in order to augment their income. This creates an unjust situation that too many of our members find themselves in: they are entitled to a State or local retirement benefit because they worked 20 or more years keeping their streets and neighborhoods safe, and also worked at a job or jobs in which they paid into Social Security, entitling them to that benefit as well. However, because of the WEP, if their second career resulted in less than twenty (20) years of substantial earnings, upon reaching the age they are eligible to collect Social Security, they will discover that they lose sixty percent (60%) of the benefit for which they were taxed! Actuarially speaking, I doubt many officers will live long enough to “break even”—that is, to collect the money they paid into the system—let alone receive any “windfall.” These men and women earned their State or local retirement benefit as public employees and they paid Social Security taxes while employed in the private sector. How is this a windfall?

I think it is clear that Congress did not intend to reduce the benefits of hard-working Americans who

chose to serve their States and communities as public employees and then went on to have second careers or worked second jobs to make ends meet. After all, when Social Security was established in 1935, it intentionally excluded State and local employees. And though most public employees are now in the Social Security system, fifteen (15) States—Alaska, California, Colorado, Connecticut, Georgia (certain local governments), Illinois, Louisiana, Kentucky (certain local governments), Maine, Massachusetts, Missouri, Nevada, Ohio, Rhode Island, and Texas—which remain outside the Social Security system. It is these approximately seven (7) million public employees that need the help of Congress.

When the WEP was enacted in 1983, it was part of a large reform package designed to shore up the financing of the Social Security system. Its ostensible purpose was to remove a “windfall” for persons who spent some time in jobs not covered by Social Security (like public employees) and also worked other jobs where they paid Social Security taxes long enough to qualify for retirement benefits. Yet the actual effect of the provision has had a profoundly negative impact on low-paid public employees outside the Social Security system, like law enforcement officers.

To the Fraternal Order of Police, this is a matter of fairness. The WEP substantially reduces a benefit that employees had included and counted on when planning their retirement. The arbitrary formula in current law, when applied, does not eliminate “windfalls” because of its regressive nature—the reduction is only applied to the first bracket of the benefit formula and causes a relatively larger reduction in benefits to low-paid workers. It also overpenalizes lower paid workers with short careers or, like many retired law enforcement officers, those whose careers are split inside and outside the Social Security system.

The repeal of the Windfall Elimination Provision has elicited no organized support, because I believe that the overwhelming majority of Members of Congress agree with the position of the Fraternal Order of Police, which is that the current law is unfair to public employees. Yet despite this agreement, the estimated costs for a full repeal of the WEP are considerable and I believe that this is the primary reason that such proposals garner a great deal of support, but little attention. Bluntly put, the WEP has not eliminated a windfall for individuals who did not earn it—it has resulted in a windfall for the Federal government at the expense of public employees.

This is why I believe that H.R. 4391, introduced by Representative Kevin P. Brady (R-TX), Howard L. Berman (D-CA), Howard P. “Buck” McKeon (R-CA), Sam Johnson (R-TX), Michael Michaud (D-ME), and you, Mr. Chairman, is so important. It is an excellent first step in correcting the inequity of current law and represents a commendable compromise between those who justly believe that public employees are being treated unfairly and those who are concerned about the potential fiscal consequences of repealing the WEP.

The legislation we are discussing here today would repeal the Windfall Elimination Provision and replace it with an individualized calculation of Social Security worker benefits based on an individual’s entire work history. Under the legislation, Social Security benefits would be calculated as if all the worker’s earnings were subject to Social Security taxes, using the standard benefit formula. To ensure Social Security benefits are based only on Social Security wages, the benefit would be multiplied by the percent of earnings subject to Social Security taxes. Current retirees and workers who have non-Social Security wages in or before the year following enactment will receive

the higher of either their benefit under current law or their benefit calculated under this bill.

The “Public Servant Retirement Protection Act” will change Social Security law to treat our nation’s public employees much more fairly and the Fraternal Order of Police is proud to offer the measure its support.

Mr. Chairman, I want to thank you and the other Members of this distinguished Subcommittee for the chance to appear before you today. It is my hope that you and the Subcommittee will mark-up and pass H.R. 4391 in the near future. I will now take any questions you may have.