



# FRATERNAL ORDER OF POLICE

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Testimony of  
**Chuck Canterbury**  
National President  
Fraternal Order of Police

on H.R. 594, the "Social Security Fairness Act"  
before the House Subcommittee on Social Security



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 305,000 rank-and-file police officers—the largest law enforcement labor organization in the United States. I am here this morning to share with you the views of the members of the FOP on the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO) provisions in current Social Security law.

The Fraternal Order of Police, by a vote of its delegates at our National Biennial Conference in 1997, has designated the repeal of the WEP and GPO as one of its top legislative priorities and we strongly urge this Subcommittee to consider and pass H.R. 594, the “Social Security Fairness Act.” The FOP had the privilege of testifying before this Subcommittee in May 1998. We did so again in June 2000, when Past National President Gilbert G. Gallegos testified on this same issue. It is our hope that the third time is the charm.

The “Social Security Fairness Act,” introduced by Representative Howard L. “Buck” McKeon (RCA), would repeal both the WEP and GPO. The bill already has one hundred and eighty-three (183) cosponsors, drawing strong support from both sides of the aisle. It is our hope that Congress will take a serious look at the manifest unfairness of the WEP and GPO and act to correct them by passing this bill. Ultimately, this legislation is about fairness to the State and local employees who paid for and ought to receive their Social Security benefits.

Let me begin by explaining the impact of the WEP on retired police officers. Simply put, 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.

The FOP contends that this provision 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, 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—remain outside the Social Security system. It is these 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. However, we can now clearly see that the WEP was a benefit cut designed to squeeze a few more dollars out of a system facing fiscal crisis. The fallout of this effort has had a profoundly negative impact on low-paid public employees outside the Social Security system, like law enforcement officers.

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. This provision 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.

Let me now discuss the other aspect of the McKeon bill, which would repeal the Government Pension Offset (GPO). In 1977, Federal legislation was enacted that required a dollar-for-dollar reduction of Social Security spousal benefits to public employees and retired public employees who received earned benefits from a Federal, State, or local retirement system. Following a major campaign to repeal the provisions in 1983, Congress, which was looking for ways to reduce the fiscal pressure on the Social Security system, adopted instead the Government Pension Offset, which limits the spousal benefits reduction to two-thirds of a public employee’s retirement system benefits. This remedial step falls far short of addressing the inequity of Social Security benefits between public and private employees. This “offset” provision should have

been repealed in 1983 and might have been were it not for the fiscal condition of the Social Security system.

The new GPO formula reduces the spouse's or widow(er)'s benefit from Social Security by two-thirds of the monthly amount received by the government pension. For example, the spouse of retired law enforcement officer who, at the time of his or her death, was collecting a government pension of \$1,200, would be ineligible to collect the surviving spousal benefit of \$600 from Social Security. Two-thirds of \$1,200 is \$800, which is greater than the spousal benefit of \$600 and thus, under this law, the spouse is unable to collect it. If the spouse's benefit were \$900, only \$100 could be collected, because \$800 would be "offset" by the officer's government pension.

In nine out of ten cases, this completely eliminates the spousal benefit even though the covered spouse paid Social Security taxes for many years, thereby earning the right to these benefits. It is estimated that approximately 349,000 spouses and widow(er)s of State and local employees have been unfairly affected by the Government Pension Offset. Moreover, these estimates do not capture those public employees or retirees who never applied for spousal benefits because they wrongly believed themselves ineligible. According to the Congressional Budget Office, the GPO reduces benefits for some 200,000 individuals by more than \$3,600 a year. Ironically, the loss of these benefits may cause these men and women to become eligible for more costly Federal assistance, such as food stamps.

The present system creates a tremendous inequity in the distribution of Social Security benefits. The standard for this narrow class of individuals—retired public employees who are surviving spouses of retirees covered by Social Security—is inconsistent with the overall provisions of the Social Security Act and does not apply to persons receiving private pension benefits. This imbalance exists even though Congress, through ERISA standards and tax code provisions, has more direct influence over private employers than public employers. Clearly, this is an issue that Congress must address.

The need to repeal the WEP and GPO is related to an issue recently debated on the floor of the House. On 2 April, the House considered H.R. 743, the "Social Security Protection Act," for the second time. The legislation had previously been considered by the House on 5 March, but failed to obtain the two-thirds majority necessary to pass under a suspension of the rules. The crux of the legislation aimed to crack down on fraud and abuse in Social Security programs by strengthening protections for vulnerable recipients dependent on representative payees to manage their financial affairs. The bill would prohibit fugitive felons and probation/parole violators from receiving Social Security disability benefits and enhance the ability of the Inspector General to fight fraud. The bill also contained the text of the FOP-backed H.R. 134, legislation authored by Representative Ron Lewis (R-KY), a Member of this Subcommittee, which would add Kentucky to the list of States permitted to operate a separate retirement system for certain public employees. We strongly supported this language and the overall intent of the legislation.

However, the FOP did object to Section 418 of the bill which would close a “loophole” in the Government Pension Offset (GPO) that enables some public employees, mostly teachers, to spend their last day of employment in a position in which they would pay into Social Security. Despite having worked their entire career in a non-covered position, a single day in a covered position is sufficient for them to avoid the benefit cuts which would have otherwise been incurred under the GPO. This practice is very recent and I do not know if law enforcement officers are making use of this loophole, or even if it is possible for them to do so in any jurisdiction in the country.

Representative Gene Green (D-TX) offered an amendment in the nature of a substitute which would have stripped out Section 418 of the bill. The FOP supported this amendment, but it was ultimately defeated on a 196-228 vote (Roll Call Vote No. 100). In our view, the GPO is unfair to begin with, thus there is no margin on “fixing” any loophole in that provision.

I am concerned that Congress continues to look for ways to save money for the Social Security system by cutting benefits earned by State and local employees. This is not right and it is not fair. The Federal government has a commitment to these men and women that must be honored.

I also want to speak to the advocates of mandatory participation in the Social Security system by all State and local employees. This is not the way to solve the inherent unfairness of the WEP or GPO, nor is it a sound fiscal or retirement policy for those States and localities which are better off outside the Social Security system. Mandatory inclusion in Social Security must be seen for what it is—a scheme to require participation for all employees currently outside the system— thus covering the expected shortfall with a huge influx of new tax dollars.

If the Federal government imposes mandatory Social Security participation, it severely compromises the financial solvency of existing pension and retirement plans into which these employees contribute. These plans, which are often designed and tailored with the public safety employee in mind, deliver a greater benefit to their participants than does Social Security.

Additionally, the cost to States, localities, and the individual employees would be immense. The employee would be required to pay 6.2% of his or her salary into the Social Security trust fund. This amount would be in addition to the contribution already paid by the employee into the State or local retirement system. The employer would have to match the employee’s contribution— another 6.2% cost to the employing agency for each employee. And that, too, would be in addition to whatever matching contribution must be made by the employer into the existing State or local retirement system.

Clearly, the damage that would be done to State and local governments and the families of the employees cannot be overestimated if the Federal government forces them to pay a new tax of 12.4%. Collected data shows that the first year cost to employers—local and State governments—to cover newly hired employees only would

be over \$771 million. The newly hired employees would be responsible for an equal amount, making the cost of the first year of coverage over \$1.5 billion. The total annual cost to employers for covering employees not currently in the Social Security system would be \$8.5 billion. When the employees' share is counted, that amount rises to over \$17 billion per year.

The result of this is obvious: less take home pay for the employee and cut backs in services, equipment and other expenditures on the part of State and local governments. Police departments and other law enforcement agencies already stretch every dollar to the limit to meet homeland security burdens. Mandatory participation would mean huge new costs that will devastate their budgets.

Federally mandated participation in Social Security is not a minor issue. Such a mandate would adversely affect millions of employees and impose billions of dollars in additional costs to State and local governments. Many retirement and pension plans for public sector employees have been specifically designed and refined on the assumption that local governments would not be required to participate in the Social Security system. This was a reasonable assumption since local governments have never been required to pay into the system. An important consideration for law enforcement and other public safety officers is a much earlier retirement age than other, more typical, government employees. Local and State retirement plans take this early retirement into consideration—Social Security does not.

Sometimes, proposals sound good on the surface, but after careful examination are revealed to be unsound policies with damaging consequences. We believe that mandating the inclusion of all public sector employees into the Social Security system falls into this category. It is wrong to change the rules sixty-eight (68) years later because the Federal government is looking for an easy way to fund Social Security without making hard choices. The State and local governments who chose not to participate in Social Security did not create this problem, nor did the nearly four million employees who do not pay into the system. But those States and localities would be paying a hefty price for their previous decision to create their own retirement plans. Destroying the retirement programs of these hard-working Americans and raiding the budgets of State and local governments should not be part of the Federal government's solution.

The President's Commission to Strengthen Social Security (CSSL) rejected the mandatory participation scheme in its final report issued on 21 December 2001. Congress should do likewise.

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 will call on the Fraternal Order of Police for its help and support when you consider H.R. 594, the "Social Security Fairness Act."



# NATIONAL FRATERNAL ORDER OF POLICE

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17 June 2003

The Honorable E. Clay Shaw, Jr.  
Chairman, Subcommittee on Social Security  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman,

Per your request, I am submitting my answers to the written questions you posed in your letter of 28 May.

I want to thank you again for giving me the opportunity to testify before your Subcommittee on 1 May, and for this opportunity to provide you and the Subcommittee with additional information about the views of the more than 306,000 members of the Fraternal Order of Police. The repeal of the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO) is a critically important issue for law enforcement officers, who are disproportionately affected by them.

If I can be of any further assistance, or provide any additional information, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,

Chuck Canterbury  
National President

- 1) **The GPO and WEP have been law for roughly twenty years, yet many are shocked to learn of their existence when they are ready to collect benefits. Please describe the efforts of the Fraternal Order of Police to educate members on these provisions. If your organization is not engaging in widespread member education campaigns, why not? How would you explain why so many members are unaware of these provisions?**

Members of the Fraternal Order of Police are aware of these provisions and the National FOP continues to educate its members about the potential negative impact that these benefit cuts can have on their retirement plans.

In August 1997, the delegates at the 53rd Biennial National Conference adopted a resolution making the repeal of the Government Pension Offset (GPO) and Windfall Elimination Provision (WEP) a top legislative priority of the FOP's National Legislative Program. This was due in large part because of the success we have had in making our members aware of the reductions they face when they become eligible to apply for Social Security benefits. Since that time, the FOP has been very involved in supporting various pieces of legislation in an effort to correct the unfairness of the current law and regularly update our membership as to our efforts. Our organization has also testified on this issue before the Subcommittee on Social Security in three of the last four Congresses: May 1998, June 2000 (submitted written testimony), and May 2003.

- 2) **Do you believe the Social Security Statement misleads many public employees? If so, what changes to the Social Security Statement would you recommend?**

The Social Security Statement is not misleading, but it is not entirely clear as to the individual impact of the GPO and WEP benefit cuts, nor does it indicate if the individual is affected by them. The language on the sample Social Security Statement on the website of the Social Security Administration related to this point is as follows:

**“(3) Your benefit amount may be affected by **military service, railroad employment, or pensions earned through work on which you did not pay Social Security tax.** Visit [www.socialsecurity.gov/mystatement](http://www.socialsecurity.gov/mystatement) to see whether your Social Security benefit amount will be affected.”**

The affected employee must research how his benefits will be affected, and he may not do this until he begins to plan his retirement at the end of his working career.

The FOP would advise making the information on the Social Security Statement more clear by emphasizing that State and local employees face a reduction in Social Security benefits. Perhaps a supplemental Statement, similar to the special insert provided to those aged fifty-five (55) and older, could be provided to all State and local employees, explaining how the WEP and GPO will affect them and their families.

- 3) Most organizations testifying at the hearing advocated a repeal of the GPO and WEP. However, this would be extremely costly and would cause Social Security to run cash flow deficits and exhaust the trust funds more quickly. Given Social Security's and the financial pressures, are there other options of reform that you could support?**

The Fraternal Order of Police appreciates the complexity of this issue and the financial pressures faced by the Social Security trust fund. However, we do not see any compelling reason why State and local employees should have their benefits cut because a Federally mandated program is managed into periodic solvency crises. Nor do we agree that restoring fairness to the system spells fiscal doom for the Social Security trust fund.

It is not right or fair to perpetuate inequitable reductions on benefits earned by public employees in order to extend the life of the trust fund for a few extra years. After all, the State and local governments who chose not to participate in Social Security did not create this problem, nor did the employees who do not pay into the system. Penalizing them is not a solution in the long or short term.

Any Social Security reform considered by Congress must include a repeal of the GPO and WEP and must reject any scheme to mandate participation in Social Security by those local and State government employees currently outside the system.

- 4) Public servants feel they are treated unfairly under Social Security because they are paying into a public pension instead of Social Security. However, your organization, and others that testified, oppose mandatory Social Security coverage for newly-hired State and local workers for several reasons, such as the government pension plan meets employees' special needs, especially with regard to early retirement, and mandatory coverage could jeopardize the pension plan's funding. What would your organization think about allowing State and local workers in jobs not covered by Social Security to voluntarily choose coverage on an individual basis, where employees would pay both the employer and employee portion of the payroll tax?**

Public employees feel they are treated unfairly, not because they participate in a public pension plan, but because Federal law cuts their benefits significantly if they worked or choose to work in a second job or career in which they were forced to pay a Social Security tax on that income. It should be no surprise that public employees are angry when they discover they cannot receive the full amount of the benefit for which they were taxed.

The Fraternal Order of Police does indeed oppose mandating participation in Social Security for those currently outside the system. The President's Commission to Strengthen Social Security (CSSS) rejected the mandatory participation scheme in

its final report issued on 21 December 2001, and we believe Congress should do likewise.

To answer the last part of your question, I do not understand how allowing State and local employees the option to pay both the employee and employer portion of the payroll tax, which amounts to an additional 12.4%, in order to participate in Social Security, solves the problem for those employees who elect to remain outside the system. These employees would still be penalized if they worked in a second job or had a second career in which they were forced to pay into Social Security because the WEP and GPO would still apply.

I am concerned that Congress continues to look for ways to save money for the Social Security system by cutting benefits earned by State and local employees and to increase the amount of revenue they can generate from these employees. State and local employees are not a cash cow to be milked for the Social Security trust fund. The Federal government must find a way to honor their commitment to these men and women, not find a loophole to accrue "savings" at their expense.