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**Policy Critique of H.B. 110 Supplement 1
2026 General Session of the
67th Legislature**

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Office of
UTAH FOR RATIONAL SEX OFFENSE LAWS

Digest of Policy Critique of H.B. 110 Supplement 1 2026 General Session of the 67th Legislature

OVERVIEW

H.B. 110 Provision 4 imposes 10- and 20-year waiting periods before Utah's Board of Pardons and Parole may consider a pardon for sex offense registry petitions, framed as a housekeeping alignment of two registry-removal pathways. This critique argues the provision is constitutionally defective because it suspends — rather than regulates — a discretionary power vested directly in the Board by the Utah Constitution, on a legislative record that never quantified the problem, never demonstrated actual harm, and never protected individuals already mid-process when the law takes effect May 6, 2026.

KEY PROBLEMS

What Provision 4 Does

- Creates 10- and 20-year waiting periods before the Board of Pardons and Parole may consider a pardon that would result in sex offender registry removal.
- Takes effect May 6, 2026 with no grandfathering for individuals currently in the pardon process.
- Was passed 6-0 in committee after being framed as a narrow housekeeping measure to align two registry-removal pathways.

Four Constitutional and Policy Problems

1. It suspends a constitutional power, not regulates it.

- Utah Constitution Article VII §12 vests pardon authority directly in the Board — not delegated by the legislature. A categorical time bar that prevents the Board from even receiving a petition is not procedural regulation; it is suspension of a constitutionally granted discretionary power. The Board can find zero public safety risk and still cannot act.

2. The data foundation is insufficient for the burden imposed.

- The sponsor cited a directional trend — year-over-year increases in pardons since 2021 — but produced no numbers. The legislature never asked: how many pardons? How many resulted in reoffense? What actual public safety harm occurred? A restriction on a constitutional power enacted on an unquantified trend cannot meet even rational basis scrutiny.

3. Conviction category is not actuarial risk.

- Provision 4 applies to everyone whose offense triggers registry placement — regardless of risk score, time elapsed, or rehabilitation. Research consistently shows sex offense

recidivism risk varies dramatically by individual. A 45-year-old with a 1999 conviction and no subsequent history is treated identically to a recent, high-risk offender. The restriction regulates legal status, not measurable risk.

4. Retroactive application causes immediate due process harm.

- Albert Kramer testified February 17 that he has actively pursued a pardon since 2025 for a 1999 conviction — a years-long, costly process. On May 6, his process does not slow; it stops. The legislature never addressed his circumstance across three hearings. Retroactive extinguishment of settled procedural reliance is an independent constitutional harm.

Why the "Housekeeping" Framing Is Misleading

- The asymmetry between the two pathways was not a drafting error — it reflects that Board clemency authority has always been constitutionally distinct from the legislature's administrative framework.
- Parity could have been achieved through less restrictive means: enhanced documentation requirements, evidentiary standards, or outcome reporting. The legislature chose the most restrictive option without considering alternatives.
- Board Chair Hills' deference to "legislative prerogative" assumes the answer to the constitutional question rather than resolving it — and was preceded by removal of a \$438,000 fiscal burden the Board opposed. That is non-opposition, not endorsement.

Recommendation:

- If this bill is to proceed, add a grandfathering clause protecting individuals with petitions filed before May 6, 2026. This is the lowest-cost fix and removes the strongest ground for emergency injunction.
- Request the Board produce post-2021 pardon data before the effective date to establish the factual record the committee was never given.
- Consider a substitute that achieves parity through documentation and evidentiary standards rather than categorical foreclosure — preserving the public safety goal without suspending a constitutional power.
- Extract provision 4 out of the bill subject to independent data before restricting constitutional clemency authority.



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To Senate Leadership and Members of the Senate Judiciary,
Law Enforcement, and Criminal Justice Committee,

Transmitted herewith is our **Policy Critique of H.B. 110 Supplement 1 for the 2026 General Session of the 67th Legislature** (Publication #2026-22). A digest is found on the pages located in the front of this document. The objectives and scope of the critique are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in this document in order to facilitate the implementation of the recommendations.

Sincerely

Utah for Rational Sex Offense Laws

UTRSOL/lm

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Introduction

H.B. 110 (3rd Substitute) passed the Senate Judiciary, Law Enforcement & Criminal Justice Committee on February 17, 2026, by a vote of 6-0.

Unanimous committee votes signal political strength. They do not signal constitutional durability. The question this critique addresses is whether Provision 4 — the creation of Utah Code §77-27-5.6 establishing waiting periods before the Board of Pardons and Parole may consider a pardon for sex offender registry offenses — can withstand the scrutiny a unanimous legislative vote was never required to face.

The answer is that it cannot. The provision's sponsor, Rep. Tyler Clancy, presented Provision 4 as a narrow housekeeping measure correcting a structural asymmetry between two registry-removal pathways. Utah for Rational Sex Offense Laws (UTRSOL) challenged it as a legislative encroachment on the Board's constitutionally granted clemency discretion.

However, the actual issue lies in the bill's architecture: a constitutionally grounded clemency mechanism has been encumbered by a categorical restriction, applied to a population defined not by actuarial risk but by offense category at conviction, justified by a legislative record that is directional but never quantified, and made immediately effective without any protection for individuals already in the pardon process. The confluence of these four defects — constitutional, methodological, evidentiary, and retroactive — produces a restriction that cannot be defended on the terms the sponsor offered, and that the legislature, precisely because of the housekeeping framing, never required anyone to defend on any other terms.

What the unanimous vote concealed, specifically, is the consequence of moving too quickly through contested constitutional terrain. A 6-0 vote on a provision that drew substantive constitutional and empirical objections is not evidence that those objections were answered. It is evidence that the framing made them easy to set aside. The Board's institutional acquiescence, the factual innocence carve-out, and the invocation of parity all functioned as rhetorical closures — each one sufficient to satisfy a legislator who did not want to slow a bill moving with momentum. None of them functions as a constitutional defense. The committee that cast those six votes was not asked to determine whether the legislature has authority to impose a categorical temporal bar on a constitutionally granted discretionary power. It was asked whether a parity-based housekeeping measure that protects people and has Board support is worth passing. Those are not the same question. Scrutiny requires the harder one to be answered.

The Housekeeping Framing

The Structural Argument

Rep. Clancy's core argument across all three hearings was structural: the 2021 legislation creating a pardon-to-registry-removal pathway enacted no waiting periods, while the primary registry-removal pathway had long required substantial time-based thresholds. The resulting asymmetry allowed a petitioner to circumvent, through the pardon route, the very waiting periods the legislature had deliberately built into the primary route. Provision 4 corrects this by importing comparable waiting periods — 10 years for 10-year registrants, 20 years for lifetime registrants, both measured from community reentry — onto the pardon pathway.

The structural observation is accurate. The asymmetry is real. And the legislature's authority to rationalize its own statutory framework is, in the abstract, broad. None of this is disputed. The problem is not the goal. The problem is what the housekeeping framing obscures about the means, the foundation, and the consequences.

What the structural argument does not supply — and was never required to supply, because the framing foreclosed the question — is any account of why the two pathways were asymmetric to begin with. The 2021 statute that created the pardon-to-removal pathway was enacted with no waiting periods for a reason: the pardon mechanism is constitutionally distinct from the registry-removal mechanism. One is a statutory administrative process. The other is a constitutionally vested discretionary power exercised by a constitutionally independent body on the basis of individualized facts. The legislature treated that distinction as an oversight to be corrected. It is not. It is the constitutional architecture.

The asymmetry between the two pathways does not reflect drafting sloppiness in 2021 — it reflects the fact that the Board's clemency authority has always been categorically different from the legislature's administrative framework, and the two were never supposed to be fully congruent. Importing the legislature's categorical waiting periods onto the Board's individualized discretion does not rationalize two equivalent processes. It subordinates a constitutional power to a statutory one — and calls it alignment. That shift is not harmonization; it is a structural reordering of authority that diminishes the independence intentionally vested in the Board. It effectively converts a discretionary safeguard into a legislatively constrained mechanism.

Three Failures the Framing Conceals

1. Parity Is a One-Way Ratchet

The housekeeping framing presents Provision 4 as a neutral alignment exercise. It is not. Parity between two pathways can be achieved in multiple ways: by lowering barriers on the primary path, by requiring the Board to document and apply equivalent evidentiary standards without categorical time bars, or by constructing a unified framework that applies consistently across both pathways. The legislature instead chose the most restrictive available option — importing the maximum thresholds from the primary path onto the pardon path wholesale — and called it alignment. That is a substantive policy choice with a specific distributional consequence: it forecloses the pardon pathway for a defined class of petitioners for a defined period of years, regardless of the Board's own assessment of the individual's circumstances. Calling this housekeeping does not make it so.

2. The Data Foundation Is Inadequate for the Power Being Exercised

Across all three hearings, Rep. Clancy offered a directional claim: sex offense pardons resulting in registry removal have increased year-over-year since 2021. He produced no numbers. UTRSOL's representative cited 2015–2019 data showing the Board approved roughly 14 of 83 petitions — approximately 17% — and asked explicitly what the post-2020 data showed. The question was never answered. The House Judiciary Committee chair asked essentially the same question in a different form: if the Board would not grant pardons for truly egregious offenses, what is the actual problem being solved? Rep. Clancy's answer was directional.

This matters not merely as a political vulnerability but as a constitutional one. The restriction Provision 4 imposes is categorical, durable, and retrospective in its immediate application. For a statute that imposes that kind of burden on a constitutionally grounded power, the legislature's justification must be more than a trend line. When a court asks whether this restriction is rationally related to a legitimate government interest, the legislative record will have to supply the answer. It currently cannot.

The Unanswered Question: How many pardons resulted in registry removal between 2021 and 2025? How many of those did the Board consider a public safety error? The legislative record contains neither number. A restriction on a constitutional power was enacted on the basis of an unquantified trend. That is not a foundation — it is an assertion. Policy built on undefined metrics cannot meaningfully demonstrate necessity or proportionality.

3. Retroactivity without Grandfathering is Due Process Harm

H.B. 110 takes effect May 6, 2026, with no grandfathering provision for individuals currently in the pardon process. Albert Kramer testified on February 17 that he has been pursuing a pardon since at least 2025 for a 1999 conviction — a process he described as long, costly, and complex. On May 6, his process does not slow. It stops. The clock restarts, or in his case, may not have even started under the new framework. The procedural expectations he built his process around are extinguished, not by any failure on his part, but by a statute that took effect while he was actively relying on the prior legal framework.

This is not a hypothetical due process concern. It is occurring in real time to identifiable individuals. The retroactive impairment of settled procedural reliance has independent constitutional weight — distinct from the Article VII argument — and it is the ground on which an emergency injunction motion, filed before May 6, would be most likely to succeed. The housekeeping framing rendered this invisible in the legislative record. Not a single legislator across three hearings specifically addressed Kramer’s circumstance or what the absence of a grandfather clause means for individuals mid-process.

The Constitutional Argument

The Article VII Argument Is Correctly Framed

Utah Constitution, Article VII, Section 12 vests pardon authority in the Board of Pardons and Parole. The constitutional language — “shall have the power to grant pardons” — is an affirmative grant of discretionary authority directly from the constitution, not a delegation of legislative power back to an executive agency. This is constitutionally unusual. Most states vest clemency in the Governor, making it readily subject to legislative procedural regulation. Utah’s Board exists specifically as an independent constitutional body, and its independence from the executive is the point — not an accident of drafting.

The legal distinction UTRSOL identified — which the committee did not engage — is between procedural regulation of a constitutional power and substantive foreclosure of it. Notice requirements, evidentiary standards, open hearing mandates: these are procedural. They govern how the Board exercises its authority without preventing it from doing so. A categorical temporal bar on even receiving a petition from an entire class of offenses for a defined period of years is categorically different. It does not govern how

the Board considers a pardon. It prohibits consideration entirely, regardless of the Board's own judgment about the petitioner's circumstances, risk level, or rehabilitation. The Board can know, with certainty, that a petitioner presents zero public safety threat and still cannot act. The waiting period is not a standard. It is a lock.

The Board can find, with clear and convincing evidence, that a petitioner poses no public safety risk whatsoever. It can find compelling rehabilitation, community support, and zero recidivism indicators. Under Provision 4, none of this matters. The Board is statutorily barred from acting on its own findings for a defined class of people for a defined period of years. That is not regulation of discretion. That is its suspension.

Board Consent is Political Neutralization

The discussion of H.B. 110 during CCJJ meetings reflected that the Board's acquiescence to the bill was not a constitutional concession. The most effective legislative counter to the Article VII challenge was the Board's own expression of support. Program Director, Public Outreach & Transparency Brittany Karson's testimony at the February 2 CCJJ hearing and Board of Pardon's Chair Blake Hills' framing that "these are policy decisions that are a legislative prerogative to make" neutralized the separation-of-powers argument in the room. It should not neutralize it in court, for three distinct reasons.

First, constitutional powers cannot be waived by their current holders. The Board's pardon authority was vested by the constitution in the institution — for future boards, future petitioners, and future circumstances no current official can anticipate. Hills' deference binds him personally. It does not bind his successors, and it does not bind a future petitioner who challenges the restriction on their specific circumstances.

Second, the record reveals what the Board's "support" actually is. Earlier versions of H.B. 110 imposed a roughly \$438,000 fiscal burden on the Board — requiring notification of prosecutors and victims for each pardon petition. That was the Board's objection. When it was stripped in the 2nd substitute, Hills' position shifted to accommodation. His deference to "legislative prerogative" was not a considered constitutional analysis. It was a pragmatic institutional calculation: the thing we actually cared about is gone, so we have no problem with this. That is not endorsement. It is non-opposition purchased with a fiscal concession. A court asked to uphold a restriction on a constitutional power based on the current Board's non-opposition to a different version of the bill would be right to find the basis thin.

Third, Hills' framing — that restriction of the Board's pardon authority is a "legislative prerogative" — is itself the constitutional question being begged. The entire dispute is about the scope of that prerogative. Hills' testimony does not answer it; it assumes it. A court examining whether the legislature can impose a categorical temporal bar on a constitutionally granted discretionary power cannot resolve that question by pointing to the testimony of the current officials who hold the power. The question is institutional, not personal.

Potential Litigation Posture

UTRSOL's challenge, as presented in committee, was framed at a level of generality that made it easier to dismiss. Two specific refinements would make it substantially more difficult to answer.

First, the factual innocence carve-out must be directly confronted rather than conceded. Rep. Clancy used it to preempt the most emotionally compelling objection — the wrongfully convicted person — and UTRSOL could not press back due to committee rules and procedures. But the carve-out is legally narrow. It applies only where a conviction has been vacated, reversed, or set aside, or where a court found factual innocence through post-conviction relief or habeas corpus.

The pardon mechanism exists precisely for people who cannot meet that standard — those who were overcharged, who received ineffective assistance of counsel, who have demonstrated compelling rehabilitation that post-conviction law cannot recognize. The factual innocence carve-out does nothing for them. Their cases are the ones Provision 4 categorically forecloses. An argument that names these petitioners specifically — rather than speaking abstractly about constitutional power — is harder to dismiss as theoretical.

Second, the strongest immediate litigation posture would not be a facial challenge but a targeted as-applied challenge combined with a motion for preliminary injunction before May 6. The plaintiff is someone like Kramer: an individual with an active pending petition that the Board had authority to consider before the effective date and authority to grant, but which Provision 4 prohibits even receiving on May 6.

The argument is two-pronged: the retroactive application of the waiting period to a pending petition violates procedural due process independent of the Article VII question, and the categorical foreclosure of the Board's discretion with respect to this petitioner's specific circumstances violates

Article VII as applied. The two arguments reinforce each other without requiring the court to reach the broad facial question about whether the legislature can ever restrict the Board’s pardon consideration.

The Architectural Weakness

The constitutional and evidentiary weaknesses as outlined above are serious. But they rest on a deeper architectural problem: Provision 4 imposes a durable restriction on a constitutionally grounded clemency mechanism, for a population whose inclusion is defined by conviction category rather than actuarial risk, calibrated to a primary pathway that is itself methodologically deficient, justified by a legislative record that is thin in ways that matter for constitutional purposes, and made immediately effective without protection for anyone already inside the process. Each of these weaknesses is independently serious.

Conviction Category Is Not Actuarial Risk

Utah’s sex offender registry is a conviction-based system. Placement on the registry is determined by the offense of conviction, not by any individualized assessment of risk of reoffense. This is not a peripheral detail. It is the load-bearing structural fact that determines who falls within Provision 4’s scope and why the restriction cannot be justified on public safety grounds without data the legislative record does not contain.

The population subject to the 10- and 20-year waiting periods includes everyone whose offense of conviction triggers registry placement — regardless of actuarial risk score, age at offense, years since offense, rehabilitative record, or any other individualized measure of current dangerousness.

Research on sex offense recidivism is substantially more nuanced than registry architecture suggests: risk of reoffense varies dramatically across offense types, time elapsed since offense, and individual characteristics. A 45-year-old who committed a registerable offense at age 22 and has no subsequent criminal history does not present the same actuarial risk as a recent offender with a pattern of escalating behavior. Utah’s registry treats them identically for purposes of Provision 4.

This matters for constitutional analysis in a specific way. The legislature’s claimed justification for the restriction is public safety — preventing the pardon pathway from being used to circumvent the carefully constructed

waiting periods of the primary registry-removal process. But if the primary process itself does not distinguish between high- and low-risk registrants, then the restriction Provision 4 imposes is not calibrated to public safety risk. It is calibrated to offense category at conviction, which is a proxy for risk that the research literature consistently shows is both over-inclusive and under-inclusive. A restriction that sweeps in low-risk individuals on the basis of conviction category alone, without any individualized finding and without any individualized exception, cannot be justified purely by reference to the public safety outcomes it claims to advance.

The core methodological problem is that the legislature built a time-based restriction on top of a conviction-based registry, using a primary pathway that is itself not calibrated to actuarial risk, and justified the restriction by reference to public safety without producing any data linking pardon grants to subsequent reoffense. There is no actuarial floor under Provision 4. Its reach is defined by what someone was convicted of, not by how dangerous they are. As a result, the provision regulates legal status rather than measurable risk, substituting categorical history for individualized assessment.

The Primary Pathway is Compounded, Not Corrected

The parity argument assumes the primary registry-removal pathway is well-designed. If the primary pathway is rational, then importing its standards onto the pardon pathway achieves rational consistency. But if the primary pathway is itself over-inclusive — applying long waiting periods to a population that includes many low-risk individuals who are not meaningfully distinguished from the general population after a decade of offense-free living — then importing its waiting periods onto the pardon pathway does not rationalize the system. It extends the irrationality.

The pardon mechanism exists precisely to address cases where the law's general application produces unjust outcomes in specific circumstances. That is the constitutional purpose of clemency: individualized relief from categorical rules. Provision 4 restricts the only mechanism capable of individualized relief, by importing the logic of the categorical rule that produced the injustice in the first place. A 20-year lifetime registrant waiting period applied to the pardon pathway does not tell us anything about whether this petitioner, in these circumstances, having served this sentence and lived this rehabilitative record, presents a public safety risk that justifies continued registry placement. It tells us only how long the legislature wants to wait before allowing anyone to ask.

Legislative Record Cannot Support the Restriction

Courts reviewing constitutional challenges to statutes examine the legislative record not to substitute their judgment for the legislature's, but to determine whether the legislature had a rational basis for what it did. Rational basis review, though deferential, requires that the legislature's stated justification bear some relationship to actual evidence. The record here is constitutionally inadequate in three specific respects.

1. The Problem Is Unquantified

Rep. Clancy cited year-over-year increases in sex offense pardons resulting in registry removal since 2021, but never stated the numbers. UTRSOL's 2015–2019 data showed an approximately 17% approval rate before the 2021 pathway was created — a rate suggesting the Board was already highly conservative. The legislature enacted a categorical restriction on a constitutional power on the basis of a directional trend it never quantified. Whether the actual number of pardons justifies the restriction cannot be determined from the record, because the record does not contain the number. A court asked to uphold this restriction on rational basis will have to supply, from outside the legislative record, the facts that would make the restriction rational.

2. The Mechanism of Harm Is Unspecified

The legislature did not explain, in any hearing, what public safety harm has actually resulted from the pardons granted since 2021. A year-over-year increase in pardons is not self-evidently harmful. The relevant question is whether pardons granted through this pathway have resulted in reoffense, or whether the Board has granted pardons in cases that presented genuine public safety risk. That question was not asked and not answered. Without it, the legislature's restriction is a response to a trend, not to demonstrated harm. Trend-based legislation restricting constitutional powers has a significantly higher legal burden than harm-based legislation.

3. The Alternative Was Never Considered

No legislator in any of the three hearings asked why the legislature chose the most restrictive available solution — categorical time bars mirroring the primary pathway's maximums — rather than an intermediate option. Requiring the Board to document its reasoning for pardon grants resulting in registry removal. Establishing evidentiary standards comparable to the primary pathway without categorical foreclosure. Creating a reporting mechanism to track outcomes. None of these were discussed. The legislature did not demonstrate that it considered and rejected alternatives; it enacted the most restrictive option as if no others existed. For a restriction on a

constitutionally granted power, the absence of any consideration of less restrictive alternatives is a significant gap in the record.

Taken together, these three evidentiary weaknesses are not individually fatal under rational basis review — but they compound each other in a way that is. A court extending deference to a legislature that quantified the problem but chose a blunt instrument might uphold the restriction. A court extending deference to a legislature that acknowledged harm and explained why alternatives were insufficient might uphold the restriction. This record offers neither. It offers a trend, asserted but not measured; a harm, presumed but not demonstrated; and a solution, adopted but never compared to anything else.

The State’s lawyers, defending this provision in litigation, will have to build the factual and analytical foundation the legislature never constructed — assembling outside the record the justification that should have been inside it. That is not a gap courts are required to fill on behalf of a legislature that restricted a constitutional power without pausing to justify it. Courts review enacted justifications, not post hoc rationalizations offered to cure a silent record.

Retroactivity is Constitutional Harm

Provision 4 takes immediate effect on May 6, 2026, with no savings clause for pending petitions. This means that an individual who filed a pardon petition in January 2026 — under a legal framework that permitted the Board to consider and grant it — will, on May 6, find that framework no longer applies. The Board cannot receive their petition. The clock has not yet started running on their waiting period. Their process — potentially years of preparation, legal fees, victim engagement, and rehabilitative documentation — is legally nullified.

The due process analysis here runs parallel to but independent of the Article VII analysis. A statute that retroactively extinguishes a procedural entitlement — the right to have a petition considered under the law in effect when it was filed — raises distinct constitutional concerns. The relevant question is whether the petitioner had a reasonable, settled expectation of process under the prior legal framework, and whether abrupt termination of that process without any transition provision constitutes an arbitrary deprivation of that expectation. Kramer’s testimony establishes that at least one such petitioner exists and is identifiable. There are almost certainly others.

This is the strongest ground for immediate legal action, because it does not require a court to resolve the broad constitutional question about Article VII. It requires only that the court find — a considerably lower bar — that applying the waiting periods to petitions already pending as of May 6 is constitutionally arbitrary. A preliminary injunction motion filed before May 6 on this ground, on behalf of identifiable pending petitioners, has a meaningful probability of success and would immediately put the State in the position of defending a retroactive restriction it never bothered to address in three hearings.

Provision 4 Under Scrutiny

The four structural weaknesses identified above are not separate and unrelated. They are mutually reinforcing, and their combination produces a restriction that cannot be defended on the terms offered and was never required to be defended on any others.

The housekeeping framing made the constitutional question invisible. A framing that presents a restriction on a constitutional power as a neutral alignment exercise discourages the kind of deliberation that would have revealed the restriction's defects. No committee member asked: what constitutional authority does the legislature have to bar the Board from even considering a petition? No committee member asked: why is 10 or 20 years the right threshold rather than some other period? No committee member asked: what happens to pending petitioners? No committee member asked: does Utah's risk-agnostic registry architecture support this kind of categorical restriction?

These questions were not asked because the framing made them seem unnecessary. The provision was presented as closing a loophole. Loophole-closing does not require constitutional justification. That is precisely what makes the framing so effective and so dangerous.

The Board's institutional acquiescence compounded the problem. When the affected constitutional body signals it has no objection, legislators have no political incentive to press harder. The 6-0 vote was the result. But institutional acquiescence purchased with a fiscal concession, from officials who lack authority to waive the constitutional rights of future petitioners and who framed their accommodation as deference to "legislative prerogative" without examining whether that prerogative actually extends this far, is not a constitutional foundation. It is a political one. The two are not the same thing.

The legislative record, as constructed, is insufficient to sustain the restriction against challenge. A court examining that record will find: a trend described but never quantified; a harm asserted but never demonstrated; alternatives that were never considered; a constitutional question that was raised and dismissed without deliberation; a retroactivity impact that was raised by a directly affected individual and never addressed. It will find a provision that was enacted as if its constitutionality was self-evident, by a legislature that the housekeeping framing had effectively immunized from needing to think carefully about whether it was.

The compounding effect is that each defect makes the others worse. A thin evidentiary record would be less damaging if the population were precisely defined by actuarial risk. Retroactivity without grandfathering would be less severe if the restriction were narrowly targeted. A constitutional overreach would be more defensible if the record showed deliberation. This provision has all four defects simultaneously, with no mitigating factor that addresses more than one of them. The factual innocence carve-out addresses one sub-category of one defect. It leaves the architecture intact.

Provision 4 is not unconstitutional because the legislature cannot regulate the pardon process. It is unconstitutional because the legislature chose to do something categorically different from regulation — it suspended a constitutional power for a defined class, on the basis of a thin record, against a population defined by conviction category rather than risk, without protecting those already in the process — and justified it with a framing that was designed to make scrutiny seem unnecessary. The scrutiny is now necessary. And the provision, examined on those terms, cannot survive it.

Conclusion

The Case Against Provision 4

Rep. Clancy's housekeeping framing was legislatively effective and constitutionally insufficient. It moved a contested provision through three hearings and a unanimous committee vote by presenting a restriction on a constitutionally grounded clemency mechanism as a neutral parity exercise, by deploying the Board's non-opposition as a substitute for constitutional analysis, and by emphasizing a factual innocence carve-out that protects a narrow subset of petitioners while leaving the provision's broader architectural weaknesses untouched. In substance, the framing advanced passage without confronting the constitutional burden the provision imposes. Legislative efficiency cannot substitute for constitutional scrutiny.

UTRSOL's constitutional argument identified the right legal terrain. The legislature cannot, by statute, categorically foreclose the exercise of a constitutionally granted discretionary power for a defined class of people for a defined period of time. A categorical temporal bar is not procedural regulation of the Board's authority. It is suspension of that authority. The Board's current officials cannot waive what the constitution vested in the institution. And the unanimous vote that Provision 4 received in committee is not constitutional evidence; it is the product of a framing strategy that made the constitutional question invisible.

But the deeper and more damaging weakness is architectural. A restriction imposed on a constitutionally grounded clemency mechanism, for a population defined by conviction category rather than actuarial risk, calibrated to a primary pathway that does not distinguish between high- and low-risk registrants, justified by a legislative record that is directional but unquantified and that never examined the mechanism of harm or considered alternatives, and made immediately effective against individuals already inside the process without any grandfathering protection — that is not a housekeeping measure. It is a structural restriction that cannot be sustained on the justification offered, and that the legislative process, as conducted, was not designed to examine seriously.

A court examining this record will find insufficient foundation for the claim that Provision 4 should survive scrutiny. Not because the legislature lacks authority to regulate the pardon process. Not because the public safety interest is illegitimate. But because the legislature chose to foreclose, rather than regulate, a constitutional power — for the wrong population, on the wrong record, without protecting those already relying on the prior framework — and called it housekeeping to avoid being asked whether it was constitutional. The question is now squarely presented. The answer, examined carefully, is that it is not.

