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February 8, 2008

Senate Government Operations and  
Political Subdivisions Standing Committee  
Utah State Senate  
320 State Capitol PO Box 145115  
Salt Lake City, Utah 84114

Re: Senate Bill 81, "Illegal Immigration"

Dear Committee Member,

On behalf of the American Civil Liberties Union of Utah, we urge you to oppose Senate Bill 81, "Illegal Immigration." This bill proposes numerous provisions, all of which unfairly target undocumented immigrants in Utah. While we believe in and support the government's right to control its borders, it must do so in a way that respects the rule of law. The guarantees of due process and equal protection contained in the U.S. and Utah Constitutions apply to all persons in this country and state, not just to U.S. citizens.

Our particular concerns surrounding Senate Bill 81 are as follows:

- 1) **Immigration is a subject that is wholly regulated by federal law.** Any incursion by states into an area that is a matter of federal law could subject the state to legal liability for preempting an area of federal law. For example, states such as Arizona and Oklahoma and cities such as Hazelton, Pennsylvania, have been forced to defend, often unsuccessfully, local immigration laws in costly and contracted litigation.
- 2) **The use of E-Verify or the Basic Pilot program by employers to verify the legal status of employees is not sound policy and may conflict with federal law.** The E-Verify databases are highly inaccurate and fraught with error, affecting the results of verification checks by employers and leading to misidentification of lawful naturalized citizens. Moreover, federal immigration law expressly preempts local proposals, such as E-verify that attempt to regulate the employment and hiring of unauthorized workers. States that nonetheless choose to enact such programs leave themselves vulnerable to legal challenge. For example, in July 2007, a federal court in Pennsylvania declared unconstitutional an ordinance enacted by the city of Hazelton that attempted to regulate unauthorized workers.
- 3) **Passage of Senate Bill 81 will have a grave economic impact within the state of Utah.** Similar states that have passed omnibus legislation targeting illegal immigrants have suffered economically in the wake of passage. For example, the

state of Oklahoma passed House Bill 1804 during its 2007 legislative session. Since the law went into effect, the state treasury has already shown a drop in revenues, partly due to the flight of immigrants. There is also real concern that Oklahoma's new immigration law could affect apartment values and sales, by raising the cost of doing business.

- 4) **The provision in Senate Bill 81 that denies bail to illegal immigrants runs afoul of the Constitutional guarantee against excessive bail**, which applies to all people, not only U.S. citizens.
- 5) **The use of local law enforcement to enforce immigration law endangers public safety.** Everyone's safety, including that of U.S. citizens, is put in jeopardy when immigrants do not feel safe to come forward with crucial information when crimes are committed against them, their families or the larger community. Additionally, asking local and state law enforcement agencies to enforce federal immigration laws will strain their already overburdened resources and will require substantial resource commitments of their time, training and administrative costs.

We urge you to consider the real and important need for federal legislation in the area of immigration rather than support state legislation that may lead to unnecessary litigation. This legislative body's efforts would be better spent in support of Senate Bill 97, "Immigration Task Force," which seeks to provide state input toward comprehensive federal immigration legislation.

Please feel free to contact us should you have any questions or if you need any further assistance. We can be reached at 801-521-9862.

Sincerely yours,

Karen McCreary  
Executive Director

Marina Lowe  
Staff Attorney