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March 19, 2012

Governor Gary R. Herbert  
Utah State Capitol Complex  
350 North State Street, Suite 200  
PO Box 142220  
Salt Lake City, Utah 84114-2220  
Fax: 801-538-1344

**Re: House Bill 155, "Drug Screening for Temporary Assistance  
for Needy Families Recipients"**

Dear Governor Herbert:

On behalf of the American Civil Liberties Union of Utah, we urge you to veto House Bill 155, "Drug Screening for Temporary Assistance for Needy Families." This bill requires recipients of public assistance programs to submit to various types of drug screening. Mandatory drug testing as a condition of receiving public assistance perpetuates a demeaning and false stereotype that those most vulnerable among us, who desperately need food and shelter, are drug abusers. We thus encourage you to veto HB 155.

**I. People who seek public assistance do not use drugs at a  
greater rate than the general population.**

The ACLU has challenged laws in both Michigan<sup>1</sup> and Florida<sup>2</sup> that authorized suspicionless drug testing of TANF applicants. The federal courts enjoined both states' laws because neither state showed evidence of a concrete danger to

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<sup>1</sup> *Marchwinski v. Howard*, 113 F. Supp. 2d 1134 (E.D. Mich. 2000), *rev'd*, 309 F.3d 330 (6th Cir. 2002), *reh'g granted, vacated*, 319 F.3d 258 (6th Cir. 2003), *aff'd en banc by an equally divided court*, 60 F.App'x 601 (6th Cir. 2003). The District Court opinion is available at <http://www.aclu.org/files/FilesPDFs/michigan%2520district%2520ct%2520opinionpdf.pdf>.

<sup>2</sup> *Lebron v. Wilkins*, No. 6:11-cv-01473-Orl-35DAB, 2011 WL 5040993, (M.D. Fla. Oct. 24, 2011) (order granting preliminary injunction), available at <http://www.aclufl.org/pdfs/2011-10-24-ACLUtanfOrder.pdf>.

public safety nor other public need.

While HB 155 takes a slightly different approach to drug testing than the programs in Michigan and Florida, nevertheless, the existence of such a law implies a correlation between poverty and drug use that cannot be borne out. For example, while the Florida law was in place, just 2 percent of drug tests came back positive – a rate four times lower than the estimated drug use of Floridians older than 12, according to Justice Department estimates.<sup>3</sup> Likewise, Indiana's 2011 drug testing program for job training applicants fared even worse. In the first five months of the program, only 13 of the more than 1,200 applicants (a mere one percent) failed their drug test, while only three people refused to take the test.<sup>4</sup>

HB 155 is problematic because it singles out a particular group of people, the poor, for drug testing on the basis of the harmful stereotype that poverty equates to drug abuse.

## **II. Mandatory drug tests may implicate Utahns' privacy.**

Mandatory drug testing programs may allow the government to retain DNA information and fail to ensure that the testing results do not reveal other highly personal information. For example, in addition to information regarding drug use, tests often reveal the existence of certain medical conditions, pregnancy status and genetic predispositions that people rightly would want to keep private. While HB 155 specifies that test results are private records under GRAMA, the bill is silent as to how results are stored and/or whether samples should ultimately be destroyed. In order to protect the privacy of Utahns seeking public benefits, any law that requires drug testing should specifically address how private genetic information is handled.

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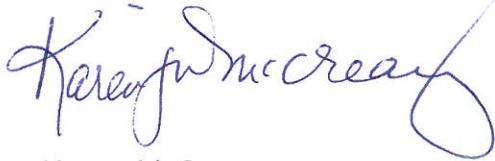
<sup>3</sup> Catherine Whittenburg, *Welfare Drug-Testing Yields 2% Positive Results*, *The Tampa Trib.*, Aug. 25, 2011. Accessible at <http://www2.tbo.com/news/politics/2011/aug/24/3/welfare-drug-testing-yields-2-percent-positive-res-ar-252458/>.

<sup>4</sup> Tom Coyne, *Indiana: 2 percent fail job training drug tests*, *The Associated Press.*, December 29, 2011. Accessible at [http://www.cbsnews.com/8301-505245\\_162-57349726/indiana-2-percent-fail-job-training-drug-tests/](http://www.cbsnews.com/8301-505245_162-57349726/indiana-2-percent-fail-job-training-drug-tests/).

For the foregoing reasons, we strongly urge you to veto HB 155. We would be happy to discuss our concerns with you further should it be helpful.

Thank you.

Sincere regards,



Karen McCreary  
Executive Director



Marina Lowe  
Legislative and Policy Counsel



John Mejia  
Legal Director

\*Licensed in Illinois, Application for Admission by Motion in Utah Pending

cc: John Pearce, Esq.  
General Counsel