



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC  
355 NORTH 300 WEST, SALT LAKE CITY, UT 84103  
(801) 521-9862 PHONE • (801) 532-2850 FAX  
ACLU@ACLUUTAH.ORG • WWW.ACLUUTAH.ORG

---

March 2, 2009

Senate Education Standing Committee  
Utah State Capitol  
Salt Lake City, Utah 84114

Dear Members of the Senate Education Standing Committee:

We at the ACLU of Utah encourage you to pass Senate bill 113 out of the Committee to the Senate floor. To do so would allow the federal government a year to deal with comprehensive immigration reform, and spare the State of Utah an incredible financial commitment, that with federal comprehensive immigration reform would be a waste of money and resources.

Our primary concern with SB 81 has been its constitutionality. As you know, immigration is within the sole purview of the federal government and not the states. Incursion of states into an area that is a matter of federal law has subjected those states to legal liability for preempting an area of federal law. Arizona, Oklahoma and cities such as Hazelton, Pennsylvania and Farmington, Texas, have been forced to defend, often unsuccessfully, local immigration laws in costly and contracted litigation. I have attached a litigation overview of those cases with this letter.

As you also may know, Utah's SB 81 was fashioned in a large part on Oklahoma's H.B. 1804. The U.S. Chamber of Commerce won a legal victory when a U.S. District Court judge postponed portions of the Oklahoma's law's enforcement and deemed the law "substantially likely" to be unconstitutional. *Chamber of Commerce of the United States et al. v. Henry et al.*, W.D. Oklahoma (2008). Enforcement was enjoined and the case is now on appeal in the 10<sup>th</sup> Circuit Court. One of the main issues raised in the appeals process is the requirement for Oklahoma employers who want contracts with the state or with any other public entity in the state, to use e-verify to ensure the eligibility of new employees.

Utah's SB 81 likewise requires employers to use e-verify, the still experimental, currently voluntary system. The E-verify databases, which include the Social Security Administration and Department of Homeland Security's databases, are highly inaccurate and fraught with error. The Social Security Administration admits that 17.8 million of its records contain discrepancies related to name, date of birth, or citizenship status, with 12.7 million of those problem records pertaining to U.S. Citizens. Given these error rates, thousands of U.S. citizens and legal workers could be denied work because of government errors. This will have the unintended consequences of

increased unemployment in a recession economy. It would also be the first time in our history that U.S. citizens are required to get the permission of the federal government to work. E-verify is under intense scrutiny by the Obama administration and its implementation by federal government contractors has been delayed pending further review by this administration. An action to enjoin SB 81 is a very real possibility for Utah if this law is implemented in July of this year.

In Arizona, the ACLU, with other organizations, brought an action challenging Arizona's "Legal Arizona Workers Act", which targets employers who hire illegal aliens, and its principal sanction is the revocation of state licenses to do business in Arizona. The Ninth Circuit upheld the statute in theory, but with a caveat that the statute has yet to be enforced and once a factual background is developed and the statute is applied, it will not be controlled by their decision. *CPLC v. Napolitano*, 534 F. supp.2d 1036 (D. Ariz. 2008). The bill became law in January of 2008, and by April only 15 percent of Arizona's registered employers were using the system. To date, no employer has had his license pulled by the state. Similarly, in Oregon a county judge halted the enforcement of its ordinance to punish employers caught hiring undocumented immigrants, when the ACLU, social justice groups and business owners challenged the measure in court.

The ACLU of Utah also questions the overall practicality for the State of Utah to have local law enforcement officers enforcing immigration law under INA § 287(g). To allow this to proceed endangers public safety. Everyone's safety is in jeopardy when immigrants do not feel safe coming forward with crucial information when crimes are committed against them, their families or the larger community. There is currently an excellent example of this fear impeding a criminal investigation. The police are having difficulty investigating the murders of two Hispanic women, which occurred on February 9<sup>th</sup>, 2007 and 2008, because the Hispanic community fears that their immigration status will be questioned by the police, if they come forward with information. The police have appealed to Hispanic leaders to help reassure people, but the Hispanic community has seen first hand the deportation of their neighbors and family members for small infractions of traffic laws.

Furthermore, in our current economy, asking local and state law enforcement agencies to enforce federal immigration laws strains their already overburdened resources and requires substantial resource commitments of their time training and administrative costs. It also opens the state up to lawsuits for racial profiling as well as misapplication of federal law. Attached is a recent study confirming the high costs of MOUs to the state of Arizona with little social benefit. This is another unfunded mandate and better left in the hands

Sincerely yours,

Karen McCreary, Executive Director

Barbara M. Szweda, Public Policy Advocate