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March 24, 2010

Governor Gary R. Herbert
Utah State Capitol Complex
350 North State Street, Suite 200
PO Box 142220
Salt Lake City, Utah 84114-2220
Fax: 801-538-1528

Re: Senate Bill 251, "Employment Verification for Employees"

Dear Governor Herbert:

On behalf of the American Civil Liberties Union of Utah, we urge you to veto Senate Bill 251, "Employment Verification for Employees," as this piece of legislation is legally suspect, costly for employers and mandates use of a system that is ineffective and error-ridden.

SB 251 mandates participation in an electronic employment eligibility verification system by all Utah employers. E-Verify, currently the only such system available to employers, is an Internet-based system that checks employee identification against either Social Security Administration (SSA) or the U.S. Department of Homeland Security (DHS) databases. Unfortunately, use of E-Verify, even as evaluated by the federal government, is inherently flawed and unreliable; mandating its use in Utah will only serve to hurt Utah employers and employees, while failing to accomplish its asserted goal of targeting identity fraud. The ACLU of Utah opposes SB 251 for the following reasons:

Immigration enforcement is the role of the federal government.

SB 251 is at odds with, and thus may be preempted by, the clear congressional mandate imposing a uniform federal immigration enforcement system. SB 251 attempts to override national law and policy on the employment of immigrants. If states like Utah strike out on their own and pass their own immigration laws, workers and businesses alike will face a patchwork of conflicting and incompatible requirements based on local politics and conditions.

E-Verify efficacy is compromised by database errors.

Because E-Verify makes use of existing SSA and DHS databases, which are plagued with errors and outdated information, employers will be faced with inaccurate responses to worker eligibility queries. According to a 2009 DHS commissioned study, E-Verify wrongly clears illegal workers about 54 percent of the time, making it an inappropriate

tool for detecting identity fraud.¹ Ironically, the unintended consequence of mandatory E-Verify would be an increase in identity theft. By linking employment more closely to valid Social Security numbers and associated data (e.g., name and state of birth), E-Verify increases the value of this information, providing greater incentives for identity thieves.

Additionally, the Social Security Administration's own Inspector General found that more than 70 percent of the discrepancies in the SSA database, upon which E-Verify relies, and that could generate a "tentative non-confirmation" notice ("TNC") (the notice employers receive when the federal databases cannot confirm a worker's employment eligibility) in E-Verify belong to native-born U.S. citizens.² Likewise, In Arizona, where use of E-Verify is mandatory, the concern most frequently identified by employers is that TNCs are issued on work-authorized individuals.³ Discrepancies between workers' social security numbers and SSA records that lead to TNCs often result from many innocent factors including clerical errors, name changes due to marriage or divorce, or the common use of multiple surnames.

Laws like SB 251 that mandate use of E-Verify hurt American and legally authorized workers, who are forced to take on the burden of persuading multiple administrative bureaucracies to fix their records in order to keep their jobs.

Mandatory participation in E-Verify will place burdens on all Utah businesses, especially small ones.

Mandatory employment eligibility verification would put undue costs on businesses of all sizes, particularly smaller businesses, which are already facing challenges in a tough economic climate. Business owners would have to spend a considerable amount of time verifying the status of their current and potential employees, taking resources away from vital issues like productivity and revenue.

While initial screening through E-Verify may not prove time-intensive, the cost to employers becomes evident when they are required to deal with the TNCs and other error-induced results that E-Verify produces. The experience of Intel Corporation in using E-Verify illustrates the extent to which use of the system to screen employees

¹ *Findings of the Web-Based E-Verify Program Evaluation* (Westat, Dec. 2009), www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf (enclosed); see also *E-Verify Misses Half of Illegal Workers, Report Finds*, Fox News, Feb. 25, 2010, <http://www.foxnews.com/politics/2010/02/25/e-verify-misses-half-illegal-workers-report-finds/>

² Office of the Inspector General, Social Security Administration, Congressional Response Report: Accuracy of the Social Security Administration's Numident File (hereinafter Accuracy of the Numident File), A-08-06-26100, December 2006 (www.socialsecurity.gov/oig/ADOBEPDF/audittxt/A-08-06-26100.htm).

³ *Observations on the E-Verify Experience in Arizona & Recommended Customer Service Enhancements* (Office of the Citizenship and Immigration Services Ombudsman, U.S. Dept. of Homeland Security, Dec. 22, 2008), www.dhs.gov/xlibrary/assets/cisomb_everify_recommendation_2008-12-22.pdf.

creates additional work and costs for employers. In evaluating the system, Intel attested that 12.21% of all of its screened employees (143 of 1363 inquiries) resulted in a TNC. Intel ultimately cleared each of the 143 TNCs as work authorized, "but only after significant investment of time and money, lost productivity and, for [Intel's] affected foreign national staff, many hours of confusion, worry and upset."⁴

Luckily for Intel, that company has the benefit of in-house human resources expertise to resolve the issues generated by E-Verify. On the other hand, small, family-owned businesses are not likely to have similar resources or staff dedicated exclusively to personnel matters; dealing with E-Verify will mean having to divert scarce time and resources from other pressing business issues.

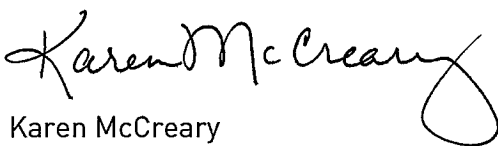
Use of E-Verify could lead to increased racial profiling.

Finally, E-Verify is likely to be misused by employers and to result in discrimination and anti-worker behavior. Employers may, as they have done in other states, decide to screen out workers with "foreign" surnames or simply avoid hiring people they think are immigrants, authorized or not, in order to preserve valuable employee time that might otherwise need to be spent resolving E-Verify results. This is an insult to the core American value of fairness and may lead to an increase in workplace discrimination litigation on the basis of race, ethnicity or gender.

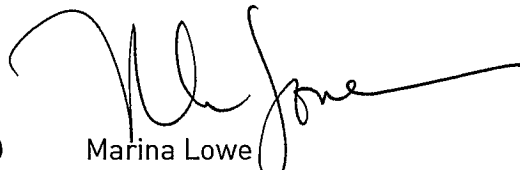
Although Utah wants to use this law as an immigration enforcement tool and to combat identity fraud, SB 251 would do little to address either of these goals. Instead, it will fuel the growth of off the-books hiring by employers and increase the incidence of identity theft in our state. We therefore strongly urge you to halt the implementation of SB 251 in Utah.

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

cc: John Pearce, Esq.
General Counsel

enclosures

⁴ Letter from Intel Corporation, to Regulatory Secretariat [VPR], General Services Administration [Aug. 8, 2008] (enclosed).