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Governor Jon Huntsman, Jr.
Utah State Capitol Complex
East Office Building, Suite E220
PO Box 142220
Salt Lake City, Utah 84114-2220

Via USPS and Facsimile 801.538.1528.

Dear Governor Huntsman,

We were heartened to read that you may be considering a veto of House Bill 100 (S1), Environmental Litigation Bond. The American Civil Liberties Union of Utah encourages you to veto HB 100, not only because of its many state and federal constitutional defects, but also because any litigation that ensues challenging the bill will be costly and unnecessary for both the state and its residents.

HB 100 would require entities filing “environmental litigation” in state or federal court to post a bond covering possible costs and damages associated with a delay of a new permit or approval of a new project. If an entity cannot afford a bond, or if a bond is not posted for any reason, the entity will be administratively dissolved or have its authority to do business in Utah revoked. Accordingly, HB 100 effectively blocks entities from exercising their First Amendment right to participate in a fundamental aspect of the democratic process by seeking judicial review of government actions.

Additionally, a six-page letter from the Office of Legislative Research and General Counsel outlines several of the state and federal constitutional problems inherent in the bill. The analysis touches on state and federal constitutional problems the bill raises, ranging from access to the courts, equal protection of the law, federal preemption, and the right to free speech and association. (Letter to Rep. Biskupski, February 13, 2006.) The ACLU of Utah believes the bill would likely be found unconstitutional in the areas raised by the Office of Legislative Research and General Counsel. Further, our legal department has received preliminary approval to litigate this issue if necessary.

Four years ago, the legislature passed a similar bill, which then-Governor Michael Leavitt vetoed. In his veto letter, he wrote, “It is fundamental to our democracy that citizens be able to take complaints to court. Government is not always right.” (Letter to President of Senate and Speaker of House, March 26, 2002.) Under similar reasoning, HB 100 should not become law because it would unconstitutionally act as an effective bar to entities’ ability to take certain complaints to court. We urge you to protect Utahns’ constitutional rights by vetoing HB 100.

Sincerely,

Margaret Plane
Legal Director

Dani Eyer
Executive Director