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October 13, 2007

The Honorable Jeff Piccola
Chair, Senate State Government Committee
Room 159 Main Capitol
Harrisburg, PA 17120

RE: SENATE BILL 9

Dear Senator Piccola:

Thank you for inviting the American Civil Liberties Union of Pennsylvania to submit written comments on Senate Bill 9. We appreciate having this opportunity to present our position on this legislation and having our views included in the official record of the public hearing of October 17, 2007.

The ACLU believes that Senate Bill 9 will cause considerable harm to United State citizens, lawfully present immigrants, and those who are trying in good faith to have their immigration status clarified. We are troubled by the reliance on government issued identification as well as the SAVE system because neither are truly reliable mechanisms for proving whether or not someone is eligible for benefits.

We think that requiring an individual to present government issued identification in order to receive public benefits will primarily impact on the thousands of elderly, disabled, and poor Pennsylvanians who do not already have government issued identification. Last session we learned about the numerous problems associated with requiring photo-identification in order to vote. We know that there are hundreds of thousands of citizens of this state who do not have the kind of identification called for in Senate Bill 9. Many of those people are the very ones who most need public benefits. They are law-abiding and tax-paying citizens who will be forced to spend considerable time and money in order to obtain the requisite identification. The ACLU does not believe that there is sufficient evidence of fraud to justify imposing this requirement that would ultimately harm so many of our fellow Pennsylvanians.

It has been suggested that this bill will prevent "illegal immigrants" from fraudulently obtaining public benefits. Leaving aside, for the moment, the fact that there is very little hard evidence that "illegal immigrants" are obtaining much in the way of public benefits, it is obvious and clear that the bill is not narrowly targeted to address that kind of fraud. The bill requires everyone who applies for public benefits to produce photo identification and complete an affidavit.

This broad brush approach brings to mind the Hazleton immigration ordinances. As I am sure you know, the ACLU was involved in the litigation that successfully challenged those laws. Just a few months ago, a federal judge issued a 206 page opinion that thoroughly analyzed those ordinances. The judge found that the ordinances were unconstitutional because the regulation of the employment and presence of immigrants is a federal matter.

The court specifically found that the ordinances were unconstitutional because: they violated the Supremacy Clause; they are incompatible with federal immigration laws; and they lacked sufficient due process protections.

I believe that there are several important lessons to be learned from the Hazleton litigation. First that litigation demonstrated the complexity of federal immigration laws. It is not easy to decide whether someone is lawfully present or should be removed. It is not just a matter of easily judging that an individual is an “illegal.”

Second, the Hazleton ordinances would have affected more than illegal aliens. As the court found, they would have affected “every employer, every employee who is challenged as an illegal alien, and every prospective employee especially those who look or act as if they are foreign.” In fact, the plaintiffs in that case included lawful permanent residents, persons of uncertain status, the Hazleton Hispanic Business Association and Casa Dominicana de Hazleton, inc., an organization that provides a variety of services to the Latino community in Hazleton.

Third, the Hazleton litigation brought to light the negative impact such laws have on our communities and our economy. There was evidence of increased tensions between the Latino and non-Latino communities. There was evidence of businesses that closed as a result of Latinos moving away from the Hazleton area. Even the United States Chamber of Commerce filed a friend of the court brief because that organization feared the economic disruption that has been, and will be, caused by these kinds of ordinances.

The ACLU of Pennsylvania urges you to carefully consider what has been learned from Hazleton. As the recently released report from Zogby International demonstrates, aggressive efforts to drive away “illegal immigrants” have had a negative impact on businesses and economic activity in Hazleton. The entire state of Pennsylvania should not be forced to suffer the same fate because of ill-conceived legislation on immigration.

I also want to bring to your attention the litigation over the Bush Administration’s attempt to use Social Security records to enforce immigration laws. Just last week, a federal judge issued a preliminary injunction blocking the implementation of a Department of Homeland Security rule that would have

punished employers if they failed to take action following the receipt of a “no-match” letter from the Social Security Administration.

In that case, the ACLU and others represented a consortium of unions and business groups who were concerned that this rule would lead to the termination of thousands of lawful workers and would have imposed many new burdens on employers. The court found that

the government’s proposal to disseminate no-match letters affecting more than eight millions workers will, under the mandated time line, result in the termination of employment to lawfully employed workers. This is so because, as the government recognizes, the no-match letters are based on SSA records that include numerous errors.

In this case, the business plaintiffs argued that the Department of Homeland Security rule was promulgated in violation of the Regulatory Flexibility Act. The business groups contended that the Department of Homeland Security had not conducted an analysis of how the new rule would impact on small businesses. The court agreed with the business plaintiffs and that was one of the reasons it issued the preliminary injunction.

As with the Hazleton litigation, I think that there are important lessons to be learned from the litigation over the “no-match” letters. First is that the impact of these kind of broad measures that are supposedly “aimed” at “illegal immigrants” actually hit a lot of lawful working employees and employers. They also have a major impact on thousands of businesses, particularly small businesses.

Second, these kinds of programs are inherently flawed because they rely on faulty government databases. All of us know that government records are full of errors. Surely those who provide constituent services know how much time is spent trying to clear up problems that are associated with mistakes in the government’s databases. We believe that our courts should be, and will be, very reluctant to uphold programs that lead to losses of jobs, housing, or liberty if those programs are premised on faulty databases.

The issue of faulty data is particularly relevant to SB 9 which relies on the SAVE system. That system largely relies on data from the immigration service. Unfortunately, the Inspector General of the Department of Justice has found the SAVE system to be “flawed in content and accuracy.” Furthermore, there is no mechanism for appealing incorrect SAVE determinations.

The ACLU of Pennsylvania thinks that Senate Bill 9 will do more harm than good. It will cause many of our fellow citizens to lose benefits or suffer

unconscionable delay in receiving benefits. It will also result in people lawfully present in this country to be harmed. Finally, we fear that measures like Senate Bill 9 will surely cause disruption to our economy and the ability of Pennsylvania to attract the businesses and workers that this state so desperately needs.

Thank you for your consideration of our views.

Very truly yours,

Larry Frankel
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cc: The Honorable Anthony H. Williams