



MEMORANDUM

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TO: House Labor Relations Committee

FROM: Andy Hoover, Legislative Director

DATE: December 7, 2009

RE: HOUSE BILLS 1502 AND 1503

On Tuesday, the House Labor Relations Committee is scheduled to consider House Bills 1502 and 1503. HB 1502 would require state contractors to use the federal E-Verify system, a database program that is intended to verify worker eligibility. HB 1503 would require all construction industry employers to use E-Verify. Due to the civil rights violations, especially against naturalized citizens, caused by inaccuracies in the E-Verify system, the American Civil Liberties Union of Pennsylvania opposes both bills. On behalf of the 16,000 members of the ACLU of Pennsylvania, I urge you to vote "no" on these bills.

The databases used for the E-Verify program are fraught with errors. It is not clear just how broad the error rate is. The Department of Homeland Security estimates that the error rate is currently at 0.4 percent. The Intel Corporation, meanwhile, has reported that 12 percent of eligible workers that it has put through the program have returned as ineligible to work, even after Intel went through the process a second time.¹ The types of errors include human error, misspellings and incorrect name order, user error, and database maintenance and aggregation.

If the General Assembly passes HBs 1502 and 1503, these errors have the potential to wreak havoc on citizens and legal residents at a time when unemployment is high and our economy is still fragile.

Authorized immigrant workers will be at great risk if HBs 1502 and 1503 become law. The data indicates that the E-Verify error rate disproportionately affects naturalized citizens and legal residents. Foreign-born workers are 30 times more likely to get an error notice.² Meanwhile, just last week the Fiscal Policy Institute released a report indicating that immigrants' contribution to Gross Domestic Product is nearly proportional to their percentage of the population. The study found that immigrants represent approximately three percent of the population of metropolitan Pittsburgh and

¹ Intel Corporation. "Comments on Proposed Employment Eligibility Regulations Implementing Executive Order 12989 (as amended)". Aug. 8, 2008.

² *Findings of the Web-Based Basic Pilot Evaluation* (Westat, Sept. 2007)

four percent of GDP. In metro Philadelphia, immigrants are responsible for approximately nine percent of the population and ten percent of GDP.³ Immigrants contribute significantly to the commonwealth's economy, but HBs 1502 and 1503 will do real damage to their ability to work and, thus, to their ability to contribute economically.

Along with the disproportionate error rate in E-Verify that naturalized citizens and legal residents face, they will also potentially face discrimination in the hiring process. Studies by the U.S. Government Accountability Office, Congressional Research Service, and Department of Homeland Security have documented employer abuse in the existing voluntary E-Verify system, including screening out workers with "foreign" surnames, failing to explain tentative non-confirmations (TNC) to employees, and punishing employees with TNCs by withholding wages and assignments during the period until any discrepancy is resolved. An increasing number of employers unlawfully use E-Verify to pre-rescreen applicants, and many employers also assume that all employees who received TNC findings are unauthorized workers and therefore require them to work longer hours and in poorer conditions.⁴

E-Verify is still an experimental, pilot program, and the federal government, which created the program, is only using it in limited situations. You may know that a new federal rule requiring federal contractors to use E-Verify recently went into effect. It is a limited rule with numerous exceptions and only applies to contracts made or solicited on or after September 8, 2009. States should look to the federal government for guidance on the use of E-Verify, and this limited roll out of the program by the federal government indicates that states would be wise to not yet mandate its use.

While the United States Supreme Court has yet to rule on numerous attempts by state and local governments to implement immigration-related laws, a ruling in the federal middle district of Pennsylvania provides guidance. In *Lozano et al. v. Hazleton*, a federal court ruled that it is unconstitutional for the city of Hazleton to enforce federal immigration employment laws. The ruling recognized that the enforcement of immigration laws is the responsibility of the federal government. The city appealed that decision, and a ruling from the Third Circuit Court of Appeals is expected sometime this year. The ordinance at the center of the case included an E-Verify provision.

A broad coalition of organizations opposes HBs 1502 and 1503. Organizations in opposition include the Pennsylvania Chamber of Business and Industry, the Service Employees International Union (SEIU), the National Federation of Independent Businesses, Associated Builders and Contractors, Pennsylvania Bar Association, the American Civil Liberties Union of Pennsylvania, and Pennsylvania Immigration and Citizenship Coalition.

House Bills 1502 and 1503 are flawed public policy. Enacting these bills will hurt workers at a time when workers and our economy need help. Please vote "no" on these bills.

³ Fiscal Policy Institute. *Immigrants and the economy: Contribution of immigrant workers to the country's 25 largest metropolitan areas*. Retrieved December 3, 2009, from http://www.fiscalpolicy.org/ImmigrantsIn25MetroAreas_20091130.pdf.

⁴ Andorra Bruno. "Electronic Employment Eligibility Verification." Congressional Research Service Report. March 13, 2009. Available at <http://nilc.org/immsemplymnt/ircaempverif/e-verify-CRS-rpt-2009-03.pdf>