



February 5, 2009

Dear Senator:

RE: ACLU Urges Rejection of Sessions E-Verify Amendment, Senate Amendment 165, to H.R. 1, The American Recovery and Reinvestment Act of 2009

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with over a half million activists and members and 53 affiliates nationwide, we write to express our opposition to an amendment offered by Senator Jeff Sessions (R-AL) which would expand the deeply flawed employment-verification program, known as “E-Verify”. Senate Amendment 165 (SA 165) would require any entity that accepts stimulus funds to participate in E-Verify.

The requirement in SA 165 would dilute the effectiveness of the stimulus package by imposing new burdens on hundreds of thousands of businesses, farms, state and local governments, schools, hospitals and other non-profit organizations. Imposing these conditions on funding now would harm hundreds of thousands of vulnerable legal workers in this extremely hazardous economic time by delaying the moment when recipients of stimulus funds can begin to put those moneys to work. We should not slow the economic recovery to attempt to expand a program that has been shown not to work during the 12 years it has been operating.

Furthermore, the E-Verify program has many well-documented failings. It generates unacceptably high error rates that result in misclassifying too many U.S. citizens and lawful immigrant workers as ineligible to work. According to reports commissioned by the Department of Homeland Security (DHS) itself, E-Verify cannot determine when unscrupulous employers misuse the system to engage in unlawful employment practices because there no oversight mechanisms exist. Nevertheless, a DHS-commissioned survey documented that some participating employers engaged in unlawful and discriminatory labor practices, including pre-screening workers who appeared or sounded foreign. Forcing employers to enroll in the program as a condition for receiving stimulus funds, as SA 165 proposes to do, will not only increase the cost of doing business, but will result in unjust firings, delayed employment and lost productivity – failings that will adversely impact all Americans.

The program is unwise because:

- **E-Verify relies on error-ridden government databases.**

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Before expanding the scope of this troubled program, Congress must make sure the government's databases are cleaned up. The E-Verify system checks the status of workers against the Social Security Administration (SSA) database of worker records. The SSA has already come under criticism for its flawed database, where errors have resulted in backlogs in payments for the disabled. SSA itself has reported that approximately 17.8 million of its files contain incorrect data, 12.7 million of which concern U.S. citizens. Under E-Verify, these 12.7 million Americans would be unable to work if the system reported the error to the employer and it could not be resolved right away.

- **E-Verify forces citizens and legal residents to get government permission slips to work.**

Expanding the E-Verify program would require employers receiving stimulus funding to verify the work-eligibility of every current and prospective employee using a flawed system that is riddled with errors. This will effectively guarantee that millions of Americans, lawfully entitled to work, will be barred from working.

- **E-Verify creates a blacklist, ensuring that millions of U.S. citizens will be denied jobs.**

In a time of such grave economic uncertainty, the last thing that Congress should do is to make it more difficult for Americans to work. Congress should be putting employees in the position to get hired quickly, not putting up roadblocks to the economic stability of American workers.

- **E-Verify lacks any mechanism to correct the blacklist.**

Workers whose records contain erroneous data impacting their eligibility and who are consequently barred from working will need a quick and permanent means of resolving these errors. Otherwise, they will become presumptively unemployable under the E-Verify regimen. SA 165 provides no due process protections to aid workers who are wrongly denied the right to start their next job. More significantly, the current E-Verify system lacks any true redress to resolve these inevitable data problems for law-abiding workers.

- **E-Verify is prohibitively costly.**

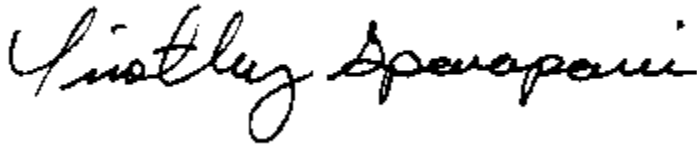
The non-partisan Congressional Budget Office (CBO) estimated the cost of E-Verify to taxpayers at \$40 billion over 10 years- without a stimulative effect on our economy. At a time of massive budget deficits and with its many problematic aspects, Congress should acknowledge the folly of pouring billions in scarce resources into such a flawed program.

For all of these reasons, we urge you to reject the Sessions Amendment, SA 165, should it come to the floor during consideration of H.R.1. Please contact Timothy Sparapani, Senior Legislative Counsel, at tsparapani@dcaclu.org or (202) 715-0839 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Caroline Fredrickson'. The signature is fluid and cursive, with a long horizontal stroke at the end.

Caroline Fredrickson
Director, Washington Legislative Office

A handwritten signature in black ink, appearing to read 'Timothy Sparapani'. The signature is cursive and somewhat stylized, with a prominent 'T' and 'S'.

Timothy Sparapani
Senior Legislative Counsel