



March 25, 2015

U.S. Senate
Washington, D.C., 20510

RE: S. Con. Res. 11, the Fiscal 2016 Senate Budget Resolution

Dear Senator,

As the Senate debates its budget proposal for Fiscal Year 2016, we offer our positions on certain proposed amendments to S. Con. Res. 11. An addendum is attached with greater detail urging you to vote as follows:

- **YES to Sen. Coons' Amendment #331 – HIV Stigma/Discrimination**
- **NO to Sen. McCain's Amendment #360 – Unaccompanied Children**
- **YES to Sen. Cardin's Amendment #365 – Profiling Training**
- **YES to Sen. Cardin's Amendment #366 – Profiling Data Collection**
- **YES to Sen. Cardin's Amendment #367 – Voter Reenfranchisement**
- **NO to Sen. Inhofe's Amendment #372 – TANF Drug Testing**
- **NO to Sen. Inhofe's Amendment #381 – Religion and Discrimination**
- **YES to Sen. Hatch's Amendment #533 – Criminal Prosecutions**
- **NO to Sen. Rubio's Amendment #549 – Private School Vouchers**
- **NO to Sen. Rubio's Amendment #560 – Parental Notification**
- **NO to Sen. Flake's Amendment #678 – Prosecution of Non-Citizens**

We may also offer additional individual vote recommendations on other issues as information becomes available. We take no overall position on the budget resolution as a whole. Please contact me or one of the contacts identified in the addendum if you have questions about the comments offered in this letter. Thank you for considering our views on this important congressional work.

Sincerely,

Michael W. Macleod-Ball

cc: Members of the U. S. Senate

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A. Vote YES on Senator Coons' Amendment #331

This amendment is intended to address outdated laws that perpetuate stigma and discrimination against those who are living with HIV. It is imperative that our laws reflect current science and medicine regarding HIV, including an accurate understanding of how it is transmitted, how to test for it, and how to treat those who are living with it. Unfortunately, many laws that explicitly reference HIV date to the earliest days of the AIDS epidemic in this country, when fear and ignorance were at their height. Coons Amendment #331 would take important steps to promote public health by ensuring that our laws are not harming those who are living with HIV through stigma and discrimination. Contact: **Ian Thompson** (ithompson@aclu.org).

B. Vote NO on Senator McCain's Amendment #360

We urge the Senate to oppose McCain Amendment #360, which would establish a deficit-neutral reserve fund relating to deterring migration of unaccompanied children from Honduras, El Salvador, and Guatemala, “which may include the expedited removal of unlawful entrants from noncontiguous countries.” The root causes of Central American migration are multiple and complicated, and cannot be addressed by measures that violate due process for those seeking protection in the U.S. from violence in their home countries. Under the bipartisan Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”), unaccompanied children from countries not contiguous with the U.S. (i.e., all countries other than Mexico and Canada) must be placed in regular removal proceedings before an immigration judge.¹ The TVPRA prevents the expulsion of these unaccompanied children through expedited removal procedures shown to be ineffective in assessing their claims to protection, and ensures that they receive a full and fair hearing. The very notion of deporting children to life-threatening conditions without ensuring due process offends the Constitution as well as our nation’s commitment to protecting the most vulnerable among us. We urge Senators to oppose McCain Amendment #360. Contact: **Joanne Lin** (jlin@aclu.org).

C. Vote YES on Senator Cardin's Amendment #365

We urge the Senate to support Cardin Amendment #365, which would provide funding to State and local law enforcement agencies for training and enforcement related to the profiling guidance established by the Department of Justice (“DOJ”). On December 8, 2014 DOJ released a revised version of its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. According to the White House and Justice Department, the revised Guidance will eliminate some of the existing carve-outs for law enforcement activities related to “protecting national security or the integrity of the borders.”^[1] It will prohibit profiling based on national origin, religion, gender, sexual orientation, and gender identity, in addition to race and

¹ See 8 U.S.C. § 1232(a)(5)(D).

^[1] CIV. RIGHTS DIV., DEP’T OF JUSTICE, GUIDANCE FOR FEDERAL LAW ENFORCEMENT AGENCIES REGARDING THE USE OF RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, OR GENDER IDENTITY (Dec. 2014), available at <http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>.

ethnicity. It also will apply to state and local law enforcement agencies participating in federal law enforcement task forces.^[2] While the Guidance does not go far enough in eliminating all forms of profiling, it is an important step toward ending discriminatory policing, which continues to harm communities, reduce public safety, and cause targeted communities to mistrust the police. The Cardin Amendment would ensure that state and local law enforcement agencies have the resources that they need to comply with the Guidance's requirement for enhanced training to prevent biased policing. We urge Senators to vote YES on Cardin Amendment #365. Contact: **Jennifer Bellamy** (jbellamy@aclu.org).

D. Vote YES on Senator Cardin's Amendment #366

We urge the Senate to support Cardin Amendment #366, which would provide funding to State and local law enforcement for data collection related to profiling by the Department of Justice. Racial profiling in law enforcement is a persistent problem in the United States, and the tragic shooting death of Michael Brown in Ferguson, Missouri and other similar events across the country highlight the need for systemic policing reform. Yet, statistical information on police practices, including around the number of police shootings per year, is sorely lacking² and often self-reported. Cardin Amendment 366 would ensure that state and local law enforcement agencies have resources to comply with the Guidance's data collection requirement and represent a significant step in building a culture of transparency within law enforcement agencies. We urge Senators to vote YES on Cardin Amendment #366. Contact: **Jennifer Bellamy** (jbellamy@aclu.org).

E. Vote YES on Senator Cardin's Amendment #367

This amendment would provide a funding stream for a voter reenfranchisement initiative to provide information to individuals released from Bureau of Prisons custody information regarding their ability to vote following release, require notifications to individuals on the impact on their voting rights when accepting plea agreements, and require the Department of Justice to report on the disproportionate impact of criminal disenfranchisement laws on minority populations, including data on voter disenfranchisement rates by race and ethnicity.

An estimated 5.85 million citizens cannot vote as a result of criminal convictions, and nearly 4.4 million of those have already been released from prison. Nationwide one in 13 African Americans of voting age have lost the right to vote – a rate four times the national average.³ Latino citizens are also impacted because they are disproportionately over-represented in the criminal justice system. States have vastly different approaches to voting with a criminal conviction. This patchwork of state laws has caused confusion among election officials and the

^[2] *Id.*

² Wesley Lowery, *How many police shootings a year? No one knows*, WASH. POST, Sept. 8, 2014, available at <http://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/>.

³ JEAN CHUNG, THE SENTENCING PROJECT, FELONY DISENFRANCHISEMENT: A PRIMER, 2 (JUNE 2014), available at http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf.

public, sometimes resulting in the disfranchisement of even eligible voters. This amendment would provide much needed information for citizens returning from incarceration. These initiatives are needed as a first step, until full restoration of voting rights to all individuals who have been released from prison and are living and working in our communities. Contact: **Deborah Vagins** (dvagins@aclu.org).

F. Vote NO on Senator Inhofe's Amendment #372

Amendment #372 would require states to perform drug testing as a condition for receiving Temporary Assistance for Needy Families (TANF) benefits and should be opposed. Drug testing of TANF recipients likely undermines the guarantees of the Fourth Amendment to be free from unreasonable government searches. Such drug testing schemes target low-income people and communities, despite little credible evidence that TANF applicants are any more likely to use drugs than the general public. Furthermore, drug testing of individuals in need of public assistance is a significant cost to taxpayers and states, and does nothing to address drug addiction. Contact: **Kanya Bennett** (kbennett@aclu.org).

G. Vote NO on Senator Inhofe's Amendment #381

This amendment promotes the use of religion to discriminate and is intended to trample upon the rights of millions of Americans, including women who need reproductive health services and committed and loving same-sex couples and their children. This amendment purports to prevent discrimination, but would in fact sanction it. We have profound respect for and demonstrated commitment to religious liberty, reproductive freedom, and LGBT equality, and this amendment represents a dangerous setback for all three. Contact: **Dena Sher** (dsher@aclu.org), **Ian Thompson** (ithompson@aclu.org), **Georgeanne Usova** (gusova@aclu.org).

H. Vote YES on Senator Hatch's Amendment #533

Amendment #533 would require Department of Justice attorneys to comply with all legal and ethical obligations in criminal prosecutions, including the disclosure of exculpatory evidence, and should be supported. In *Brady v. Maryland*, the Supreme Court recognized that a defendant has a fundamental right to favorable evidence that might demonstrate his or her innocence. *Brady* stands for the belief that prosecutors should be in pursuit of justice, not wins. Incidents of prosecutorial misconduct, many of which involve *Brady* violations, undermine this belief and the integrity of our justice system. It is critical that federal prosecutors comply with *Brady* and other constitutional obligations. Contact: **Kanya Bennett** (kbennett@aclu.org).

I. Vote NO on Senator Rubio's Amendment #549

We oppose any amendment that would endorse the creation of a private school voucher or tuition tax credit program, including Rubio Amendment #549. We oppose vouchers because they harm religious liberty. Religious schools, which receive the overwhelming majority of taxpayer-funded vouchers, not only require all students to receive religious instruction and attend religious services, but also integrate their religious beliefs in everything they teach students. Beyond

harming religious liberty, vouchers lead to taxpayer-funded discrimination. For instance, a voucher program in Milwaukee systematically excludes students with disabilities from participating and segregates them in public schools in disproportionate numbers.⁴ Furthermore, many religious schools that receive taxpayer-funded vouchers discriminate in hiring and admissions.⁵ Yet, the government can't fund or aid discrimination. Contact: **Dena Sher** (dsher@aclu.org).

J. Vote NO on Senator Rubio's Amendment #560

Senator Rubio's amendment would provide for enforcement of S. 404, the Child Interstate Abortion Notification Act (CIANA), a bill that would impose a mandatory parental notification requirement on young women who need abortion services in states where they do not reside, and make criminals of the caring adults and doctors who help them get the care they need. Some young women are unable to involve their parents in their decision to access abortion care for a variety of reasons, including histories of abuse or incest at home. Instead, teens may turn to other adults such as grandparents, adult siblings, aunts or uncles, or clergy to accompany them in seeking care that is legally available in another state. CIANA would subject these caring adults to federal criminal penalties, and would impose a complex patchwork of state parental-involvement laws on young women and doctors that is both difficult to navigate and unconstitutional. CIANA endangers young women's health and Senator Rubio's amendment supporting it should be rejected. Contact: **Georgeanne Usova** (gusova@aclu.org).

K. Vote NO on Senator Flake's Amendment #678

Senator Flake's Amendment #678 would establish a spending-neutral reserve fund relating to federal criminal prosecutions of non-citizens who cross the border for the first time without documentation. Illegal entry (under 8 U.S.C. § 1325) and illegal re-entry (under 8 U.S.C. § 1326) are already the most prosecuted federal crimes in the United States. These prosecutions are extremely expensive to taxpayers, who foot the relevant bills to fund district courts, U.S. Attorney's offices, federal public defenders, Criminal Justice Act panel attorneys, court interpreters, and U.S. Marshals Service (USMS) facilities, as well as private federal prisons known as Criminal Alien Requirement (CAR) prisons. The criminal proceedings for immigrants charged with illegal entry or re-entry present serious due process concerns. And there is little to no evidence that such prosecutions discourage immigrants from attempting to cross the border to seek protection from persecution, to reunite with family, or to find employment. Immigration enforcement is more appropriately handled by civil, not criminal, authorities. Amendment #678 should be opposed. Contact: **Ruthie Epstein** (repstein@aclu.org).

⁴ See Letter to Tony Evers, State Superintendent, Wisc. Dep't of Pub. Instruction, from U.S. Dep't of Justice, Civil Rights Div., Educ. Opportunities Section, Apr. 9, 2013, *available at* https://www.aclu.org/files/assets/04_09_13_letter_to_wisconsin_dpi_0.pdf.

⁵ See, e.g., Rebecca S. Green, "Jury Sides with Fired Teacher," *Fort Wayne Journal Gazette*, Dec. 20, 2014 (the school received taxpayer-funded vouchers for 51 students in 2012-2013 and 158 students in 2013-2014. <http://indianapublicmedia.org/stateimpact/sortable-table-voucher-distribution-private-school/>); Kim Severson, "Backed by State Money, Georgia Scholarships Go to Schools Barring Gays," *N.Y. Times*, Jan. 20, 2013;