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**COMMENTS IN REGARD TO H 5312 –
RELATING TO LABOR AND LABOR RELATIONS
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The ACLU appreciates the opportunity to testify before the committee this week in regard to legislation mandating the use of the E-Verify program. The committee heard significant testimony as to the pros and cons of the program, and the ACLU would like to provide some follow-up information as to our major concerns regarding E-Verify.

Many of our concerns about the program, outlined below, are echoed by the federal government in their most recent evaluation of E-Verify, which I have e-mailed to the committee members as requested. E-Verify was intended to be, and still largely is, a voluntary program; given the lasting concerns with E-Verify, we believe that requiring its use is an inappropriate course of action which will lead to discrimination, and will prevent lawful workers, including U.S. citizens, from securing work.

E-Verify Databases Contain Millions of Errors

According to the most recent data available, the Social Security Administration (SSA) estimates that 17.8 million of its records contain discrepancies related to name, date of birth, or citizenship status. Of these flawed records, 12.7 million are for U.S. citizens. There are more flawed records in one of E-Verify's key databases, then, than there are non-legal workers in the United States. Errors and outdated information are also prominent in the databases of the Department of Homeland Security and the U.S. Bureau of Citizenship and Immigration Services. A 2006 Government Accountability Office (GAO) report found that in just 14 USCIS district offices, over 110,000 immigrant records were lost.

Though a 2007 Westat study commissioned by DHS did find improvement in database accuracy, it noted that "[m]ost importantly, the database used for verification is still not sufficiently up to date to meet the IIRIRA requirement for accurate verification, especially for naturalized citizens." The December 2010 GAO report on E-Verify notes that while steps have been taken to reduce tentative nonconfirmation reports (TNCs), "the accuracy of E-Verify continues to be limited".

Foreign-Born Citizens and Lawful Workers Are Negatively Impacted

As a result of these database errors, foreign-born lawful workers, including those who have become citizens, are 30 times more likely than native-born U.S. citizens to be incorrectly identified as not authorized for employment. Almost 10 percent of foreign-born citizens are initially told they are not authorized to work.

The 2010 GAO report found that 76 percent of name mismatches in 2009 affected U.S. citizens. The GAO also noted that numbers of mismatches are likely to increase if E-Verify

were to become a mandated program. Individuals of Hispanic or Arab origin, according to the GAO report, are more likely to receive a TNC as a result of a name mismatch.

Unrealistic Timeframe to Resolve Tentative Nonconformations

Whether because of transportation issues, child care issues, a second job, or myriad other reasons, new hires may not be able to visit a local SSA office within the eight day allotted time frame to resolve a TNC. For those who can, resolving a TNC involves taking time off from their new job to fix the database error. It is also conceivable that in order to resolve the TNC, the new employee would have to obtain any other official documents necessary, amounting to more missed work in the first few days of employment. Additionally, not all SSA errors can be resolved in the ten-day time frame E-Verify permits for employers to re-run new employee information. The 2010 GAO report anticipates that the wait time involved with resolving SSA errors will only increase if E-Verify participation is mandated and increasing numbers of individuals seeking to resolve their TNC flood the local SSA offices, taxing their limited resources.

Employers Use E-Verify to Discriminate

A September 2007 program evaluation of E-Verify found that employers engaged in discriminatory practices directly prohibited by the E-Verify program. Forty-seven percent of employers pre-screened job applicants. As noted above, Hispanic and Arab individuals are more likely to receive a TNC because of name mismatches. These errors in the system lead to suspicion and race-based discrimination of applicants who are perceived to look and sound foreign; in anticipation a TNC, qualified legal workers are citizens are denied employment because of their name, their accent, or their skin color. Disturbingly, the program evaluation found that 9.4 percent of employers never even notified potential employees of their TNC, never giving them a chance to resolve the database error, or even to know that one existed. Twenty-two percent of employers restricted work assignments because of a TNC, 16% delayed training, and 2% reduced the pay of the new hires as a result of their TNC.

Given the unemployment crisis occurring in Rhode Island, denying employment to qualified Rhode Islanders cannot be an option. Denying qualified Rhode Islanders employment because of their race, name, or accent can never be an option. Based on all of the above reasons, the ACLU opposes mandating E-Verify use in Rhode Island, and strongly opposes H 5312.

Submitted by: Hillary Davis, Policy Associate