



COMMUNITY LEGAL SERVICES
OF PHILADELPHIA

National Security Begins at Home Package of Legislation

**House Bills 41, 355, 439, 474, 738, 799, 801, 809, 810, 856, 857, 858, and 865
Senate Bill 9**

**Written Testimony of Community Legal Services, Inc.
August 30, 2011**

SUMMARY

The following testimony is submitted by Community Legal Services, Inc (“CLS”) of Philadelphia. Community Legal Services is a non-profit law office providing free legal services to over 18,000 low-income Philadelphians every year, as well as expert advice to legal services programs across the state. This testimony is submitted on behalf of our clients affected by these bills.

The House State Government Committee is considering a package of bills with the intention of addressing the Pennsylvania “illegal immigrant problem.” These bills will be costly to the state, costly to businesses, and will harm ordinary Pennsylvania families who reside here legally—citizens and immigrants alike. These bills ignore the incredible and valuable contributions of immigrants to the Commonwealth, both today and throughout our history. **We urge you to vote no on these bills.**

The testimony contained herein is broken into three separate parts.

First is testimony regarding the implications for Pennsylvanian safety net programs by HB 41, HB 355 Section 1, HB 738 Section 4, and HB 809 and SB 9. **By imposing onerous identification requirements for receipt of public benefits, certain of these bills will unintentionally block an estimated 500,000 low-income United States citizens in Pennsylvania from accessing critical public benefits which they are eligible to receive.** At the same time, all of the bills will cost state and local agencies (and in some cases community groups receiving state funds) substantial time and money to implement, with no identified savings. Despite these costs and hardships, the proponents of these bills have failed to show documented evidence of a widespread problem of ineligible immigrants receiving benefits.

Second is testimony regarding HB 355, HB 439, HB 738 (sections 6 and 9), HB 798, HB 856, and HB 865. These bills create an assortment of criminal and civil penalties for employers, municipalities, and individuals who work with undocumented immigrants. As in other states, these bills are likely to be found largely unconstitutional and will lead to costly legal challenges. While they are in effect, **they will subject businesses to**

costly requirements and potentially harassing litigation. As well, they would punish entire municipalities and all individuals living in them if critical services such as soup kitchens and domestic violence shelters provide services without regard for immigration status. **They would also create tens of millions of dollars in unfunded mandates to municipalities and state agencies without an increase in the health, safety, or welfare of the city.** Finally, they would subject lawfully resident individuals to illegal racial profiling, creating a community of fear among immigrants.

Finally, we have presented testimony regarding the E-Verify provisions found in section 2806-D of HB 355, sections 8 and 10 of HB 738, and HB 858. **E-Verify is an error prone system that may deny over 150,000 work-authorized Pennsylvanians (citizens and permanent resident immigrants) the ability to work.** As well, E-Verify is costly to implement, both for the state and for businesses. Without protections for workers who are discriminated against, E-Verify will lead to racial profiling, with businesses denying jobs to those who “look like immigrants” for fear that they could lead to a time-consuming E-Verify confirmation.

We urge this committee to vote against all of these bills and to support legislation that will grow our economy, support low-income individuals who desperately need public benefits from the state, and make Pennsylvania a more welcoming state.

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HB 41, HB 355 (Section 1), HB 738 (Section 4), HB 809, and SB 9

**Written Testimony of Michael Froehlich and Louise Hayes, Staff Attorneys
Community Legal Services, Inc.
August 30, 2011**

We thank you for the opportunity to present this testimony on behalf of our low income clients regarding HB 41, HB 355 Section 1, HB 738 Section 4, HB 809 and SB 9.

Several of the bills that are subject to discussion at this hearing include provisions that would affect how Pennsylvanian families apply for and receive public benefits. This testimony specifically focuses on HB 41, SB 9, HB 809, HB 738 Section 4, and HB 355 Section 1 (adding new section 2807-D). The provisions in these bills intend to prevent undocumented immigrants from receiving public benefits for which they are not eligible. In reality, these provisions will prevent U.S. citizens and lawfully present immigrants from receiving Unemployment Compensation, the popular property tax and rent rebate, and many other benefits for which they are eligible simply because they lack the required papers proving their status and are awaiting replacement identity documents from government agencies. In addition, these provisions will drive up the cost of government and impose onerous red tape on under-resourced state and local agencies, as well as community-based nonprofit agencies. Finally, these provisions are a solution in search of a problem as proponents of these bills have failed to show that the problems that these provisions attempt to address exist.

I. HB 41, HB 355, HB 738, HB 809, and SB 9 Will Deny a Wide Variety of Public Benefits to Eligible Citizens

The intent of HB 41, HB 355, HB 738, HB 809, and SB 9 is to prevent undocumented immigrants from receiving public benefits for which they are not eligible. The bills include many commonalities, but some significant differences. The comments below apply to provisions in all of these bills unless otherwise noted.

HB 41, SB 9, HB 809, HB 738, and HB 355 would require that applicants and recipients of a wide variety of public benefits sign an affidavit that they are U.S. citizens or lawfully present immigrants. They would also require that each person's name be run through the federal immigration database called SAVE. HB 41, SB 9, HB 738, and HB 355 would apply only to state and local agencies. HB 809 would apply to state and local agencies, as well as any private entity that receives "a grant, loan or authority to expend Commonwealth moneys." Hence, HB 809 would likely apply to food cupboards, homeless shelters, domestic violence shelters, and other community-based service providers.

HB 41 and SB 9 (but not HB 809, HB 355, or HB 738) would require applicants and recipients of public benefits to provide a government-issued ID. Military records would be permissible as government-issued IDs under SB 9. The only armed forces records acceptable under HB 41 would be armed forces identification cards. Persons who do not have the necessary records because of domestic violence would be exempt from the ID requirement under SB 9. They would not be exempt under HB 41.

HB 809, HB 355, and HB 738 (but not HB 41 or SB 9) would prohibit the expenditure of public moneys on public benefits to unauthorized aliens with the exception of emergency medical care, law enforcement and related expenses, or as otherwise required by federal statute or court decision. The bills do not define “public benefit.” Existing law prohibits undocumented immigrants from receiving almost all forms of public benefits, with exceptions set forth in federal law.

HB 809 (but not HB 41, SB 9, HB 355, and HB 738) would require that state agencies, local agencies, and private entities report the name and address of unauthorized aliens to the Attorney General of the Commonwealth if their identity and status becomes known during the course of determining the individual’s eligibility for public benefits. Agencies, including private entities, would also be required to prepare an invoice for any public benefit provided to an unauthorized alien. This invoice shall be submitted to the state Department of Revenue to be “provided to the United States Department of Homeland Security and the United States Department of State for transmission to the country of origin of the unauthorized alien with a request that the country reimburse the Commonwealth for the expenses.”

HB 809 (but not HB 41, SB 9, HB 355, and HB 738) defines “unauthorized alien” as an alien who does not have the legal right or authorization under Federal law to work in the United States. It prohibits issuance of public benefits to unauthorized aliens, with narrow exceptions. This provision equates lack of work authorization with ineligibility for benefits, but these two conditions are separate determinations under federal law. Many immigrants who do not have work authorization are “qualified” or “lawfully present” under federal law and hence potentially eligible for benefits. These immigrants include battered spouses of United States citizens who have presented a prima facie case of their eligibility for lawful immigration status; children applying for asylum whose application has been pending over 180 days; children with Temporary Protected Status; asylees who were recently granted their status in an Immigration Court proceeding, and some refugees who cannot afford and do not need work authorization documents.

HB 809, HB 355, and HB 738 (but not HB 41 or SB 9) permits agencies to adopt variations to the verification requirements in order “to improve efficiency or reduce delay in the verification process or to provide for adjudication of unique individual circumstances where the verification procedures...would impose unusual hardship on a

legal resident.” This sensible provision has been included in other states’ legislation restricting undocumented immigrants’ access to benefits.

II. HB 41 and SB 9 Would Harm Both Citizens and Lawfully Residing Immigrants who Lack Government-Issued ID.

Getting government-issued ID is a huge problem for CLS’s clients. Almost every day, we see clients seeking help getting government-issued ID. Unlike most legal aid offices in Pennsylvania, we are fortunate to have a social worker in our office. Over half of her time—and the time of the interns she supervises—is spent helping clients get ID. This problem is extremely widespread among low-income citizens, and it is a problem that is getting worse.

A. Over 500,000 Low-Income Pennsylvanians Lack Government Identification

Who doesn’t have government-issued ID? Many people. *Elderly people* who have never needed it. (Recall that in cities like Philadelphia and Pittsburgh, many low-income people never learn to drive because they can get around via public transportation.) Homeless people who have lost their ID amid their moves. *Domestic violence victims* who had to flee their homes in a hurry, or whose abusers have hid their documents. *Many people with mental illnesses* that interfere with their ability to maintain their documents. *People who are starting new lives* after successfully completing a period of incarceration. *People whose parents changed their mind about what to call them after listing a different name on a birth certificate.*

A 2006 survey from the Brennan Center for Justice at New York University School of Law found that 11% of U.S. citizens lack a photo ID (which is in effect the same requirement as HB 41 and SB 9). This number rises to 15% of citizens with income below \$35,000 per year, meaning that *over 500,000 low-income Pennsylvanians lack government-issued ID*. The study found that 18% of seniors over age 65 lack government-issued ID – close to 350,000 Pennsylvanians. And a full 25% of African-Americans lack photo ID.¹

Since 9/11, government-issued ID has become much more difficult to get. Many of us who first got our driver’s licenses before 2001 may not realize how difficult it now is to obtain government-issued ID. Since 9/11, PennDOT, the state health department, and the Social Security Administration have simultaneously tightened up their requirements to get documents. To get a PennDOT ID today, you must have a social security card, a birth certificate with raised seal, and two proofs of residency. *But there’s a catch-22 if you*

¹ Survey conducted by Opinion Research Corporation for the Brennan Center for Justice at NYU School of Law, published as “Citizens Without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification,” November 2006, available at http://www.brennancenter.org/dynamic/subpages/download_file_39242.pdf and attached to this testimony. Pennsylvania census data from the 2006 American Community Survey, available at http://factfinder.census.gov/servlet/STSelectServlet?_lang=en&_ts=210452882794.

do not have all these documents. Generally, you cannot get the necessary social security card or birth certificate if you do not have government-issued ID. It is this catch-22 that is the major obstacle for many of our clients seeking government-issued ID.

B. Real People Face the Problem Of Getting a Government Issued Identification Every Day

Here are stories of just three of the clients at CLS who lacked ID.

- > Mr. S is elderly, illiterate, and has kidney cancer. Although he had worked for many years and paid into Social Security, he never needed ID until he found he could not get Social Security benefits or senior housing without it. ***CLS's social worker spent six months working to get him ID.*** First, she had to get him his birth certificate. Because she works for a law office and was thus a legal representative, she was able to apply for a birth certificate on his behalf as an "eligible requester"; other social workers are not so fortunate. She then had to persuade the Social Security Administration to issue a printout with his social security number (a lesson she has learned through experience), which, with other documents she was able to obtain, she used to persuade PennDOT to issue a photo ID. With that photo ID, she was able to get him a replacement social security card. During the six months our social worker worked on this case, Mr. S could not get Social Security and slept on a relative's couch.
- > Ms. B, age 47, has a history of mental illness and homelessness. ***All her documents were stolen while she was in a shelter.*** Without ID, she could not get permanent housing. ***It took our social worker four months to get ID for Ms. B.*** If not for the social worker's intervention in obtaining her birth certificate and other documents needed to get her social security card (in similar ways to the work she did for Mr. S), Ms. B would never have been able to navigate the "catch 22" of needing ID to get the documents needed to get ID.
- > Ms. P is 81 years old and was born in the home of her sharecropper parents in North Carolina. ***She worked and owned her home in Philadelphia for 50 years, but never had a photo ID because she does not drive and never had a birth certificate.*** Our social worker sent a sheaf of documents to the North Carolina records office, including school records from the 1940s. The records office eventually told her that Ms. L's birth had been registered using her mother's maiden name. Ms. L used her father's last name all her life until she adopted her husband's name when she married. After six months of accumulating records and submitting them to North Carolina, our social worker was finally told that the only way Ms. L can get her birth certificate is to obtain a legal name change. The social worker referred Ms. L to a lawyer who will do the work pro bono, but the name change will cost \$300 in publication fees and will take months. This case is still pending.

These three people are typical of the roughly 530,000 Pennsylvanians with incomes under \$35,000 per year who lack government-issued ID. **These Pennsylvanians could find themselves unable to get Unemployment Compensation or other urgently-needed benefits if HB 41 or SB 9 are enacted.** Examples of other of our clients and those of the Homeless Advocacy Project in Philadelphia are attached to our testimony.

But the government-issued ID requirement is not our only concern with HB 41 and SB 9. Even if the government-issued ID requirement were removed from these bills, we would still oppose them.

III. HB 41, SB 9, HB 809, HB 355, and HB 738 are Costly Solutions in Search of a Problem

The problem these bills aim to address does not exist, or at least not in significant numbers. **Immigrants who are not lawfully present in the U.S. are generally *already ineligible for the benefits targeted by this bill***; they are certainly ineligible for all major benefits administered by the Department of Public Welfare. DPW and other state agencies already have well-functioning systems in place to ensure that individuals do not receive public benefits for which they are ineligible because of their immigration status. And we have heard *no* evidence of any widespread problem of undocumented immigrants improperly receiving public benefits.

We have not learned of a single undocumented client fraudulently receiving public benefits for which he or she is not eligible. But the opposite is often true: our office frequently encounters lawfully present immigrants who are not receiving benefits for which they are eligible, because they were wrongfully denied or they incorrectly believed they were not eligible.

Some proponents of this bill have cited a study by the advocacy organization FAIR that undocumented immigrants cost Pennsylvania \$728 million per year. This study is based on faulty math, baseless assumptions, and ignores the financial contributions of the immigrants it vilifies. Two-thirds (\$472.8 million) of the costs, in fact, are for the education of children who are U.S. citizens and are alleged to have one or more undocumented parents. **In addition, none of the costs described by the FAIR study would be addressed by HB 41, SB 9, HB 809, HB 355, or HB 738.**

In September 2007, State Representative Daryl Metcalfe published a report called “*Invasion PA*” in which he sought to identify the harm perpetrated by undocumented immigrants. Representative Metcalfe’s report did not cite a single confirmed instance of improper receipt of public benefits by undocumented immigrants. Its only evidence of improper public benefits receipt by undocumented immigrants is its item # 108: “[T]he

Attorney General's office has been contacted by members of the Pennsylvania General Assembly who have indicated that their constituents have alleged that such benefits are still being provided." These multiple layers of hearsay are useless as evidence, especially as there is no reason to believe that the complaining constituents have direct knowledge of the relevant facts or of the highly technical rules around public benefits eligibility.

IV. HB 41, SB 9, HB 809, HB 355, and HB 738 Would Add Costly Red Tape to a Wide Variety of Programs and Services

These bills would impose additional bureaucratic requirements on applications for a wide range of services. Provisions in some of these bills would require agencies to adjust their processes so that they would (1) see government-issued ID for every applicant, (2) have each applicant sign an affidavit of citizenship or lawful presence, and (3) run the name of each noncitizen applicant through the SAVE system, and be prepared to interpret the result. *This unfunded mandate would put counties and other localities in a difficult situation: either have their limited staff work with applicants to help them get government-issued ID or deny clearly needy citizens the services for which they are otherwise eligible.*

- > **Even citizens with the necessary ID will be inconvenienced by the need to show it.** Many government programs, in line with a national trend aimed at improving the accessibility of government services, now allow applications on-line, by phone, or by mail. Such remote application systems embody good customer service and are far easier for Pennsylvanians than rules requiring applications to be submitted in person. HB 41 and SB 9 would require agencies to accept government-issued IDs and affidavits by mail or electronic means. However, each agency would be required to develop a new application process to accommodate this requirement. This additional burden would pose particular hardships for elderly applicants and for individuals with disabilities.

For example, the Unemployment Compensation system has closed its local offices and now handles all applications by phone or on-line. The Department of Labor and Industry relies on checking other government databases to confirm the applicant's identity and eligibility. If HB 41 or SB 9 were enacted, the Unemployment Compensation system and many others would need to alter their systems to provide for ID documentation to shown in person, mailed, faxed, or scanned.

- > **The new affidavit requirement in all five of these bills is unnecessary red tape that imposes more burdens on citizens and is yet another unfunded mandate** on counties, cities, and townships. The affidavit would be one more piece of paper for Pennsylvanians to complete every time they apply for basic governmental services. It may also confuse immigrants and deter lawfully present immigrants' use of services to which they are entitled.

- > **The SAVE database required by all five of these bills is costly, error-prone, and complicated to administer.** *Government agencies must pay the federal government every single time they use SAVE.* When Colorado implemented a similar bill last year, it spent over \$2 million in start-up costs, apparently on costs of implementing SAVE, with no identifiable savings.² We cannot afford to make the same mistake in Pennsylvania.

In addition, SAVE does not tell the user whether someone is “eligible” or not “eligible” for benefits; it only reports the immigrant’s status, such as having a “U visa.” Staff at all levels of government will have to be trained to recognize complex immigration terms and determine which statuses are “lawfully present.”

V. HB 809 Would Impose Onerous Requirements on Private Entities That Receive Any State Funds, Including Churches and Non-Profit Community-Based Organizations

HB 809 would subject any private entity to the onerous verification rules if the private entity receives “a grant loan or authority to expend Commonwealth moneys.” Churches that run **soup kitchens** under state-funded food programs or accept childcare subsidies would be affected. Non-profit community-based organizations that provide state-funded **afterschool programs for children** or **services to individuals with disabilities** would be required to comply with onerous new reporting requirements and intrusive questioning of their clients. **Domestic violence shelters**, which routinely see women who have fled without any documents, might have to turn away women fleeing abuse.

VI. A Cautionary Tale: Congressionally-Mandated Citizenship Documentation for Medicaid Harmed Citizens at Great Cost with Few Benefits

As part of the Deficit Reduction Act in late 2005, Congress enacted a similar law to HB 41, SB 9, HB 809, HB 355, and HB 738 mandating that state Medicaid agencies require birth certificates of most citizens seeking Medicaid. The law had the same ostensible purpose: to prevent undocumented immigrants from receiving public benefits. Just as here, Congress imposed this requirement despite the absence of evidence of any significant problem with undocumented immigrants fraudulently receiving Medicaid.³

² Mark P. Couch, “Colorado Immigration Law Falls Short of Goal; State Agencies: \$2 Million Cost and No Savings,” *Denver Post*, Jan. 25, 2007, available at http://www.denverpost.com/ci_5081255.

³ Neither an investigation by the Inspector General of the Department of Health and Human Services nor the Centers for Medicare and Medicaid Services found particular evidence of false allegations of citizenship. Nor, following its investigation, did the Inspector General recommend that states require birth certificates of Medicaid applicants. U.S. Department of Health and Human Services Office of Inspector

*The results of this law were disastrous for states and for needy citizens seeking Medicaid. Large numbers of citizens were unable to supply the required birth certificate and have consequently gone without needed health insurance.*⁴ Officials in Iowa and Florida, among other states, reported declines in Medicaid receipt by citizens unable to provide the required birth certificates, while they unearthed virtually no undocumented immigrants who had been improperly receiving benefits.⁵

The citizens who lost Medicaid as a result of the new red tape imposed by Congress were disproportionately white and African-American. Apparently Hispanic citizens, who are most likely to be mistaken for undocumented immigrants, are more likely to safeguard their citizenship proof and to obtain birth certificates shortly after a child's birth.⁶

Finally, the citizenship documentation requirement was extraordinarily costly. The House Committee on Oversight and Government Reform found that *the federal government spent \$8.3 million in administrative costs in just six states, and had uncovered just eight undocumented immigrants improperly receiving Medicaid.* According to the report, "for every \$100 spent by federal taxpayers to administer the documentation requirements, the federal government saved only 14 cents."⁷

The results of Congress's new documentation requirement were so burdensome and expensive that Congress reversed course in 2009. Instead of requiring birth certificates from all applicants for Medicaid, states may now verify identity and citizenship through data matches with the Social Security administration. This method is much less burdensome on citizen applicants for benefits and on state agencies.

General, "Self-Declaration of U.S. Citizenship For Medicaid," July 2005, OEI-02-03-00190, available at <http://oig.hhs.gov/oei/reports/oei-02-03-00190.pdf>.

⁴ Donna Cohen Ross, Center on Budget and Policy Priorities, "New Medicaid Citizenship Documentation Requirement Is Taking a Toll: States Report Enrollment Is Down and Administrative Costs Are Up," March 13, 2007, available at <http://www.cbpp.org/2-2-07health.htm>; Majority Staff of the House of Representatives Committee on Oversight and Government Reform, "Medicaid Citizenship Documentation Requirements Deny Coverage To Citizens And Cost Taxpayers Millions," July 24, 2007, available at <http://oversight.house.gov/documents/20070724110341.pdf> and attached to this testimony

⁵ Robert Pear, "Lacking Papers, Citizens Are Cut From Medicaid," *The New York Times*, March 12, 2007, available at <http://www.nytimes.com/2007/03/12/us/12medicaid.html?adxnnl=1&adxnnlx=1192392124-GNtItPpVLiRfwFBHO1iflg>.

⁶ Donna Cohen Ross, Center on Budget and Policy Priorities, "Medicaid Documentation Requirement Disproportionately Harms Non-Hispanics, New State Data Show: Rule Mostly Hurts U.S. Citizen Children, Not Undocumented Immigrants," July 10, 2007, available at <http://www.cbpp.org/7-10-07health.htm>.

⁷ Majority Staff of the House of Representatives Committee on Oversight and Government Reform, "Medicaid Citizenship Documentation Requirements Deny Coverage To Citizens And Cost Taxpayers Millions," July 24, 2007, available at <http://oversight.house.gov/documents/20070724110341.pdf>.

Pennsylvania should not replicate Congress's mistake of expending huge sums to address a nonexistent need, only to harm U.S. citizens and legal immigrants.

VII. HB 41, SB 9, HB 809, HB 355, and HB 738 Would Spread Fear and Confusion Among Immigrants, Undermining Public Health and Safety

Enactment of these bills would create a hostile and confusing atmosphere that would deter lawfully present immigrants and citizen children in immigrant families from applying for benefits for which they are eligible.

Unfortunately, history gives us good reason to fear that changes in benefits rules affecting immigrants will deter eligible legal immigrants from receiving benefits. After a 1996 federal law restricted food stamp eligibility for certain legal immigrants, participation among eligible immigrants and their children declined precipitously. Between 1994 and 2000, the participation rate among *eligible* noncitizens fell from 67% to 45%. Among eligible citizen children living with immigrant parents, the participation rate dropped in half, from 80% to 38%.⁸ Experts have attributed much of the decline among immigrants to the "chilling effect" of confusion about program rules.⁹

These bills do not affect federal law allowing undocumented immigrants to access a small number of humanitarian services, including immunizations or non-cash disaster relief. However, based on experience from other states, they would deter these immigrants from seeking critical services that it is in everyone's interest remain open, turning preventable problems into more costly emergencies and jeopardizing public health and safety.¹⁰

⁸ At the same time, the decline in participation among all households (including citizens) was much smaller: from 75% to 59%. Karen Cunyningham, Mathematica Policy Research, Inc., "Trends in Food Stamp Program Participation Rates: 1994 to 2000," Final Report, June 2002, submitted to U.S. Department of Agriculture, Food and Nutrition Service, Contract No.: 53-3198-9-008, MPR Reference No.: 8659-213, Table 4, p. 10, available at <http://www.fns.usda.gov/oane/menu/Published/FSP/FILES/Participation/Trends94-00.pdf>.

⁹ See Randy Capps, The Urban Institute, "Hardship among Children of Immigrants: Findings from the 1999 National Survey of America's Families," No. B-29, February 2001, available at http://www.urban.org/UploadedPDF/anf_b29.pdf; Michael E. Fix and Jeffrey S. Passel, The Urban Institute, "Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform," available at <http://www.urban.org/publications/408086.html>.

¹⁰ See Tanya Broder, National Immigration Law Center, "State and Local Policies on Immigrant Access to Services: Promoting Integration or Isolation?," May 2007, available at http://www.nilc.org/immspbs/sf_benefits/statelocalimmppolicies06-07_2007-05-24.pdf, pp. 9-10; Jennifer Brown, Allison Sherry, and Elizabeth Aguilera, "ID Law Packs Fear Factor," Denver Post, August 5, 2007, available at http://www.denverpost.com/search/ci_6541776.



HB 355, HB 439, HB 738 (sections 6 and 9), HB 798, HB 856, and HB 865

**Written Testimony of Nadia Hewka and Michael Hollander, Staff Attorneys
Community Legal Services, Inc.
Affirmative Methods to Protect Pennsylvania Workers
August 30, 2011**

The following testimony is submitted by the Employment Unit of Community Legal Services, Inc (“CLS”), of Philadelphia. We thank you for the opportunity to present this testimony on behalf of our low income clients regarding HB 355, HB 439, HB 738 (sections 6 and 9), HB 798, HB 856, and HB 865.

In this testimony, we will address numerous anti-immigrant bills before this committee that will affect significant numbers of Pennsylvanians in areas such as public benefits and employment. These comments are not intended to cover E-Verify legislation nor legislation that requires proof of citizenship before receipt of public benefits as those are addressed in other comments submitted by CLS.

CLS is extremely concerned that the package of bills before this committee will harm the local economy with costly anti-immigrant measures that will increase business costs with no discernible benefit, at a time when our fragile economy can least afford it. In addition, these bills will lead to costly litigation as the state defends unconstitutional laws. Finally, these measures would paralyze many social service agencies and religious organizations that are the foundation of the health, safety, and welfare of our state.

We should not follow Arizona, Georgia, and Alabama down the path of moral and economic disaster. Rather we should follow the lead of 26 other states that have recently rejected similar proposals. We urge you to vote against these measures.

I. This Package of Legislation Will Cost Businesses By Creating New Private Rights of Action and Costly Procedures to Verify Their Employees

In addition to the problems with the E-Verify provisions of HB 738 and HB 858 addressed elsewhere, these laws also go well beyond the Arizona licensing provision which was recently upheld in another way—**they create a private right of action against employers**. Under HB 738 and HB 858, private citizens can make complaints against any company within the Commonwealth who they believe are employing unauthorized workers and can seek damages. At best, this will subject small business and corporations to frivolous but expensive lawsuits.

These lawsuits could easily bankrupt a small but legitimate business with a disgruntled former employee. Similarly, a competitor business could make a claim regarding another business, and the law provides no baseline as to what level of proof would be required before triggering an investigation. These laws would use up limited state resources to investigate these claims, as they would trigger an investigation by either the Department of Labor and Industry or the Secretary of State. Because immigration status issues are complex, each governmental unit and its staff would have to engage in both upfront and ongoing training on determining immigration status, a province better left to the trained federal authorities.

II. Unconstitutional Parts of This Legislation Will Bring Costly New Lawsuits Against the Commonwealth

The majority of anti-immigrant legislation similar to that being proposed in Pennsylvania has been overturned by federal courts in other states as it has been declared to be preempted by federal law. If any of the bills proposed today are signed into law, there is a strong likelihood that these laws will face costly legal challenges. Looking to other states and the experience of Hazleton as a guide, the Commonwealth will be exposed to extremely high legal costs defending itself. The likely outcome of these challenges will be little more than legal fees, overturned legislation, and a politically bruised immigrant community.

In the year since Arizona's broad anti-immigrant laws passed, Arizona has spent \$1.9 million on legal fees.¹¹ Although the Supreme Court has ruled on some aspects of those laws, much of the law remains to be tried in the federal courts, meaning costs will certainly continue to increase. Right here in Pennsylvania, Hazleton, has spent approximately \$2.8 million so far on its legislation, and the litigation continues to rack up costs.¹² In a time of shrinking budgets, the Commonwealth cannot afford to waste millions of dollars on litigation for legislation that we know will be declared unconstitutional.

- > **HB 439 and section 8 of HB 738 penalize employers who hire undocumented workers by revoking business licenses, either permanently or temporarily.** HB 738 also imposes additional penalties in the form of fines. *Neither of these proposals would pass constitutional scrutiny under the standard recently set forth by the U.S. Supreme Court in Chamber of Commerce v. Whiting.* Reviewing Arizona's licensing scheme, the Court upheld them because the determination as to whether an employer had violated federal immigration laws was made by the federal government. In the Pennsylvania licensing proposals, the determination as to whether federal immigration law was violated would be investigated by state agencies and ultimately

¹¹ "Donations for defending Arizona's SB1070 top \$3.7M," Associated Press, May 4, 2011.

¹²"Unconstitutional and Costly," Center for American Progress, Gebe Martinez, January 2011.

determined by the Commonwealth Court. By placing immigration power in state hands, the scheme would certainly be preempted by federal law.

- > **Section 6 of HB 738 would create a new criminal offense for workers who fail to carry registration papers.** Similar provisions of the Arizona, Georgia, and Alabama laws are currently being challenged in the courts. *In Arizona, a similar provision was enjoined because the court found that the challenge of this provision was likely to be successful.*¹³ Again, because this proposed law creates additional penalties on top of those already imposed by federal immigration legislation, this law is likely to be found to be unconstitutional. Moreover, Section 6(a) would not just criminalize failure to carry papers, but also willful failure to apply for legal permanent status. Many refugees delay making application for permanent status for a variety of factors, including financial reasons or lack of familiarity with documentation. Criminalizing this behavior would seem to serve no valid purpose, other than enriching private prisons and defense attorneys while clogging our courts and draining law enforcement resources.

- > **Section 9 of HB 738 would make it illegal for an undocumented person to apply for work or solicit work in a public place.** *This will likely be found unconstitutional, as more narrow laws than this have been overturned by the courts as an illegal restriction on the freedom of speech.*¹⁴ In the current proposal, the restriction would not be deemed content neutral as it prohibits particular forms of speech by particular classes of people, i.e. soliciting employment by unauthorized immigrants. Furthermore, there are no provisions to limit this curtailment on speech, such as by prohibiting only solicitation on public roadways rather than sidewalks. Instead, it would prohibit solicitation of work in any “public place,” a term so broad that it could encompass almost any location in the Commonwealth.

- > **HB 355 and HB 856 would create broadly defined crimes and penalties regarding transporting and harboring of undocumented individuals.** HB 355 is so broad as to apply to a church group that provides transportation to immigrant congregants and a social service agency that assists immigrants in almost any way. *It is so encompassing that it would lead to the result of criminalizing a U.S. citizen daughter who drives her ill, undocumented mother to the doctor’s office for care.* Both bills could certainly apply to employers who transport undocumented workers to and from work even if the employer had no role in transporting the person into the United States. A similar law passed in Georgia was recently enjoined based on the

¹³ See, *U.S. v. Hines*, 312 U.S. 52, 66-67 (1941): the Supreme Court held that because there needs to be one uniform system of immigration enforcement, “states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations.”

¹⁴ See, *Comité de Jornaleros v. Redondo Beach*, No. 06-55750, (USCA, 9th Cir. June 9, 2010): lays out the relevant law on restricting solicitation, which is a form of speech. Restrictions on speech must be both content neutral and limited in terms of time space and manner.

finding that the law will most likely be found to be unconstitutional. In addition to a preemption challenge, it is likely that the broad language in HB 856 and HB 355 would be subject to challenge based on the constitutional rights to freedom of association and freedom of movement.

III. Implementing This Package of Legislation Will Cost Pennsylvania Immense Amounts for Little Discernible Benefit

This package of bills will not be easy to implement for state agencies. With new mandates and sanctions created under virtually all of the bills, the Attorney General's office, the Department of Labor and Industry, local law enforcement, local district attorneys, the Department of Public Welfare, and virtually every agency that provides public benefits will have increased costs to implement and enforce the mandates of these bills. *Unfortunately none of the bills designate any additional funds for these agencies nor do they designate funding from penalties collected under these measures to go to the implementing agencies.* In addition to increasing state expenditures, by driving many workers into the underground economy or out of the state, the state will reduce its revenue in the form of lost tax collections. All of this with no discernible benefit for the Commonwealth.

As an example of the increased costs with no discernible benefit, we can look to HB 798, which would authorize the state to maintain information in its Criminal Records Repository regarding citizenship and immigration status. The bill permits licensing boards and commissions and employers to use this information when determining eligibility for certain occupations, professions, and employment.

The state would face huge obstacles to maintaining its own database of immigration status. *Given that there are more than 80 different immigration statuses and how often immigration status can change, the responsibility and expense of maintaining and distributing these records would be daunting.*¹⁵ Any state repository would quickly become outdated and error prone, making it an unreliable source for verification of eligibility for employment or public benefits purposes. In addition, a process would need to be created to monitor and correct entries, adding additional expense to the state. This system and its expense are completely unnecessary, as there are already numerous systems maintained by the federal government to verify an individual's eligibility for employment and public benefits.

In addition to creating expensive, unfunded mandates for the state, an obvious intention of these bills is to create "attrition through enforcement." The bills would create such an unwelcoming environment for undocumented immigrants in the Commonwealth that they would leave. An unintended but direct consequence of this

¹⁵ A document recently published by PennDOT lists 89 different immigration statuses. This document is revised frequently. See *Fact Sheet, Identification and Legal Presence Requirements for Non-United States Citizens*. http://www.dmv.state.pa.us/pdotforms/fact_sheets/pub195nc.pdf. Accessed August 22, 2011.

policy will be to significantly contract the state's economy. There are an estimated 110,000 undocumented workers in PA.¹⁶ Removing these workers and their contributions to Pennsylvania would have a huge impact on Pennsylvania's economy and its employers. Undocumented immigrants build our houses, run our restaurants, pick our food, and take care of our children. This is not a workforce that can simply be "replaced" by the unemployed in Pennsylvania: immigrants work in jobs that require skills and tolerances for working conditions that are not necessarily matched by native workers. As well, all workers pay taxes, even unauthorized workers. In 2010, Pennsylvania families headed by undocumented immigrants paid an estimated \$134,967,366 in income, property, and sales taxes.¹⁷ If we force these families out of Pennsylvania these revenues will leave with them at a time when our state is starved for tax revenue.

PA tourism and, in particular, the convention industry would likely take a direct hit if Pennsylvania were to follow Arizona's lead. The Arizona convention industry's losses were estimated to cost the state \$253 million in economic output and more than \$86 million in lost wages from their statute's passage in 2010 until 2013.¹⁸ Losses from meetings that were cancelled following approval of the immigration control law S.B. 1070 totaled \$141 million in direct spending by convention attendees. The economic hit from cancelled meetings that would have occurred over the next two to three years—\$253 million in economic output—affected 2,800 jobs that would have been supported by that activity. Obviously, the economic hit would not be limited just to this industry and its workforce, but to the state that would need to support the laid off workforce with diminished tax revenues, an awful combination for taxpaying citizens.

IV. Selective Enforcement Provisions Will Lead to Racial Profiling

By creating numerous sanctions and requirements that apply only to undocumented immigrants, these bills would certainly lead to racial profiling, violation of civil rights, and unequal enforcement. Notwithstanding provisions that require that these laws are enforced without respect to race or other illegal identifiers, the reality of enforcement on the ground is that they will lead to increased racial profiling. This racial profiling will lead to numerous lawsuits against the state, harassment of legal residents who "look undocumented," and enforcement against only certain demographic groups.

- > **Section 6 of HB 738 creates criminal sanctions for failure to carry certain immigration documents.** Only individuals who "look like" immigrants will realistically be in danger of police action for not carrying papers. In addition, such a

¹⁶ See, Pew Hispanic Center, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade* (9/1/2010) <http://pewhispanic.org/files/reports/126.pdf>. p. 15

¹⁷ See, Immigration Policy Center, *Estimates of the State and Local Taxes Paid by Unauthorized Immigrant Households*, <http://www.immigrationpolicy.org/just-facts/unauthorized-immigrants-pay-taxes-too>. Accessed August 22, 2011.

¹⁸ See, Center for American Progress, *Stop the Conference: The Economic and Fiscal Consequences of Conference Cancellations due to Arizona's S.B. 1070*, http://www.americanprogress.org/issues/2010/11/az_tourism.html, November 18 2010

law will create significant legal headaches for someone that appears to be an alien, but is in fact a citizen. The law is silent on the question of how would one prove that they are a citizen or lawful resident to a law enforcement officer who is not a trained immigration official.

- > **Section 9 of HB 738 creates criminal sanctions for an undocumented immigrant to knowingly apply for or solicit work.** Similar to section 6, this law makes certain acts illegal only based on the immigration status of the individual. *To enforce the law, local law enforcement will necessarily stop individuals who “look like” immigrants and are soliciting for work—in reality an impossible task that will only lead to racial profiling.* Like section 6, section 9 of HB 738 will be selectively enforced, will lead to loss of civil rights, and leave the state open to costly lawsuits.

V. **These Bills Will Paralyze Local Support Agencies and Religious Organizations Who Perform Critical Functions to Safeguard the Health, Safety, and Welfare of Pennsylvanians**

HB 810 and HB 865, purport to address the problem of so-called “sanctuary cities.” A similar idea was proposed and failed in Texas in the most recent legislative session. These proposals should similarly be rejected.

HB 810 would withhold funding from any municipality and individual in that municipality that adopts ordinances, policies, procedures to “encourage unauthorized aliens to reside in the municipality.” Ordinances, policies, or procedures that encourage unauthorized aliens include ordinances that: 1) prohibit, restrict, or discourage municipal employees from sending, receiving, or maintaining information regarding immigration status, 2) prohibit, restrict, or discourage municipal employees from inquiring individuals about immigration status, or 3) provide public benefits to unauthorized aliens, unless for the purposes of emergency medical care. *This dangerous measure means that all services in a city will be virtually shut down and all welfare, unemployment, transportation, and other benefits will fail to be disbursed to individuals if that city is ruled to be a sanctuary city. The determination of “sanctuary city” is left to the whim of the Secretary of State, with no apparent right of appeal by the city.*

HB 865 would subject a “sanctuary” municipality to a lawsuit for damages for injuries caused by crimes committed by unauthorized aliens. This measure creates an entirely new arena for cities to be subjected to costly and frivolous lawsuits that will have to be defended regardless of legal merit. As well, this legislation takes the radical step of creating municipal liability for the acts of private citizens—this is a law unprecedented in Pennsylvania history. It will serve to do little more than bankrupt cities while doing nothing to increase the safety of Pennsylvanians. In order to avoid the specter of lawsuits, municipal governments and all private agencies that receive public moneys would need to heavily invest in training on arcane rules of immigration. As noted previously, immigration status is complex and ever-changing.

What more, despite the lack of any municipal policy, a municipality could be subjected to the harsh penalties of these laws merely because a social service agency that receives a municipal grant provides services without regard to immigration status.

Agencies that help crime victims deal with the trauma they suffered would be restricted in their work because of these provisions. Groups that assist victims of domestic violence would similarly be restricted. ***In order to prevent loss of funds, all of these groups that promote the health, safety, and welfare of Pennsylvanians will have to radically alter their work. No rational purpose is served by limiting these essential services to people who have nowhere else to turn for desperately needed assistance.***



COMMUNITY LEGAL SERVICES
OF PHILADELPHIA

**HB 355 (adding section 2806-D), HB 738 (Sections 8 and 10), and HB 858
(E-Verify Provisions)**

**Written Testimony of Nadia Hewka and Michael Hollander, Staff Attorneys
Community Legal Services, Inc.
Affirmative Methods to Protect Pennsylvania Workers
August 30, 2011**

The following testimony is submitted by the Employment Unit of Community Legal Services, Inc (“CLS”) of Philadelphia. We thank you for the opportunity to present this testimony on behalf of our low income clients regarding section 2806-D of HB 355, sections 8 and 10 of HB 738, and HB 858.

In this testimony, we will address the concerns that we have with these bills insofar as they require the use of E-Verify, the problems being faced by low-wage workers in Pennsylvania, and affirmative steps that the Commonwealth can take to improve the wages and working conditions of all Pennsylvanians at little to no additional cost to the state.

The purported intent of the relevant sections of HB 355, HB 738, and HB 858 is to protect Pennsylvanians from job loss and depressed wages and to protect the Commonwealth from reduced tax revenues by preventing unauthorized aliens from working in the state. In reality, these bills will be costly and difficult to implement, ultimately costing Pennsylvania business, jobs, and tax revenue; moreover, it will not address the underlying problems that have led to job losses, depressed wages, and reduced tax revenues.

A better solution to the problems faced by working Pennsylvanians would be to strengthen and better enforce the existing wage laws to ensure that Pennsylvania’s workers are getting paid fairly for their hard work and that only those businesses that routinely commit wage violations are punished for their actions. By proactively supporting Pennsylvania’s workers, the state can raise wages and improve working conditions without adding costly and error-filled programs such as E-Verify that will hamper business in a sea of red ink and bureaucracy.

I. HB 355, HB 738, and HB 858 Do Not Address the Major Concerns of Working Pennsylvanians and Create a Host of Burdens and Problems for Business

There are myriad problems with the relevant sections of HB 355, HB 738, and HB 858. These problems can be split into two categories: problems with the E-Verify Program generally, and problems with the specific implementation of E-Verify in these bills.

A. E-Verify is a Costly Program to Individuals, Businesses, and the Commonwealth

The E-Verify Program increases costs for business, reduces tax revenues, and causes great anxiety within immigrant communities, among both the documented and undocumented. There is little evidence that it actually reduces the size of the undocumented workforce while at the same time there is strong evidence that it reduces tax revenues to the state. E-Verify is an expensive non-solution that will be expensive for businesses to implement without any discernible benefit, reduce taxes, and ostracize large communities within our state:

- > **E-Verify is Expensive for Businesses** – Requiring employers to use E-Verify is a costly proposition that will greatly increase the cost of doing business in Pennsylvania. E-Verify has a number of time-consuming and potentially expensive requirements; these requirements are even more costly and time-consuming for small businesses that do not have a dedicated human resources department.¹⁹ As reported by Bloomberg, if E-Verify were mandatory throughout the United States in 2010, it would have cost employers \$2.6 billion.²⁰

- > **E-Verify is Costly to the State** – Requiring E-Verify within a state is predicted to significantly reduce state tax revenue. *A study found that if a similar law were passed in Oregon, \$17.7 billion in annual productivity would be lost due to the negative effects of the law.*²¹ Furthermore, after a similar law was passed in Arizona, studies found that a significant proportion of businesses transitioned to an underground, cash-only model to avoid the burden of the law, causing a huge drop in tax-revenue to the state.²² Were Pennsylvania to move to mandatory E-Verify, tax

¹⁹ See, American Council on International Personnel, *Comments on Proposed Rule Published at 73 Fed. Reg. 33374 (June 12, 2008)*, Aug. 11, 2008 (reporting that 99% of businesses have not joined the E-Verify program to date because enrollment is not easy or efficient); Chamber of Commerce of the USA v. Chertoff, No. 08-cv-3444-AW (D.Md.) (a small Maryland employer found that it's one year costs of implementation of E-Verify would be \$27,000).

²⁰ See, Jason Arvello, 'Free' E-Verify May Cost Small Businesses \$2.6 Billion: Insight, Bloomberg (Jan. 28, 2011).

²¹ Jennifer Anderson, *Immigration no-match policy could hurt state economy*, Portland Tribune, July 9, 2008. http://www.portlandtribune.com/news/story.php?story_id=121564353535993600.

²² *Illegal workers manage to skirt Arizona employer-sanctions law*, The Arizona Republic, Dec 1, 2008. <http://www.tucsoncitizen.com/daily/fromquote/104016.php>. See also, *Costly in Every Way: States That Have Implemented Harsh Anti-Immigrant Laws Face Grave Economic Risks*, NELP (January 2009)

revenues in the state would drop precipitously as more businesses mis-classified workers as independent contractors or moved to the underground, cash economy.²³

- > **E-Verify Will Devastate the Pennsylvania Economy** – Undocumented workers represent 1.8% of the Pennsylvanian workforce—110,000 workers.²⁴ These individuals work in numerous industries that are critical to the Commonwealth’s economy: they pick fruit, they work in poultry processing, they cultivate mushrooms, they build our homes and commercial buildings, they run corner stores, and they work in restaurants, preparing our food and cleaning our dishes. Losing these workers would devastate the Pennsylvania economy. Many industries rely on the hard work of immigrant laborers—hard work that they cannot find among domestic workers. *Georgia recently enacted many laws similar to those proposed by Pennsylvania today and the farming industry has suffered millions of dollars in losses as a result of the labor shortage caused by fleeing immigrants.*²⁵ These are not losses that Pennsylvania can afford.

- > **E-Verify is Error-Prone** – A high error rate in the E-Verify database, especially among naturalized citizens (*10% of naturalized citizens encounter errors in the system*), means that even United States citizens will be denied employment under these laws.²⁶ Between 0.8%²⁷ and 2.7%²⁸ of all eligible workers run through E-Verify will receive an erroneous tentative non-confirmation (TNC). *With 5.9 million workers in Pennsylvania²⁹, this would mean that between 47,200 and 159,300 workers would receive erroneous E-Verify reports.* In this economy, we cannot afford to deny jobs to those willing, able, and qualified to work.

- > **E-Verify Causes the Potential for Discrimination** – Because of the mechanics of the E-Verify program, resident aliens and naturalized citizens are not immediately cleared to work at a far higher rate than natural born citizens. Under Federal law, a business must continue to employ and train employees until they are ruled not authorized to work, which can be costly, especially if there is uncertainty surrounding the individual’s work status. Because of this, many businesses may choose to only

²³ Letter to Rep. John Conyers, Chair, Committee on the Judiciary, U.S. House of Representatives, from Peter Orszag, Director, Congressional Budget Office (Apr. 4, 2008), www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf.

²⁴ See, Pew Hispanic Center, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade* (9/1/2010) <http://pewhispanic.org/files/reports/126.pdf>. p. 15.

²⁵ See, Jay Bookman, *Ga’s farm-labor crisis playing out as planned*, 6/17/2011. <http://blogs.ajc.com/jay-bookman-blog/2011/06/17/gas-farm-labor-crisis-playing-out-as-planned/>.

²⁶ *Findings of the Web Basic Pilot Evaluation*, at xxi, US Citizenship and Immigration Service (Westat, Sept. 2007). www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf.

²⁷ *Findings of the Web-Based E-Verify Program Evaluation* (Westat, Dec. 2009), www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf, p. 117.

²⁸ Marc Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform* (Migration Policy Institute, Feb. 2011), <http://www.migrationpolicy.org/pubs/E-Verify-Insight.pdf>, p. 6.

²⁹ U.S. Bureau of Labor Statistics, *Pennsylvania Economy at a Glance*, “Number of Employed, May 2011 (Seasonally Adjusted)”, <http://www.bls.gov/eag/eag.pa.htm>.

hire people who “look like” citizens to avoid the costs of E-Verify, illegally discriminating against people based on their race, color, and country of origin. In addition, employers are responsible for notifying people of a tentative non-confirmation (TNC) to allow that person time to correct their records with the government. In many cases, employers will choose to just fire an individual upon receipt of a TNC, erroneously assuming that the person must be undocumented.

- > **E-Verify Does Not Directly Address the Problems Faced by Working Pennsylvanians** – E-Verify does not address worker exploitation and wage violations head on. Rather, E-Verify distracts the state from the true problems being faced by workers while adding significant costs to local businesses, the state, and many workers.

B. As Written, HB 355, HB 738, and HB 858 Are Overbroad and Do Not Include Protections for Businesses or Authorized Workers Against Improper Accusations

- > **These Bills Require E-Verify Checks for All Contractors as Well as Employees** – Sections 8 and 10 of HB 738 and Section 2806-D are explicit in that they require contractors as well as employers to use the E-Verify system on anyone they contract with or hire. HB 858 likely includes the same requirement, although it does so by rewriting the well-settled definition of “employee” and “contractor.” *This requirement will balloon the cost and administrative requirements of doing business in Pennsylvania, ultimately making services more expensive in Pennsylvania.*
- > **All Three Bills Will Penalize Businesses With No Knowledge That Their Workers Are Undocumented** – All three bills make it unlawful for an employer to employ or contract with an unauthorized alien. This is true even if the employer had no knowledge that her employees were undocumented. *This means that an employer who inadvertently has an undocumented worker on her staff could have her business shut down despite complying with every aspect of the law.* This is true even if the undocumented worker used falsified, but “valid” documentation when applying for work.
- > **Neither HB 858, HB 355, nor Section 10 of HB 738 Penalize False or Malicious Reports Against Businesses** – All three bills allow virtually anyone to make a complaint that a business is employing undocumented workers. No evidence is required to be submitted with these complaints and there is no penalty for false or malicious reporting of a business. *Competitor businesses, disgruntled former-employees, and even unrelated busybodies will be able to harass a business using the reporting mechanisms in these laws, creating undue work for the Secretary of State and putting unnecessary strain, costs, and legal fees on a law-abiding business.*

- > **None of the Bills Provides a Mechanism to Protect Individuals Against Unlawful Actions By Their Employers** – The E-Verify Program includes very minimal protections against employers who improperly use the verification system. Unfortunately, all three bills have chosen to ignore these minimal protections, providing no way for an employee who was improperly discharged to get a remedy from an employer. Although section HB 858 §3(j)(2) admirably states that complaints made based on national origin, race, or ethnicity are invalid, none of the bills, including HB 858 protect workers who are improperly dismissed by employers upon receipt of a TNC. What more, neither HB 355 nor HB 738 penalize complaints or actions taken on the basis of national origin, race, or ethnicity. These bills also do not provide a mechanism to make a complaint against employers who use the E-Verify system as a pre-screening system on individuals before they are offered a position. *Without these protections, workers are left with no recourse when they are wronged.*
- > **The E-Verify Programs Will Be Costly to the State to Operate** – Each bill provides its own operation scheme: HB 355 relies on the Department of Labor and Industry, HB 738 relies on local District Attorneys, and HB 858 relies on the Secretary of State to hear complaints and work with businesses to maintain compliance. These bills will add a monumental new task to already over-burdened and underfunded agencies. This will undercut the ability of these agencies to enforce these laws as well as all of the other laws under their jurisdiction. The high cost to implement this program in times of a shrinking state budget is nonsensical.

Reduced wages and tax revenue in Pennsylvania needs to be addressed directly, using tools that can effectively raise wages, improve working conditions, and reduce the number of businesses that operate under-the-table. The lack of comprehensive immigration reform at a national level should not be solved through piecemeal state solutions, but rather should be solved through nationwide federal action. Pennsylvania should focus its efforts on providing protections to its workers through laws that can truly make a difference, and do so without the negative externalities that these bills bring.

II. The Crux of the Issue Facing Pennsylvania Workers is Exploitation by Unscrupulous Employers, Not Competition From Undocumented Workers

Virtually every day, the Employment Unit at CLS adds to a growing list of clients facing wage violations by their employer. Since January 1 alone, CLS has opened over eighty new cases where the client faced some sort of wage violation. *Wage violations represent the second most frequent reason why clients come to CLS seeking employment representation.* These eighty-plus cases are only the tip of the iceberg, as many employees either do not know their rights or abstain from exercising their rights for fear of losing their job in retaliation. While wage violations are always a significant problem for Pennsylvania’s workers, in today’s economic climate such exploitation is particularly

pernicious as it pushes to a critical level the myriad economic stresses already faced by Pennsylvanians.

In our experiences at CLS, workers face a range of wage violations that not only threaten their own livelihood, but also diminish wages and working conditions for all Pennsylvanians, weaken state safety net programs such as Unemployment Compensation, and reduce critical tax revenues to the state. These violations include:

- > **Unpaid and Underpaid Wages** – According to a 2001 study by the United States Department of Labor, *wage violations occur at a rate of between 25% and 100% in low wage industries.*³⁰ These violations can have severe consequences for the workers that are not being paid properly for all of the hours that they worked. Furthermore, these violations lower the wages of all Pennsylvanians by lowering the wage floor for everyone. These violations also lower state taxes, as individuals do not pay taxes on money they are never paid.
- > **Unpaid Overtime** – Despite overtime laws, many workers are paid at their normal hourly rate for all of their work, regardless of the number of hours worked. In many cases, workers are improperly paid by the day, regardless of how many hours they work. This reduces taxable income of workers and thus state tax revenues.
- > **Misclassification of Workers** – *By misclassifying workers as independent contractors, employers are able to avoid paying local, state, and federal taxes on their employees and avoid paying into the state Unemployment Compensation Trust Fund.* Workers that are misclassified are often not covered by workers compensation insurance, do not receive job benefits, and may not be able to rely on Unemployment Compensation in the eventuality that they lose their job.³¹
- > **Workers Paid “Off the Books” in Cash** – By paying workers off the books and in cash, employers are able to further avoid paying taxes and into the Unemployment Compensation Trust Fund for their workers. Because this pay is not reported to the state, Pennsylvania loses out on this money twice—once when the employers fail to pay taxes on the money and again when employees fail to pay income taxes on the money.³²

³⁰ *1999-2000 Report on Initiatives (2001)*, United States Department of Labor, available at <http://www.nelp.org/page/-/EJP/US%20DOL%20Enforcement%20Report%201999-2000.pdf>

³¹ *Employment Arrangements: Improved Outreach Could Help Ensure Proper Worker Classification*, GAO-06-656 (July 2006), at p. 25. See also NELP, *Testimony of Catherine K. Ruckleshaus to the United States House of Representatives Committee on Education and Labor’s Subcommittee on Workforce Protections* (March 2007). <http://www.nelp.org/page/-/Justice/IndependentContractorTestimony2007.pdf>, stating that independent contractor misclassification occurs at a high rate in the following industries: construction, day labor, janitorial and building services, home health care, child care, agriculture, poultry and meat processing, high-tech, delivery, trucking, home-based work, and the public sectors.

³² This is in contrast to the misclassified worker, whose income has been reported the state and federal government through a 1099 and therefore must pay taxes.

Taken together, these violations have directly reduced state revenues and harmed Pennsylvania workers at a time when neither the state nor Pennsylvanians can afford any loss in income. Furthermore, these violations have indirectly hurt law abiding businesses that are unable to compete against their law breaking counterparts who are able to reduce costs by breaking state wage laws. Finally, the widespread nature of such wage violations depresses the wages and working conditions of all Pennsylvanians, even if they personally suffer no wage violations as they must compete in a landscape replete with exploitation.

We recommend strengthening the current protections that we have for workers and making a strong commitment to enforcement to protect Pennsylvania workers. We recommend the following:

- > **Index the minimum wage to the CPI to keep pace with inflation**
- > **Extend the minimum wage and its overtime protections to all Pennsylvania workers rather than exclude certain industries.**
- > **Increase monetary penalties for violations of the Pennsylvania wage laws**
- > **Improve laws so that it is harder for employers to misclassify their employees**
- > **Increase criminal penalties for wage theft**
- > **Allow the Pennsylvania Department of Labor and Industry to impose administrative fines**
- > **Use administrative fines to fund increased enforcement activity**
- > **Target key industries where wage violations are rampant**
- > **Engage in innovative enforcement methods by working with other state and federal agencies who seek the same types of law breakers**
- > **Engage in innovative enforcement methods by working with community-based groups**
- > **Promote enforcement against joint employers who create complex business structures meant to skirt the law**

III. Conclusion

To improve the working conditions of all Pennsylvanians, this legislature should pass measures to strengthen and enforce our existing wage laws. HB 355, HB 738, and HB 858 do not directly address the true problems faced by Pennsylvania workers and businesses and bring with them a host of negative externalities that will damage Pennsylvania businesses and drain money from state coffers at a time when we can ill afford any loss in business or revenue. We urge this committee to reject HB 355, HB 738, and HB 858 and instead pass new legislation that will provide real help to working Pennsylvanians.

Thank you very much for considering our remarks.

**ATTACHMENTS TO
COMMUNITY LEGAL SERVICES TESTIMONY**

Examples of Pennsylvanians who Lack Government-Issued ID Community Legal Services & the Homeless Advocacy Project

Ms. A

In December 2008, Ms. A sought assistance from a Social Worker to obtain a delayed birth certificate, which is issued when an original birth certificate was not issued at the time of birth. Ms. A's mother, a woman with a chronic drug addiction, delivered her out of the hospital, and did not register her birth with the Commonwealth of Pennsylvania. In order to obtain a delayed birth certificate, an applicant must provide two documents with an official seal which proves the place, date and name of birth. Multiple information requests and releases were sent to local hospitals, the school district, individual schools, the Department of Public Health, the Board of Elections, and the Department of Public Welfare, none of whom could verify a listed place of birth for Ms. A. In March 2009, the Social Worker and Ms. A submitted a Freedom of Information Act request to obtain a numident printout from SSA. Two months later, the Social Worker received it. Unfortunately, Ms. A still needed an additional document, which she was unable to obtain. After initially agreeing to support a court order for a delayed birth certificate, the Department of Vital Records finally agreed to grant it without a court order in January 2010.

Ms. B

In November 2009, Ms. B requested assistance in obtaining her birth certificate. Delivered by a midwife in the south in the 1930s, Ms. B was unsure if a birth certificate had ever been filed. The Social Worker found that it had, but that it listed an incorrect last name for Ms. B, and misspelled her mother's last name. In spite of overwhelming evidence that Ms. B did not use the last name listed on her birth certificate, the state's Department of Vital Records informed her that she would need a court order to change it, and to provide a Photo ID. In a letter sent in May 2010, Vital Records stated that Ms. B would also need a notarized Birth Certificate Amendment form to correct her mother's last name. After providing the form, in August 2010 Vital Records informed Ms. B that she would need to provide additional information to make the Birth Certificate Amendment. Unfortunately, she did not have the information, and the Social Worker had to refer Ms. B's case to VIP.

Mr. C

Mr. C, born in the mid 1940s, had tried to obtain his birth certificate for ten years but was told repeatedly that no record of his birth existed. His search was complicated by the fact that he had been removed from his mother's care in the early 1950s by the Department of Human Services, and placed in foster care. His dependency court records and his case file, which may have contained documents proving his name, age, date and place of birth, had since been destroyed. Without his birth certificate, Mr. C could not receive his Social

Security benefits. In June 2008, Mr. C and the Social Worker began collecting documents to file an application for a delayed birth certificate from Pennsylvania. After filing his application in June 2009, Mr. C finally received his delayed birth certificate in July 2009, one year and one month after he began the process to obtain his birth certificate.

Ms. D

Ms. D, born in the south in the 1930s, did not have her birth registered with the state. As a result, she did not have a birth certificate and could not obtain a photo ID in Pennsylvania. In June 2008, Ms. D requested assistance from a Social Worker in obtaining a delayed birth certificate. Ms. D had a difficult time obtaining documentation which met the state's requirements for place of birth. She obtained a numident printout from SSA, but it listed three different places of birth; she obtained a copy of her marriage license, but it only listed the state, and not the county; and she obtained a copy of her school records from the 1940s, but one of the documents misspelled her mother's first name. After her application was rejected by the Department of Vital Records for the fifth time in October 2009, the Social Worker contacted the state's Vital Records Customer Service Representative. She recommended one additional piece of documentation, and assured the Social Worker that she would see that the application for a delayed birth certificate was approved. Unfortunately, the document, a school census record from the mid 1940s, again misspelled her mother's first name, and also misspelled Ms. D's first name. Ms. D's application was rejected again, and in January 2010, the Social Worker referred Ms. D's case to an attorney to attempt to obtain a legal order compelling the Department of Vital Records to issue a replacement birth certificate.

Mr. E

Mr. E, born in the south in the 1950s, requested assistance in November 2009 in obtaining his birth certificate so that he could get a photo ID. As the Social Worker and Mr. E filed a request for the birth certificate, they found that due to a transcription error, Mr. E's last name was listed incorrectly. In December 2009, the state's Department of Vital Records informed Mr. E that since he lacked a photo ID, he needed to submit a copy of his parents' marriage certificate in order to amend his birth certificate. After the Social Worker and Mr. E requested a copy in December 2009, the county where his parents were married notified them that that the marriage took place before they kept records of such events, and suggested that Mr. E contact the Probate Judge. Subsequently, the Probate Judge informed them that they had no marriage license on file. After relaying this to the Department of Vital Records, they were told that Mr. E must provide some type of documentation that established Mr. E's identity that was issued prior to Mr. E's seventh birthday. In January 2010, the Social Worker and Mr. E submitted a Freedom of Information Act request for a numident copy from SSA, which was received and sent to the Department of Vital Records in March 2010. In April 2010, the Social Worker and Mr. E also sent an affidavit and immunization records. Finally in June 2010, Mr. E received his amended birth certificate.

Mr. F

Mr. F lives in southeastern Pennsylvania, is elderly, illiterate, and has kidney cancer. He never needed ID until he found he could not get social security benefits or senior housing without it. A social worker applied for a birth certificate on his behalf as an “eligible requester,” collected other documents to persuade the Social Security Administration to issue a replacement social security card, and eventually got him a photo ID. This process took six months, during which time Mr. F had no income and slept on a relative’s couch.

Mr. G

Mr. G, age 47, who lives in southeastern Pennsylvania, has a history of mental illness and homelessness. All her documents were stolen while she was in a shelter. Without ID, she could not get permanent housing. It took a social worker four months to get ID for Mr. G. If not for the social worker’s intervention in obtaining her birth certificate and other documents needed to get her social security card, Mr. G would never have been able to navigate the “catch 22” of needing ID to get the documents needed to get ID.

Mr. H

Mr. H is 63 years old and has emphysema. There is no record of Mr. H’s birth because he was delivered by a midwife at home in rural Virginia. A social worker has been working since April 2006 to obtain a delayed birth certificate for Mr. H. To satisfy Virginia’s rules for obtaining a delayed birth certificate, the social worker has had to file Freedom of Information Act requests to obtain social security records and census records from the 1950s. In the meantime, Mr. H cannot open a bank account and is forced to rely on a check cashing store to get his SSI benefits.

Mr. I

Mr. I, who is homeless and has very limited resources, was born in Germany and adopted by U.S. citizens serving abroad in the military. All of his identifying documents– including his expired Maryland driver’s license and his Permanent Resident Card– were stolen during a mugging. Mr. I has worked with a volunteer attorney for eight months in an effort to obtain new government issued ID. His volunteer attorney has advocated on his behalf with the Maryland Motor Vehicle Administration, PENNDOT, and USCIS. He has filed an application for a replacement Permanent Resident Card, but processing times for that document are long and Mr. A expects to be without identification for over a year before he has all the documents he needs for a new photo ID.

Mr. J

Mr. J, who has a twenty-year history of street homelessness and suffers from depression with psychotic features, has never had state issued identification. Born to parents he

cannot remember, he was informally adopted at the age of six. His extremely abusive adoptive mother refused to provide him with any information about his birth parents or birth; he is not even sure in which state he was born. The Social Security Administration has only his adopted mother listed as his parent. His school records show no birth information. A partner at a major Philadelphia law firm worked pro bono to advocate on his behalf with vital records in New York— where it is believed he was born— for over a year and a half in an attempt to obtain or create a birth record for him so that he could obtain government issued identification. She was unsuccessful.

Ms. K

Ms. K, who lives in a safe haven for chronically homeless women, suffers from schizophrenia so severe that she is terrified to leave her residence. Unfortunately, she is not able obtain any identification or access any benefits because Vital Records has recorded that she is deceased. Although there is ample evidence that Ms. K was inpatient at a psychiatric hospital when she was reported to have died, as well as evidence of her staying in various shelters and mental health facilities both immediately before and following her “death,” months of advocacy by social workers and attorneys with the PA Department of Vital Records has not resulted in any progress. A volunteer attorney is currently working with a partner from the Social Security Administration to persuade vital records to change their notation. An attorney who served as guardian for a similarly situated man in the past noted that he was not able to resolve this type of issue on behalf of his charge even after advocating for over four years; the problem was only corrected by Vital Records when the man actually died.

Ms. L

Ms. L, a formerly homeless woman recovering from addiction and working to move forward with her life, was unable to obtain state issued ID because of a discrepancy between the name on her birth certificate and the name on her social security card. Ms. L was adopted at the age of 9 in New York. Although her adoptive parents amended her birth record, they failed to take the steps necessary to change her name with the Social Security Administration. A pro bono lawyer was able to obtain a certified copy of her Certificate of Adoption, but she was unable to obtain either the Order for Adoption or the original birth certificate as both are “forever sealed.” Because the Certificate of Adoption does not explicitly state that Ms. L’s birth name and adoptive name belonged to the same person, the Social Security Administration would not accept it.



Highlights of [GAO-07-889](#), a report to congressional requesters

Why GAO Did This Study

The Deficit Reduction Act of 2005 (DRA) included a provision that requires states to obtain documentary evidence of U.S. citizenship or nationality when determining eligibility of Medicaid applicants and current beneficiaries; self-attestation of citizenship and nationality is no longer acceptable. The Centers for Medicare & Medicaid Services (CMS) issued regulations states must follow in obtaining this documentation. Interested parties have raised concerns that efforts to comply with the requirement will cause eligible citizens to lose access to Medicaid coverage and will be costly for states to implement.

GAO was asked to examine how the requirement has affected individuals' access to Medicaid benefits and assess the administrative and fiscal effects of implementing the requirement.

To do this work, GAO surveyed state Medicaid offices in the 50 states and the District of Columbia about their perspectives on access issues and the administrative and fiscal effects of the requirement. GAO obtained complete responses from 44 states representing 71 percent of national Medicaid enrollment in fiscal year 2004. GAO also reviewed federal laws, regulations, and CMS guidance.

www.gao.gov/cgi-bin/getrpt?GAO-07-889.

To view the full product, including the scope and methodology, click on the link above. For more information, contact James Cosgrove at (202) 512-7114 or cosgrovej@gao.gov.

MEDICAID

States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens

What GAO Found

States reported that the citizenship documentation requirement resulted in barriers to access to Medicaid for some eligible citizens. Twenty-two of the 44 states reported declines in Medicaid enrollment due to the requirement, and a majority of these states attributed the declines to delays in or losses of Medicaid coverage for individuals who appeared to be eligible citizens. Of the remaining states, 12 reported that the requirement had no effect and 10 reported they did not know the requirement's effect on enrollment. Not all of the 22 states reporting declines could quantify enrollment declines due specifically to the requirement, but a state that had begun tracking the effect identified 18,000 individuals in the 7 months after implementation whose applications were denied or coverage was terminated for inability to provide the necessary documentation, though the state believed most of them to be eligible citizens. Further, states reporting a decline in enrollment varied in their impressions about the requirement's effect on enrollment after the first year of implementation. States' enrollment policies and whether an individual was an applicant or a beneficiary may have influenced the requirement's effect on access to Medicaid. For example, states that relied primarily on mail-in applications before the requirement were more likely to report declines in enrollment than states where individuals usually applied in person. In addition, the requirement may have more adversely affected applicants than beneficiaries because applicants were given less time to comply in some states and were not eligible for Medicaid benefits until they documented their citizenship.

Although states reported investing resources to implement the requirement, potential fiscal benefits for the federal government and states are uncertain. All 44 states reported taking administrative measures to implement the requirement and assist individuals with compliance. In addition, 10 states reported that a total of \$28 million was appropriated in state fiscal year 2007, and 15 states budgeted funds for implementation costs in state fiscal year 2008. Despite these measures, states reported that the requirement has increased the level of assistance needed by individuals and amount of time spent by states during the enrollment process. States specified two aspects of the requirement as increasing the burden for them and for individuals: that documents had to be originals and the list of acceptable documents was complex and did not allow for exceptions. Further, although CMS estimated the requirement would result in savings for the federal government and states of \$90 million for fiscal year 2008, states' responses indicated that this estimate may be overstated for two reasons. Specifically, CMS did not account for the increased administrative expenditures reported by states, and the agency's estimated savings from ineligible, noncitizens no longer receiving benefits may be less than anticipated.

In commenting on a draft of the report, CMS raised concerns about the conclusions drawn from the survey responses as to the requirement's effect on access, mainly that states did not submit data to support their responses.



CITIZENS WITHOUT PROOF:

A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION

Summary

A recent national survey sponsored by the Brennan Center for Justice at NYU School of Law reveals that millions of American citizens do not have readily available documentary proof of citizenship. Many more – primarily women – do not have proof of citizenship with their current name. The survey also showed that millions of American citizens do not have government-issued photo identification, such as a driver's license or passport. Finally, the survey demonstrated that certain groups – primarily poor, elderly, and minority citizens – are less likely to possess these forms of documentation than the general population.

From November 16-19, 2006, the independent Opinion Research Corporation conducted a telephone survey of 987 randomly selected voting-age American citizens.¹ The survey included several questions sponsored by the Brennan Center, asking whether respondents had readily available documentary proof of citizenship or government-issued photo identification, and if so, whether it contained current information:

- 1) Do you have a current, unexpired government-issued ID with your picture on it, like a driver's license or a military ID?
- 2) If yes, does this photo ID have both your current address AND your current name (as opposed to a maiden name) on it?
- 3) Do you have any of the following citizenship documents (U.S. birth certificate/U.S. passport/U.S. naturalization papers) in a place where you can quickly find it if you had to show it tomorrow?
- 4) If yes, does [that document] have your current name on it (as opposed to a maiden name)?

¹ Scholars recognize that many telephone surveys underrepresent low-income and minority households. *See, e.g.*, Stephen J. Blumberg et al., Telephone Coverage and Health Survey Estimates: Evaluating the Need for Concern About Wireless Substitution, 96 AM. J. PUBLIC HEALTH 926 (2006); U.S. BUREAU OF THE CENSUS, STATISTICAL BRIEF: PHONELESS IN AMERICA (1994), at http://www.census.gov/apsd/www/statbrief/sb94_16.pdf. Although the results of this survey were weighted to account for underrepresentation of race, they were not weighted to account for a likely skew toward higher-income households. Because the survey found that low-income households were less likely to have documentary proof of citizenship or photo ID, it is therefore likely that the survey results actually underestimate the total number of American citizens who do not have readily available documentation.

Survey results: proof of citizenship

As many as 7% of United States citizens – 13 million individuals – do not have ready access to citizenship documents. Seven percent of the American citizens surveyed responded that they do not have ready access to U.S. passports, naturalization papers, or birth certificates.² Using 2000 census calculations of the citizen voting-age population, this translates to more than **13 million** American adult citizens nationwide who cannot easily produce documentation proving their citizenship.³

Citizens with comparatively low incomes are less likely to possess documentation proving their citizenship. Citizens earning less than \$25,000 per year are more than twice as likely to lack ready documentation of their citizenship as those earning more than \$25,000.⁴ Indeed, the survey indicates that at least **12 percent** of voting-age American citizens earning less than \$25,000 per year do not have a readily available U.S. passport, naturalization document, or birth certificate.⁵

Documentation proving citizenship often does not reflect the citizen's current name. Many of those who possess ready documentation of their citizenship do not have documentation that reflects their current name. For example, survey results show that only 48% of voting-age women with ready access to their U.S. birth certificates have a birth certificate with current legal name⁶ – and only 66% of voting-age women with ready access to *any* proof of citizenship have a document with current legal name.⁷ Using 2000 census citizen voting-age population data, this means that as many as **32 million** voting-age women may have available only proof of citizenship documents that do not reflect their current name.

² Unless otherwise indicated, the margin of error for these survey results, to a 95% confidence level, is $\pm 2\%$.

³ We note that 135 respondents indicated that they had *both* a U.S. birth certificate and U.S. naturalization papers. This most likely indicates confusion on the part of the respondents, who might not have understood what a “naturalization certificate” is. Because these 135 individuals most likely do possess some documentary proof of citizenship, whether birth certificate or naturalization papers, they have been included for purposes of these results with survey respondents who indicated that they do possess citizenship documents. If these 135 respondents were excluded from the total sample, the remaining population would have revealed an even larger portion (nine percent) without documentary proof of citizenship.

⁴ The survey did not yield statistically significant results for differential rates of possession of citizenship documents by race, age, or other identified demographic factors.

⁵ The margin of error for this particular result, to a 95% confidence level, is $\pm 5\%$.

⁶ The margin of error for this particular result, to a 95% confidence level, is $\pm 5\%$.

⁷ The margin of error for this particular result, to a 95% confidence level, is $\pm 4\%$.

Survey results: photo identification

As many as 11 percent of United States citizens – more than 21 million individuals – do not have government-issued photo identification. Eleven percent of the American citizens surveyed responded that they do not have current, unexpired government-issued identification with a photograph, such as a driver's license or military ID.⁸ Using 2000 census calculations of the citizen voting-age population, this translates to more than **21 million** American adult citizens nationwide who do not possess valid government photo ID.

Elderly citizens are less likely to possess government-issued photo identification. Survey results indicate that seniors disproportionately lack photo identification. **Eighteen percent** of American citizens age 65 and above do not have current government-issued photo ID.⁹ Using 2005 census estimates, this amounts to more than **6 million** senior citizens.

Minority citizens are less likely to possess government-issued photo identification. According to the survey, African-American citizens also disproportionately lack photo identification. **Twenty-five percent** of African-American voting-age citizens have no current government-issued photo ID, compared to eight percent of white voting-age citizens.¹⁰ Using 2000 census figures, this amounts to more than **5.5 million** adult African-American citizens without photo identification. Our survey also indicated that sixteen percent of Hispanic voting-age citizens have no current government-issued photo ID, but due to a low sample size, the results did not achieve statistical significance.¹¹

Citizens with comparatively low incomes are less likely to possess photo identification. Citizens earning less than \$35,000 per year are more than twice as likely to lack current government-issued photo identification as those earning more than \$35,000. Indeed, the survey indicates that at least **15 percent** of voting-age American citizens earning less than \$35,000 per year do not have a valid government-issued photo ID.¹²

Photo identification often does not reflect current information. For many of those who possess current, valid government-issued photo ID, the documentation does not reflect their current information. For example, survey results show that ten percent of voting-age citizens who have current photo ID do not have photo ID with both their current address and their current legal name. The rate is higher among younger citizens: as many as **18 percent** of citizens aged 18-24 do not have photo ID with current address and name; using 2004 census tallies, that amounts to almost **4.5 million** American citizens.¹³

⁸ This figure is consistent with official government estimates. The 2005 Carter-Baker Commission, for example, cited the U.S. Department of Transportation and the U.S. Census Bureau in finding that approximately twelve percent of the national voting-age population does not possess a driver's license. Commission on Federal Election Reform, *Building Confidence in U.S. Elections*, at 73 n.22 (2005).

⁹ The margin of error for this particular result, to a 95% confidence level, is $\pm 6\%$.

¹⁰ The margin of error for this particular result, to a 95% confidence level, is $\pm 8\%$.

¹¹ The margin of error for this particular result, to a 95% confidence level, is $\pm 7\%$.

¹² The margin of error for this particular result, to a 95% confidence level, is $\pm 4\%$.

¹³ The margin of error for this particular result, to a 95% confidence level, is $\pm 7\%$.

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Colo. immigration law falls short of goal

State agencies: \$2 million cost and no savings

By Mark P. Couch
Denver Post Staff Writer

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Colorado's new law banning state spending on illegal immigrants has cost more than \$2 million to enforce - and has saved the state nothing.

Less than a year after politically charged debates on illegal immigration, officials are reporting high costs, no savings and unexpected problems with the new laws.

Once touted by statehouse Republicans and Democrats as the toughest anti-immigration package in the nation, the Colorado crackdown is falling apart.

"We're finding very few of the departments where these bills have a major effect," said state Sen. Abel Tapia, D-Pueblo, chairman of the legislature's Joint Budget Committee.

The centerpiece of the get-tough effort was House Bill 1023, which prohibits spending taxpayer money on illegal immigrants except in cases required by the federal government.

To figure out whether the law is working, the Joint Budget Committee asked each department to report how much it was spending to enforce the law and how much the department was saving as a result.

The result: Eighteen departments reported adding \$2.03 million in costs while not saving any money. None of the departments could say how many, if any, illegal immigrants were being denied state-funded services. Lawmakers expressed mixed views about the report.

Sen. David Schultheis, R-Colorado Springs, who is calling for a tougher ban, said he believes departments are suppressing information.

"They are probably playing fast and loose with the statistics for ideological reasons," Schultheis said.

Tapia said he wasn't surprised.

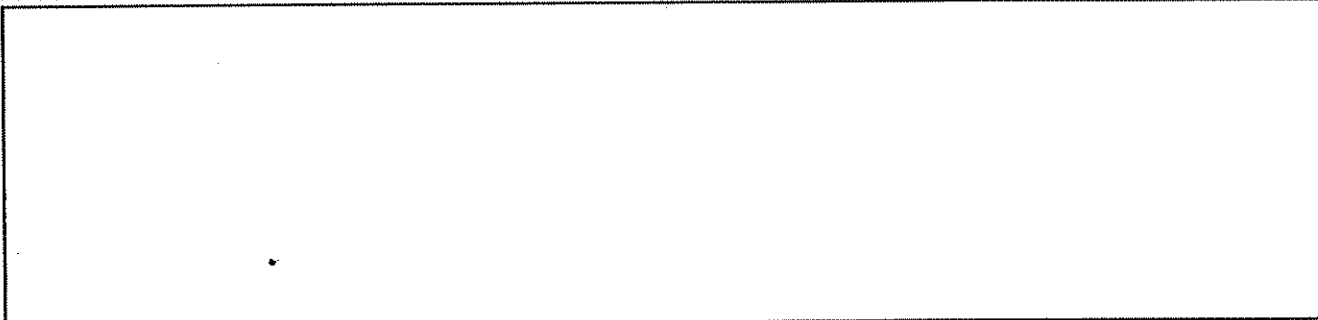
"I thought it was a waste of money when we were doing it," he said, "but I don't think the general public believed that the state wasn't spending money on illegal immigrants."

Senate President Joan Fitz-Gerald, D-Jefferson County, said the departments should have reported such information before last year's special session.

"It would have been nice to have this information before Gov. (Bill) Owens called us back for a special session," she said.

The JBC held a special hearing on the eve of the special session to seek that information from department heads, but lawmakers were told the

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information was not available.

When HB 1023 passed, the only identified cost was \$6,600 - the estimated amount it would take to enroll all state departments in a federal program providing immigration and citizenship verification.

A 2005 bill calling for a more sweeping ban on services - including cuts to child welfare and probation, among other services - had an estimated price tag of \$4.3 million and would have added 87 workers to the state payroll.

The increased spending - mostly due to startup costs of the law - is not the only problem with the immigration measures passed by the legislature or approved by voters last year.

The spending ban has also forced some public school districts to cancel keynote speakers from out of state. In those cases, the speakers live in states where the documents required to receive a driver's license are not as stringent a form of identification as in Colorado under the new law.

Two other immigration laws have vexed the Colorado attorney general's office.

In November, state Attorney General John Suthers' office acknowledged that it has not been enforcing an anti-counterfeiting law due to a lack of funding.

That law orders the attorney general to pursue civil fines of at least \$50,000 from people who forge documents to help illegal immigrants get jobs.

And earlier this month, Suthers told lawmakers that

a voter-approved referendum on immigration is doomed to fail.

That measure - Referendum K on the November ballot - ordered Suthers to sue the federal government to demand enforcement of existing laws.

On Tuesday, Suthers' office asked for emergency funding of \$46,191 to cover the costs of pursuing the lawsuit, even while concluding that such a case is likely to be dismissed prior to trial.

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Departments' tallies of compliance costs

The state of Colorado has spent about \$2 million to comply with a new law that was meant to curb state spending on illegal immigrants. So far, no department has reported a cost savings. Here is a breakdown of money spent, by department:

Agriculture: at least \$300

Education: n/a*

Governor: n/a

Health Care Policy and Financing: \$87,287

Higher Education: n/a

Human Services - County Administrative Services: \$173,000

Human Services - Old Age Pension: \$101,557

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Human Services - Alcohol & Drug Abuse: \$24,900

Human Services - Low-Income Energy Assistance Program: \$52,254.56

Human Services - CBMS: \$23,377

Labor and Employment: \$374,828

Law: no more than \$300

Local Affairs: \$0

Military and Veterans Affairs: \$0

Natural Resources: possibly \$368,059

Personnel and Administration: \$0

Public Health and Environment: \$73,362

Regulatory Agencies: \$378,107

Revenue: \$372,533

State: \$0

Transportation: \$0

* Information for some departments was not available.

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