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**Statement by Paul Filson, Director of Service Employees International Union (SEIU) Connecticut State Council opposed to SB 240 – AN ACT CONCERNING THE E-VERIFY PROGRAM – March 2, 2010**



CONNECTICUT STATE COUNCIL

SERVICE EMPLOYEES INTERNATIONAL UNION  
CTW, CLC

Good Afternoon, Co-Chairs, Senator Prague, Representative Ryan and distinguished members of the Labor and Public Employees Committee. I appreciate the opportunity to testify today. My name is Paul Filson and I am Director of SEIU's Connecticut State Council. The State Council represents over 55,000 members in Connecticut. SEIU is Connecticut's largest union. We represent health care workers, building service workers, public employees and community college professors and staff. Our hard working members risk being caught in the cross hairs of the E-Verify Program. SEIU believes that **SB 240** is unreliable, unrealistic, expensive and potentially discriminatory.

In April 2009, the unions within the AFL-CIO and the Change to Win labor federations, of which SEIU is a part, stood together to announce a unified Labor position in the national debate around immigration reform. The labor movement agreed that, while worker authorization laws are an important piece of immigration reform, the current system of verification, upon which this legislation is based, is ineffective and has failed to curtail illegal immigration. To quote the AFL-CIO and Change to Win joint statement:

*The current system of regulating the employment of unauthorized workers is defunct, ineffective and failed to curtail illegal immigration. A secure and effective worker authorization mechanism is one that determines employment authorization accurately while providing maximum protection for workers, contains sufficient due process and privacy protections and prevents discrimination. The verification process must be taken out of the hands of employers, and the mechanism must rely on secure identification methodology...*

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The systems included in SB 240 do not meet these very basic requirements. The E-Verify bill would require all employers with more than 50 employees utilize the E-Verify to assess their new workers employee eligibility.

This program is ineffective, inaccurate and expensive, putting an undue burden on employers and employees alike during what are already tough economic times. Moreover, E-Verify doesn't even do what the bill intends for it to – prevent unauthorized employment. The system can't detect identity theft, therefore any worker using a stolen or borrowed identity will not be detected. Additionally, undocumented workers are not going to leave CT or the U.S. because of a worker authorization system. The Arizona Republic reported that a 2008 state law requiring businesses to use E-Verify has simply resulted in workers and businesses moving off the books into the cash economy. This is

depriving Arizona of income-tax revenue at the same time the state is facing a \$1.6 billion budget gap.

I have three major concerns with using the E-verify system to judge employee worker authorization.

1. The E-Verify system is grossly inaccurate;
2. The system lends itself to employer abuses;
3. The program adds an undue burden on struggling employers and employees during an already vulnerable economic period.

### **The E-Verify grossly inaccurate**

In fact, the E-Verify system that this bill would enact is so flawed that the Federal Government has never enacted its own mandatory E-Verify program. The Social Security Administration Office of Inspector General estimates that least 17.8 million records in the SSA database used for E-Verify contain discrepancies. A report issued last week by Westat, a research company, says that E-Verify fails to catch 54% of illegal workers. In 1997 SSA testified that a mandatory E-Verify system would result in 6 out of every 10 workers having to go to an SSA office in order to correct their records or lose their jobs. This is far too great a burden to put on the hard-working people of Connecticut.

In 2008, Intel Corporation reported that over 12% of workers it put through E-Verify were mis-identified as not eligible for employment, even when run through the system a second time. Foreign born workers are almost 30 times more likely to be mis-identified than native born workers. Hard working Americans, whether native born or immigrants, should not go to work with the fear of losing their family's livelihood by being caught up in a system that their own Government deems inaccurate.

Examples from recent media reports demonstrate how pervasive the inaccuracies of the E-verify system are:

- A U.S. citizen and captain in the U.S. Navy was flagged by E-Verify as not eligible for employment after 34 years in the service and maintaining high security clearance with the U.S. government. It took him and his wife, an attorney, two months to resolve the discrepancy.
- Carmen, a U.S. citizen, applied for a position with a temporary agency in California, only to be turned away because E-Verify was unable to confirm her work authorization. The employer did not advise her of her right to contest the finding and violated the law by asking her to show additional documents. She was unemployed for over four months without health insurance and was diagnosed with a serious illness during that time.

- Ken Nagel, a restaurant owner in Phoenix, Arizona (where E-Verify is mandatory), expressed scorn regarding Basic Pilot/E-Verify after he recently hired one of his daughters, a native-born U.S. citizen, and, upon feeding her information into the system, received a non-confirmation of her eligibility to be employed in the U.S.

Importantly, when DHS conducted a survey of employers in Arizona (where E-Verify is mandatory), the “concern most frequently identified” is that the notices employers receive when the federal databases cannot confirm a worker’s employment eligibility are “issued on work-authorized individuals.”

### **The system is expensive and places an undue burden on business and employees alike**

We all know that we are in the midst of a very serious recession. The unemployment rate is now close to 9%. Low wage workers are already some of the hardest hit in this challenging economy. Many low wage workers who would be impacted by the this legislation make minimum wage with no health benefits and have to work two, sometimes three jobs to make ends meet for themselves and their families. The process employers and employees have to go through to use the system delays hiring, and implements expensive reporting systems. The U.S. Chamber of Commerce estimates that a federal rule requiring contractors to use E-Verify could cost close to \$10 billion per year. This is a cost that the smaller businesses of CT cannot afford to bear in these tough economic times.

### **The system lends itself to employer abuses and discrimination**

Most importantly, the E-Verify bill opens the door to discrimination based on race and ethnicity. The bill may allow the state to investigate companies based on third party complaints. This opens the door for racial profiling and discrimination based on the perceived race or ethnicity of a company’s workforce. After Arizona passed a similar law, employers were reluctant to hire people who looked or “sounded foreign” because they did not want to run the risk of a penalties. Additionally, an official from the Greater Phoenix Chamber of Commerce reported that his office received calls from people saying they would make complaints against businesses based on employees “speaking Spanish and being minorities. This reporting requirement lends itself to retaliation and inaccuracy and does nothing to protect the jobs of the hardworking men and women in this state.

Additionally, employers have been known to use the E-verify system to punish employees who try to assert their rights on the job. Some companies have knowingly hired undocumented workers in order to maintain their bottom line, only to report them to immigration officials when these same employers attempt to organize and collectively bargain.

Any worker authorization system must include strong worker protections and penalties for labor law abuses in order to prevent low-road employers from abusing this system to hurt workers.

I understand that, in the past, states like CT have been frustrated with the federal government's lack of action on immigration reform and have therefore attempted to take matters into their own hands. Now, however, the Obama Administration and Congress have indicated that they intend to reform federal immigration laws to address many of the issues I have raised in this testimony. SEIU does not believe that inaccurate and costly worker authorization programs, like this one are an effective tool in the campaign for immigration reform nor do they protect the rights of workers. These bills waste taxpayers money on programs that are inaccurate and do not protect American workers.

The best way to ensure CT attracts high road employers, who employ documented workers, is to incorporate workplace standards such as wage and benefit standards, health and safety, overtime, workers compensation, and anti-discrimination into the state contracting system and the private sector. These standards fall squarely within the purview of this committee.

If the legislature is concerned about cracking down on non or under-payment of wages, unsafe working conditions, workers comp fraud by employers and misclassification of workers as independent contractors we would be very happy to work with you to craft a bill that actually cracks down on the abuse of workers by unscrupulous employers that undercuts high-road employers. Thank you for giving me the time to testify this afternoon. I urge you to vote no on **SB 240**.

# BASIC PILOT/E-VERIFY REALITY CHECK

## Businesses Challenge DHS's Claims

OCTOBER 2008

**A**n official in the U.S. Department of Homeland Security (DHS) recently described using Basic Pilot/E-Verify as “a bit less burdensome than ordering books for the first time from Amazon.com.”<sup>1</sup> But that’s not what U.S. businesses report. Here’s a sample of their real-life experiences using the program.

### ■ On the database accuracy rates:

DHS claims that only 0.5% of work-authorized employees receive a tentative nonconfirmation (TNC).<sup>2</sup> But businesses that use the program say:

- Queries submitted to Basic Pilot/E-Verify by Intel Corporation in 2008 resulted in slightly over 12% of all workers receiving a TNC. All of these workers were cleared by Basic Pilot/E-Verify as work-authorized, but “only after significant investment of time and money, lost productivity and, for our affected foreign national staff, many hours of confusion, worry and upset.”<sup>3</sup>
- A large multinational employer reported that 15% of queries it submitted to Basic Pilot/E-Verify between January 1, 2008, and May 22, 2008, resulted in a TNC. Of the DHS TNCs, approximately 80% required personal attention to resolve, at a great cost to the employer.<sup>4</sup>
- MCL Enterprises, a company that owns 24 Burger King restaurants in Arizona, reports that over 14% of queries to Basic Pilot/E-Verify result in a TNC, and the rate for foreign-born workers is 75%.<sup>5</sup>

### ■ On correcting database errors:

DHS claims that it should take an employer 5 minutes to examine the TNC and print out a copy for the worker, and 10 minutes for the employer and worker to sign the form.<sup>6</sup> DHS also estimates that it takes 8 hours on average to resolve a TNC with the Social Security Admini-

stration (SSA).<sup>7</sup> But businesses that use the program say:

- DHS’s estimate regarding resolution of TNCs assumes a small single-site employer where there is face-to-face interaction with workers, according to the American Council of International Personnel (ACIP). ACIP members rarely work this way, and it is “not unusual” for 24 hours to pass before the worker receives the TNC. Once a TNC is delivered, ACIP members routinely spend more than 30 minutes with the worker.<sup>8</sup>
- ACIP members also report that corrections at SSA usually take in excess of 90 days, and that workers must wait 4 or more hours per trip, with repeated trips to SSA frequently required to get their records corrected.<sup>9</sup>
- Intel reports that each TNC requires at least 30 minutes in direct consultation with each affected worker, as well as government agents, to resolve. If Intel’s nearly 13% TNC rate for new hires were extrapolated to its existing workforce, Intel estimates the need for “thousands of additional personnel-hours to manage the additional TNC’s.”<sup>10</sup>

### ■ On the costs and burden of using Basic Pilot/E-Verify:

According to a DHS official, “Anyone who has seen it done once can do it, and the process takes a few minutes. Understanding the rules that go with the process requires a bit of online training, but that takes at most an hour or two.”<sup>11</sup> But businesses that use the program say:

- “The reason 99 percent of American employers have not enrolled in Basic Pilot/E-Verify is *not* because they are hiring undocumented workers or shirking their employment verification responsibilities, but rather because Basic Pilot/E-Verify enrollment is not easy or efficient for a large employer,” according to ACIP.<sup>12</sup>



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- MCL Enterprises recently registered to use Basic Pilot/E-Verify as a result of the Arizona law requiring all employers to use the system and found the transition to Basic Pilot/E-Verify “extremely costly” and “disruptive” to operations.<sup>13</sup>
- An ACIP member with 50,000 U.S. employees recently outsourced Basic Pilot/E-Verify to a vendor after 18 months of planning. The company made the decision that verification was not a core business function and that verification of its dispersed workforce was best handled by another organization with expertise in this complex legal area. The annual tab for this service is \$40,000 per year.<sup>14</sup>
- Other ACIP members report that it takes 3 to 4 hours for each staff person to register, understand the requirements, and take the tutorial. “For those with

multiple hiring sites, or where the Basic Pilot/E-Verify function is spread across the country, the costs would need to be multiplied to account for several staff members at each location as well as training and coordination of policies and practices across locations.”<sup>15</sup>

## ■ Conclusion:

Currently, only approximately 1% of employers nationwide are enrolled in Basic Pilot/E-Verify, and of those only an estimated half actually use it regularly.<sup>16</sup> But DHS is doing everything under its power to expand the program, regardless of the costs and burdens for businesses and workers. Common sense demands a reality check on the effectiveness and costs of the program as it actually operates before it is expanded any further.

## FOR MORE INFORMATION, CONTACT

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## NOTES

<sup>1</sup> Stewart Baker, “Debunking Three More Basic Pilot/E-Verify Myths,” *Leadership Journal: The Blog of the Department of Homeland Security*, June 2, 2008, [www.dhs.gov/journal/leadership/labels/Basic\\_Pilot/E-Verify.html](http://www.dhs.gov/journal/leadership/labels/Basic_Pilot/E-Verify.html) (last visited Oct. 21, 2008).

<sup>2</sup> Employers receive a “tentative nonconfirmation” (TNC) notice from either SSA or DHS when the agencies are unable to automatically confirm a worker’s employment eligibility. A TNC notice is not an indication of an immigration violation, and workers have the right to contest the finding with the appropriate agency. For information on the DHS statistic, see Jonathan Scharfen, *Written Testimony Before the Subcommittee on Social Security, Committee on Ways and Means, House of Representatives: “Electronic Employment Verification Systems: Needed Safeguards To Protect Privacy And Prevent Misuse”* (U.S. Citizenship and Immigration Services, June 10, 2008), [www.uscis.gov/files/pressrelease/testimony.pdf](http://www.uscis.gov/files/pressrelease/testimony.pdf).

<sup>3</sup> Intel Corporation, “Comments on Proposed Employment Eligibility Regulations Implementing Executive Order 12989 (as amended),” Aug. 8, 2008.

<sup>4</sup> American Council on International Personnel (hereinafter “ACIP”), “Comments on Proposed Rule Published at 73 Fed. Reg. 33374 (June 12, 2008),” Aug. 11, 2008.

<sup>5</sup> Mitchell C. Laird, *Testimony Before the Subcommittee on Social Security, Committee on Ways and Means, House of Representatives: “Employment Eligibility Verification*

*Systems (EEVS) and the Potential Impacts on the Social Security Administration’s (SSA’s) Ability to Serve Retirees, People with Disabilities, and Workers”* (MCL Enterprises, Inc., May 6, 2008), <http://waysandmeans.house.gov/media/pdf/110/laird.pdf>.

<sup>6</sup> Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council, *Regulatory Impact Analysis: Employment Eligibility Verification* (Federal Acquisition Regulation Case 2007-013, May 29, 2008), at 34.

<sup>7</sup> *Id.*, at 35.

<sup>8</sup> Intel Corporation.

<sup>9</sup> ACIP.

<sup>10</sup> Intel Corporation, emphasis added.

<sup>11</sup> Baker.

<sup>12</sup> ACIP, emphasis added.

<sup>13</sup> Laird, emphasis added.

<sup>14</sup> ACIP.

<sup>15</sup> *Id.*, emphasis added.

<sup>16</sup> Richard M. Stana, *Testimony Before the Subcommittee on Social Security, Committee on Ways and Means, House of Representatives: Employment Verification: Challenges Exist in Implementing a Mandatory Electronic Employment Verification System* (GAO-08-729T, Government Accountability Office, May 2008), <http://waysandmeans.house.gov/media/pdf/110/gao5608.pdf>.