



May 8, 2012

Good Afternoon,

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On behalf of the American Civil Liberties Union, please find attached our vote recommendation for today's anticipated vote on Rep. Diane Black's (R-TN) amendment to H.R. 5326, the Commerce, Justice, Science, and Related Agencies Appropriations Act 2013. A recorded vote on this amendment is anticipated on the House floor today.

Please call Legislative Counsel Joanne Lin with any questions at (202) 675-2317.

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Regards,

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**ACLU Vote Recommendation for Representative Black's Amendment to H.R. 5326, the Commerce, Justice, Science, and Related Agencies Appropriations Act 2013**

**Representative Diane Black (R-TN-6) is expected to introduce an amendment to H.R. 5326, the Commerce, Justice, Science, and Related Agencies Appropriations Act 2013 to prohibit federal funding for lawsuits seeking to invalidate nine specified state laws that unconstitutionally intrude on federal immigration authority.**

**The American Civil Liberties Union recommends a NO vote on the Black amendment.**

**Vote NO on the Black amendment because it is overbroad in seeking to bar hypothetical DOJ litigation.**

•The nine named state laws in the Black amendment are: the Oklahoma Taxpayer and Citizen Protection Act of 2007; Missouri House Bill 390 (2009); Arizona's S.B. 1070 (2010); Alabama's HB 56 (2011); Utah's Illegal Immigration Enforcement Act (2011); Indiana Senate Enrolled Act No. 590 and an Act to amend the Indiana Code concerning education (HB 1402) (2011); South Carolina Act No. 69 (2011); and Georgia's Illegal Immigration Reform and Enforcement Act of 2011. Two of the state laws, Oklahoma's and Missouri's, have been in effect for several years without Department of Justice (DOJ) challenge. Nor has DOJ filed suit against the laws passed by Indiana and Georgia. Only the remaining four specified laws, passed in Arizona, Alabama, Utah, and South Carolina have been challenged by DOJ.

**Vote NO on the Black amendment because defunding specific DOJ litigation poses serious separation of powers concerns.**

•As the executive branch's lawyer, DOJ is constitutionally responsible for ensuring the faithful execution of federal laws. In its pending lawsuits against four state immigration statutes, DOJ is arguing that states may not legislate in conflict with federal law. Whether or not Members agree with DOJ's litigation positions, Rep. Black's funding limitation would establish a dangerous precedent by opening the door to congressional restraints on pending federal litigation by future administrations about any issue.

**Vote NO on the Black amendment because it would be unprecedented for Congress to interfere in pending Supreme Court litigation by defunding DOJ's participation.**

•In July 2010, DOJ sued the State of Arizona for unconstitutionally interfering with the federal government's authority to enforce federal immigration law. The Arizona district court blocked key provisions of the Arizona law (S.B. 1070), a decision which was affirmed by the U.S. Court of Appeals and is currently under consideration by the U.S. Supreme Court after oral arguments in the case on April 25, 2012. The Court will be issuing its decision by the end of June 2012. Congress should await this decision rather than interfere in a case already argued at the Supreme Court.

**Vote NO on the Black amendment because state immigration laws cause racial profiling of Latinos and people of color, violating core American values of fairness and equality.**

•These laws encourage the illegal racial profiling of Latinos and all people perceived to look or sound foreign, by state and local police untrained in immigration law. As there is no way of perceiving whether someone is here lawfully, police in these states fall back on bias in requiring

certain individuals to carry and present their papers. S.B. 1070 and similar laws turn racial minorities residing in these states into potential criminal suspects, including U.S. citizens and lawful residents.

**Vote NO on the Black amendment because state immigration laws unconstitutionally undermine federal immigration priorities.**

•These state laws conflict with the Constitution's clear reservation of power to Congress to establish a uniform immigration policy. The patchwork caused by state immigration enforcement statutes is unconstitutional. Such laws usurp the federal government's priorities because they force federal immigration officials to squander limited resources investigating persons, including U.S. citizens and lawful residents, who are arrested and detained by state and local law enforcement officers untrained in federal immigration law. In turn, state and local law enforcement agencies operating under these laws are forced to investigate and arrest low-level, non-violent offenders in order to check immigration status, hampering their attention to serious criminal activity and damaging trust in police by victims and witnesses of crime.

For more information, please contact Joanne Lin, ACLU Legislative Counsel, at 202/675-2317 or [jlin@dcaclu.org](mailto:jlin@dcaclu.org)