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Legal and Social Implications of H.B. 17-1134

DENVER, CO – Riding alongside the anti-immigrant and refugee rhetoric ushered in by the Trump administration are the deeply problematic bills which seek to further divide and dehumanize our diverse communities. In Colorado, as in Iowa and Texas, Republicans have introduced a new bill, H.B. 17-1134, which seeks to criminalize the legislative processes that have been the very cornerstones of American democracy—long protected by a tradition of immunizing public officials for their legislative activities on behalf of their constituencies.¹ The bill proposes to bar cities or local governmental units from limiting their cooperation with Immigration and Customs Enforcement (ICE) in upholding what is broadly referred to as “sanctuary cities/jurisdictions”. Thus, threatening civil and criminal sanctions for any such violations. Punishing legislators for voting in a particular way is inapposite to democratic discourse. Put simply, the bill’s criminalization of legislative voting is nothing short of an attack on open democratic deliberation and the independence of legislative duties. To this point, in April 2009 the U.S. Court of Appeals for the Tenth Circuit affirmed that “[l]egislative immunity enables officials to serve the public without fear of personal liability. Not only may the risk of

¹ H.B. 17-1134 can be found at: <http://leg.colorado.gov/bills/hb17-1134>.

liability deter an official from proper action, but the litigation itself 'creates a distraction and forces legislators to divert their time, energy, and attention from their legislative tasks to defend the litigation.'"²

Even more troubling than the clear violation of the principles of legislative immunity is the bill's attempt to restrain state and federal courts from reviewing any such indictments. Eviscerating the court's ability to review legislative pronouncements would effectively render our judicial system as a whole null and void. This wouldn't be the first instance of discriminatory immigration legislation that has attacked the independence of the judiciary, but it may be the most pointed-- and it is a terrible slippery slope. The proposal's severability clause attempts to erode principles on the separation of powers, upon which the U.S. and Colorado Constitutions rest.

Further, this bill harkens back to the "show me your papers" laws which came to a head in 2010 by exposing Arizona's Maricopa County's Sheriff Joe Arpaio's immigrant targeting policies. Here, part of the expansive definition of "sanctuary jurisdiction" proposed by H.B. 17-1134 targets Colorado sheriffs, who, at least for the time being, have unanimously refused to honor immigration "detainers." Numerous federal court decisions have held that these types of immigration policies clearly violate the Fourth Amendment, which limits the government's ability to deprive any "person" of our liberty and have unambiguously held that any arrest requires "probable cause" (of the commission of any crime). As the County Sheriffs of Colorado put it, "[sheriffs] cannot hold persons in jail at the request of a local police officer or a federal agent."³ This bill

² See *Sable v. Myers*, 563 F.3d 1120, 1123-24 (10th Cir. 2009).

³ County Sheriffs of Colorado Statement on Immigration can be found at: <http://csoc.org/wp-content/uploads/2016/12/Immigration-paper-version-1.pdf>.

would hold sheriffs liable for adhering to their own policies and indeed in following the very letter of well-established Fourth Amendment law.

Colorado has long benefited from its welcoming tradition of inclusion and diversity. This is evident in the way our majestic natural landscapes and outdoor activities attract thousands of visitors to the Rocky Mountains each year and the significant contributions made to our social fabric and economy on behalf of our vibrant immigrant and refugee populations. According to the Colorado Tourism Office, in 2015 a record of 77.7 million visitors to the state spent an all-time high of \$19.1 billion, generating \$1.13 billion in state and local taxes.⁴ A 2016 study by the New American Economy on the role of immigrants as entrepreneurs reveals that 32,115 immigrants in Colorado are self-employed and 83,794 in Colorado are employed at firms owned by immigrants while immigrant-owned businesses generated \$566.4 million in business income in 2014.⁵ These achievements across every sector in our public and private spheres are indeed underpinned by our great multicultural and cooperative citizenry.

As immigrants who are contributing members of our local communities in the fields of human rights advocacy and law, we strongly believe that introducing a bill, which directly targets and threatens the rights of certain members of our community, elected officials and governmental units is not only a violation of our constitutional rights but also the long held values of multiculturalism, tolerance and cooperation among our

⁴ Denver Post statistics on Colorado Tourism can be found at:
<http://www.denverpost.com/2016/07/20/record-colorado-tourism-2015/>.

⁵ "The Contributions of New Americans in Colorado", can be found at:
<http://www.renewoureconomy.org/wp-content/uploads/2016/10/nae-co-report.pdf>

communities in Colorado. Furthermore, it is essential that immigration and refugee policy in the U.S. continues to be a bipartisan effort, which upholds our constitution and is driven by humanitarian values in easing the burden of the world's most vulnerable populations as envisaged in President Ronald Reagan's 1981 "Statement on United States Immigration and Refugee Policy", which urged that "We shall continue America's tradition as a land that welcomes peoples from other countries. We shall also, with other countries, continue to share in the responsibility of welcoming and resettling those who flee oppression."⁶

⁶ Ronald Reagan's 1981 "Statement on United States Immigration and Refugee Policy" can be found at: <http://www.presidency.ucsb.edu/ws/?pid=44128>.