



May 4, 2012

Via Electronic and U.S. Mail

The Honorable Bill Haslam
State Capitol
First Floor
Nashville, TN 37243
Bill.Haslam@tn.gov

AMERICAN CIVIL
LIBERTIES UNION
OF TENNESSEE

P.O. BOX 120160
NASHVILLE, TN 37212

Phone: (615) 320-7142
Fax: (615) 320-7260
www.aclu-tn.org

Dear Governor Haslam:

On behalf of American Civil Liberties Union of Tennessee (ACLU-TN) members and supporters across the state, I write to strongly urge you to veto SB 2580/HB 2725, which mandates drug testing for some Temporary Assistance to Needy Families (TANF) applicants. SB 2580/HB 2725 raises a number of serious constitutional concerns and risks wasting precious taxpayer dollars in a time of economic turmoil to address a nonexistent problem. For these reasons, as explained in further detail below, ACLU-TN asks you to veto SB 2580/HB 2725.

- 1) **SB 2580/HB 2725 is constitutionally suspect.** The bill allows for testing individuals based on a yet-to-be defined “reasonable suspicion” standard. However, the U.S. Supreme Court has made clear that a drug test is considered a search under the Constitution. As a result, in the absence of a special need, the government must demonstrate the existence of “probable cause,” rather than mere reasonable suspicion, before it can subject individuals to the indignities of a drug test. Conducting a search based on anything less than probable cause is unconstitutional. Moreover, there is no rational basis for the state’s underlying assumption that TANF applicants are more likely to use drugs than anyone else receiving government funds, thus making the state vulnerable to a challenge under the Equal Protection Clause of the Constitution.
- 2) **The legislation does not identify how key components of the proposed drug testing program will be defined or implemented.** The bill mandates suspicion-based drug testing of TANF applicants, but does not articulate how reasonable suspicion, the key component of the bill, will be determined. While the bill requires the Department of Human Services, in consultation with substance abuse treatment experts, to develop “appropriate screening techniques and processes that will establish reasonable cause,” the legislature provides absolutely no guidance as to

what can and cannot serve as grounds for the requisite level of suspicion under the law.

- 3) **Tennessee will incur significant costs in complying with SB 2580/HB 2725.** There was no fiscal note attached to the final version of SB 2580/HB 2725, keeping the true cost of implementing the bill unknown to both legislators and taxpayers. Data from across the country shows that bills like SB 2580/HB 2725 do not save states money. In 2011, the U.S. Department of Health and Human Services reviewed the projected costs of implementing various proposed welfare drug testing laws and in no case did the legislative projections show net savings resulting from proposed drug testing programs.¹
- 4) **SB 2580/HB 2725 serves no useful purpose as TANF applicants and recipients do not use drugs at a greater rate than the general population.** By targeting TANF recipients for drug screening and testing, the bill implies that there is some correlation between poverty and drug use. That claim is baseless. There is no credible evidence that TANF applicants in Tennessee use illegal drugs at a higher rate than the general population. Indeed, research shows that the rate of drug use among TANF applicants is no higher than that among the general population.² Recent data arising out of Florida's failed attempt to subject TANF applicants to mandatory drug testing indicates that those applicants are significantly *less* likely to use drugs than the general population.³
- 5) **SB 2580/HB 2725 identifies illegal drug use as a "public safety" issue, yet does not provide treatment for the few applicants who may test positive.** SB 2580/HB 2725 mandates that people who test positive for drug use should be referred to drug counseling and can continue to receive benefits if receiving treatment, but does not provide funding for said treatment. By definition, TANF applicants do not have the funds to pay for drug treatment. If Tennessee is serious about addressing drug abuse and supporting the families of those addicted to drugs, it is imperative that the state make treatment options available to applicants at no cost to the individual.

¹ "Drug Testing Welfare Recipients: Recent Proposals and Continuing Controversies," *ASPE ISSUE BRIEF* (U.S. Department of Health & Human Servs., Washington, D.C.), Oct. 2011.

² Robert E. Crew, Jr. & Belinda Creel Davis, "Assessing the Effects of Substance Abuse Among Applicants for TANF Benefits," 17(1) *J. of Health & Soc. Pol.* 39 (2003).

³ Lizette Alvarez, "No Savings are Found From Welfare Drug Tests," *The New York Times*, April 17, 2012.

For all of these reasons, ACLU-TN urges you to veto SB 2580/HB 2725. Please do not hesitate to contact me if I can provide any additional information.

Thank you for your thoughtful consideration.

Sincerely,

A handwritten signature in blue ink that reads "Hedy Weinberg". The signature is written in a cursive, flowing style.

Hedy Weinberg
Executive Director