

June 24, 2008

Re: Opposition to the Fingerprint Registry in Senate Housing legislation

Dear Senators Reid and McConnell:

We are diverse organizations, but we hold in common a deep commitment to privacy rights, civil liberties and the Fourth Amendment's prohibition of unreasonable searches and seizures. As such, we write together to strongly urge you to oppose provisions of housing legislation that recently passed the Senate Banking Committee that would establish a mandatory fingerprint registry for thousands of American workers neither convicted nor even suspected of a crime. Title V in Division A of the Housing and Economic Recovery Act of 2008 unreasonably and unnecessarily requires the submission of fingerprints from a broad category of "loan originators" that could encompass thousands of employees in the mortgage and real estate industries.

The bill would require any worker defined as a "loan originator" to "furnish ... fingerprints for submission to the Federal Bureau of Investigation" and a host of other government agencies. The fingerprints would be held in the Nationwide Mortgage Licensing System and Registry for "tracking of loan originators." A "loan originator" is defined in the proposed Act as anyone who accepts a mortgage application, negotiates mortgage terms, or prepares loan packages – a broad definition that could cover many low-level clerical employees and part-time and seasonal workers.

We are troubled by the scope of this requirement and the lack of a justification as to how this would serve the goal of reducing mortgage fraud.

As noted by the respected news service CNET.com, “What’s odd is the lack of public discussion about this new fingerprint database.” Indeed, the fingerprint provisions do not appear to have been debated in any record of Senate hearings.

We think it highly unlikely that proposed fingerprinting requirements will have any tangible benefits in solving problems associated with subprime lending. Most of the lower-level employees targeted in this bill have little to do with the creation of mortgage products in question. And there is little, if any, data connecting risky lending to employees with criminal backgrounds.

We are also concerned about the bill’s lack of safeguards for the data collected. Identity theft involving fingerprints is becoming a major concern among data security professionals. Yet the bill contains few restrictions on access to the data and does not specify how it should be protected.

The provisions would reduce privacy without any rational justification. We urge you to work to strip these provisions from the bill and oppose any final legislation containing them.

Thank you for considering our views.

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Chairman
American Conservative Union

Caroline Fredrickson
Director, Washington Legislative Office
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John Berlau
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Bob Barr
Former Member of Congress (Georgia)

Brett Kimberlin
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William Westmiller
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Dane vonBreichenruchardt,
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U.S. Bill of Rights Foundation

John W. Whitehead
President
Rutherford Institute

Cc: Chairman Christopher Dodd, U.S. Senate Committee on Banking,
Housing, and Urban Affairs

Ranking Member Richard Shelby, U.S. Senate Committee on
Banking, Housing, and Urban Affairs