

June 20, 2011

Members of the Suffolk County Legislature
725 Veterans Memorial Highway
Hauppauge, NY 11788

Dear Legislator,

As a group of concerned lawyers, activists, social justice organizations, unions, interfaith groups and constituents, we write to urge you to oppose I.R. 1266, which would create a prepaid cell phone registry in Suffolk County.

If enacted, this legislation would require consumers to present two forms of identification when purchasing prepaid cell phones. It would establish a police database where consumers' information would be stored, and would require retailers to make copies of consumers' identification cards and either scan the cards into the police database or maintain paper records. A retailer's failure to comply is a misdemeanor punishable by a fine of up to \$1,000 and/or up to one year in jail.

The purported purpose of the bill is to provide law enforcement with information believed to be essential to combating crime and terrorism. We oppose this legislation because it fails to strike an appropriate balance between effective law enforcement and the preservation of civil liberties of the people of Suffolk County.

If enacted the bill would:

- Disturb well-established constitutional protections of the people of Suffolk County;
- Disproportionately impact low income and minority communities;
- Threaten the safety of victims of domestic violence;
- Unduly burden small businesses; and
- Provide for an inefficient and ineffective law enforcement strategy.

I.R. 1266 Undermines Constitutional Protections

Under I.R. 1266, the government would erode privacy interests for those who choose to purchase prepaid phones. In order for the government to do away with privacy rights for a certain class of people – here, prepaid cell phone purchasers—it must have a very strong justification that outweighs the privacy interest. Under the bill, retailers would have to collect sensitive information and either enter it into a police database or maintain paper records for at least three years. The legislation does not lay

out any protections for consumers, safeguards for retailers, or training mechanisms for retailers who choose to maintain paper records. Retailers who have no experience handling such sensitive information will now be charged to do so, without consent.

The bill also facilitates the wrongful or negligent use of sensitive personal information provided by the purchaser of prepaid cell phones. There is no protection laid out in the legislation against retailer misuse of consumers' personal information, nor is there protection from negligent handling of such information. As a result, this legislation exposes purchasers to the possibility of identity theft and other forms of inappropriate use of their personal information, either by retailers themselves or by third parties who acquire the personal information through the negligent handling of the information by the retailer.

I.R. 1266, even as amended, would allow for unjust collection of personal information by law enforcement, upsetting well-established Fourth Amendment principles. The Fourth Amendment protects Americans from unlawful searches and seizures by the government. Police may only search or seize materials and/or information if they have probable cause to proceed with their investigation. The amended version of the bill requires police to present a subpoena when seeking records directly from retailers. However, no such requirement exists when law enforcement wants to access the police database, which would contain mass amounts of innocent consumers' information. To suggest that the subpoena requirement alleviates constitutional concerns is naïve and foolish. Police will still have unfettered access to consumers' personal information via the police department database, leaving open the potential for misappropriation and abuse of sensitive information, disturbing residents' core constitutional protections.

I.R. 1266 will have a Disproportionate Impact on Vulnerable Populations and Minority Communities

The proposed legislation targets communities and groups that most need prepaid cell phone services. Under this proposal, those who purchase prepaid phones will be presumed guilty, or at least suspect, as their personal information will be stored in a police database or readily available to police.

Most people who purchase prepaid cell phones are law-abiding people who do so for entirely innocent, non-criminal reasons. For low-income residents, these phones provide an inexpensive means of communication without a contract or credit check. Parents purchase prepaid phones for their children. Immigrants, tourists and other temporary visitors to Suffolk County purchase these phones because they may not have credit histories and do not want to be bound by a long-term contract.

Further, the proposed bill would disproportionately burden Latino and African-American communities, which, according to a recent Bureau of Labor Statistics report have higher rates of unemployment than the general population.¹ The unemployed and those of limited means rely on

¹ Bureau of Labor Statistics, The Employment Situation – May 2011, (June 3, 2011).

prepaid phones to conduct business, stay connected to family and report crimes and emergencies to law enforcement. Also, requiring two forms of identification to purchase a phone is burdensome, as a study by the Brennan Center for Justice reported that approximately 11 percent of Americans lack or cannot get current government-issued photo identification, a disproportionate number who are racial minorities, senior citizens and the working poor.²

Many people, such as victims of domestic violence, purchase these phones simply for the level of anonymity they allow. This legislation would threaten the important privacy rights of domestic violence victims who seek means of communication other than their contract family plans or home phones. Under this proposal, such victims who use prepaid cell phones would be at an increased risk of harm, as they would no longer be able to guarantee their personal information, including phone number and address, is private and unknown to their abuser.

Additionally, domestic violence victims often flee their batterers with nothing more than the clothes on their backs and a handful of cash. Often, abusers lock up or destroy their victims' IDs and personal documents, to limit their ability to seek help. Requiring two forms of identification would place an undue burden on victims seeking help in the most crucial and time-sensitive moments. It would limit victims' access to prepaid cell phones, which are vital lifelines during a time of extreme need.

I.R. 1266 Places an Unnecessary and Overwhelming Burden on Small Businesses

Suffolk County thrives on the growth and expansion of small businesses, but I.R. 1266 would burden retailers of prepaid phones and discourage economic growth.

I.R. 1266 provides no support, either financial or otherwise, to small businesses which choose to carry prepaid phones. Businesses that do not have computers, internet access or scanners would have no ability to enter consumer information into the Suffolk Police database, unless they shouldered the cost themselves. Business owners may resort to taking photocopies of IDs home to enter them into the database from their home computers, which would increase the likelihood of identity theft or misappropriation of sensitive information. And, retailers who do not want to keep paper records or constantly deal with police questioning and lawyer subpoenas, may simply stop carrying prepaid cell phones, leading to a decrease in revenue.

Legis. Browning has said that she is not concerned that small businesses would stop carrying prepaid phones if the law passes; however, many small stores survive on income generated from prepaid phones and prepaid SIM cards. Legis. Browning has also said that this impact would be a minor one on communities, because prepaid devices would still be available at chain wireless stores and large electronics stores. However, certain communities in Suffolk are miles away from the nearest wireless or

² Brennan Center for Justice at NYU School of Law, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, (Nov. 28, 2006).

electronics store. Low-income residents, immigrants and domestic violence victims who may not have cars or other means of transportation would be unable to obtain prepaid phones, another instance of the law leaving vulnerable populations at a significant disadvantage.

Additionally, permitting retailers to effectively create their own databases of consumers' personal information or directly funnel such information to the police creates bad precedent. It puts an overwhelming burden on small business and puts them in the business of law enforcement and policing without necessary safeguards. Instead of depending upon unjust policy and deputized retailers, we should use the tools we have to achieve policing goals in a smart, efficient and lawful way.

I.R. 1266 is an Ineffective Law Enforcement Strategy

I.R. 1266 proposes an ineffective way to protect against crime and terrorism. Instead of utilizing well-developed standards – such as reasonable suspicion or probable cause – that facilitate effective law enforcement, this proposal creates a new scheme that will be burdensome for retailers and law enforcement alike. And there is no evidence that this new scheme will actually help law enforcement. Would-be criminals could just as easily avoid identifying themselves by purchasing prepaid cell phones outside of Suffolk County.

Even wireless and security experts are skeptical about prepaid cell phone registries as an effective means of combating crime and terror. Bruce Schneier, founder of Counterpane Internet Security and a former cryptographer for the U.S. military, says that these laws simply serve to force criminals to change their tactics. In 2006, Schneier told the *Arkansas Democratic Gazette*, "It's like these people have never heard of pay phones. If al-Qaida has this great plan to use a cell phone to call something in and somehow the cell phones are banned, the terrorists are not going to go home and get real jobs. They'll go to a pay phone. They can do something else. It's nutty."³ Rather than actually deterring criminals or keeping track of terrorists, this legislation will serve to provide the police with an expensive, complicated database of innocent people.

There has been no affirmative showing of evidence that suggests that a prepaid cell phone registry would actually provide law enforcement with more tools to combat crime or prevent or deter crime. There has only been rhetoric and speculation that more information in the hands of law enforcement is a good thing. However, criminals would easily evade this law, leaving the innocent people of Suffolk County to deal with a burdensome law that infringes on their core constitutional rights. And, there has been no showing that this law would provide for more efficient policing. If retailers opt to maintain paper records rather than entering the information in the police database, then we will have an enormous distribution of paper files all over the county. In the

³ Hornaday, B. "Debate grows as more buy prepaid cells." THE ARKANSAS DEMOCRAT GAZETTE, October 8, 2006.

course of an investigation, with just the knowledge or suspicion that a prepaid cell phone was used, law enforcement would have to sift through all of these records in all stores, taking time and efforts away from other, more substantive leads and strategies.

Rather than actually combating crime and terror, I.R. 1266 has the consequences of invading privacy, while burdening retailers and having a chilling effect on prepaid cell phone purchasers, many of whom have already been marginalized by society because of their socioeconomic status, lifestyle or history with domestic violence. To that end, we strongly urge this legislature to vote against I.R. 1266, and put an end to irrational, fear-based laws that infringe upon the privacy and the constitutional rights of Suffolk County residents.

Sincerely,

Amol Sinha
Director, New York Civil Liberties Union – Suffolk County Chapter
asinha@nyclu.org
(631) 650-2301

Luis Valenzuela
Director, Long Island Immigrant Alliance

Jessica Glynn
Supervising Attorney, SEPA Mujer

Elizabeth Joynes
Skadden Fellow, LatinoJustice PRLDEF

Pat Young
Central American Refugee Center (CARECEN)

Eric Horn
Immigration Attorney, The Law Offices of Eric Horn

Lucius Ware
President, Eastern Long Island NAACP

Michele Lynch
1199 SEIU

Sylvia Baruch
Chair, Neighbors in Support of Immigrants

Lisa Tyson
Long Island Progressive Coalition

Carlos Ramos
Make the Road NY

Shirley E. Coverdale
Long Island Organizing Network (LION)

Maryann Slutsky
Long Island Wins

Charlene Obernauer
Executive Director, Long Island Jobs With Justice

Omar Angel-Perez
The Workplace Project

Michael O'Neill
Long Island Immigrant Solidarity

Sister Jeanne Clark, O.P.
Coordinator, Pax Christi Long Island

M. Athar Suhail
President, Masjid Darul Qur'an, The Muslim Center of Bay Shore

Sonia Palacio-Grottola, LCSW
National Association of Puerto Rican Hispanic Social Workers, Inc. (NAPRHSW)

Edgard Laborde
SEIU 32BJ

Linda Lane-Weber
Founder, Suffolk County Coalition Against Domestic Violence

Abraham Valentine, Jr., LCSW, CASAC
National Association of Social Workers – Suffolk Division

Isabel Sepulveda-de Scanlon
OLA of Eastern Long Island

Dr. Greg Maney
Long Island Teachers for Human Rights

Cesar A. Malaga
President, Hispanic American Association

Angeline Echeverria
Long Island Civic Participation Project (LICPP)

Gwen O'Shea
Health & Welfare Council of Long Island

Jack Evans
Law Office of the Public Advocacy Center

Don Friedman
Empire Justice Center

New York Communities for Change

New York Chapter of the American Immigration Lawyers Association