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May 19, 2014

State of Texas
House of Representatives
SYLVESTER TURNER
STATE REPRESENTATIVE

The Honorable Greg Abbott
Attorney General of Texas
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711

RE: *Texas v. EEOC*, Civil No. 13-00255-C
United States District Court for the Northern District of Texas, Lubbock Division

Dear General Abbott:

On November 4, 2013, your office filed a lawsuit against the United States Equal Employment Opportunity Commission ("EEOC"), the federal agency tasked with enforcing our nation's employment antidiscrimination laws. This baseless lawsuit aims to make it harder for millions of Texans seeking to obtain gainful employment to support themselves and their families. We, the undersigned elected Senators and Representatives call on your office to drop this lawsuit immediately.

Approximately 4.7 million Texans—or nearly 20% of the State's population—have, at some point in their lives, been arrested or convicted of a crime.¹ In fact, it is estimated that each year, 70,000 people are released from incarceration and return to communities all across the State of Texas.² All of these people need a place to live and a job so that they can support themselves and their families. As former President and Texas Governor George W. Bush has recognized:

We know from experience that if [former prisoners] can't find work, or a home, or help, they are much more likely to commit more crimes and return to prison. . . . America is the land of the second chance, and when the gates of the prison open, the path ahead should lead to a better life.³

Despite the critical importance of employment for the individual, their families, and for Texas, people with criminal records face tremendous obstacles in obtaining a job. Just last year, the State legislature found that job seekers with criminal records receive less than half as many job offers as other applicants and that employment policies to assist this population may not only allow people with criminal records to become self-sufficient, but also enhance employers' hiring options and profitability.⁴ The EEOC, recognizing that this problem exists all across the United States, promulgated guidance in 2012 that was designed to assist the employment prospects of people with criminal records.⁵ In its guidance, the EEOC sensibly advises employers not to categorically refuse to hire anyone with a criminal history. Instead, employers should consider the nature of the person's offense, the amount of time that has passed since the criminal conduct,

and whether the conduct has any relationship to the job sought. The EEOC also recommends that employers offer individuals the opportunity to explain their criminal background before making a decision about whether to offer the person a job.


The balanced, thoughtful approach reflected in the EEOC's guidance makes sense, and is particularly useful here in Texas. Given that for many years, our State led the nation in rates of incarceration,⁶ it is imperative that we think creatively and proactively about ways in which to ensure that people with criminal records can become productive members of society. We simply cannot afford to block the path to employment for those who are ready, willing, and able to work. This is especially true since studies have repeatedly found that ex-offenders who are employed are much less likely to recidivate.⁷

The lawsuit your office filed against the EEOC is deeply misguided, because it inexplicably seeks to invalidate the EEOC's recent guidance and render it inapplicable in the State of Texas. In press statements about the lawsuit, your office has characterized the EEOC's guidance as just another example of federal overreach into Texas state matters, and stated that the principles expressed in the guidance are inconsistent with the way that Texas approaches this matter.⁸ But nothing could be further from the truth. In recent years, bipartisan majorities of lawmakers in this State have worked with the business community to pass legislation that, just like the EEOC's guidance, seeks to make it easier for people with criminal records to obtain employment.⁹ For example, in the last session, we passed House Bill 1188, a measure that encourages employers to offer a second chance to people with criminal records who have paid their debt to society and are qualified to work. This legislation limits liability for employers who want to hire these individuals, but are afraid to do so because of the fear of negligent hiring lawsuits. H.B. 1188 was passed by a 134-2 vote in the House and a unanimous 31-0 vote in the Senate and was signed into law by Governor Rick Perry. Similarly, more than a decade ago, our State legislature amended the Texas Occupations Code to require State licensing authorities to consider many of the same factors contained in the EEOC's guidance when deciding whether to grant certain occupational licenses to people with criminal backgrounds.¹⁰ The overwhelming support for these measures shows that reducing barriers to employment for people who want to work is not a partisan issue. It is common sense.


In fact, your office's lawsuit neglects the important progress made throughout the State of Texas. Municipalities around the State are actively engaged in efforts to assist people with criminal records secure employment, and both Travis County and the City of Austin have joined more than 50 jurisdictions nationwide in enacting "ban the box" policies, which require employers to give job applicants individualized consideration before asking for criminal history information.

We are deeply disappointed that your office has chosen to devote this State's scarce and precious resources to bringing such an unnecessary lawsuit. We fully support the EEOC's guidance, and believe it is imperative that we, as a State, take steps to ensure that the 4.7 million Texans with criminal records are not needlessly denied employment. The time to drop this misguided lawsuit is now.

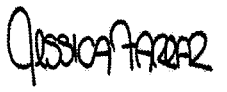
Sincerely,



Senator Rodney Ellis

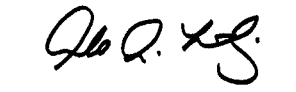

Senator Royce West



Senator John Whitmire


Rep. Alma Allen

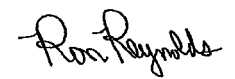

Rep. Jessica Farrar


Rep. Naomi Gonzalez


Rep. Armando "Mando"
Martinez

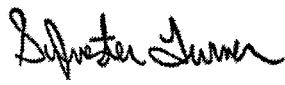

Rep. Elliott Naishtat

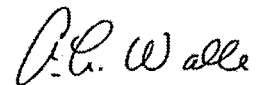

Rep. Poncho Nevarez


Rep. Ron Reynolds


Rep. Toni Rose


Rep. Chris Turner


Rep. Sylvester Turner


Rep. Armando Walle

¹ Helen Gaebler, *Criminal Records in the Digital Age: A Review of Current Practices and Recommendations for Reform in Texas* 4 (William Wayne Justice Center for Public Interest Law, University of Texas School of Law, Mar. 2013), available at http://www.utexas.edu/law/centers/publicinterest/research/criminalrecords_report.pdf.

¹ Helen Gaebler, *Criminal Records in the Digital Age: A Review of Current Practices and Recommendations for Reform in Texas* 4 (William Wayne Justice Center for Public Interest Law, University of Texas School of Law, Mar. 2013), available at http://www.utexas.edu/law/centers/publicinterest/research/criminalrecords_report.pdf.

² *Id.* at 8.

³ President George W. Bush, State of the Union Address (Jan. 20, 2004), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2004/01/20040120-7.html>.

⁴ Judiciary & Civil Jurisprudence Committee Report, Bill Analysis of H.B. 1188, available at <http://www.legis.state.tx.us/tlodocs/83R/analysis/html/HB01188H.HTM>.

⁵ Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, as amended, 42 U.S.C. § 2000e et seq. (Apr. 25, 2012), available at http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf.

⁶ Prisoners in 2012, U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics 23 (Dec. 2013), available at <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>.

⁷ Texas Public Policy Foundation, *Working with Conviction: Criminal Offenses as Barriers to Entering Licensed Occupations in Texas* 1 (Nov. 2007), available at <http://www.texaspolicy.com/center/effective-justice/reports/working-conviction>.

⁸ "Texas Attorney General Challenges EEOC Hiring Guidelines that Jeopardize Public Safety and Contradict Texas Law," issued on Nov. 4, 2013, available at <https://www.texasattorneygeneral.gov/oagNews/release.php?id=4570>.

⁹ Maurice Chammah, *Business Group Helps Criminal Justice Bills Pass*, Texas Tribune (May 23, 2013), available at <http://www.texastribune.org/2013/05/23/business-association-looks-back-criminal-justice-a/>.

¹⁰ Texas Occupations Code §§ 53.022-53.023 (effective Sept. 1, 1999).