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The Honorable Cottie Petrie-Norris  
State Capitol, Room 4144  
Sacramento, California 95814

**RE: AB 110: Deepening Structural Racism and the Vulnerability of  
Incarcerated Californians to Wrongful Denial of Unemployment Benefits and  
Identity Theft — OPPOSE**

Dear Assemblymember Cottie Petrie-Norris:

On behalf of the National Employment Law Project (NELP), I write to respectfully share our opposition to AB 110, a bill that would require the Department of Corrections and Rehabilitation (CDCR) and county jails to provide the names and social security numbers of currently incarcerated Californians to the Employment Development Department (EDD) on a monthly basis.

NELP is a national, non-profit law and policy organization with an office in California. For more than 50 years, NELP has fought for the employment rights of working people across the country. We advocate at the federal, state, and local levels for policies to create good jobs, expand access to work to those who want it, and strengthen protections and support for workers in low-wage industries and individuals who are unemployed. One of NELP's areas of expertise is expanding fair access to employment for people targeted by criminalization and the criminal legal system, disproportionately Black and Latinx. NELP is one of the nation's leading authorities on "fair chance" employment policies (also known as "ban the box") and fair chance occupational licensing reforms. In recent years, NELP has worked closely with advocates and policymakers both within California and throughout the country to craft policies and law that reduce barriers to employment and expand the job prospects of people with records.

NELP's concerns with AB 110 — and other pending bills similar to AB 110 like Republican-sponsored SB 39 — is that the bill overemphasizes alleged fraud committed by incarcerated Californians, while underemphasizing incarcerated Californians' particular risk both to (1) wrongful denial of unemployment benefits and (2) identity theft, or fraudulent activities using their information. Especially given our context of both public health and unemployment crises, we are deeply concerned that the sensationalizing of "undeserving" Californians receiving unemployment benefits have resulted in overbroad and wrongful denials, even to Californians who have never been incarcerated.

We fear that bills such as AB 110 serve to deepen structural racism. People of color are already more likely to be flagged for unemployment insurance fraud, even while



there is no evidence they are more likely to be engaged in it.<sup>1</sup> Compounding this reality is the widely recognized targeting of people of color by the criminal legal system — a recognition also held by its own systems actors.<sup>2</sup> Furthermore, as California’s own EDD “Strike Team” reports, overemphasis on fraud has resulted in the State of California overflagging non-fraudulent applicants, creating unnecessary and consequential delays: “the cost of finding that small number of imposters is extremely high, both in terms of literal cost of staff time and in terms of negative impact on the system.”<sup>3</sup>

Second, not all Californians in the custody of CDCR and county jails are ineligible for unemployment benefits. Simple population rolls oversimplify the complex and diverse ways the State of California and its county jails incarcerate Californians. For instance, county jails throughout the state may incarcerate Californians through varied arrangements, including work release programs, work furlough programs, “pay-to-stay” programs, and other case by case arrangements.<sup>4</sup> Simple population rolls cannot indicate whether such individuals, whose physical incarceration may be limited to sleeping hours and weekends — and thus may be “able and available” or otherwise determined to be eligible for unemployment benefits under California law — are participants in such programs.

Third, the average length of stay for a Californian incarcerated in a California county jail is less than a month.<sup>5</sup> Simple monthly population rolls would include the significant portion of Californians incarcerated in county jails who spend relatively short periods of time in jail before bonding out, having charges against them dismissed, or otherwise resolving custody or the allegations against them. Nothing in AB 110 ensures that such potentially eligible Californians would not be excluded from proper receipt of unemployment benefits.

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<sup>1</sup> New America, *Unpacking Inequities in Unemployment Insurance – A Focus on Fraud over Accessibility: The Punitive Design of Unemployment Insurance*, September 17, 2020, <https://www.newamerica.org/pit/reports/unpacking-inequities-unemployment-insurance/>

<sup>2</sup> See e.g., The National Judicial College, *Most Judges Believe the Criminal Justice System Suffers from Racism*, July 14, 2020, <https://www.judges.org/news-and-info/most-judges-believe-the-criminal-justice-system-suffers-from-racism/>

<sup>3</sup> California Employment Development Department Strike Team, *Detailed Assessment and Recommendations: Current Identity Verification Process intended to Block Fraud are Slowing Service Delivery without Catching Fraud*, September 16, 2020, <https://www.govops.ca.gov/wp-content/uploads/sites/11/2020/09/Assessment.pdf>

<sup>4</sup> See e.g., Anaheim Detention Facility Work Release, <https://www.anaheim.net/255/Work-Release>, or Riverside County Work Release Program, <https://www.riversidesheriff.org/253/Work-Release-ProgramWRP>

<sup>5</sup> Kaplan, Jacob. *California Jail Profile Survey 1995-2020*. Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 2021-01-16. <https://doi.org/10.3886/E104560V7>

Fourth, the transmission of Californians' sensitive information such as social security numbers as required by AB 110 unfairly places the risk of identity theft on incarcerated Californians to bear the burden of resolving fraud. Incarcerated people are already recognized to be particularly vulnerable to identity theft.<sup>6</sup> Incarcerated people lack access to regularly monitor their credit reports. Friends or family members often have access to personal data, including bank and credit card accounts and information while they are incarcerated. Prison and jail staff may have access to an incarcerated person's personal financial information.<sup>7</sup> Incarcerated Californians incarcerated for lengthier periods may not become aware of identity theft until years later, and further, may be subsequently treated with unfair suspicion due to their arrest or conviction history. Indeed, recent reports have emerged involving non-incarcerated individuals stealing the identities of incarcerated Californians for the purpose of submitting fraudulent EDD Claims.<sup>8</sup>

Finally, overemphasis on incarcerated Californians' alleged fraud has led to wrongful denials of unemployment benefits to non-incarcerated and otherwise eligible Californians.<sup>9</sup> We fear that the sensationalizing of "undeserving" Californians receiving unemployment benefits have resulted in these overbroad and wrongful denials.

We believe California should be greatly concerned about the wrongful denials and identity theft incarcerated Californians are especially vulnerable to. Ultimately, incarcerated Californians are our family members, co-workers, and fellow community members who are also experiencing our unprecedented public health and unemployment crises. We fear bills such as AB 110 compound race inequities promoted by a focus on fraud over relief and the criminal legal system. Overbroad and over-simplified monthly population rolls of incarcerated Californians such as

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<sup>6</sup> See e.g., Consumer Financial Protection Bureau, *Protecting One's Credit while in the Criminal Justice System*, <https://www.consumerfinance.gov/about-us/blog/protecting-ones-credit-while-criminal-justice-system/>

<sup>7</sup> See e.g., Prison Legal News, *Corrections Officials Stealing Prisoners' Identities a Growing Problem*, December 8, 2016, <https://www.prisonlegalnews.org/news/2016/dec/8/corrections-officials-stealing-prisoners-identities-growing-problem/>, or The Marshall Project, *The Man with the Stolen Name*, May 14, 2018, <https://www.themarshallproject.org/2018/05/14/the-man-with-the-stolen-name>,

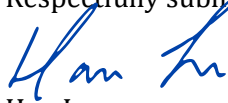
<sup>8</sup> See e.g., ABC 7 News, *Inland Empire residents accused of using inmate's identity to receive over \$18,000 in unemployment benefits*, February 4, 2021, <https://abc7.com/moreno-valley-edd-fraud-california-unemployment-ui/10315649/>

<sup>9</sup> See e.g., ABC 7 News, *California unemployment: EDD mistakenly cuts off man's benefits, accuses him of being in jail*, February 11, 2021, <https://abc7news.com/edd-benefits-cuts-off-man-jail/10331499/>, and CBS 8, *EDD denies Oceanside man's claim, tells him he's 'incarcerated'*, February 22, 2021, <https://www.cbs8.com/article/news/investigations/edd-denies-oceanside-mans-and-claim-tells-him-hes-incarcerated/509-aa451b36-9f6e-4715-86d4-8c2cfc138cb>

those proposed by AB 110 increase the risks of wrongful denials and identity theft to incarcerated Californians which in turn, increases these risks to the whole of us.

For these reasons, National Employment Law Project opposes AB 110.

Respectfully submitted,



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