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Testimony of Amy Traub

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Thank you, members of the Committee for this opportunity to present testimony. I am a Senior Policy Analyst in the Economic Opportunity Program at Dēmos. We are a national, non-partisan research and advocacy organization, established in 2000 and headquartered in New York City. The Dēmos Economic Opportunity Program works to achieve a more equitable economy with opportunity for all.

I am pleased to be here today to testify on S. 42 Relating To Employment Decisions Based On Credit Information which prohibits the use of consumer credit information for employment purposes if the information is unrelated to the job.

Over the past nine years, Dēmos has conducted extensive research on credit card debt among low- and middle-income households. As part of this research, we have become increasingly concerned with how families are being financially penalized for being in debt, making it difficult, if not impossible, for them to ever get out of debt. The proliferation of the use of credit reports and scores in particular have resulted in families in debt being forced to pay more for basic services, such as water and gas, being denied a rental apartment, being charged more for auto or homeowners' insurance, or, as I'll discuss today in more detail, being denied a job — which is the very thing they need to get out of debt.

Credit checks are an unnecessary barrier to employment: by restricting their use, this legislation will help put people back to work and ensure that all job seekers have a fair shot at gainful employment.

CREDIT CHECKS INCREASINGLY USED FOR EMPLOYMENT—DESPITE A LACK OF EVIDENCE FOR THEIR VALIDITY

As the bill's findings note, six out of ten American employers now look at a job applicant's credit report when hiring for some or all positions.¹ A brief, informal survey of job listings throughout the state of Vermont reveals that employers today are requiring credit checks for positions as diverse as doing maintenance work, being an office assistant, working as a delivery driver, and supervising a stockroom.²

Employment credit checks have become commonplace because employers are looking for a way to predict if a potential employee will be honest, if they will handle money responsibly, if they are likely to steal or commit fraud.³ For-profit credit reporting agencies take advantage of these concerns to market credit reports to employers. However, reviewing the social science research on this issue, I have found no credible evidence that credit reports reveal this information.⁴ In fact, a spokesperson for one of the major credit reporting agencies has admitted that he has seen no evidence to support the use of credit checks for employment purposes.⁵

It's important to emphasize that credit reports evolved as a means for lenders to evaluate whether someone would be a good credit risk based on their past payment history. These reports detail whether someone has fallen behind on their bills, whether they have had to declare bankruptcy, and if they've faced foreclosure. In fact, credit reports can be a good indicator of the tremendous economic stresses that are facing Vermont families during these difficult economic times. I was delighted to see the legislative findings based on Demos' research on credit card debt among middle- and low-income households which found that most indebted families go into debt to pay for basic expenses: groceries, utilities, child care, and health care. In a 2008 survey we commissioned of low-and-moderate income households, 37% of credit card indebted families had used their credit cards to pay for basic expenses and 52% had used them to pay for medical care in the past year.⁶ Simply put, Americans are borrowing to make ends meet.

You can often see the effects of that economic hardship in a credit report. What a credit report will not reveal is how well applicants are likely to perform on the job. The use of credit reports for employment purposes has no validity—and it's our position that there is no job category in which they have proven to be useful or reliable.

EMPLOYMENT CREDIT CHECKS ARE DISCRIMINATORY

In addition to their irrelevance, employment credit checks are also discriminatory, and I urge the committee to think of S.42 as a piece of civil rights legislation. The reality is that employment credit checks disproportionately impact Latinos and African Americans, whose credit histories have suffered as a result of discrimination in lending, housing and employment itself.⁷ Employment credit checks can perpetuate and amplify this historic injustice. For this reason organizations including the Lawyers Committee for Civil Rights, National Council of La Raza, and the NAACP have taken repeated stands against employment credit checks.⁸ The Equal Employment Opportunity Commission has sued two employers for the discriminatory impact of their use of credit reports as a hiring tool, demonstrating that credit reports may introduce legal liability to employers.

CREDIT REPORTS ARE OFTEN INACCURATE, AND ERRORS ARE DIFFICULT TO FIX

Another critical consideration is the accuracy of credit reports. A 2008 Federal Trade Commission (FTC)-sponsored pilot study found that about 31 percent of people who reviewed their credit report found errors that they wanted to dispute.⁹ A 2011 study funded by the credit reporting industry itself found that 19.2 percent of people who reviewed their credit reports identified information that appeared to be erroneous.¹⁰ Either way, this amounts to tens of millions of Americans whose credit reports contain information that is wholly inaccurate—perhaps someone else’s debts that became mixed up in their file, a mistake in the amount owed, or information wrongly stating that debts are still pending when in fact they were fully paid off.

Many jobseekers are not aware these errors exist, and if they find out, the burden for ensuring credit-report accuracy falls on the individual. If an individual uncovers a potential error in their credit report at a particular agency, the agency is required by law to investigate the matter and report back to the consumer within 35 days. However, as a practical matter, disputing an error can be a time-consuming, nearly impossible three-party negotiation between the credit bureau, the creditor and the individual—a negotiation for which the outcome is ultimately controlled by the sometimes arbitrary decision of the agency. We’ve heard of numerous cases where errors continued to appear on credit reports long after they were supposedly corrected.

EMPLOYMENT CREDIT CHECKS ARE A VIOLATION OF PRIVACY

I’d also like to raise the issue of privacy, because that is another concern as we consider employment credit checks. Americans should not have to expose the details a painful divorce or past medical condition just to get a job. Yet because family break-up and medical problems are among the leading reasons that Americans become unable to pay their debts, these deeply personal concerns are often revealed in an employment credit check, particularly if an applicant is asked by a prospective employer to “explain” their imperfect credit history.

EXEMPTIONS ARE UNNECESSARY

I would like to take a moment to address the exemption in this legislation. As it is currently written, S.43 permits the continued use of employment credit checks for positions for firefighters, police officers, employees of financial institutions, any position that requires a financial fiduciary responsibility, and anyone whose job would involve access to confidential financial information.

I would urge you to reconsider these exemptions as there is no evidence that credit checks are useful or reliable for determining who can safely handle money or make management decisions, much less who would be a good firefighter. In particular, the exemption involving access to “confidential financial information” is problematic, because, as this term is defined, it could be interpreted to include even employees who handle routine credit card transactions in entry-level retail positions. In other words, under this standard, someone applying to be a clerk at the Gap or a waitress at Applebees could be shut out of the job because they’ve had difficulty paying their bills in the past.

CONCLUSION

The unwarranted exemptions aside, S.42 will remove an unnecessary barrier that prevents qualified Vermont residents from getting the work they need. By enacting this bill, the state will join the growing number of jurisdictions—including seven states, from California to Illinois to Connecticut—that have taken action to restrict the use of credit checks in employment. I urge you to pass this legislation. Thank you.

ENDNOTES

1. Society of Human Resources Management, *Background Checking: Conducting Credit Background Checks*, January 22, 2010.
2. Based on the author's review of Vermont job postings on Craigslist.org on February 21, 2012.
3. See: Kelly Gallagher, "Rethinking the Fair Credit Reporting Act: When Requesting Credit Reports for Employment Goes Too Far," *Iowa Law Review*, 91, p. 1593-1621, 2006.
4. See: Shawn Fremstad and Amy Traub, "Discrediting America: The Urgent Need to Reform the Nation's Credit Reporting Industry," Demos, 2011. http://www.demos.org/sites/default/files/publications/Discrediting_America_Demos.pdf
5. Andrew Martin, "As a Hiring Filter, Credit Checks Draw Questions," *The New York Times*, April 9, 2010.
6. Jose Garcia and Tamara Draut, "The Plastic Safety Net: How Households are Coping in a Fragile Economy," Demos, 2009. http://www.demos.org/sites/default/files/publications/PlasticSafetyNet_Demos.pdf
7. Board of Governors of the Federal Reserve System, "Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit," 2007; Federal Trade Commission, "Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance," 2007; Robert B. Avery, Paul S. Calem, and Glenn B. Canner, "Credit Report Accuracy and Access to Credit," *Federal Reserve Bulletin*, 2004; Matt Fellowes, "Credit Scores, Reports, and Getting Ahead in America," Brookings Institution, 2006.
8. See, for example, "Letter in Support of the Equal Employment for All Act" signed by the Lawyers Committee for Civil Rights, National Council of La Raza, and the NAACP among other organizations. http://www.lawyerscommittee.org/admin/employment_discrimination/documents/files/Equal-Employment-for-All-Support-Letter.pdf
9. Federal Trade Commission, Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003 (December 23, 2008). <http://www.ftc.gov/os/2008/12/P044804factarptcongress.pdf>
10. Michael A. Turner, Robin Varghese, and Patrick D. Walker, "U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts," Policy & Economic Research Council, May 2011.

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