



October 18, 2007

Ms. Cindy Bunfill
Third Frontier Internship Coordinator
Office of Workforce Development
Ohio Department of Development
77 South High Street
Columbus, Ohio 43215-6130
SENT VIA FAX TO (614)728-9135 AND VIA U.S. MAIL

Dear Ms. Bunfill,

I write to you concerning the Third Frontier Internship Program, specifically, its requirement that applicants must be United States citizens. The Ohio Department of Development and the Third Frontier program are forbidden by law from discriminating on the basis of alienage. By limiting the internship program only to U.S. citizens, Third Frontier risks losing federal funding and violates the U.S. Constitution. We strongly encourage you to change this requirement immediately.

We take no issue with the concept of the Third Frontier Internship Program and applaud both the usefulness and amount of energy and dedication it takes to make the program a success. We think such efforts should be encouraged and repeated to the extent that they advance economic growth and industrial/technological development while also enhancing the educational experiences of Ohio students.

Our research indicates that part of the funding for the program comes from federal funds authorized by the Workforce Investment Act of 1998 (the "WIA"). WIA Section 188(5), "Prohibition on discrimination against certain noncitizens," states: "Participation in programs and activities or receiving funds under this chapter shall be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States." Therefore, limiting participation in the internship program to U.S. citizens without including the additional classes of individuals allowed by the act is restrictive and violates WIA. In fact, it may jeopardize Ohio's funding under the WIA.

More importantly, states are generally forbidden altogether from discriminating based on alienage. While the federal government may create some alienage restrictions, due to the federal government's exclusive authority to regulate ingress and egress to the United States (*i.e.*, to set immigration policy), the states cannot. *Graham v. Richardson*, 91 S.Ct. 1848 (1971). Quite the

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contrary, state discrimination based on alienage, with very few exceptions, violates the Equal Protection and Due Process clauses of the U.S. Constitution. *Id.*

The ACLU of Ohio trusts that the Office of Workforce Development is interested in complying with federal law while promoting educational opportunities for Ohioans. We are requesting that the improper and unconstitutional limitation of applicants to United States citizens be removed immediately. It is my sincere hope that litigation over this issue will not be necessary and that you will understand the seriousness of the situation and adjust the qualification requirements as a result.

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Sincerely,

Jeffrey M. Gamso
Legal Director
ACLU of Ohio

