

March 25, 2019

The Honorable Elijah E. Cummings
Chairman, House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jim Jordan
Ranking Member, House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

RE: H.R. 1076 (The Fair Chance to Compete for Jobs Act of 2019)

Dear Chairman Cummings and Ranking Member Jordan:

We write in response to testimony provided in opposition to H.R. 1076 (The Fair Chance to Compete for Jobs Act 2019) by Professor Jennifer Doleac of Texas A&M University. In brief, Professor Doleac's testimony underplays key findings in the academic literature that support "Ban the Box" policies, and mischaracterizes the significance of results from other studies.ⁱ It is vital that returning citizens encounter as much of a level playing field in the labor market as possible. As such, we hope to clarify the academic record as the Committee continues its consideration of the Fair Chance Act.

Three points in particular are worth emphasizing.

First, Ban the Box policies help improve the labor market outcomes of residents of high-crime neighborhoods, a good proxy for the labor market outcomes of workers with a criminal record. They have increased employment in the highest-crime neighborhoods by as much as 4%.ⁱⁱ This increase occurred to a large extent in the public sector, where workers with criminal records saw their odds of employment improve dramatically.ⁱⁱⁱ Ban the Box legislation thus appears to have been successful if judged on the basis of its proclaimed proximate objective: making it easier for individuals with criminal records to find and retain employment. The mechanism through which this happened seems quite straightforward: in all likelihood, employers who used to ask about an applicant's criminal history used to scare some potential employees away and used to choose not to interview some others. For workers with a criminal record, Ban the Box policies have also been found to increase the likelihood of finding a public sector job by 30%.^{iv} These studies directly contradict Professor Doleac's claim that "[c]urrent evidence suggests that Ban the Box may not increase employment for people with criminal records, and might even reduce it."

One paper often held up as providing evidence to the contrary, by Amanda Agan and Sonja Starr, also supports this conclusion. Agan and Starr sent out fake job applications to employers

immediately before and after Ban the Box rules were implemented, and report that callback rates increased for both white and black applicants with criminal records.^v These increases suggest that Ban the Boxes rules work as intended, though the increase is greater for white applicants than for blacks. If anything, this exercise provides a lower-bound estimate of the effectiveness of Ban the Box policies, as it rules out the possibility of increased job applications by workers with criminal records after the policies are implemented. Of course, this study comes with the caveat that a true experiment would have required the random application of Ban the Box rules. Instead, what we have here is a random distribution of applicants' race across applications, a research design that does nothing to address possible confounders such as employment trends that differ, over time, between white and black workers.

Second, Ban the Box policies do not appear to have led to racial backlash against black workers. Potential groups of losers from Ban the Box initiatives are the focus of a study by Professor Doleac and Benjamin Hansen as well as the aforementioned study by Agan and Starr. These authors emphasize concerns about statistical discrimination, especially against blacks, that might result from the introduction of Ban the Box rules. This type of consequence may give policymakers pause. Doleac and Hansen analyze Current Population Survey data using a difference-in-difference design and focus much of their write-up on low-skilled black men between the ages of 25 and 34, who in their preferred specification become 3.4 percentage points less likely to be employed after the introduction of Ban the Box rules.^{vi} One possible explanation is simply that there are many possible subgroups of the black population that one could study, and sampling variation will make it seem like at least some of them experienced job losses.^{vii} Sampling variation in narrowly defined subgroups aside, there are two obvious explanations for this: statistical discrimination on the basis of race, as Doleac and Hansen argue, or jobs shifting away from demographic groups that are less likely to have criminal records, such as young people.

An intuitive way to distinguish between these two explanations is to look at older black men, who are more likely to have criminal records.^{viii} Doleac and Hansen find that employment for this group *increases*, suggesting that pure racial discrimination is not what drives the worsening outcomes for younger black men. In fact, a back-of-the-envelope calculation that weights the effects reported by Doleac and Hansen for various groups of black men by their population shares suggests a slight increase in employment for black men between the ages of 25 and 64. In our attempts to replicate their results, we have found a similar result: a small and statistically insignificant increase in employment for this group. When we study the employment effects of Ban the Box rules in the census tracts with the greatest share of blacks based on LEHD Origin-Destination Employment Statistics data, we again find a small, positive, and statistically insignificant result.^{ix} Finally, a triple-difference estimation using NLSY data confirms that there seems to have been no large racial backlash in response to Ban the Box rules.^x All this suggests that it is the former explanation, jobs to some extent shifting from workers without to workers with criminal records, that accounts for the labor market consequences of Ban the Box policies,

and not racial discrimination, as suggested by Professor Doleac. In fact, two of the four papers discussed most extensively in Professor Doleac's testimony find no evidence of racial discrimination in response to Ban the Box policies^{xi}, while a recent analysis à la Agan-Starr argues that blacks with criminal records might even be differentially better off as a result.^{xii} Of course, even if Professor Doleac were right on this question, "using race as a proxy for criminal history, that employer is patently violating federal civil rights law," according to the Acting EEOC Chair, Victoria Lipnic. Legal remedies would be available to address such injustices. In this vein, the success Ban the Box policies have had in the public sector may in part be attributable to the long-standing legacy of affirmative action policies that insure against discrimination of protected classes.^{xiii}

Third, Professor Doleac recommends alternatives to Ban the Box that she believes will improve the employment of those with criminal records without any adverse unintended consequences to black men. Specifically, she proposes improving the work-readiness of those with criminal records and providing information to employers about their work-readiness through certificates of qualification for employment. However, these alternatives should not be viewed as substitutes but as *complements* to Ban the Box policies. Investments in the education and job training of those with criminal records are obviously important. However, if employers continue to screen applicants based on criminal history, will they effectively evaluate work-readiness? Ban the Box policies help ensure that employers evaluate applicants based on their skills and qualifications first and foremost.

Certificates of qualification for employment come with their own set of limitations. Professor Doleac argues that "individuals with criminal records can go before a judge and present evidence of their rehabilitation and work-readiness. If the judge is convinced, he or she can issue a certificate of qualification." Unfortunately, the process of obtaining these certificates is not that simple, and standards vary tremendously by jurisdiction. For those with no money, job or stable housing – precisely those most in need of help - such certificates may well be out of reach. In addition, this process reintroduces bias into the process by relying heavily on the discretion of individual judges. They are therefore not suitable substitutes for Ban the Box policies either.

Policymakers may still be concerned about the distributional consequences of these policies – in that they heighten labor market competition for workers without criminal records. Yet it is hard to argue that these are unintended consequences of the policies in question.

Sincerely,

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ⁱ Doleac, Jennifer L. (2019) “Empirical Evidence on the Effects of Ban the Box Policies: The State of the Literature in 2019,” Testimony Prepared for the U.S. House Committee on Oversight and Government Reform, March 11.

ⁱⁱ Shoag, Daniel, and Stan Veuger (2019) ““Ban the Box” Measures Help High Crime Neighborhoods.” Mimeo: American Enterprise Institute and Case Western Reserve University.

ⁱⁱⁱ Craigie, Terry-Ann (2017) “Ban the Box, Convictions, and Public Sector Employment,” Mimeo: Connecticut College.

^{iv} Craigie, Terry-Ann (2017) “Ban the Box, Convictions, and Public Sector Employment,” Mimeo: Connecticut College.

^v Agan, A., and Sonja B. Starr (2018) “Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment,” *The Quarterly Journal of Economics* 133(1): 191–235.

^{vi} Doleac, Jennifer L., and Benjamin Hansen (2016) “Does “Ban the Box” Help or Hurt Low-Skilled Workers? Statistical Discrimination and Employment Outcomes When Criminal Histories are Hidden,” NBER Working Paper No. 22469.

^{vii} This type of counterintuitive finding based on a conveniently selected subset of observations enjoys some popularity among academic economists.

^{viii} Shoag, Daniel, and Stan Veuger (2019) “The Economics of Prisoner Reentry,” in Elizabeth English and Gerard Robinson (eds.) *Education for Liberation: The Politics of Promise and Reform Inside and Beyond America’s Prisons*. Lanham, Maryland: Rowan and Littlefield.

^{ix} Shoag, Daniel, and Stan Veuger (2019) ““Ban the Box” Measures Help High Crime Neighborhoods,” Mimeo: American Enterprise Institute and Case Western Reserve University.

^x Craigie, Terry-Ann (2017) “Ban the Box, Convictions, and Public Sector Employment,” Mimeo: Connecticut College.

^{xi} Jackson, Osborne, and Bo Zhao (2017) “The Effect of Changing Employers’ Access to Criminal Histories on Ex-Offenders’ Labor Market Outcomes: Evidence from the 2010-2012 Massachusetts CORI Reform,” Federal Reserve Bank of Boston Research Department Working Paper 16-30; Rose, Evan (2017) “Does Banning the Box Help Ex-Offenders Get Jobs? Evaluating the Effects of a Prominent Example,” Mimeo: University of California, Berkeley.

^{xii} Flake, Dallon (2019) “Do Ban-the-Box Laws Really Work?” *Iowa Law Review* 104(3).

^{xiii} Kurtulus, F. A. (2016). The Impact of Affirmative Action on the Employment of Minorities and Women: A Longitudinal Analysis Using Three Decades of EEO-1 Filings. *Journal of Policy Analysis and Management*, 35(1), 34-66.