Lamar Smith's E-Verify Bill Must Be Amended

by Phyllis Schlafly July 1, 2011

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E-Verify, a computer process that makes it fast and easy for employers to check the validity of employees' Social Security numbers to ascertain if they are legal, was created by Congress as a voluntary system. It demonstrates its utility by verifying individuals within a few seconds with 99.5 percent accuracy, but only about two percent of businesses actually use it.

Arizona passed the Legal Arizona Workers Act in 2007 to require the use of E-Verify by businesses in that state and to allow the state to revoke the business license of any companies that knowingly employed illegal aliens.

On May 26, the U.S. Supreme Court, in a 5-to-3 decision (Chamber of Commerce v. Whiting), upheld the Arizona law. The Court rejected the pro-amnesty claque's argument that immigration enforcement is exclusively the federal government's responsibility.

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A similar case from Hazleton, Pennsylvania was remanded by the High Court to the Third Circuit to be reconsidered in light of the Arizona decision. Hazleton's ordinance to protect itself against employers hiring illegal aliens was so popular with voters that they reelected its sponsor, Mayor Lou Barletta, and then elected him to Congress in 2010.

The pro-amnesty U.S. Chamber of Commerce, which was the loser in the Arizona case, conspired with House Judiciary Committee chairman Rep. Lamar Smith (R-TX) to introduce H.R.2164 that, unless amended, will reverse Arizona's significant

victory. This bill sounds helpful because it pretends to make E-Verify mandatory nationwide, but it actually ties the hands of the states.

H.R.2164 preempts the states from requiring use of E-Verify unless employees work for state or local governments. That's equivalent to giving amnesty to millions of illegal aliens who are currently employed in our country.

H.R.2164 forbids the states from using their constitutional power to revoke licenses from businesses that hire illegal aliens unless there has been "a showing by the Secretary of Homeland Security, by clear and convincing evidence, that the employer had knowledge that an employee is an unauthorized alien." There is no likelihood that an Obama Administration will prosecute employers who use E-Verify but fail to fire the illegals, or who contract out part of their workforce to circumvent the system.

The arguments for Lamar Smith's H.R.2164 are fallacious. We are told that only the federal government can do anything about the immigration issue, but the recent Supreme Court decision provides the definitive rebuttal to that.

We're told we need a nationwide congressional law because states like California and New York will never pass an Arizona-style law. Now that states have the go-ahead from the Supreme Court to implement mandatory E-Verify and voluntary attrition is taking place, there's a better chance that many more states will imitate Arizona than that the Obama Administration will ever enforce E-Verify.

Since Arizona's law went into effect, 80,000 illegal aliens have already left that state, and Georgia has seen a similar exodus. Their voluntary departure is without cost to the taxpayers.

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We are told that Arizona's law, and similar laws passed by other states including Alabama, Missouri and Georgia, were passed only to prod the federal government into taking action and H.R.2164 is the appropriate result. In fact, those state laws were passed to protect their own citizens from the enormous costs of dealing with illegal aliens by schools, hospitals and various welfare programs, and to protect their citizens against unfair competition for jobs in our current period of high unemployment.

Illegal immigration is a vast unfunded mandate. Given that states are mandated by the Supreme Court's 5-to-4 decision in Plyler v. Doe in 1982 to admit illegal alien children into tax-supported schools, and mandated by Congress to give illegal aliens health care in hospital emergency rooms, the states should have the power to defend themselves.

An additional way to get employers to obey the law against employing illegal aliens would be to amend H.R.2164 with Rep. Steve King's (R-IA) proposal to make E-Verify a condition for the employer to take a tax deduction for wages paid, a provision already adopted by Alabama. That would put the incentive on the employer where it belongs, and we would not need prosecutions or deportations.

Rep. Lou Barletta (R-PA) says about Lamar Smith's bill, "The Supreme Court says state and local laws can be enforced, and now the federal government wants to take that power away. We cannot allow this to happen."

The bottom line is that Lamar Smith's H.R.2164 absolutely must be amended to allow concurrent enforcement by the states, and to strike the sections that allow businesses to continue to employ illegal aliens unless the Obama Administration actually takes action against them.