



February 11, 2009

Dear Senator/Representative:

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with over a half million activists and members and 53 affiliates nationwide, we wanted to share a very wise editorial from *The Wall Street Journal* on Monday, February 9th, which opposed mandating the use of E-Verify for businesses receiving funds through the stimulus as the Kingston (R-GA) Amendment in the House-passed version would do. It is not often that the ACLU and *The Wall Street Journal* agree on issues, so we did not want to pass up this opportunity to show the broad-based opposition to this deeply flawed employment verification program. We have included the full editorial below.

Mandating the use of E-Verify in the economic recovery legislation would greatly dilute the effectiveness of the stimulus package by imposing new burdens on hundreds of thousands of businesses, farms, state and local governments, schools, hospitals and other non-profit organizations. As the editorial below correctly states "The last thing employers need now is more bureaucratic red tape." Imposing these conditions on funding now would harm hundreds of thousands of vulnerable legal workers in this extremely hazardous economic time by delaying the moment when recipients of stimulus funds can begin to put those moneys to work. We should not slow the recovery to attempt to expand a program that has been shown not to work during the 12 years it has been operating.

Please contact Timothy Sparapani, Senior Legislative Counsel, at tsparapani@dcacclu.org or (202) 715-0839 with any questions.

Sincerely,

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<http://online.wsj.com/article/SB123414293730761905.html>

The Last Thing Employers Need

A screening program that doesn't work

Weekend negotiations over the Senate stimulus bill followed another dismal jobs report on Friday. So we're happy to report that negotiators so far have rejected a troublesome amendment that would require any business receiving stimulus funds to enroll in E-Verify, a government program for determining work eligibility. The last thing employers need now is more bureaucratic red tape.

E-Verify, which is currently voluntary, is a Web-based pilot program that allows employers to check the legal status of employees by matching their name and Social Security number against databases maintained by the Social Security Administration and Department of Homeland Security. Proponents tout E-Verify as a way to curb the hiring of illegal aliens. But the program is plagued by serious problems that include misidentifying U.S. citizens as not authorized for employment.

In 2007, DHS commissioned an independent study of E-Verify, which concluded that "the database used for verification is still not sufficiently up to date to meet the requirements for accurate verification." The error rate was almost 10% for foreign-born U.S. citizens. E-Verify's vulnerability to identity fraud is also problematic. A person using a valid Social Security card that doesn't belong to him would go undetected by the system. Mandating use of E-Verify could provide a nice boon to an already thriving document-fraud industry.

An executive order that would require all federal contractors to use E-Verify was scheduled to go into effect next month. But two weeks ago Homeland Security Secretary Janet Napolitano said the Administration would delay the rule until May 21 "to see what needs to be done to increase the capacity for the E-Verify system." If the Obama Administration is concerned that the program will buckle under the demands of 168,000 or so federal contractors, E-Verify certainly doesn't belong in a stimulus package that would require the system to determine the job eligibility of tens of millions of new hires.

After immigration reform flamed out in Congress in 2007, the Bush White House gave in to pressure from GOP lawmakers to focus exclusively on enforcement. We hope the new President doesn't continue down this path. The E-Verify mandate is already part of the House stimulus, and Republican Jeff Sessions of Alabama is still hoping to add it to the Senate bill before final passage.

But simply cracking down on employers isn't the answer, especially when such efforts aren't coupled with expanding the authorized work force. The best way to reduce the hiring of illegals is to put in place a guest-worker program that gives U.S. employers better access to legal foreign workers. Most U.S. employers don't have a problem with being held accountable for the workers they hire, so long as the government is providing them with the proper tools to abide by the law. E-Verify clearly doesn't meet that standard, and until it does the program ought to remain voluntary.

Illegal immigration tends to flow and ebb based on the strength of the U.S. economy. Given the recession, it's likely to decline in the short-run, and Congress might use the lull to enact some substantive policy reforms. Work-site enforcement should be part of a broader immigration debate, not something slipped into a stimulus bill to placate protectionists.