

**Rebuttal to objections to E-Verify as published in a news release of October 17, 2007  
by David Jones, President and CEO of the Arizona Contractors Association.**

Jones alleged that HB 2779, the Legal Arizona Workers Act (commonly referred to as Employer Sanctions), may have been unconstitutional (ultimately, four court attempts to kill the law by E-Verify opponents failed ).

What Jones expected the public to believe, is that he and other business groups (hereafter referred to as **business groups**) were “genuinely” concerned about constitutional law -- never mind that had the Employer Sanctions law been defeated, Arizona employers would have continued to hire illegal alien workers by accepting without verification, fraudulent documents. If the business groups were really concerned about what's good for American workers, they would have supported the employer sanctions law as did the Yavapai County Contractors Association.

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Jones states that enforcing border security and regulating immigration is the exclusive responsibility of the federal government.

Jones is partly right. It's true that only congress can make laws to regulate immigration, but congress did not mean to exclude cities, counties, and states, from enforcing those laws anymore than congress intended only the FBI to enforce the federal crime of bank robbery.

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Jones favors the creation of a workable guest worker program and enforcement of the federal sanctions against employers that are proven to have knowingly employed illegal workers.

On the first point (workable guest worker program) Jones is dreaming. Such a program would require employers to abide by intolerable anti-business labor laws.

Employers would be under close government scrutiny to prevent conditions which exploit workers; they would have to pay the same wages to guest workers comparable to U.S. workers as determined by the Department of Labor; they would have to provide workers with earnings statements with copies to government detailing the worker's total earnings, the hours of work offered and the hours actually worked. In some cases they would have to provide housing and transportation to guest workers. And of course they would have to provide worker's compensation and health insurance. The red tape would be a nightmare for employers.

If employers had to comply with the federally mandated requirements for guest workers, it would defeat the advantages of hiring cheap illegal immigrant labor in the first place. What Jones really wants is to have the federal government “streamline” a guest worker program to legalize the on-demand hiring of the same cheap labor that employers have always hired, with the taxpayers footing the bill for workers' benefits. Jones better wish his wish for guest workers doesn't come true.

Jones' second point is a non sequitur. He wants the feds to enforce employer sanctions but objects to the state enforcing employer sanctions. Jones feels free to pass the buck to the feds because he is confident that the feds won't enforce the law as they never have. Let's see what position Jones takes if congress (who he claims to have exclusive rights to enforce immigration law) makes it mandatory for all employers to use E-Verify.

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Jones alleges that employer sanctions threaten the ability of approximately 150,000 Arizona enterprises to operate in the state. He states that under HB 2779, Arizona businesses will be denied their due process rights to have their day in court or before appropriate licensing boards.

If Jones was truly concerned about false allegations of hiring illegal worker employees, he would embrace E-Verify because no employer would ever be indicted for intentionally hiring an illegal worker if that employer screened the worker with E-Verify in good faith even if it was later proven that the illegal worker used false documents to get the job. E-Verify is like having an insurance policy against court actions. The only employers who should be worried about being sued for intentionally hiring illegal workers are employers who don't participate in the E-Verify program.

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Jones is concerned about the Fourth Amendment's protection from "unreasonable search and seizures."

Jones' concern of warrantless searches is a red herring. Just like the IRS has always had the right when there is probable cause, to come to your business to audit your tax records without a subpoena or warrant, Homeland Security (formerly the INS) has always had the right to audit I-9 records without a subpoena or warrant as long as there's probable cause and provides an employer with three days' notice prior to a work-site I-9 audit.

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Jones makes the claim that E-Verify has serious accuracy issues and it remains to be seen if a system that currently serves less than 20,000 businesses nationwide can adequately handle the crush of 150,000 new Arizona users.

Jones' naive concern about the government's ability to handle large volumes of verification inquiries reminds me of the time when the use of computers was new when many businesses resisted using computers fearing excessive mistakes. How wrong they were!

As an E-Verify Designated Agent, I am thoroughly familiar with the stats which can be seen here:

<<http://www.dhs.gov/journal/leadership/2008/05/debunking-e-verify-error-rate.html>>

Of one thousand queries, 942 are instantly verified. Surely Jones isn't concerned that instant verification of legal workers is an error. On the contrary, Jones would be delighted if illegal workers were flagged by E-Verify as legal.

Of one thousand queries, only fifty-eight are told that they have to do something more to establish that they are lawfully authorized to work. Usually this means they have to go to Social Security to correct the mismatch in name and number. (Typos and similar problems are cured on line, so legal workers usually have a problem only if they changed their names or citizenship status but failed to tell Social Security of the change.)

In running an E-Verify query when I hired my Mexican immigrant wife who is a naturalized U.S. citizen for my own business, she was flagged as Tentatively Non Confirmed because the Department of Homeland Security could not confirm her claim that she was a U.S. citizen. Under the E-Verify rules, I had to give my wife eight government business days to fix the record -- she fixed it the next day when she presented her U.S. Citizenship Certificate to the Social Security Administration in Douglas, AZ. The problem was traced to her not having notified the Social Security Administration that she had become a U.S. citizen (that type of problem can now be handled by telephone rather than personal appearance).

And, is it really an error to tell workers that their social security credits aren't being properly recorded? Sooner or later, the worker will want to collect benefits, and they won't want to face doubts about who earned the credits.

Is the 53 applicants who walk away an error rate? Most likely, they walked away because they didn't want to be busted for using false documents.

If Jones were really concerned about mistakes in legal workers records, he would be pushing work verification programs as a public service because it notifies legitimate workers whose cases were erroneously flagged as unauthorized, to make the correction now, rather than when they reach the age of 65 and find out they haven't been credited for decades of work.

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