



FAIR FEDERATION FOR AMERICAN IMMIGRATION REFORM

# Immigration REPORT

JUNE/JULY 2011

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## U.S. Supreme Court Upholds States' Authority to Require Use of E-Verify

In a landmark decision, the U.S. Supreme Court upheld a 2007 Arizona law requiring all employers in the state to use the E-Verify system to check that the workers they hire are legally eligible to hold jobs in the U.S. In addition to requiring the use of E-Verify, the law, known as the Arizona Legal Workers Act, allows the state to suspend and/or revoke the business licenses of employers who knowingly hire illegal aliens. The Chamber of Commerce filed suit in 2007 seeking to have the law struck down. That effort was supported by the

Obama administration, which filed a brief in 2010 in support of the Chamber's lawsuit.

By a 5-3 ruling on *Chamber of Commerce v. Whiting*, 563 U.S. (2011), the Court rejected each of the plaintiff's arguments and held that the Arizona Legal Workers Act is constitutional. (Justice Elena Kagan recused herself from the case because of her previous role as Solicitor General in the Obama administration.) Writing for the majority, Chief Justice John Roberts held

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## Congress Moves Toward Requiring All Employers to Use E-Verify

Both the House and the Senate took important steps to prevent illegal aliens from working in the U.S. In mid-June, House Judiciary Committee Chairman Lamar Smith (R-Tex.) introduced the Legal Workforce Act (H.R. 2164), which requires that all U.S. employers check workers' employment eligibility using the E-Verify system. A companion Senate bill was introduced by Charles Grassley (R-Iowa),



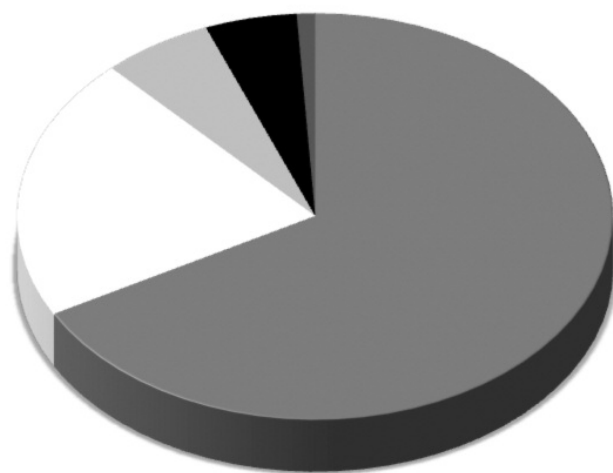
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## FAIR's National Poll Shows Overwhelming Support for E-Verify

A nationwide poll of 1,000 likely voters, commissioned by FAIR, shows overwhelming public support for the E-Verify program and for requiring its use by all U.S. employers. The poll, conducted by Pulse Opinion Research, found that 88 percent of U.S. voters favor the use of an electronic verification system to check worker eligibility (67 percent said they "strongly favor"), versus only 11 percent who oppose electronic verification. Eighty-one percent of respondents want the government to require the use of E-Verify in the hiring process. There is also strong support for states establishing their own E-Verify requirements. The poll found that 76 percent of likely voters support state E-Verify laws, while only 21 percent oppose them.

Support for E-Verify cuts across all demographic and ideological lines. Further, the poll demonstrates how politically isolated opponents of a secure worker verification process are. While business lobbies, like the Chamber of Commerce, and illegal alien advocacy groups vehemently fight against E-Verify, the American public recognizes that a reliable system that prevents illegal aliens from using counterfeit or stolen documents to procure employments is critical to controlling illegal immigration. With such broad public support, the failure of Congress to mandate the use of E-Verify would demonstrate how beholden they are to narrow special interests.

**Do you strongly favor, somewhat favor, somewhat oppose or strongly oppose Congress requiring all employers to use E-Verify to ensure that workers are legally eligible to work in the U.S.?"**



■ Strongly Favor □ Somewhat Favor ■ Somewhat Oppose ■ Strongly Oppose ■ Not Sure

## Immigration REPORT

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## In-State Tuition: Supreme Court Refuses to Weigh In, But Maryland Voters May Have Their Say

**T**he U.S. Supreme Court, in late May, denied a petition to consider the constitutionality of California's law granting in-state tuition benefits to illegal aliens. In doing so, the Supreme Court has let stand (for now) a ruling by the state's highest court upholding the California law known as AB 540.

Last year the California Supreme Court determined that AB 540 had successfully exploited a loophole in a federal law intended to prevent states from

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MD. IN-STATE TUITION *continued*

granting in-state tuition subsidies to illegal aliens by conditioning those benefits on having graduated from a California high school, rather than on residency. FAIR and the Immigration Reform Law Institute (IRLI) brought a suit on behalf of American students who were being denied the same benefits the state was providing to illegal aliens. We are continuing to mount legal challenges to in-state tuition policies in other states.

In Maryland, voters may not wait for the courts to decide whether the state's newly enacted policy allowing in-state tuition for illegal aliens should be allowed to stand. When the state legislature — grappling with a more than a \$2 billion budget shortfall — decided to approve in-state tuition subsidies for illegal aliens, Marylanders mounted a petition drive to put the issue on the November 2012 ballot. By the end of May, advocates for repealing the in-state tuition provision had collected 44,000 valid signatures and were easily within reach of the 55,736 that must be turned in by the end of June. By doing so they have prevented the new policy from going into effect at least temporarily.

Maryland's in-state tuition law was instigated by CASA de Maryland, a radical group with ties to Venezuelan dictator Hugo Chavez. Among the groups fighting to keep a repeal measure off the ballot is the American Civil Liberties Union (ACLU). The ACLU is challenging the legality of a website established to gather signatures in favor of the initiative, arguing that it is "illegal and vulnerable to fraud." The ACLU, of course, has consistently opposed efforts to require voters to present identification or prove eligibility.

## Supreme Court Tells Lower Court to Take Another Look at Hazleton Decision

Two weeks after the U.S. Supreme Court upheld Arizona's E-Verify law, the high court handed true immigration reformers another important victory by voiding a lower court's decision to block implementation of an anti-illegal immigration ordinance in Hazleton, Pennsylvania. Among other provisions, the ordinance allowed the city to enforce laws against the employment of illegal aliens and bar landlords from renting to illegal aliens. The Third Circuit Court of Appeals sided with illegal alien advocates and stopped the Hazleton law from taking effect.

The Supreme Court sent the case back to the Third Circuit with instructions to consider the high court's ruling in *Chamber of Commerce v. Whiting*. In that case, the Supreme Court concluded that state and local governments have the authority to establish and enforce laws against the employment of illegal aliens based on their licensing power. The legal precedent set in the Whiting case significantly increases the likelihood that the Third Circuit will uphold the Hazleton law.

FAIR and the IRLI worked closely with Hazleton officials — including then-Mayor and now Congressman Lou Barletta — to draft the ordinance and to defend the law in the courts.





## ACROSS THE COUNTRY

### *North Carolina*

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The Tarheel State edged closer to requiring many private North Carolina employers to check worker eligibility using E-Verify. The North Carolina House of Representatives approved a bill that would require companies with more than 25 employees to use E-Verify. The measure, however, includes an exception for seasonal employers (mostly agricultural) who employ workers for less than 90 days. HB 36 also allows North Carolinians who believe that employers are not complying with the law to file a complaint with the state attorney general who would be required to investigate all credible complains.

### *Georgia*

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Georgia's new immigration law, which grants the state broad powers to discourage illegal immigrants from remaining in Georgia, does not go into effect until July 1. However, even before its implementation, the law seems to be having the desired effect. Media reports indicate that illegal aliens are leaving Georgia and the agricultural industry has complained about not being able to find low-wage illegal alien labor. Rather than capitulate to the demands of agricultural interests, however, Gov. Nathan Deal proposed a creative plan for ensuring farmers have access to workers. The governor instructed Georgia's labor, corrections and agricultural commissioners to work jointly to connect unemployed probationers with farmers who need workers. There are some 100,000 probationers in Georgia, many of whom need employment.

### *Indiana*

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Indiana joined a growing list of states that adopted state-based laws to discourage illegal immigration. In late May, Gov. Mitch Daniels signed a bill that allows police to ask about immigration status during a lawful stop when they reasonably suspect that an individual is in the country illegally. The new Indiana law, scheduled to take effect on July 1, also outlaws the use of identification documents issued by foreign consulates. An estimated 50,000 Mexican matricula consular cards have been issued in Indiana over the past five years. Advocates for illegal aliens, led by the American Civil Liberties Union, are attempting to block the law from taking effect.



## Alabama Raises the Bar on State-Based Immigration Enforcement

**W**hile the Obama administration selectively enforces immigration laws, state governments continue to turn up the pressure by enacting their own laws to discourage illegal immigration. Alabama became the latest state to adopt a measure designed to curb its growing illegal immigration problem.

The Alabama Taxpayer and Citizen Protection Act signed into law by Gov. Robert Bentley on June 9 is acknowledged by both supporters and critics as the most far-reaching effort yet by a state to deal with illegal immigration. “Alabama is now the number one state for immigration enforcement,” stated Kansas Secretary of State Kris Kobach. Kobach, who is also of counsel to the Immigration Reform Law Institute (IRLI), helped draft Alabama’s new law along with the bill’s sponsors, State Sen. Scott Beason and State Rep. Mickey Hammon.

I campaigned for the toughest immigration laws, and I’m proud of the legislature for working tirelessly to create the strongest immigration bill in the country.

—Alabama Governor Robert Bentley

The law, also known as HB 56, is scheduled to take effect on September 1. Among its key provisions, the law:

- Makes it a state crime to be an illegal alien in Alabama.
- Makes it a crime for illegal aliens to work in Alabama.
- Requires police to detain individuals whom they reasonably suspect are illegal aliens.
- Makes it a crime to pick-up and transport an illegal alien for the purpose of employment.
- Requires employers to use E-Verify to check work eligibility of those they hire.
- Requires school administrators to determine students’ citizenship status (but does not deny K-12 admission to illegal aliens).

At the signing ceremony, Gov. Bentley noted that he was fulfilling a campaign pledge to take effective measures against illegal immigration in Alabama. “I campaigned for the toughest immigration laws, and I’m proud of the legislature for working tirelessly to create the strongest immigration bill in the country,” stated the governor.

IRLI has worked closely with the Alabama lawmakers who shepherded this important bill through the legislature. They helped Beason and Hammon craft language that will allow the state to effectively deter illegal immigration without preempting federal authority over immigration. FAIR’s field program also helped generate political support for the measure in Alabama. The law will provide a model for other states that wish to discourage illegal immigration.

As expected, the American Civil Liberties Union and other pro-illegal immigration groups filed suit to prevent HB 56 from being implemented. As such, the Alabama law will continue the process of establishing legal precedence for steps state and local governments can take to fight illegal immigration.

SUPREME COURT UPHOLDS E-VERIFY *continued*

that Arizona's requirement that businesses use E-Verify "is entirely consistent with federal law. And the consequences of not using E-Verify under Arizona law are the same as the consequences of not using the system under federal law."

The Court also reaffirmed the principle that state and local governments have a legitimate role to play in the enforcement of immigration policy. "As with any piece of legislation, Congress did indeed seek to strike a balance among a variety of interests when it enacted IRCA. Part of that balance, however, involved allocating authority between the Federal Government and the States," wrote the Chief Justice.

The Supreme Court also upheld Arizona's right to suspend or revoke the licenses of businesses that knowingly employ illegal aliens. In its suit, the Chamber contended that Arizona's policy violated a provision of the 1986 Immigration Reform and Control Act (IRCA) which preempted state and local penalties against employers who hire illegal aliens. The Court flatly dismissed the Chamber's contention stating that Arizona's licensing law "falls well within the confines of the authority that Congress chose to leave to the States..."

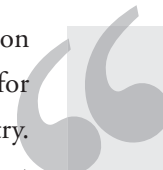
The majority opinion also rejected the argument that the Arizona law was not a licensing scheme, but an effort to make an end run around the IRCA preemption provision. That argument, too, was flatly rejected, calling it "contrary to common sense" with "no basis in law, fact or logic."

The Whiting decision was a clear and

unequivocal victory for the immigration reform movement and, potentially, for American workers all across the country. It is nearly universally acknowledged that the lure of jobs is the single biggest draw for illegal immigration. The Whiting decision provides a green light to state and local governments to require employers to check work eligibility using E-Verify and to revoke the business licenses of companies that knowingly hire illegal aliens. The ruling empowers other states to take similar measures to protect legal U.S. workers from losing jobs and wages to illegal workers and to discourage illegal aliens from settling or remaining within those jurisdictions.

Armed with this clear legal precedent, FAIR will continue its work of promoting meaningful state and local policies aimed at deterring illegal immigration. With strong public support for state-based measures and unquestionable legal authority for states to pursue such policies, FAIR expects to be able to expand its work with legislators around the country to provide similar protections to American workers in other states.

FAIR and the Immigration Reform Law Institute (IRLI) take special pride in having helped shape the Arizona Legal Workers Act and subsequently defend both in the courts and at the ballot box. In addition to the failed lawsuit, the Chamber launched an ill-fated attempt in 2009 to gut the law through a deceptive ballot initiative. FAIR's efforts to expose the Chamber's deception contributed to the initiative's defeat by Arizona voters.



FAIR and the Immigration Reform Law Institute (IRLI) take special pride in having helped shape the Arizona Legal Workers Act and subsequently defend both in the courts and at the ballot box.

E-VERIFY BILLS *continued*

the ranking member of the Senate Judiciary Committee. If enacted, either of these bills would represent the most significant breakthrough in the effort to control illegal immigration since Congress barred the employment of illegal aliens in 1986.

The prospect of employment in the United States is widely acknowledged as the driving force behind mass illegal immigration. The 1986 Immigration Reform and Control Act (IRCA) outlawed the employment of illegal aliens. However, rampant document fraud has made that law difficult to enforce. E-Verify, which is used voluntarily by more than a quarter of a million businesses, allows employers to electronically verify the Social Security number and work eligibility of new hires against Social Security Administration and Department of Homeland Security records. The system, which has been in use since 1996, has better than a 99 percent accuracy rate, and has proven to be an invaluable tool in preventing illegal aliens from filling American jobs.

Requiring all employers to use E-Verify is also enormously popular among American voters (see Poll story on page 2). In introducing their bills, both Chair-

man Smith and Sen. Grassley noted that passage of the legislation would free-up millions of jobs desperately needed by unemployed Americans. "There is no other legislation that can be enacted that will create more jobs for American workers," noted Smith.

Under the House bill, all employers would be required to use E-Verify within three years of enactment. The Grassley bill would require full implementation within one year. Both bills would impose penalties of as much as \$25,000 against employers who hire illegal aliens. H.R. 2164 would create stiff penalties for the use of fraudulent Social Security numbers. Individuals or employers who present fraudulent Social Security numbers would face fines and up to two years in prison. Valid Social Security numbers that are being used by multiple parties would be blocked until the legitimate holder could be identified.

The legislation would also hold labor recruiters and contractors accountable. These provisions would address the use of subcontractors to get around compliance with laws against employing illegal aliens. They would also force operators of day labor hiring centers to verify the employ-

ment eligibility of workers who seek employment through them.

While FAIR enthusiastically supports making E-Verify mandatory, one section of H.R. 2164 poses concern. The legislation would preempt "any state or local law, ordinance, policy or rule, including any criminal or civil fine or criminal penalty structure" that relates to the hiring, continued employment or employment eligibility of unauthorized aliens. While states would be barred from imposing fines or criminal penalties, they would still retain the right to suspend or revoke the business licenses of companies that do not comply with E-Verify requirements. Given the current administration's lax enforcement of immigration laws in the nation's interior, FAIR believes it is essential that state and local governments maintain the ability to impose penalties against employers that hire illegal aliens.

Both bills were introduced as the deadline for the current issue of the *Immigration Report* approached. FAIR will provide more detailed analysis in the next edition of the newsletter.

## Correction

In the May issue of the *Immigration Report*, we stated that Pinal County, Arizona, straddles the U.S.-Mexico border. Pinal County is not situated along the border. Rather, the county has become an important conduit through which criminal organizations move illegal aliens, narcotics and other contraband to other parts of the U.S.

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