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\$800 Billion Economic Stimulus and Job Creation Bill Includes No Protections for U.S. Workers

The whirlwind legislative process that played out in the month between President Obama's inaugural and Presidents Day resulted in the most massive government spending in history. The intent of the legislation is to jump start the sputtering economy with an infusion of borrowed cash, and to create or preserve some 4 million jobs. At the end of January, an estimated 25 million workers in the U.S. were either unemployed, involuntarily working part-time, or had given up hope of finding jobs.

While American taxpayers and future generations of Americans are being asked to take a nearly trillion dollar gamble that the stimulus bill will work as advertised, the legislation included no safeguards to ensure that the jobs created will actually be filled by legal U.S. workers. The failure to provide protections that jobs created under this program are not filled by illegal aliens was not an oversight. It was a conscious and deliberate decision of the congressional leadership and the Obama administration.

In putting together the largest government spending (and borrowing) package in the history of mankind, the House acted first. The bill approved by that body in late January included provisions that would have provided reasonable assurances that legal U.S. workers would get to fill the jobs created with taxpayer dollars. By unanimous consent, the House approved two key amendments:

At the end of January, an estimated 25 million workers in the U.S. were either unemployed, involuntarily working part-time, or had given up hope of finding jobs.



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Stimulus Bill continued

- A four-year reauthorization of the E-Verify program. Offered by Rep. Ken Calvert (R-Calif.), this amendment would have ensured that the highly accurate program that allows employers to verify a worker's Social Security number could continue to operate.
- A requirement that employers who receive stimulus money use the E-Verify system. This amendment, authored by Rep. Jack Kingston (R-Ga.), would have ensured that legal U.S. workers, not illegal aliens, would be able to fill newly created jobs.

In early February, the Senate got to work on their version of the stimulus bill. Amendments identical to the Calvert and Kingston provisions of the House bill were written by Sen. Jeff Sessions (R-Ala.) to be added to the Senate legislation. However, these amendments were not part of the bill that the Senate passed on February 11—not because they were rejected by a vote of the full body, but because Senate Majority Leader Harry Reid (D-Nev.) refused to allow them to be offered.

U.S. WORKERS DELIBERATELY SOLD OUT

The two versions of the economic stimulus package then went to a conference committee, where the many differences between them were ironed out by a handful of members of the respective bodies. For the vital worker protections provided by the Calvert and Kingston amendments to become part of the legislation signed by President Obama, all the Senate negotiators needed to do was accept the House language.

Exactly what transpired in these closed door sessions is unknown. However, congressional sources close to FAIR's government relations staff report that the Calvert and Kingston amendments were stripped from the bill by order of the two congressional leaders, Sen. Reid and House Speaker Nancy Pelosi (D-Calif.). Reports indicate that the removal of these protections for U.S. workers occurred without debate or explanation.

A NEW ILLEGAL IMMIGRATION MAGNET

Americans are not suffering through the current economic crisis alone. We are experiencing a global recession that is affecting workers everywhere. In addition to the 13 million illegal aliens estimated to be in the country—some 7 million in the labor force—the massive

jobs creation bill signed by the president is likely to attract still more illegal aliens in search of employment.

The combined effects of increased worksite enforcement toward the end of the Bush administration and the slowing economy were beginning to reverse the flow of illegal immigration. The combined effects of a massive jobs creation program, rising unemployment in other countries, and no mechanism to prevent illegal aliens from filling the newly created jobs are certain to convince illegal aliens to stay and touch off a new influx of illegal immigration.

300,000 NEW JOBS FOR ILLEGALS?

With its focus on public works projects, the largest and most immediate beneficiary of the stimulus package is likely to be the construction industry. The construction industry is already the single largest employer of illegal aliens. An estimated 15 percent of the industry's labor force is believed to be composed of illegal workers. According to independent estimates from the Heritage Foundation and the Center for Immigration Studies, if that same percentage of new construction industry jobs are filled by illegal aliens, the net result of the stimulus bill could be to create 300,000 new jobs for illegal aliens. Of course, without E-Verify, that percentage could easily increase as the worldwide recession sends more illegal aliens in search of U.S. jobs.

Immigration REPORT

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E-VERIFY: FACT AND FICTION

Led by the U.S. Chamber of Commerce, the cheap labor/open borders lobby employed a massive disinformation campaign to derail efforts to include E-Verify requirements in the economic stimulus bill. The U.S. Chamber of Commerce, whose membership benefits from hiring illegal aliens, along with other lobby groups repeatedly made false and misleading assertions about the E-Verify program.

FICTION:

E-Verify is cumbersome and costly to American businesses.

FACT:

Most verifications are carried out in about two minutes, either online or by phone. There is no cost to employers who use the system. Today, more than 100,000 U.S. employers are currently enrolled and using E-Verify and 13 states have enacted laws encouraging or requiring use of E-Verify for state contractors, state employees, and, in some cases, for all.

FICTION:

E-Verify is fraught with errors. Opponents of E-Verify claim the system has a 4 percent error rate, which could result in thousands of eligible workers being denied jobs.

FACT:

E-Verify has a 0.4 percent (four-tenths of one percent) error rate. The U.S. Citizenship and Immigration Services agency, which runs E-Verify, reports that 96.1 percent of verifications are approved on the first try. Of the remaining 3.9 percent, most delays are due to discrepancies between information presented by job applicants and information in the Social Security Administration database, such as unreported name changes due to marriage. The majority of these discrepancies are resolved within 24 to 72 hours and do not prevent eligible workers from being hired.

FACT:

The interest groups that oppose E-Verify do so for one reason: E-Verify works! E-Verify is the single most effective tool to discourage illegal immigration and hold employers accountable, which is why the illegal immigration lobby wants it eliminated.

The Fight to Save E-Verify

The American worker—especially the unemployed American worker—was sold out when President Obama signed an economic and job stimulus bill that did not include basic protections to ensure that they would get the jobs being created. They were not sold out without a fight and those of us who have been working for their interests are not giving up the effort to protect the interests of legal U.S. workers.

FAIR was intensely involved in the effort to ensure that the jobs created by the economic stimulus bill would be protected by E-Verify. Early in the process, Representatives Ken Calvert (R-Calif.) and Jack Kingston (R-Ga.), the authors of the House provisions reauthorizing E-Verify and requiring stimulus fund recipients to use the system, reached out to FAIR to build public support for the amendments.

Through the efforts of our government relations staff, our media department, and our field representatives, we worked with members of Congress to educate other elected officials and the public about the need to ensure that the jobs being created would go to legal American workers. These provisions were accepted by the House by unanimous consent.

From the start, we knew there was trouble brewing in the Senate. Over the first two weeks of February we intensified our efforts on all fronts. FAIR's government relations department worked around the clock to get similar amendments added to the Senate bill. FAIR's media department appeared on some two dozen radio talk programs to speak directly to the public. FAIR's field program organized a massive public awareness campaign and generated countless phone calls and emails to members of Congress, congressional leaders and the White House.

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Bailed Out Banks Lay Off American Workers But Keep H-1B Guest Workers

According to a February report by the Associated Press, “the dozen banks now receiving the biggest rescue packages, totaling more than \$150 billion, requested visas for more than 21,800 foreign workers over the past six years.”

Lest anyone think that countless billions of dollars in toxic loans, collapsing stock values, and wholesale layoffs altered the banking industry’s desire for foreign guest workers, think again. These same banks, during the last three months of 2008, cut approximately 100,000 jobs from their payrolls. But during that same period they continued to petition for more H-1B workers. Stating the obvious, AP noted, “Foreigners are attractive hires because companies have found ways to pay them less than American workers.”

Banks were not alone in the practice of giving jobs to foreign guest workers while handing out pink slips to their American workers. Microsoft, whose chairman, Bill Gates, appeared before Congress about a year ago to call for an increase in the H-1B quota, announced major layoffs in January. In a letter to the company, Sen. Charles Grassley (R-Iowa), reminded that “the purpose of the H-1B visa program is to assist companies in their employment needs where there is not a sufficient American workforce,” and strongly urged Microsoft not to retain H-1B workers while laying off Americans.

Sen. Grassley’s efforts went beyond merely writing letters to H-1B employers. Together with Sen. Bernie Sanders (I-Vt.), they included an amendment to the Senate economic stimulus bill requiring banks that benefit from government bailout money be limited in their ability to hire new H-1B workers. The amendment was included in the final language of the massive stimulus package signed by President Obama on Feb. 17. While employers still will have some flexibility to hire foreign workers, this is the first time legislation has been adopted that recognizes that this visa program limits job opportunities for Americans.

FAIR has long fought against the widespread practice of using foreign guest workers instead of U.S. workers. Even before the current economic crisis, companies frequently sought foreign guest workers while failing to reach out to available U.S. workers and, in many cases, while laying off their American workers.

The continued demand by companies for foreign guest workers during a period when jobs are being lost at a rate of about half a million a month provides further evidence that requests for guest workers have little or nothing to do with the availability of labor in this country. Rather, it demonstrates clearly that demand for foreign guest workers is primarily driven by the desire of many companies to cut their labor costs.



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Oklahoma’s Immigration Enforcement Statute Upheld by Court

A judge in Oklahoma became the latest jurist to uphold a policy that allows state governments to enforce laws against illegal immigration. Tulsa County Judge Jefferson Sellers, in a Feb-

bruary 11 ruling, upheld the constitutionality of Oklahoma’s House Bill 1804.

H.B. 1804 was a landmark piece of legislation enacted in 2007 that allows Oklahoma to discourage illegal immigration by punishing employers who knowingly hire illegal aliens, and to deny most state services and benefits to illegal aliens. In addition to the direct impact Judge Sellers’ ruling will have on the state’s ability to implement H.B. 1804, the decision builds on a series of precedent-setting court rulings, all of which

turned on legal technicalities, not on the merits of its intent. The plaintiff in this case alleged that H.B. 1804 violated Oklahoma’s constitutional requirement that each piece of legislation address only one subject. Except for one provision of H.B. 1804 pertaining to the denial of in-state tuition to illegal aliens, Judge Sellers found that the bill in its entirety “may be summarized in one common theme: to discourage illegal immigration.”

Unlike other legal challenges to state enforcement policies, the plaintiffs in the Oklahoma case sought to have it over-

turned on legal technicalities, not on the merits of its intent. The plaintiff in this case alleged that H.B. 1804 violated Oklahoma’s constitutional requirement that each piece of legislation address only one subject. Except for one provision of H.B. 1804 pertaining to the denial of in-state tuition to illegal aliens, Judge Sellers found that the bill in its entirety “may be summarized in one common theme: to discourage illegal immigration.”

The favorable ruling is a tribute to the work of State Representative Randy

Terrill, who sponsored H.B. 1804, and the Immigration Reform Law Institute (IRLI), which worked closely with him to craft a bill that would stand up to the inevitable legal challenges. IRLI, FAIR’s

public interest immigration law affiliate, has demonstrated a remarkable track record of working with state and local legislators to write immigration reform legislation that conforms to all federal and state constitutional requirements.

With this latest judicial decision, the question becomes not whether state and local governments can take steps to enforce laws against illegal immigration, but whether they are prepared to protect the interests and tax dollars of law-abiding residents.

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Immigration and the U.S. Labor Market by the Numbers

Number of U.S. unemployed workers	11.6 million
Number of U.S. involuntary part-time workers	7.8 million
Number of U.S. workers discouraged or dropped out	5.6 million
TOTAL	25 million
Estimated number of illegal aliens in the labor force	7 million
Number of legal foreign-born workers	18 million
TOTAL	25 million
Percentage of new jobs filled by foreign-born 2000-2007	47.7%

Three Years, 32 Miles of Double Fencing: *Another Enforcement Promise Not Kept*

In a demonstration of their commitment to securing America's borders, Congress in 2006 approved construction of 700 miles of security fencing along the U.S.-Mexico border. The security barrier was supposed to include two layers of fencing, making it significantly more difficult for illegal border crossers to successfully elude Border Patrol agents. This added barrier is especially important in populated areas, where illegal border-crossers can quickly blend into the population.

Fast-forward to 2009. A report by the Government Accountability Office (GAO) finds that a grand total of 32 miles of double fencing has been completed—a pace of just under 11 miles a year. Moreover, those 32 miles may well be the only double fencing the public is likely to see along the increasingly violent border. The GAO's assessment stands in stark contrast to the Department of Homeland Security's (DHS) January claim that the fence is nearly 90 percent complete.

Thanks to a 2007 amendment authored by Sen. Kay Bailey Hutchison (R-

Tex.) the 2006 requirement that a fence be constructed became a matter that would be left up to the discretion of the Secretary of DHS. With the limited funding available, former DHS Secretary Michael Chertoff opted to construct a single layer of fencing. Whether the sec-



ond layer of fencing—which has proven to be extremely effective at preventing illegal border crossings in the areas where it exists—is constructed will now be left to the discretion of his successor, Janet Napolitano, and congressional appropriators.

Congressional opponents of the fence have wasted no time in trying to convince the Obama administration to halt construction. In a letter to President Obama, eight House members urged him to suspend construction and do further evaluation.

Even as the president is being urged to delay construction, the level of vio-

lence and cross-border criminal activity has been spiraling out of control. Drug smuggling, gun-running, and alien smuggling have combined to make the U.S.-Mexico border one of the most violent places on earth. Many of these criminal organizations have moved their operations across the border with deadly consequences. According to an ABC News report, Phoenix, Arizona, now ranks second only to Mexico City in the number of kidnappings—370 in

2008—spearheaded by Mexican drug cartels, which operate brazenly in the city.

The repudiation of a promise made to the American public just three years ago provides further evidence that any commitments that might be offered in exchange for another illegal alien amnesty would not be worth the taxpayer-funded paper they are printed on. As FAIR has repeatedly documented, nearly every promise of meaningful enforcement made by the government has either been broken or only partially implemented. Only concrete action can restore the public's faith.

Correction: A photo accompanying a story in the February edition of the FAIR Immigration Report about the appointment of Hilda Solis as Secretary of Labor was that of California Congresswoman Loretta Sanchez. We apologize for the error.

E-Verify *continued*

In the end, the will of the public and the will of the vast majority of the members of both Houses of Congress were overridden by a handful of congressional leaders who blatantly ignored the interests of millions of unemployed or struggling American workers.

WHAT'S NEXT?

The E-Verify protections are not part of the bill President Obama signed. But that does not mean that these protections cannot be approved on their own. FAIR will continue its intense efforts to inform the public about the lack of safeguards to assure that \$800 billion of their money actually creates jobs that will be filled by U.S. workers. Over the next several months, FAIR will continue to work to educate the public about the need for:

- Permanent reauthorization of E-Verify. The system that allows employers to verify Social Security numbers with a 99.6 percent accuracy rate is supported by an overwhelming majority of the public and members of Congress. (A stand-alone reauthorization bill passed the House by a vote of 407-2 in September 2008, but died because the Senate failed to act.) It is unimaginable that E-Verify will not be reauthorized and it is unacceptable that it is apparently being used as a bargaining chip to extract benefits for illegal aliens.
- Mandatory use of E-Verify by all government contractors. Last summer, President Bush issued an executive order requiring that any company doing business with the federal government use E-Verify. Implementation of that order has been postponed twice (once by Bush and once by Obama) and is now scheduled to take effect in May.

The American people can help by keeping up the pressure on their elected representatives and President Obama. Even under the best case scenario, economic recovery will be a long-term process and there will be millions of Americans who desperately need jobs. Americans (who will be paying for the stimulus spending) must continue to insist that the government act responsibly and protect U.S. jobs using E-Verify.

Arizona Court Upholds Right of Border Area Citizens to Protect Themselves

For years, illegal alien advocacy organizations like the Mexican American Legal Defense and Education Fund (MALDEF) have used the threat of lawsuits to intimidate communities and individuals from protecting themselves, their communities and their property against mass illegal immigration. Even though such acts are perfectly legal, the cost of litigation scared off many.

Then MALDEF met the Barnetts: Brothers Roger and Donald and their families, who own an Arizona ranch close to the U.S.-Mexico border, and who have incurred thousands of dollars of damage to their property due to the trafficking of illegal aliens. With the help of the Immigration Reform Law Institute (IRLI), FAIR's public interest law affiliate, the Barnetts fought MALDEF in court and won an important legal decision for themselves and others who want to exercise their constitutional rights.

MALDEF sued the Barnetts, who in 2004 detained a group of 20 illegal entrants until the Border Patrol could take custody of them, alleging, among other charges, that they had violated the aliens' civil rights. The civil rights conspiracy and private militia claims were so specious that Federal Judge John Roll simply dismissed them. The judge stated that illegal aliens have no constitutional right of travel within the U.S. and that it is reasonable for people along the border to assume that large groups of people they encounter hiding or trespassing are doing so with the aid of a smuggler, which is a felony.

In addition to being cleared on all but a few minor points of the lawsuit—which the Barnetts and IRLI are appealing—the dismissal of the civil rights charges clears the way for the Barnetts to seek attorneys' fees from the plaintiffs. In addition to justice for the Barnetts, recovering attorneys' fees would attach a hefty price tag to future attempts by MALDEF to use the threat of a lawsuit to intimidate citizens and communities along the border.

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Tax Credits for Illegal Aliens

While legislators managed to exclude E-Verify protections for U.S. workers from the economic stimulus bill, they did take the trouble to include loopholes that will allow illegal aliens to benefit from the tax credits offered in the bill. Most U.S. taxpayers earning under \$200,000 a year will receive tax credits amounting to \$400 for an individual and \$800 for a married couple filing jointly.

Though “nonresident alien individuals” are not supposed to receive the credits, the federal tax code defines a “resident alien” as anyone who meets the “substantial presence test.” Under IRS code substantial presence is defined as (1) having lived in the U.S. at least 31 days in the previous year; and (2) at least 183 days over the previous 3 years. Thus, any illegal alien who entered the U.S. prior to May 2008 will be eligible for the tax credit.

Eligibility for the tax credit is also extended to people filing returns using Individual Tax Identification Numbers (ITINs) instead of Social Security numbers. While not all ITIN filers are illegal aliens, many are. Language that specifically excludes ITIN holders from receiving other tax benefits is deliberately missing from the language of the stimulus bill.