

Another amnesty?

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History is threatening to repeat itself. Twenty-five years ago, Congress passed the Simpson-Mazzoli Act (better known among conservatives as the 1986 illegal-alien amnesty), which gave a path to citizenship to illegal aliens already here in exchange for prohibiting the hiring of illegal workers -- a provision that has been enforced only sporadically. It was a raw deal for conservatives.

On Tuesday, House Judiciary Committee Chairman Lamar Smith (R-TX) introduced a bill (HR 2164) to require nationwide use of the E-Verify system, which checks a job applicant's citizenship and immigration status, via the Internet, to see if he or she is eligible to work.

While the Smith bill *sounds* good, in fact, it *hobbles* immigration enforcement. Negotiated with the pro-amnesty US Chamber of Commerce, the bill would establish a fairly toothless E-Verify requirement while defanging the only government bodies that are serious about enforcing immigration law -- the states.

The timing couldn't be worse. The bill stabs Arizona in the back, just after it won a victory in the US Supreme Court in *Chamber of Commerce v. Whiting* on May 26. The court upheld the 2007 Legal Arizona Workers Act, which lets the state suspend the business licenses of employers who knowingly hire unauthorized aliens and requires employers to use E-Verify.

The decision was a significant defeat for the Obama administration, which argued against the Arizona law in the high court, and for the Chamber of Commerce, which also opposed Arizona and has resisted immigration enforcement in the workplace.

It gives a green light to the rest of the states, allowing them, too, to revoke the business licenses of employers who hire unauthorized aliens. Alabama enacted a law taking Arizona's approach on June 9, just two weeks after the Supreme Court decision. Other states, like Missouri, Mississippi, South Carolina, Georgia and Oklahoma, had already done so. More would have followed in 2012.

But now, the Smith bill threatens to snatch defeat from the jaws of victory. The Arizona law -- along with every other state law on the subject -- would be preempted under the bill.

The Supreme Court held that cooperative immigration enforcement, with the states and the federal government working together to restore the rule of law in the workplace, was permissible under current federal law. But Smith's bill would change federal law so that the states can no longer take *any* actions against employers who knowingly hire unauthorized aliens.

State governments, not the federal government, shoulder the lion's share of the fiscal burden of illegal immigration. Illegal immigration costs the states some \$80 billion a year, net, after any taxes paid by illegal aliens are considered. The net fiscal cost to the federal government is a quarter of that.

In effect, illegal immigration is the ultimate unfunded mandate. Now, the Smith bill threatens to tie the states' hands in addressing the problem.

The federal government has been unwilling to aggressively enforce immigration laws in the workplace, and this bill would be no exception. There is zero likelihood that the Obama administration will go after employers who fail to use E-Verify or who knowingly help their employees circumvent the system.

In contrast, states like Arizona have been effective in enforcing their illegal-immigration laws. In Arizona, dozens of work-site raids and investigations have occurred. That's why the number of illegal aliens in Arizona dropped 16 percent from 2008 to 2010 -- more than double the national 7 percent drop.

There are other problems with Smith's bill, showing why the chamber was so willing to strike this deal. Notably, it grandfathered in almost all illegal aliens who are already employed here and stay in the same job. They won't be checked through E-Verify. Thus, the bill will help keep the current population of illegal aliens working, so that they are still here if a future amnesty (which the chamber supports) occurs.

Even worse, the bill would effectively allow agricultural workers to *skip* E-Verify. All an employer has to do is assert that the alien worked for him at some point in the past. This loophole alone would likely allow millions of illegal aliens to continue working here.

In sum, the bill is a bad bargain for any American who thinks our immigration laws should be enforced -- selling out the states for little in return. The chamber knew exactly what it wanted.

If Smith's bill passes, it will be 1986 all over again.

Kris W. Kobach, the Kansas secretary of state, co-authored the Arizona and Alabama illegal-immigration laws.

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