



MEMORANDUM

FROM IW president, Tamar Jacoby
RE U.S. Supreme Court ruling on Legal Arizona Workers Act
DATE May 26, 2011

Bad news – the Supreme Court ruled today to uphold Arizona’s 2007 employer sanctions act.

That law, the Legal Arizona Workers Act, requires all Arizona businesses to enroll in the federal E-Verify program, checking the immigration status of all new hires, and punishes employers found to have hired unauthorized workers by suspending and revoking their business licenses.

Chief Justice John Roberts, writing for a 5-3 majority, said the Arizona law “falls well within the confines of the authority Congress chose to leave to the states.” (Justice Elena Kagan did not participate in the decision because she worked on the case when she was President Obama’s solicitor general.)

What this means for employers in other states: legislatures across the country will now feel empowered to follow in Arizona’s footsteps.

The court has said it is legitimate and acceptable for a state government to require all employers to use E-Verify. And the decision opens the door to more states to punish employers who hire unauthorized workers by suspending their operating licenses – a de facto death penalty for any business.

But it’s also important to note what the court did not say. It did not empower states to impose any other penalties on employers who hire unauthorized immigrants – no fines or other sanctions. It did not open the door to any other kind of state lawmaking on immigration: this is not an invitation to states to pass tough policing measures like the one passed in Arizona in 2010 that required local law enforcement to inquire about the immigration status of people they stop in connection with other possible legal violations. The law upheld by the Supreme Court today is about state employer sanctions laws – that and nothing more. And today’s decision upholds the principle that state immigration enforcement must run parallel to federal immigration enforcement and use federal immigration standards.

In other words, today’s decision opens the door to a new wave of state lawmaking on immigration – but it’s a narrow door with clearly defined limits and boundaries.

The challenge for employers and others going forward will be to hold state legislatures to those limits. E-Verify mandates, yes. Penalties involving business licenses, okay. Sweeping policing laws, state efforts to repeal birthright citizenship, mandates that state authorities check the immigration status of, say, hospital patients or students, no.

The other complicating factor: Congress too is about to weigh in on E-Verify. House Judiciary Committee chairman Lamar Smith is expected to introduce a bill in coming weeks mandating that most or all employers across the country enroll in the E-Verify program.

Just what today's ruling will mean for that bill is unclear. But it only increases the already good odds that Smith's bill will move easily through Congress.

This is not necessarily a bad thing. ImmigrationWorks supports a workable employment verification system. No one will benefit more than employers from an immigration overhaul that restores the rule of the law in the workplace. And most business owners want to be on the right side of the law – they want to be part of the solution on immigration.

Our job in the months ahead is to make sure that whatever E-Verify bill moves in Congress is workable for business. The system must be phased in gradually. It must be timely, accurate and efficient. Employers who use it and use it properly must be held harmless for failures of the system that result in unauthorized hiring or problems for American workers. And there needs to be one uniform, national verification system. A patchwork of overlapping and contradictory federal, state and local law – and today's ruling can only encourage that – is not only bad for business. It's also a drag on the nation's economic recovery.

Perhaps most important, in the long run, businesses need a legal workforce. Even with today's high unemployment, employers in many sectors – agriculture, high-tech, the seasonal economy – need immigrant workers to keep their operations running. And as the economy improves, that need will only grow.

Eventually, worksite enforcement must be accompanied by programs that allow the foreign workers we need to enter the U.S. legally, keeping U.S. businesses open and sustaining jobs for Americans. And despite today's setback, employers need to keep their eyes on that prize, fighting back against the wrong kinds of immigration enforcement and fighting for the positive changes we need – a legal immigration system that works.

ImmigrationWorks USA is a national federation of small business owners advocating immigration reform. The organization links 25 state-based, pro-immigration business coalitions: employers and trade associations from Florida to Oregon and from every sector of the economy that relies on immigrant workers. The organization's twin goals: to educate the public about the benefits of immigration and build a mainstream grassroots constituency in favor of better immigration law.