

RPTS COCHRAN

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MARKUP OF H.R. 2885, THE
"LEGAL WORKFORCE ACT OF 2011"
Thursday, September 15, 2011
House of Representatives,
Committee on the Judiciary,
Washington, D.C.

The committee met, pursuant to call, at 11:15 a.m., in Room 2141, Rayburn House Office Building, Hon. Lamar Smith [chairman of the committee] presiding.

Present: Representatives Smith, Coble, Gallegly, Lungren, Chabot, Issa, King, Franks, Chaffetz, Griffin, Adams, Conyers, Scott, Watt, Lofgren, Jackson Lee, Waters, and Sanchez.

Staff Present: Sean McLaughlin, Chief of Staff; Allison Halatei, Deputy Chief of Staff/Parliamentarian; Sarah Kish, Clerk; Jennifer Lackey, Clerk; Andrea Loving, Counsel; Perry Apelbaum, Minority Staff Director; and David Shahoulian, Minority Counsel.

Chairman Smith. The Judiciary Committee will come to order.
Without objection, the Chair is authorized to declare recesses of the
committee at any time.

The Clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. Present.

The Clerk. Mr. Sensenbrenner.

[No response.]

The Clerk. Mr. Coble.

Mr. Coble. Here.

The Clerk. Mr. Gallegly.

Mr. Gallegly. Here.

The Clerk. Mr. Goodlatte.

Mr. Lungren.

[No response.]

The Clerk. Mr. Chabot.

[No response.]

The Clerk. Mr. Issa.

[No response.]

The Clerk. Mr. Pence.

[No response.]

The Clerk. Mr. Forbes.

[No response.]

The Clerk. Mr. King.

Mr. King. Here.

The Clerk. Mr. Franks.

Mr. Franks. Here.

The Clerk. Mr. Gohmert.

[No response.]

The Clerk. Mr. Jordan.

[No response.]

The Clerk. Mr. Poe.

[No response.]

The Clerk. Mr. Chaffetz.

[No response.]

The Clerk. Mr. Griffin.

[No response.]

The Clerk. Mr. Marino.

[No response.]

The Clerk. Mr. Gowdy.

[No response.]

The Clerk. Mr. Ross.

[No response.]

The Clerk. Ms. Adams.

[No response.]

The Clerk. Mr. Quayle.

[No response.]

The Clerk. Mr. Conyers.

[No response.]

The Clerk. Mr. Berman.

[No response.]

The Clerk. Mr. Nadler.

[No response.]

The Clerk. Mr. Scott.

[No response.]

The Clerk. Mr. Watt.

[No response.]

The Clerk. Ms. Lofgren.

Ms. Lofgren. Present.

The Clerk. Ms. Jackson Lee.

[No response.]

The Clerk. Ms. Waters.

[No response.]

The Clerk. Mr. Cohen.

[No response.]

The Clerk. Mr. Johnson.

[No response.]

The Clerk. Mr. Pierluisi.

[No response.]

The Clerk. Mr. Quigley.

[No response.]

The Clerk. Ms. Chu.

[No response.]

The Clerk. Mr. Deutch.

[No response.]

The Clerk. Ms. Sanchez.

[No response.]

The Clerk. Mr. Lungren.

Mr. Lungren. Here.

The Clerk. Mr. Chabot.

Mr. Chabot. Present.

The Clerk. Mr. Watt.

Mr. Watt. Present.

The Clerk. Ms. Waters.

Ms. Waters. Present.

The Clerk. Mr. Issa.

Mr. Issa. Here.

The Clerk. Mr. Chaffetz.

Mr. Chaffetz. Present.

The Clerk. Ms. Jackson Lee.

Ms. Jackson Lee. Present.

The Clerk. Ms. Adams.

Ms. Adams. Present.

Chairman Smith. Are there any other members who wish to record their presence?

If not, we have a working quorum, so we will proceed.

Without objection, the Chair is authorized to declare recesses of the committee at any time.

The Clerk will report.

The Clerk. Mr. Chairman, 14 members responded "present."

Chairman Smith. A working quorum is present.

Pursuant to notice, I now call up H.R. 2885 for purposes of markup.
The Clerk will report the bill.

The Clerk. H.R. 2885, to amend the Immigration and Nationality Act to make to make mandatory and permanent requirements relating to use of an electronic employment eligibility verification system, and for other purposes.

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Smith. Without objection, the bill will be considered as read. I will begin by recognizing myself for an opening statement, then the ranking member and then other members of the committee.

Twenty-three million Americans are unemployed or cannot find full-time work. At the same time, seven million people are working illegally. These jobs should go to American citizens and legal workers.

The unemployment rate in the black community is 17 percent and among Hispanics it is 11 percent. Anyone who cares about helping unemployed Americans should care about opening up jobs for them.

E-Verify allows employers to electronically verify that newly-hired employees are authorized to work in the U.S. The program is free, quick and easy to use. Nearly 300,000 American employers voluntarily use E-Verify and over 1,000 new businesses sign up for it every week.

The American public overwhelmingly supports E-Verify. This year, a Rasmussen poll found that 82 percent of likely voters "think businesses should be required to use the Federal Government's E-Verify system to determine if a potential employee is in the country illegally." Seventy-eight percent of black voters agreed, 72 percent of other minorities, primarily Hispanics, and 73 percent of Democrats. They know we should put the interest of American workers first.

E-Verify also has received bipartisan congressional support. In 2008, the House passed a 5-year extension of E-Verify by a vote of 407-2, and in 2009 the Senate passed a permanent E-Verify extension by voice

vote. A 2009 Westat report found that persons eligible to work receive immediate confirmation 99.5 percent of the time, and U.S. Citizenship and Immigration Services' own evaluation found that only 2.6 percent of employees receive initial system mismatches, and most of them are found to be in the U.S. illegally.

The Legal Workforce Act could open up millions of jobs for unemployed Americans by requiring employers to use E-Verify. It makes no sense to rely on the paper-based, error-prone I-9 system when a successful web-based program is available.

A few have claimed that a Federal E-Verify requirement would cause job losses. Yes, E-Verify is a jobs killer, but only for illegal workers. For Americans and legal workers, it is a jobs protector. Today it takes an unemployed American 9 months on the average to find a job. With E-Verify we can open up a new job in 1 to 2 minutes.

Critics cite a 2009 study regarding identity theft. However, its estimate was based entirely on speculation. The study even admits that "any estimate of the level of identity theft will be very imprecise." To the extent there is identity theft, H.R. 2885 contains several provisions that combat it.

Some opponents of E-Verify claim that the American agriculture industry will be harmed if farmers are required to use E-Verify, but the Legal Workforce Act gives ag employers 3 years to comply. And E-Verify doesn't apply to current seasonal agricultural workers, only future employees, so current seasonal ag workers can leave and return. There is a need, however, for a legal foreign labor supply in the

agriculture industry. The American Specialty Agriculture Act which I have introduced provides up to half a million visas for legal ag workers.

The business community has shown widespread support for E-Verify. The U.S. Chamber of Commerce, the National Restaurant Association, the American Meat Institute and the National Association of Home Builders, among others, support a requirement that all U.S. businesses use E-Verify. They understand that when one employer undercuts others in the same industry by hiring illegal immigrant labor, which is often cheaper than legal labor, the entire industry is hurt.

Some assume that a Federal E-Verify requirement will simply force illegal immigrants to begin working off the books. But this impugns the character of the overwhelming majority of U.S. employers who are law-abiding and who would like to hire legal workers. The Congressional Budget Office made that same assumption in scoring a similar bill. However, they didn't take into account the taxes paid by those who fill jobs vacated by illegal immigrants, which in fact is likely to be more than what illegal workers pay.

I understand why those who want amnesty oppose this bill. They want to legalize illegal immigrants, not encourage them to return home. But amnesty prevents Americans from getting jobs since millions of illegal immigrants will become eligible to work legally in the United States. Instead of encouraging amnesty, we should end the incentives for illegal workers to come here in the first place. The biggest incentive for illegal immigration is jobs. E-Verify will reduce that

jobs magnet and at the same time create more jobs for American workers.

Why would anyone oppose legislation that helps businesses follow the law and helps American workers get jobs?

I urge my colleagues to support this bill.

The ranking member is not present, though I understand he is on the way here -- here he is. The gentleman from Michigan, Mr. Conyers, the ranking member of the Judiciary Committee, is recognized momentarily for his opening statement.

Mr. Conyers. Thank you. Excuse my tardiness, Chairman.

Let me put the matter simply: No one disagrees with the notion that we should protect the jobs of citizens and green card holders, but the solution that we have been called upon to begin consideration of today may well create more problems than will be solved and complicate the issue that we are all concerned with. So what has been suggested to me and at this point in time before we go further next week is that mandatory E-Verify will push workers into the shadows and will cost us lots of financial loss in terms of tax revenues.

Instead of opening up jobs for workers, the Legal Workforce Act would simply push employers to go off the books or enemies classify workers as independent contractors. So what we do is aggravate a challenging problem rather than bring a sensible remedy to it.

The other smaller consideration is that this makes it even more difficult for both citizens and legal immigrants to obtain and hold a job. It will massively expand the role of government by requiring all U.S. citizens to get permission to work. We know that databases

are riddled frequently with error, and that means that we would be putting a great number of workers at risk for losing their jobs.

Now, I don't know how a person with my attitude, what we can do at this stage of the game. Maybe staff will be able to figure out some way that we can get the rough edges off of this proposal. But it is my feeling, Mr. Chairman, that E-Verify is fundamentally flawed, and right now if I had a proposal, I would suggest it at this opportunity.

But look at it. Many people don't have government-issued ID's, photo ID's. I mean, goodnight. I try to use my congressional card at airports and they say, well, you don't have any numbers. I don't have a Social Security number. Don't you have anything else?

I said, goodnight, only 434 people have a card like this. What are you talking about?

They said, look, we have to write some numbers down.

Then at Detroit Metro, they will say, well, I know who you are, by the way, but we have to do that, because people are watching us, and if we don't -- so I just hope that with the relationships that we have developed over the years, that we will continue to meet on some other ways that we can deal with this problem. I know we are coming back on Tuesday at 3:30, Tuesday before the votes -- okay, Wednesday. An extra day.

So I will put in the rest of my statement and hope that we will look more carefully at the Main Street Alliance, the small business people who also are concerned that they may not be able to live up to the challenges of E-Verify.

I thank you for the time.

[The statement of Mr. Conyers follows:]

***** COMMITTEE INSERT *****

Chairman Smith. Thank you, Mr. Conyers. Without objection, your entire statement will be made a part of the record.

The gentleman from California, Mr. Gallegly, the Chairman of the Immigration Subcommittee, is recognized for an opening statement.

Mr. Gallegly. Thank you, Mr. Chairman, and I want to commend you for introducing H.R. 2885, the Legal Workforce Act. I am an original cosponsor of this legislation and I wholeheartedly support and look forward to its quick passage.

In my view, this bill, by making the E-Verify employee verification system mandatory, represents the single-most important step that Congress can take in significantly diminishing the number of illegal immigrants who enter and work in our country.

Mr. Chairman, there are nearly 14 million unemployed Americans. Making sure that they have every opportunity to find employment is more important today than ever. One way to do this is to reduce the number of jobs that go to illegal immigrants, and the E-Verify program will do just that.

E-Verify allows employers to check the work eligibility of new hires by running the employee's Social Security number or alien identification number against the Department of Homeland Security and Social Security Administration records.

Mr. Chairman, in 1995 I chaired the Congressional Task Force on Immigration Reform. We published a 200-plus page report with more than 80 specific recommendations, as you remember. One of those was the Electronic Employment Eligibility Verification System, which was

included in your bill, Mr. Chairman, in 1996, in the 1996 immigration reform bill. That system is now known as E-Verify. It is currently a volunteer program for most of the almost 290,000 employers who use it. It is free, Internet-based and very easy to use, and the employers who use it all agree.

The bill mandates that all employers in the United States use E-Verify to help make sure that the workforce is legal. The result of that will be that jobs are reserved for citizens and legal residents.

The bill requires that employers be notified when they submit one or more mismatched W-2 statements. Once the employer receives the notice, they must use E-Verify to check the employee's work eligibility and are subject to penalty if they do not follow the requirements of E-Verify in good faith. The Legal Workforce Act requires employees who submit a Social Security number for which there is a pattern of unusual multiple use to be notified so that the rightful owner can be determined. The employer must then be notified of the unusual use and follow E-Verify procedures for the employee.

H.R. 2885 will also help alleviate some of the burden on businesses. Currently the employer is prohibited from using E-Verify until after they have hired the employee. As a result, they sometimes invest time, money and resources into an employee only to discover that the employee is not eligible to work. But the Legal Workforce Act allows the employer to make a job offer contingent on E-Verify confirmation. This change is just plain commonsense.

The Legal Workforce Act implements a process whereby employers

can help ensure a legal workforce and Americans will have a chance to get every job possible in the U.S.

Again, I want to thank you, Mr. Chairman, for introducing this act and I look forward to its passage in this committee, hopefully next week.

I yield back.

Chairman Smith. Thank you, Mr. Gallegly.

The gentlewoman from California, Ms. Lofgren, the ranking member of the Immigration Subcommittee, is recognized for an opening statement.

Ms. Lofgren. Thank you, Mr. Chairman.

The Republican majority has been talking about two things: Jobs and the debt. They say the government should not focus on anything else. Our job, they say, is to reduce government regulation, spur economic growth and create an atmosphere for businesses to create jobs. At the same time, they say we should reduce the size of government and lower the burden on American taxpayers. So I don't understand how they can support this bill.

The bill is the opposite of everything they say they stand for. Rather than downsize government, the bill grows it dramatically, increasing government intrusion into all our lives. It creates new regulatory burdens for small businesses and adds tens of billions to the burden already shouldered by taxpayers. And it shrinks our economy, decimates at least one industry, and destroys millions of jobs in the process.

Don't take my word for it. The American Farm Bureau opposes this bill, as do American farmers all across this country who see what happened in Georgia and Alabama after E-Verify laws were passed in those States. E-Verify didn't create jobs or help small businesses. Instead, it left farmers with insufficient workers and rotting fields.

As the crisis mounted during the summer months, Georgia Governor Nathan Deal, our former colleague, even tried to bus ex-convicts to the field. But nothing worked. The harvest was simply lost. The Georgia Agribusiness Council estimates that Georgia incurred losses of \$250 million to \$300 million so far this year, and the total could reach \$1 billion next year. Families who have been working their land for generations are talking about having to give up their farms forever.

The majority knows that this is the real legacy of E-Verify. That is why they introduced another bill to be marked up with this one. This other bill, they will tell you, will prevent E-Verify from destroying farms across the Nation the way it destroyed farms in Georgia and Alabama.

But don't be fooled. The other bill is just smoke and mirrors. A temporary foreign worker program of the magnitude they envision is just simply never going to work. It just cannot be implemented.

The government already has trouble getting 50,000 H-2A workers into the country every year so as not to miss harvests. How are we ever going to get it right when we are talking about 500,000 or one million such workers? We won't even be able to get their interviews done in our consulates.

Yet there is a more fundamental problem. Those temporary worker provisions I just mentioned, they are not in this bill. There is nothing that ties them to this bill, and I think that is for a reason. Those provisions will never become law, and there is nothing, absolutely nothing that prevents this bill from becoming law if those provisions aren't enacted.

Because of the regulatory burdens it imposes, the bill is also opposed by the Wall Street Journal, the CATO Institute, the Liberty Coalition, the American Freedom Agenda, and many other conservative and libertarian groups. And small business coalitions like the Main Street Alliance are opposed because of the disproportionate effects on small businesses.

A recent Bloomberg government study concluded that mandatory E-Verify would cost small businesses about \$2.6 billion every year to verify new hires through E-Verify. But because the bill requires checks on many existing hires as well, the cost to small businesses would be even greater. The bill would thus impose crippling costs on small businesses, the engine of job creation in America, just when we need those businesses to create jobs the most. If the intent is to provide jobs, it makes no sense to impose massive costs on small businesses when they could be spending this money to actually create jobs.

The bill is also opposed by all major labor unions as well as economists of all political stripes because of the effect it will have on workers and the revenues they produce. Instead of opening up jobs

for U.S. workers, the bill would simply push employers to go off the books or to misclassify workers as interested contractors, which this bill does nothing about.

This is exactly what happened in Arizona after it made E-Verify mandatory. Rather than leave for other States that don't mandate E-Verify, the vast majority of undocumented workers stayed right in Arizona and either went off the books or became independent contractors.

If implemented nationwide, this would have a tremendous cost on workers and taxpayers. The CBO has scored other mandatory E-Verify bills, such as the SAVE Act in 2008, and concluded that mandating E-Verify without other reforms would cost taxpayers \$17.3 billion in lost tax revenues as employers and employees moved into the underground economy. We would also see depressed wages and working conditions for all workers as unscrupulous employers are further able to abuse workers and undercut employers who play by the rules.

We also need to take into account that E-Verify is not a perfect system. The Social Security Administration has estimated that mandatory E-Verify would force 3.6 million workers to go to the Social Security Administration Office to correct their records or else lose their jobs. This assumes the worker is even told by the employer that there is a discrepancy.

An independent study funded by the Department of Homeland Security showed that up to 42 percent of applicants who receive tentative non-confirmations were not even informed of the discrepancy

by the employer, thereby denying the workers the ability to contest the finding. They simply didn't get a job. At a time of 9 percent unemployment, putting millions of workers' jobs on the line is just irresponsible.

How is any of this helping to reduce the size of government, create jobs or help erase the national debt? I agree it makes sense to have an electronic system for checking work authorization that works and that contains sufficient safeguards, and since 2005 every serious proposal to fix our broken immigration laws has included such an electronic system to ensure we have a legal workforce. But it can't be done alone.

Our system has been broken for far too long, and we don't now need a one-sided solutions. The E-Verify provisions in each of those former bills were paired with other reforms to fix the entire system. Without those other reforms, mandatory E-Verify would bring tremendous damage.

The majority says this bill is meant to protect American workers. They claim every time we remove an undocumented worker from the country, we open that job up for a native American worker. But that ignores the reality of the complex economy we are in. The bill cannot be said to protect jobs when it destroys many more jobs than it ostensibly saves.

Simply continuing to enforce our broken immigration laws is not a serious job proposal. Pressing harder on the pedal without fixing the problem will only endanger our recovering economy, hurt American workers, and leave our broken immigration system just as it is today.

I yield back.

Chairman Smith. Thank you, Ms. Lofgren.

The vice chairman of the Immigration Subcommittee, the gentleman from Iowa, Mr. King, is recognized.

Mr. King. Thank you, Mr. Chairman.

I want to say first that I think I collected a rebuttal for most of everything I heard the gentlelady from California say. But I will just only address one of those, and that would be when they simply didn't get the job that 42 percent were denied, they had the job. That is a condition of today's current E-Verify, or they couldn't have run the name through E-Verify. So that is just one of the points that I think will come out in this discussion that we will have over the ensuing days.

Also the idea that people might have to give up their farms if we pass an E-Verify bill, I lived in the middle of farm country all my life and I will tell you they are not going to grow up to weeds. Something will be done with that land that is productive. I could give you a whole series of variety options that might be there, but I don't think they are going to give up their farms or let them grow up to weeds.

I do want to say the name of Ken Calvert. I don't know anybody that has mentioned that here today. But if they did and I missed it, I am sorry. But if it has been missed, I want to say so. He has initiated this, and he deserves a lot of credit for laying the foundation for this discussion that is unfolding today and on into next week as the father of E-Verify. It is a foundational good idea that

has sustained itself and gotten better over its years, and most of what is in this bill is good.

I look back in 1986 when the Immigration Reform Act of 1986 was passed, which I have referred to as the amnesty bill. It was a time when Ronald Reagan was very clear to us, that was one of the times he let me down, but that was an amnesty bill and he said so.

That is when I was obligated as an employer to beginning I-9 documents for the applicants that came to my construction company and applied for work. I still have some of those I-9 documents. They are dusty now and they are back in the King Construction archives. But I lived in fear that there would be an agent of the INS at the time show up at my office and want to examine my compliance with the '86 immigration act and did I have the I-9 documents and had I examined them and made a reasonable judgment that their identification documents conformed with the information on the application and was it reasonable to believe that they were lawfully present in the United States and that they could lawfully work in the United States.

We have seen the litigation erode the principle of the 1986 immigration act substantially. That is part of what has brought us here today, and it has been a big part of the foundation of the reason for the E-Verify legislation, the statute that exists.

So I would say also with record to the accuracy, the accuracy is only going to get better by using E-Verify. This is a very, very high ranking of accuracy, no matter how you objectively look at it. You can take those who are rejected by E-Verify and claim that once you

go into that universe, then you can start to divide that. But we saw numbers that were at least 98.6 percentage accuracy, I remember because it was a body temperature number that came by here about 3 years ago, and many of those that were inaccurate were people that had gotten married and hadn't changed their maiden name over to their married name. So how do you get a database to be perfect? You use it. And I think that is a good thing that comes out of the initiative that is here.

Also some of this is driven by the case, *U.S. Chamber v. Whiting*. I won't go into that in depth, but I think we need to have that in our minds as we discuss this bill.

Then I want to say also that when I first went down through this bill as it is presented I found five areas of concern, that I raised all of those issues. There are two areas that have been addressed in the bill, and I thank the chairman and the committee and staff especially for that.

The issues that remain today that hopefully we can have some illuminating discussion on are the preemption question. It is the biggest question that is before us here. And that question gets to be complicated and it is kind of where you sit is where you stand, but do you believe the Federal Government will enforce efficiently and effectively the laws that we might pass in this Congress.

The history of that, of immigration enforcement, doesn't answer that as a yes. I have concerns because of that. I want local government to help us enforce immigration laws because the Federal Government is not doing the job. In my ideal world, the Federal

Government would be in control of all immigration laws, it would enforce all immigration laws, and there would be 100 percent enforcement and compliance so local government did not have that burden.

That is not the reality of the administrations who lacks the will and I will say also apparently have the will to move away from their oath of office to take care that the laws are faithfully executed and ignore some of these immigration laws because they don't like them. That would be in point the administrative amnesty that the executive branch and the President seem to be supporting now. That spells a message that we need to take a look at local government as an assister in enforcing immigration laws within preemption standards certainly.

The ag workers part of this I am troubled by. I have hired a lot of seasonal workers. They are not ag workers most of the time. Part of the time they are. But the seasonal workers that might come back to work for the second generation King Construction Company would have to be reverified, but the people that might be working on an identical job on the identical field or across the road from them might be labeled as returning ag workers and not have to be reverified. That puts something in the code that does trouble me.

Then the issue that has to do with the enforcement I mentioned, the Social Security number enforcement is a question. We can get into that a little bit further.

But on balance I am going to repeat what I said to the chairman. I do think that this bill is 85 percent of what I would design to be as a bill that I would want to stamp as 100 percent. It is 85 of what

I think is 100. My father would have never been satisfied with that. I am not sure I am, but I want to go through the process and mark it up and do the work of the committee.

Thank you, Mr. Chairman. I yield back.

Chairman Smith. Thank you, Mr. King.

Are there other members who wish to make an opening statement?

The gentlewoman from Texas, Ms. Jackson Lee, is recognized.

Ms. Jackson Lee of Texas. Thank you very much, Mr. Chairman. And I could not start this markup without noting the importance of a theme that we have used over and over again, and that is comprehensive immigration reform might be the better legs to stand on, which again reinforces our commitment to border security, but has an integrated process.

I see in the ranking member of this committee, and I served as the ranking member for a number of terms, a person along with her members who is willing to work through tough issues and find the right common ground.

Let me state for the record that deportations have increased under this present administration probably more than any other previous administration. So on the enforcement side, we have not been inattentive.

And I might also suggest to my friend Chairman Smith, who I believe served as chairman when I served as the ranking member, there are some issues to ensuring that when we have these tough economic times, we must be concerned about the continuously unemployed. It is obvious

that we have addressed the question or raised the question of the double digit of unemployment in the African American population and the equally unpleasant numbers in the Latino population of those who are in the United States, and, of course, many of our friends, Anglo friends, Asian friends, who are in pockets of communities that have high unemployment. We get that. We understand it.

And if I might add an additional comment of rationality, we have a jobs bill that is proposed that we might look to solve some of these problems.

But I am concerned about a particular approach in the E-Verify mandatory process that really doesn't answer the question. Houston has one of the most diverse populations in the country and is home to many immigrant workers and small businesses. Reports show that in Houston undocumented workers contributed an estimated \$27.3 billion to the gross regional product. It also admits or indicates that amounting to 8 percent of the total GRP and across 16 different sectors in the economy.

I think it is a misnomer to suggest that the work that is being done effectively by some populations that happen to be immigrant are going to be work that is going to be a substitute for the unemployed minorities or Anglos, Asians, Hispanics and African Americans. That is my quarrel with this legislation. It is prone to mistakes and errors, and it is prone to not doing the job that it should be doing.

Let me just raise an example. In my own State of Texas, an immigrant worker who is legally authorized to work in the United States

was offered a job and enrolled in E-Verify preemployment. E-Verify responded erroneously to the employer with a tentative non-confirmation; in other words, alerting the employer that this particular candidate was unauthorized to work in the United States. This erroneous response resulted in an employer denying a perfectly legal, qualified prospective employee a job.

Is the software up to the task? Are we going to be confused about same names? And are people who are United States citizens going or those with documentation going to be unfairly treated? Although employers were supposed to allow workers an opportunity to contest E-Verify findings, many do not.

In this particular case the worker went to a local Social Security office and received the appropriate confirmation that they were in fact authorized to work. Even with the SSA clarification, the employer refused to take the store worker back. The story is not unique.

So what are we doing? We have a flawed E-Verify system, and we are trying to impact it with an even more flawed system. Do we have the money to implement this system, or are we just shouting at the darkness?

With respect to the agricultural program, I distinctly remember the work that we did to try and provide the right kind of living conditions for agricultural workers. If you bring more, if you will, guest workers in under this presented structure, I don't know how anyone on this committee expects for those guest workers to return.

We should find a regularization system that allows a fair process

of those who wish to work in the agricultural industry to do so, and if they are experienced and want to come back and work in the agricultural industry, if this is their calling, we should provide that opportunity. But to have a pool of guest workers that changes year after year after year, treated unfairly and without benefits, and when I say that, bare housing and transportation that you usually use to get guest workers here and the atmosphere that we operate in, Mr. Chairman, I don't think either bill is going to be effective.

Why don't we join together and have comprehensive immigration reform that allows the 12 million undocumented individuals to regularize, to truly emphasize outreach to minorities in jobs that many who are in this country desire to have, such as in software, technology, construction jobs. Let's open up those doors and let's have the stair steps as we have always had with immigrants where they come in and do their work and rise up the ladder.

This, as far as I am concern, continues to dumb down hard-working individuals, immigrants who want to be part of this great American society and this great American dream. We can do better in this committee.

With that, I yield back.

Chairman Smith. Thank you, Ms. Jackson Lee.

The gentleman from California, Mr. Lungren, a member of the Immigration Subcommittee, is recognized for an opening statement.

Mr. Lungren. Thank you very much, Mr. Chairman. I hope we are not going to establish a pattern of perfection before we pass anything

because we wouldn't be passing anything. We probably wouldn't be here.

Mr. Chairman, I am a cosponsor of the E-Verify bill, the original bill, not this new numbered bill that we have before us, but I think it is essentially the same, and I do believe that an E-Verify mandatory program will assist us in having greater control over illegal immigration in this country. One of the great faults of the 1986 bill was that it was never enforced. At least the enforcement side was never truly brought forward.

But I must say that I am somewhat troubled by the fact that the bill before us does not recognize the demonstrated need for temporary foreign workers in agriculture. Now, that might not be politically correct to say, but it happens to be a fact.

I live in California. I am sorry my friend from Iowa is no longer here, because he talked about Iowa agriculture. I don't know Iowa agriculture. My dad left Iowa in 1934. I grew up in Long Beach, which was known at one time as Little Iowa By the Sea. But I have lived in California my entire life, and I do know something about California agriculture, and California agriculture depends to a great degree on a foreign workforce. It has either been legal or illegal, depending on whether we had a workable program or not.

In 1986, I worked very hard to get a temporary worker program established. Unfortunately, I didn't have the votes. So I attempted to see if the H-2 program could be amended. Much of what is in the H-2A program today is the product of the legislation that I crafted in 1986, and I am here to tell you it doesn't work. It hasn't worked,

it won't work, and an attempt to try and reform the H-2A program, and I appreciate the efforts by the chairman and others, will not work.

H-2A affects about 4 percent of agriculture. That means 96 percent, experience has shown, it doesn't work. So to have a 3-year grandfather of the H-2A program for agriculture may help some of the 4 percent, but it is not going to help 96 percent.

So, Mr. Chairman, I am somewhat disappointed that we are dealing separately with the E-Verify bill in the agriculture bill, your bill, that attempts to try and take care of the demonstrated need for agriculture workers by way of a reform of the H-2A program, even though I know you call it by a new name.

I was disappointed last week when we had the hearing on this issue and not a single Californian was invited. Not a single representative of California agriculture was before this committee to articulate the concerns, the demonstrated facts of California. I know we are only one State, but we are the largest agricultural State in the Union. Total agricultural exports from California totaled \$12.4 billion in 2009. If we were a country, we would be the fifth largest country in the world producing agriculture. And I just can't abide the fact that we are ignoring my State in terms of a demonstrated need for temporary workers.

I have crafted such legislation dealing with agriculture around the country, not just California, that I think would resolve the problem.

Now, as I say, Mr. Chairman, I am a supporter of E-Verify, but

I have grave difficulty in supporting the E-Verify program if we don't take care of the demonstrated need for foreign workers in the area of agriculture. It will, based on the testimony we have had before this committee and subcommittee, devastate agriculture.

There are some who say, well, we will get E-Verify, we will pass it and then take care of agriculture. I have difficulty with that because I know what the facts are in the fields. I don't think we ought to bifurcate the decisions.

So, I stand as someone who supports E-Verify. I know it is not perfect. But I would say with those who talk about the mistakes that are made with those who are rejected, the vast majority of those who are rejected happen to be people who don't have a right to be in the United States to work. We need to have a program that focuses on the employment attraction for people to come to the United States illegally. We have to make it workable. I think we can do it.

But to all of my colleagues on this panel, I would just say, if we do not recognize the demonstrated need for foreign workers, and I am talking about temporary foreign workers in our agricultural fields, we are kidding ourselves. Anybody who suggests that we can do it with American workers, with all due respect, does not understand agriculture in America today. We would wish it were something else, but it is not.

So I stand as a supporter of the E-Verify, but I also have to say that unless we recognize a specific demonstrated need for agriculture and respond to that with a workable program, I am afraid E-Verify won't pass and won't become law. But I also am afraid if it were to pass

and become law, it would devastate agriculture, and I just don't see why we have to do that. I don't think it is an either/or proposition.

I have been speaking with agriculture for the last year, agriculture interests. I told them don't oppose E-Verify. Support E-Verify, so long as you have a program that will work for agriculture. And I think most of agriculture has taken a responsible position on that. Other industries might say they have got a need. I don't think it is demonstrated. Frankly, I would not support it for other industries at this time because I don't think they have a demonstrated need.

But the fact of the matter is we have a demonstrated need in the United States. I know we have one in California, I know the history of it, and I do not understand why we cannot work at the same time to deal with both the E-Verify issue and the demonstrated need for a workable legal means by which foreign workers can come to the United States and work.

With that, Mr. Chairman, I would yield back my time.

Chairman Smith. Thank you, Mr. Lungren. The gentlewoman from California, Ms. Sanchez, is recognized.

Ms. Sanchez. Thank you, Mr. Chairman, for the opportunity to speak on the Legal Workforce Act.

It is pretty clear to me if you listen at all to constituents at home that they want Congress to be focusing on ways to grow our economy, and this bill fails to do that and it quite frankly fails the American people. The bill also fails small business. Bloomberg Government

Analysis says that the mandatory use of the E-Verify system would cost small businesses \$2.6 billion each year.

I think we can all agree that now is the time for our government to make the business climate more attractive for growth, which is why adding this additional burden doesn't make any sense to me at this time.

This bill fails legal workers. In addition to the costs associated with the E-Verify, the system is riddled with errors and doesn't work. It doesn't flag the workers that it is supposed to find and it snags far too many citizens and legal workers in its net. The job market is tough enough right now. It makes no sense for Congress to consider a law that makes it harder for legal workers to gain employment.

This bill also fails to protect workers because it will encourage some employers to hire employees only as independent contractors, and that allows an employer quite simply to avoid the liability of using employees who would have to be screened through the E-Verify system. However, it also means that these employees lose their rights to minimum wage, their rights to employer-provided benefits and their rights to Workers' Compensation if they happen to be injured on the job. These are basic rights that these workers deserve and would lose under the Republican proposal we are considering today.

I just want to point out something else. The bill also fails our seniors, because it is expected that in order to comply with E-Verify, millions of American workers would be required to fix erroneous information with the Social Security office. We already have a lengthy

backlog that seniors face when dealing with the Social Security agency, and adding these problems into the system only further clogs up the backlog at the Social Security office.

Finally, this bill I think fails our agricultural sector and impacts all consumers. It doesn't recognize the reality that Mr. Lungren was just talking about that much of our agricultural sector relies on foreign labor, and yet nothing has been done to ensure a steady flow of workforce in order to harvest crops before they wither on the vine.

While I don't have farms in my district per se, coming from California I know that agriculture depends on the labor of foreign workers, and if we don't have those workers to harvest the crops, the crops will fail or the cost for consumers for those basic crops will go up at a time when most families are struggling to make ends meet.

For all of the reasons that I have enumerated, this bill is the wrong bill at the wrong time. I hope we can dispose of this quickly and refocus our efforts on legislation that can is going to grow the American economy.

With that, I yield back the balance of my time.

Chairman Smith. Thank you, Ms. Sanchez.

I would like to thank all the members for their opening statements. We are now going to adjourn until we resume the markup next Wednesday morning.

We stand adjourned.

[Whereupon, at 12:20 p.m., the committee was adjourned.]

