

E-Verify

A proposed solution to the
problem of illegal immigration

Is it Constitutional?

Is it wise?

E-Verify: The Trouble with Databases

Recently our small organization experienced learning the ins and outs of a database management program, one used by many major companies. It was quite a struggle to learn how to create fields for entering data, how to synchronize data between many county chapters and the state database, the possibility of a sync wrongly deleting people or information from one or the other database, which information takes priority, who should access it, etc. All this inspired the chairman to make this observation:

"If you think you've got a brain twister here – tonight I was listening to a talk radio show where they were interviewing a Congressman who is pushing for E-verify. He was talking about issues they have been having in setting up the computer system to run it. Wow! Think of it! One giant, mega huge database consisting of 300 million records compiled from every scrap of information that can be found in the systems of millions of computers in thousands of government agencies, all merged, cross-checked against things like criminal records, etc., and put in a format that can be accessed by every business in the country. Then, with one push of a button, this conglomer-ation of data is going to tell us who is allowed to be employed and who is not. All concerns of constitutionality aside, I'm really questioning whether we trust the government to set up and run a system like that, I mean, one bad piece of data or one wrong push of a button in D.C. and poof! 10 million people are out of a job because the computer says they are illegal aliens. I don't know if I want a super-mega database having that much power over my life, not even if someone as smart as our database guy is running it."

The Congressman is Representative Peter Defazio (D-Oregon). He is pushing for a bill that would require the use of E-verify by the government within two years, then by all employers beginning three years later. He also pointed out that there are rumors the Senate will create loopholes in their version to exempt agriculture or other businesses so they can continue using cheap illegal labor. The problem is this, while a state has the constitutional right to implement any program they want, the federal government lacks a Constitutional right to require employers to do this. The federal government only has jurisdiction over federal employees and federally administered programs. There is NO constitutional authority for forcing private employers to use E-verify.

One of the problems of E-verify is the issue of getting a 'false positive' or 'false negative'. Representative DeFazio indicated there would be some sort of system for appealing the matter. Have you ever tried appealing anything to the government? How many forms would you have to fill out, how many bureaucrats would have to review them, how many

appointments would you have to make, how many 20 day waiting periods before filings of 10 day notices of intent to apply for a 60 day hearing date subject to appeal or revision by a higher bureaucratic agency...but rest assured, they will get the matter cleared up in time for your grandchildren to have a job.

What is E-verify?

E-verify is an internet-based program provided "free" to businesses (paid for by you the taxpayer, of course) by the Department of Homeland Security, in partnership with the Social Security Administration. Once implemented, it assures us that only "legal" aliens and citizens will be employed in the United States. Comparing information from the employee's Employment Eligibility Verification Form I-9 to U.S. government records, a match would mean that the employee is eligible to work in the United States. No match? The system notifies the employer and the employee is given eight days to resolve the problem while continuing to work. It is mandated for federal employees, federal contractors, certain post-graduate students, and holders of the H-1B Visa (foreign temporary workers).

E-verify is optional for States. Under the 9th and 10th Amendments, a State has the constitutional right to implement or reject any federal program they choose, including E-verify. According to the U.S. E-Verify Legislation Map (www.i9advantage.com/extras/e-verify/), fifteen states have already opted to use E-Verify. They are Idaho, Utah, Arizona, Colorado, Nebraska, Oklahoma, Minnesota, Missouri, Tennessee, Mississippi, Georgia, South Carolina, North Carolina, Virginia, and Rhode Island. Twelve states have only Immigration and Customs Enforcement access. The remainder, including the State of Washington, have not passed any legislation to enact E-Verify.

Craig Keller, and his organization called Respect Washington, (www.respectwashington.us/) have been pushing for the enactment of

E-Verify in our state through the initiative process the past few years, most recently I-1122. The Washington State Legislature is currently considering Senate Bill 5338, which would implement E-Verify in Washington State.

E-Verify: Is it Constitutional?

Many concerns have been raised about the constitutionality of E-verify. The Constitution of the United States gives authority to Congress to "to establish a uniform rule of Naturalization" (Article 1, Section 8). It also says that "the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States" (Article 4, Section 2.). There is also a guarantee that it "shall protect each of [the several States]

against Invasion” (Article 4, Section 4). But that is all it says, except for the 9th and 10th Amendments which confirm that, “the enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people” and “the powers not delegated to the United States by the Constitution, nor prohibited to it by the states, are reserved to the states respectively, or to the people.”

What does all this mean? It means that Congress determines the rules of naturalization for every immigrant that must be equally applied to all legal immigrants. There is no provision for illegal immigrants. They are outside of the law by virtue of the fact that they entered illegally. Naturalization laws do not apply to them. E-verify intends to make sure that everyone who works in the U.S. is legally qualified to work here, but effectively turns employers into agents of the federal government, doing the work of Immigration and Customs Enforcement officers.

A naturalized citizen is a citizen born in a foreign country of foreign parents, and who has followed the legal process towards obtaining citizenship. A natural-born citizen is born on United States territory of naturalized or natural-born parents. Both might occasionally and properly be asked to produce ID, such as when voting, for example. An illegal immigrant who obtains documents illegally breaks the law twice—first by trespassing, second by fraudulently obtaining legal documents. E-verify makes the assumption that everyone is guilty until proven innocent, a violation of the 4th Amendment guarantee requiring probable cause before issuing a warrant or making an arrest, or searching someone’s private information.

Congress is required to protect the states from invasion—military aggression, criminal activity, economic invasion through illegal immigration, etc. E-verify does nothing to address this issue. To protect those who may have been a victim of a database error, violators will be able to use the eight days allowed for clearing up a problem to disappear and start over again.

Finally, the Constitution clearly says that anything not specifically written in the Constitution is left up to the states. Each state determines who qualifies as a citizen of that state, with the responsibility to protect them from invasion and criminal activity. Federal law applies to federal borders. State law applies to state borders. When a border is shared by both jurisdictions, as in the case of Arizona, there is a shared responsibility. The Arizona Immigration Law only re-states current federal law and provides for its enforcement at the state level. Nothing in it violates the constitutional rights of anyone. Arizona chose to be an E-verify state in 2008. They, as a state, have a right to do so.

A Constitutionally-correct Solution

So what might be a reasonable solution to the problem of illegal immigration?

- Bring our military troops home from defending the borders of other nations and set them to defending the borders of their own. This would actually reduce federal spending, contribute to reducing the deficit, and let the military do their job, i.e. protecting U.S. citizens and their property from invasion.
- Let ICE do its job by checking work sites on their own, when they have probable cause (under the 4th Amendment) to believe workers have obtained employment under false pretenses. We can work out the details as to what will happen with the children of such workers, but the workers knew when they crossed the border and had children, that they would be taking a risk in being separated from them. Nonetheless, an equitable solution should be worked out on a case by case basis.
- Put American citizens, both natural-born and naturalized back to work by filling the jobs now left vacant by the deportation of illegal immigrants. This will begin to solve the unemployment problem.
- Make appropriate contracts with countries such as Mexico to provide seasonal workers in those sectors of the economy which may still need help. In the past, such contracts were made between the United States, other nations, and private contractors. This system worked well enough then; it will work now.

The majority of the people of the State of Washington have so far voted against E-Verify by refusing to sign the many petitions attempting to make it law through the initiative process.

Now Senate Bill 5338 is working its way through the state legislature. It will attempt to enact E-verify through state law. The choice is up to you. If you think it's a good idea and you don't mind giving up some constitutional rights to get rid of illegal immigrants, contact your state legislators and let them know. If you don't think it's a good idea, then contact those same legislators and let them know it. Either way, it's your state; and if you don't speak up, who will?



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