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12 Attorneys for Plaintiffs

13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE DISTRICT OF ARIZONA**

15 ARIZONA CONTRACTORS )  
16 ASSOCIATION, INC., an Arizona non- )  
17 profit corporation, ARIZONA )  
18 EMPLOYERS FOR IMMIGRATION )  
19 REFORM, INC., an Arizona non-profit )  
20 corporation, CHAMBER OF )  
21 COMMERCE OF THE UNITED )  
22 STATES OF AMERICA, a Washington )  
23 D.C. non-profit corporation, ARIZONA )  
24 CHAMBER OF COMMERCE, an )  
25 Arizona non-profit corporation, )  
26 ARIZONA HISPANIC CHAMBER OF )  
27 COMMERCE, INC., an Arizona non- )  
28 profit corporation, ARIZONA FARM )  
BUREAU FEDERATION, an Arizona )  
non-profit corporation, ARIZONA )  
RESTAURANT AND HOSPITALITY )  
ASSOCIATION, an Arizona non-profit )  
corporation, ASSOCIATED )  
MINORITY CONTRACTORS OF )  
AMERICA, an Arizona non-profit )  
limited liability company; ARIZONA )  
ROOFING CONTRACTORS )  
ASSOCIATION, an Arizona non-profit )  
corporation, NATIONAL ROOFING )  
CONTRACTORS' ASSOCIATION, an )  
Illinois not-for-profit corporation, )  
WAKE UP ARIZONA! INC., an )  
Arizona non-profit corporation, and )  
ARIZONA LANDSCAPE )  
CONTRACTORS ASSOCIATION, )  
INC., an Arizona non-profit corporation. )  
Plaintiffs, )

Case No. \_\_\_\_\_

**COMPLAINT**

- 1. Violation of Procedural Due Process under U.S. Constitution**
- 2. Violation of Procedural Due Process under Arizona Constitution**
- 3. Violation of Commerce Clause of U.S. Constitution**
- 4. Violation of Supremacy Clause of U.S. Constitution/Federal Pre-Emption**
- 5. Violation of Separation of Powers of Arizona Constitution**
- 6. Violation of Fourth Amendment of U.S. Constitution**

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CRISS CANDELARIA, Apache County Attorney, ED RHEINHEIMER, Cochise County Attorney, TERENCE C. HANER, Coconino County Attorney, DAISY FLORES, Gila County Attorney, KENNY ANGLE, Graham County Attorney, DEREK D. RAPIER, Greenlee County Attorney, MARTIN BRANNAN, LaPaz County Attorney, ANDREW P. THOMAS, Maricopa County Attorney, MATTHEW J. SMITH, Mohave County Attorney, JAMES CURRIER, Navajo County Attorney, BARBARA LAWALL, Pima County Attorney, JAMES P. WALSH, Pinal County Attorney, GEORGE SILVA, Santa Cruz County Attorney, SHEILA POLK, Yavapai County Attorney, JON SMITH, Yuma County Attorney, TERRY GODDARD, Attorney General of the State of Arizona, and FIDELIS V. GARCIA, Director of the Arizona Registrar of Contractors,

Defendants.

For their Complaint against CRISS CANDELARIA, Apache County Attorney, ED RHEINHEIMER, Cochise County Attorney, TERENCE C. HANER, Coconino County Attorney, DAISY FLORES, Gila County Attorney, KENNY ANGLE, Graham County Attorney, DEREK D. RAPIER, Greenlee County Attorney, MARTIN BRANNAN, LaPaz County Attorney, ANDREW P. THOMAS, Maricopa County Attorney, MATTHEW J. SMITH, Mohave County Attorney, JAMES CURRIER, Navajo County Attorney, BARBARA LAWALL, Pima County Attorney, JAMES P. WALSH, Pinal County Attorney, GEORGE SILVA, Santa Cruz County Attorney, SHEILA POLK, Yavapai County Attorney, JON SMITH, Yuma County Attorney, the HONORABLE TERRY GODDARD, Attorney General of the State of Arizona, (the “State”), and FIDELIS V. GARCIA, Director, Arizona Registrar of Contractors, Plaintiffs the Arizona Contractors Association, Inc. (“Arizona Contractors Association”), Arizona Employers for Immigration Reform, Inc.

1 (“AZEIR”), Chamber of Commerce of the United States of America (“U.S. Chamber  
2 of Commerce”), Arizona Chamber of Commerce, Arizona Hispanic Chamber of  
3 Commerce, Inc. (“Arizona Hispanic Chamber of Commerce”), Arizona Farm Bureau  
4 Federation (“Arizona Farm Bureau”), Arizona Restaurant and Hospitality  
5 Association, Associated Minority Contractors of America (“Associated Minority  
6 Contractors”), Arizona Roofing Contractors Association, the National Roofing  
7 Contractors’ Association (“National Roofing Contractors’ Association”), Wake Up  
8 Arizona! Inc. (“Wake Up Arizona!”), and the Arizona Landscape Contractors  
9 Association, Inc. (“Arizona Landscaping Contractors Association”), (hereinafter  
10 collectively referred to as “Plaintiffs”) allege as follows:

11 **SUMMARY**

- 12 1. Plaintiffs bring this case to uphold and to prevent violations of the  
13 Constitution of the United States, the laws of the United States, and the Constitution  
14 of the State of Arizona.
- 15 2. On July 2, 2007, the Honorable Janet Napolitano, the Governor of  
16 Arizona, signed into law HB 2779, a bill passed by the Arizona Legislature on June  
17 20, 2007, codified in relevant part at A.R.S. § 23-211 to 23-214 (hereinafter the  
18 “Legal Arizona Workers Act”).
- 19 3. The Legal Arizona Workers Act violates the United States and Arizona  
20 Constitutions and is preempted by federal law.
- 21 4. The Legal Arizona Workers Act deprives Plaintiffs and others of  
22 property without due process of law.
- 23 5. The Legal Arizona Workers Act regulates and interferes with interstate  
24 commerce.
- 25 6. The Legal Arizona Workers Act violates the Supremacy Clause because  
26 it conflicts with and is preempted by federal law.
- 27 7. The Legal Arizona Workers Act violates the separation of powers  
28 doctrine of the Arizona Constitution.



1 policies that promote a favorable legal and business climate in Arizona for the benefit  
2 of its members.

3 16. Plaintiff the U.S. Chamber of Commerce is a non profit corporation  
4 incorporated under the laws of the District of Columbia with its principal place of  
5 business located in Washington D.C.

6 17. The U.S. Chamber of Commerce is the world's largest federation of  
7 businesses, professional organizations, and state and local chambers of commerce.  
8 The U.S. Chamber of Commerce represents an underlying membership of more than  
9 three million businesses and organizations of every size in every industrial sector and  
10 geographic region of the country, including Arizona, and its members transact  
11 business in Arizona and hold what are deemed to be licenses under A.R.S. § 23-  
12 211(7).

13 18. The U. S. Chamber of Commerce membership includes associations,  
14 chambers of commerce and direct business members. The U. S. Chamber of  
15 Commerce serves as a public policy advocate on behalf of its members. It advocates  
16 the interests of the business community, including advocating the interests of its  
17 members in courts across the nation in cases involving issues of national concern to  
18 American businesses.

19 19. The U.S. Chamber of Commerce has also been involved heavily in  
20 efforts to seek to achieve federal immigration legislation and laws that are uniform,  
21 fair, and appropriate to the needs of businesses.

22 20. Plaintiff the Arizona Chamber of Commerce is a non profit corporation  
23 incorporated under the laws of the State of Arizona, with its principal place of  
24 business located in the State of Arizona.

25 21. The Arizona Chamber of Commerce employ employees in the State of  
26 Arizona, transact business in Arizona, and holds what are deemed to be licenses under  
27 A.R.S. § 23-211(7).

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1           22. The Arizona Chamber of Commerce is an association of members  
2 (“Arizona Chamber of Commerce Members”). Arizona Chamber of Commerce  
3 Members employ employees in the State of Arizona, transact business in Arizona, and  
4 hold licenses and permits from the State an/or its political subdivision.

5           23. Arizona Chamber of Commerce Members employ employees in the  
6 State of Arizona, transact business in Arizona, and hold licenses and permits from the  
7 State and/or its political subdivisions.

8           24. The Arizona Chamber of Commerce serves as a public policy advocate  
9 on behalf of its members and urges the Arizona Legislature and Executive Branch  
10 agencies to adopt and implement policies that promote a favorable legal and business  
11 climate in Arizona for the benefit of its members.

12           25. Plaintiff the Arizona Hispanic Chamber of Commerce is a non profit  
13 corporation incorporated under the laws of the State of Arizona, with its principal  
14 place of business located in the State of Arizona.

15           26. The Arizona Hispanic Chamber of Commerce is an employer that  
16 employs employees in the State of Arizona. It transacts business in Arizona and holds  
17 what are deemed to be licenses under A.R.S. § 23-211(7).

18           27. The Arizona Hispanic Chamber of Commerce is an association of  
19 members (“Arizona Hispanic Chamber of Commerce Members”). Arizona Hispanic  
20 Chamber of Commerce Members employ employees in the State of Arizona, transact  
21 business in Arizona, and hold licenses and permits from the State and/or its political  
22 subdivisions.

23           28. The Arizona Hispanic Chamber of Commerce serves as a public policy  
24 advocate on behalf of its members and urges the Arizona Legislature and Executive  
25 Branch agencies to adopt and implement policies that promote a favorable legal and  
26 business climate in Arizona for the benefit of its members.

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1           29. Plaintiff the Arizona Farm Bureau is a non profit corporation  
2 incorporated under the laws of the State of Arizona, with its principal place of  
3 business located in the State of Arizona.

4           30. The Arizona Farm Bureau is an employer that employs employees in the  
5 State of Arizona. It transacts business in Arizona and holds what are deemed to be  
6 licenses under A.R.S. § 23-211(7).

7           31. The Arizona Farm Bureau is an association of members (“Arizona Farm  
8 Bureau Members”). Arizona Farm Bureau members employ employees in the State  
9 of Arizona, transact business in Arizona, and hold licenses and permits from the State  
10 and/or its political subdivisions.

11           32. The Arizona Farm Bureau serves as a public policy advocate on behalf  
12 of its members and urges the Arizona Legislature and Executive Branch agencies to  
13 adopt and implement policies that promote a favorable legal and business climate in  
14 Arizona for the benefit of its members.

15           33. Plaintiff the Arizona Restaurant and Hospitality Association is a non  
16 profit corporation incorporated under the laws of the State of Arizona, with its  
17 principal place of business located in the State of Arizona.

18           34. The Arizona Restaurant and Hospitality Association is an employer that  
19 employs employees in the State of Arizona. It transacts business in Arizona and holds  
20 what are deemed to be licenses under A.R.S. § 23-211(7).

21           35. The Arizona Restaurant and Hospitality Association is an association of  
22 members (“Arizona Restaurant and Hospitality Association Members”). The Arizona  
23 Restaurant and Hospitality Association Members employ employees in the State of  
24 Arizona, transact business in Arizona, and hold licenses and permits from the State  
25 and/or its political subdivisions.

26           36. The Arizona Restaurant and Hospitality Association serves as a public  
27 policy advocate on behalf of its members and urges the Arizona Legislature and  
28

1 Executive Branch agencies to adopt and implement policies that promote a favorable  
2 legal and business climate in Arizona for the benefit of its members.

3 37. Plaintiff the Associated Minority Contractors is a non profit corporation  
4 incorporated under the laws of the State of Arizona, with its principal place of  
5 business located in the State of Arizona.

6 38. Associated Minority Contractors is an employer that employs  
7 employees in the State of Arizona. It transacts business in Arizona and holds what are  
8 deemed to be licenses under A.R.S. § 23-211(7).

9 39. Associated Minority Contractors is an association of members  
10 (“Associated Minority Contractors Members”). Associated Minority Contractors  
11 Members employ employees in the State of Arizona, transact business in Arizona, and  
12 hold licenses and permits from the State and/or its political subdivisions.

13 40. Associated Minority Contractors serves as a public policy advocate on  
14 behalf of its members and urges the Arizona Legislature and Executive Branch  
15 agencies to adopt and implement policies that promote a favorable legal and business  
16 climate in Arizona for the benefit of its members.

17 41. Plaintiff the Arizona Roofing Contractors Association is a non profit  
18 corporation incorporated under the laws of the State of Arizona, with its principal  
19 place of business located in the State of Arizona.

20 42. The Arizona Roofing Contractors Association is an employer that  
21 employs employees in the State of Arizona. It transacts business in Arizona and holds  
22 what are deemed to be licenses under A.R.S. § 23-211(7).

23 43. The Arizona Roofing Contractors Association is an association of  
24 members (“Arizona Roofing Contractors Association Members”). Arizona Roofing  
25 Contractors Association Members employ employees in the State of Arizona, transact  
26 business in Arizona, and hold licenses and permits from the State and/or its political  
27 subdivisions.

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1           44.    The Arizona Roofing Contractors Association serves as a public policy  
2 advocate on behalf of its members and urges the Arizona Legislature and Executive  
3 Branch agencies to adopt and implement policies that promote a favorable legal and  
4 business climate in Arizona for the benefit of its members.

5           45.    Plaintiff the National Roofing Contractors' Association is a not for  
6 profit corporation incorporated under the laws of the State of Illinois, with its  
7 principal place of business located in the State of Illinois.

8           46.    The National Roofing Contractors' Association is an association of  
9 roofing, roof deck, and waterproofing contactors, industry-related associate members,  
10 including manufacturers, distributors, architects, engineers, and others. The National  
11 Roofing Contractors' Association has more than 4,600 members from all 50 states  
12 and 54 countries and is affiliated with 105 local, state, regional and international  
13 roofing contractor associates. Its members transact business in Arizona and hold what  
14 are deemed to be licenses under A.R.S. § 23-211(7).

15           47.    The National Roofing Contractors' Association serves as a public policy  
16 advocate on behalf of its members.

17           48.    Plaintiff Wake Up Arizona! is a non profit corporation incorporated  
18 under the laws of the State of Arizona, with its principal place of business located in  
19 the State of Arizona.

20           49.    Wake Up Arizona! Transacts business in Arizona and holds what are  
21 deemed to be licenses under A.R.S. § 23-211(7).

22           50.    Wake Up Arizona! is an association of members ("Wake Up Arizona!  
23 Members"). Wake Up Arizona! Members employ employees in the State of Arizona,  
24 transact business in Arizona, and hold licenses and permits from the State and/or its  
25 political subdivisions.

26           51.    Wake Up Arizona! serves as a public policy advocate on behalf of its  
27 members and urges the Arizona Legislature and Executive Branch agencies to adopt  
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1 and implement policies that promote a favorable legal and business climate in Arizona  
2 for the benefit of its members.

3 52. Plaintiff the Arizona Landscape Contractors Association is a non profit  
4 corporation incorporated under the laws of the State of Arizona, with its principal  
5 place of business located in the State of Arizona.

6 53. The Arizona Landscape Contractors Association is an employer that  
7 employs employees in the State of Arizona. It transacts business in Arizona and holds  
8 what are deemed to be licenses under A.R.S. § 23-211(7).

9 54. The Arizona Landscape Contractors Association is an association of  
10 members (“Arizona Landscape Contractors Association Members”). The Arizona  
11 Landscape Contractors Association Members employ employees in the State of  
12 Arizona, transact business in Arizona, and hold licenses and permits from the State  
13 and/or its political subdivisions.

14 55. The Arizona Landscape Contractors Association serves as a public  
15 policy advocate on behalf of its members and urges the Arizona Legislature and  
16 Executive Branch agencies to adopt and implement policies that promote a favorable  
17 legal and business climate in Arizona for the benefit of its members.

18 56. Defendant Criss Candelaria is the County Attorney for Apache County,  
19 Arizona. He is named herein as a Defendant in his capacity as County Attorney.

20 57. Defendant Ed Rheinheimer is the County Attorney for Cochise County,  
21 Arizona. He is named herein as a Defendant in his capacity as County Attorney.

22 58. Defendant Terence C. Hance is the County Attorney for Coconino  
23 County, Arizona. He is named herein as a Defendant in his capacity as County  
24 Attorney.

25 59. Defendant Daisy Flores is the County Attorney for Gila County,  
26 Arizona. She is named herein as a Defendant in her capacity as County Attorney.

27 60. Defendant Kenny Angle is the County Attorney for Graham County,  
28 Arizona. He is named herein as a Defendant in his capacity as County Attorney.

1           61. Defendant Derek D. Rapier is the County Attorney for Greenlee  
2 County, Arizona. He is named herein as a Defendant in his capacity as County  
3 Attorney.

4           62. Defendant Martin Brannan is the County Attorney for LaPaz County,  
5 Arizona. He is named herein as a Defendant in his capacity as County Attorney.

6           63. Defendant Andrew Thomas is the County Attorney for Maricopa  
7 County, Arizona. He is named herein as a Defendant in his capacity as County  
8 Attorney.

9           64. Defendant Andrew Thomas has entered into an agreement with the  
10 Maricopa County Sheriff, Joe Arpaio, under which Thomas has delegated to the  
11 Sheriff's office certain investigation and enforcement authority that was conferred  
12 upon Thomas in the Legal Arizona Workers Act. The actions of the Maricopa County  
13 Sheriff's office in enforcing the Legal Arizona Workers Act are therefore conducted  
14 as an agent of Thomas and Thomas is liable for such actions.

15           65. Defendant Matthew J. Smith is the County Attorney for Mohave  
16 County, Arizona. He is named herein as a Defendant in his capacity as County  
17 Attorney.

18           66. Defendant James Currier is the County Attorney for Navajo County,  
19 Arizona. He is named herein as a Defendant in his capacity as County Attorney.

20           67. Defendant Barbara LaWall is the County Attorney for Pima County,  
21 Arizona. She is named herein as a Defendant in her capacity as County Attorney.

22           68. Defendant James P. Walsh is the County Attorney for Pinal County,  
23 Arizona. He is named herein as a Defendant in his capacity as County Attorney.

24           69. Defendant George Silva is the County Attorney for Santa Cruz County,  
25 Arizona. He is named herein as a Defendant in his capacity as County Attorney.

26           70. Defendant Sheila Polk is the County Attorney for Yavapai County,  
27 Arizona. She is named herein as a Defendant in her capacity as County Attorney.

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1 71. Defendant Jon Smith is the County Attorney for Yuma County,  
2 Arizona. He is named herein as a Defendant in his capacity as County Attorney.

3 72. Defendant Terry Goddard is the Attorney General of the State of  
4 Arizona (the "Attorney General"). He is named herein as a Defendant in his capacity  
5 as Attorney General.

6 73. Defendant Fidelis V. Garcia is the Director of the Arizona Registrar of  
7 Contractors. He is named herein as a Defendant in his capacity as Director of the  
8 Arizona Registrar of Contractors.

9 74. Each Plaintiff and the members of each Plaintiff are affected by the  
10 actions of the State of Arizona in enacting into law the Legal Arizona Workers Act.

11 75. Each Plaintiff has standing to sue in this action.

12 76. The Due Process, Commerce Clause, and Supremacy/Preemption claims  
13 of Plaintiffs arise under the Constitution and laws of the United States. As a result,  
14 Plaintiffs have a right to sue arising under 42 U.S.C. § 1983.

15 77. This Court has jurisdiction over the Due Process, Commerce Clause and  
16 Supremacy Clause/Preemption claims of Plaintiffs pursuant to 28 U.S.C. §§ 1331 and  
17 1343 because they arise under the Constitution and laws of the United States.

18 78. This Court has jurisdiction over the Plaintiffs' state law claims pursuant  
19 to 28 U.S.C. § 1367.

20 79. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

21 80. Pursuant to 28 U.S.C. §§ 2201-2202, the Court may issue a declaratory  
22 judgment and further necessary or proper relief.

23 **ALLEGATIONS COMMON TO ALL CLAIMS**

24 81. On July 2, 2007, the Honorable Janet Napolitano, the Governor of  
25 Arizona, signed into law HB 2779, a bill passed by the Arizona Legislature on June  
26 20, 2007, known as the Legal Arizona Workers Act, codified in relevant part at  
27 A.R.S. § 23-211 to 23-214.

28

1 82. A.R.S. § 23-212(A) prohibits employers from “knowingly” or  
2 “intentionally” employing an unauthorized alien.

3 83. A.R.S. § 23-212(B) requires the Arizona Attorney General and the  
4 County Attorneys of the several counties in Arizona to investigate all complaints that  
5 an employer is knowingly or intentionally employing an unauthorized alien.

6 84. A.R.S. § 23-212(B)-(C) requires County Attorneys to prosecute all  
7 complaints that are considered to be “not frivolous.”

8 85. When investigating complaints pursuant to A.R.S. § 23-212(B), the  
9 County Attorneys or the Attorney General must verify an individual’s work  
10 authorization exclusively by communicating with the federal government pursuant to  
11 8 U.S.C. § 1373(c).

12 86. The County Attorneys take an oath of office and are to faithfully uphold  
13 and enforce the law.

14 87. Under the Legal Arizona Workers Act, effective January 1, 2008,  
15 employers that are deemed to have “knowingly” or “intentionally” hired unauthorized  
16 aliens may have their business licenses suspended for a first violation of A.R.S. § 23-  
17 212(A) and permanently revoked for a second violation of A.R.S. § 23-212(A).

18 88. A.R.S. § 23-214 requires that after December 31, 2007, every employer  
19 must verify the employment eligibility of employees through the federal  
20 government’s otherwise voluntary E-Verify Program.

21 89. In order to enroll in E-Verify, Arizona employers must access E-Verify  
22 through a computer and the use of the Internet.

23 90. Some of Plaintiffs’ members are small businesses that do not own a  
24 computer and do not have Internet access to be able to use E-Verify at their business.

25 91. One or more of Plaintiffs’ Members have already incurred expenses to  
26 come into compliance with the Legal Arizona Workers Act’s requirements that  
27 employers use E-Verify, including training, equipment, outsourcing the E-Verify  
28 process and other expenses.

1           92. Using E-Verify impose burdens on employers, including Plaintiffs and  
2 their members. These include the costs for the equipment necessary to use E-Verify  
3 and the staff time necessary for training and using E-Verify.

4           93. The annual operating costs for E-Verify is \$1,800.

5           94. Arizona Contractors Association Members, Associated Minority  
6 Contractors Members, Arizona Roofing Contractors Association Members, National  
7 Roofing Contractors' Association Members and some of the other Plaintiffs' members  
8 are contractors that hold contractors licenses from the State of Arizona.

9           95. Pursuant to A.R.S. § 32-1154(a)(12), the failure of a contractor to  
10 comply with any labor law of the state government is grounds for revocation or  
11 suspension of the Plaintiffs' Members' contractors license. The failure to use E-  
12 Verify as required by the Legal Arizona Workers Act would constitute the failure to  
13 comply with a labor law.

14           96. On information and belief, County Attorney Criss Candelaria has  
15 already received complaints that one or more Plaintiffs or one or more of Plaintiffs'  
16 members is employing an unauthorized alien.

17           97. On information and belief, County Attorney Ed Rheinheimer has  
18 already received complaints that one or more Plaintiffs or one or more of Plaintiffs'  
19 members is employing an unauthorized alien.

20           98. On information and belief, County Attorney Terence Hance has already  
21 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members  
22 is employing an unauthorized alien.

23           99. On information and belief, County Attorney Daisy Flores has already  
24 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members  
25 is employing an unauthorized alien.

26           100. On information and belief, County Attorney Kenny Angle has already  
27 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members  
28 is employing an unauthorized alien.

1           101. On information and belief, County Attorney Derek Rapier has already  
2 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members  
3 is employing an unauthorized alien.

4           102. On information and belief, County Attorney Martin Brannan has already  
5 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members  
6 is employing an unauthorized alien.

7           103. On information and belief, County Attorney Andrew Thomas has  
8 already received complaints that one or more Plaintiffs or one or more of Plaintiffs'  
9 members is employing an unauthorized alien.

10           104. On information and belief, the Maricopa County Sheriff's Office with  
11 whom Maricopa County Attorney Andrew Thomas has signed an agreement that the  
12 Sheriff would help investigate complaints pursuant to the Legal Arizona Workers Act,  
13 has already received complaints that one or more Plaintiffs or one or more of  
14 Plaintiffs members is employing an unauthorized alien.

15           105. On information and belief, County Attorney Matthew J. Smith has  
16 already received complaints that one or more Plaintiffs or one or more of Plaintiffs'  
17 members is employing an unauthorized alien.

18           106. On information and belief, County Attorney James Currier has already  
19 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members  
20 is employing an unauthorized alien.

21           107. On information and belief, County Attorney Barbara LaWall has  
22 already received complaints that one or more Plaintiffs or one or more of Plaintiffs'  
23 members is employing an unauthorized alien.

24           108. On information and belief, County Attorney James P. Walsh has already  
25 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members  
26 is employing an unauthorized alien.

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1           109. On information and belief, County Attorney George Silva has already  
2 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members  
3 is employing an unauthorized alien.

4           110. On information and belief, County Attorney Sheila Polk has already  
5 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members  
6 is employing an unauthorized alien.

7           111. On information and belief, County Attorney Jon Smith has already  
8 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members  
9 is employing an unauthorized alien.

10          112. On information and belief, Attorney General Terry Goddard has already  
11 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members  
12 is employing an unauthorized alien.

13          113. On information and belief, Defendants intend to fully and faithfully  
14 prosecute the law and violations of the Legal Arizona Workers Act.

15          114. On information and belief, one or more Defendants intend to investigate  
16 and prosecute one or more of Plaintiffs' members after January 1, 2008.

17          115. At least one member of one of the Plaintiff associations employs an  
18 undocumented worker, intends not to comply with the Legal Arizona Workers Act  
19 and has been threatened with prosecution by the office of the Maricopa County  
20 Sheriff and Maricopa County Attorney.

21          116. At least one member of one of the Plaintiff associations has received a  
22 voicemail message from a caller identifying himself as being with the Maricopa  
23 County Sheriff's office Illegal Immigration Task Force. The caller communicated  
24 that the Sheriff's office had received complaints about the employer hiring  
25 undocumented workers. The call was part of the investigation and enforcement  
26 activities pursuant to the Legal Arizona Workers Act. As previously alleged, any  
27 such actions by the Maricopa County Sheriff's office were conducted under the  
28



1 authority and as an agent of Defendant Andrew Thomas, County Attorney of  
2 Maricopa County.

3 117. Defendant Thomas, Maricopa County Attorney, has begun enforcement  
4 activities pursuant to the Arizona Legal Workers Act.

5 118. The enforcement activities by Defendant Thomas include receiving  
6 complaints and preparing to or actually beginning to investigate those complaints.

7 119. The enforcement activities of Defendant Thomas include preparations  
8 to bring claims against employers pursuant to A.R.S. § 23-212.

9 120. The enforcement activities of Defendant Thomas include preparations to  
10 investigate and bring claims against Plaintiffs and their members.

11 121. Plaintiffs are entitled to injunctive relief. They have a strong likelihood  
12 of success on the merits and will suffer irreparable harm if the Legal Arizona Workers  
13 Act is not enjoined and is enforced against employers in Arizona, including Plaintiffs.

14 122. Plaintiffs will suffer irreparable harm as a result of the potential  
15 enforcement of the Legal Arizona Workers Act, as a result of the legal uncertainty  
16 that they face due to the Legal Arizona Workers Act's vagueness and its provisions  
17 that conflict with other laws and the Constitution.

18 123. Plaintiffs are entitled to recover the costs and attorneys' fees of bringing  
19 this suit pursuant to 42 U.S.C. § 1988.

20 **FIRST CLAIM FOR RELIEF**  
21 **VIOLATION OF PROCEDURAL DUE PROCESS GUARANTEES UNDER**  
22 **THE U.S. CONSTITUTION**

23 124. Plaintiffs hereby incorporate by this reference all allegations of the  
24 preceding paragraphs of this Complaint, as if fully set forth herein.

25 125. Under the Fourteenth Amendment to the U.S. Constitution, state and  
26 local governments are prohibited from depriving any person of property without due  
27 process of law.

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1            126. Corporations, including Plaintiffs and their members, are persons  
2 entitled to due process.

3            127. Licenses or permits from the State of Arizona and/or its political  
4 subdivisions are property interests that are subject to the due process protections of  
5 the Fourteenth Amendment to the U.S. Constitution.

6            128. The County Attorneys, the Attorney General, the State of Arizona and  
7 its political subdivisions and other public officials are prohibited by the Fourteenth  
8 Amendment from suspending or revoking business licenses or permits unless the  
9 State or its political subdivisions provide due process of law to the holder of the  
10 license or permit.

11           129. Due process of law requires, at a minimum, that before any person,  
12 whether an individual, corporation or other business entity, may be deprived of a  
13 license or permit, the State must provide:

- 14            (a) Notice and a reasonable definite statement of the charges or  
15 matters at issue.
- 16            (b) Notice of the time and place of a hearing.
- 17            (c) The right to produce witnesses at a hearing.
- 18            (d) The right to examine witnesses at a hearing.
- 19            (e) The right to a full consideration and determination of the issues  
20 based on the evidence.

21           130. The Legal Arizona Workers Act does not provide Plaintiffs, their  
22 members, or other employers with due process before the State may deprive them of  
23 property interests.

24           131. In contrast to the Legal Arizona Workers Act, federal immigration law  
25 contains provisions to provide due process rights to employers. Under federal  
26 immigration law, before an employer is found to have violated the law, the employer  
27 is provided the following due process rights:  
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- 1 (a) A signed, written complaint must be filed with sufficient
- 2 information to identify the complainant and the potential violator,
- 3 including names and addresses.
- 4 (b) The federal government investigates only those complaints
- 5 “which, on their face, have a substantial probability of validity.”
- 6 8 U.S.C. § 1324a(c)(1)(B).
- 7 (c) After investigation the federal government may issue a Warning
- 8 Notice or Notice of Intent to Fine.
- 9 (d) The Notice of Intent to Fine must include the basis for the
- 10 charges, the statutory provisions alleged to have been violated,
- 11 and the penalty to be imposed.
- 12 (e) The Notice of Intent to Fine must also notify the employer of its
- 13 rights, including the right to counsel, that any statement may be
- 14 used against the employer, and the employer’s right to a hearing.
- 15 (f) The respondent employer has a right to request a hearing before a
- 16 federal administrative law judge. 8 C.F.R. § 274a.9(e) and
- 17 8 U.S.C. § 1324a(e)(3).
- 18 (g) The employer has the right to an evidentiary hearing, with
- 19 appellate review, as is customary in other federal
- 20 administrative/adjudicative proceedings.
- 21 (h) At the hearing, the employer has the right to present evidence
- 22 and to cross-examine witnesses regarding the evidence presented
- 23 against it.

24 132. Under the Legal Arizona Workers Act, Plaintiffs, their members, and  
25 other employers will not be provided any of the due process rights of federal law set  
26 forth in the preceding paragraph.

27 133. Under the Legal Arizona Workers Act, Plaintiffs, their members and  
28 other employers will be subject to an enforcement scheme that includes the following:

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- (a) Complaints may be initiated by any person without a signed written complaint, without any standards, without any requirements for the identification of the person(s) who is accused of not being authorized to work in this country, without any disclosure or identification of the basis for the allegation that an employee is not authorized to work, and without any requirement that any basis for the allegation must exist before an investigation must be initiated.
- (b) Complaints may be initiated based solely on or primarily on race, national origin, language ability or characteristics, accent, physical appearance, clothing characteristic of an ethnic group, religious attire, racial or ethnic prejudice or other unlawful factors.
- (c) Complaints may be initiated for reasons unrelated to the enforcement of immigration laws.
- (d) The Attorney General and County Attorneys are compelled to investigate all complaints regardless of the lack of any basis for the complaint.
- (e) The Attorney General and County Attorneys must investigate all complaints, even if the basis for the complaint is racial or ethnic prejudice or discrimination or any other improper unlawful motive.
- (f) There is no notice of the initiation of an investigation to the employer or to the individual who is the subject of the investigation (the “Affected Employee”).
- (g) The investigation relating to whether an employee is authorized to work in the United States consists solely of a request by the Attorney General or a County Attorney to the federal government

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to check federal computer records pursuant to 8 U.S.C. § 1373(c).

- (h) HB 2779 excludes the ability of the Attorney General or County Attorneys to consider any other evidence besides the response from the federal government pursuant to 8 U.S.C. § 1373(c) in determining whether an employee is authorized to work.
- (i) The County Attorneys are compelled to prosecute the employer in every case in which a complaint was investigated and found “not frivolous.”
- (j) In any proceedings in Arizona courts to impose penalties under A.R.S. § 23-212(F), including the suspension or revocation of all business licenses or permits of Plaintiffs, their members, and other employers, A.R.S. § 23-212(H) restricts the evidence that may be considered.
- (k) The Legal Arizona Workers Act provides in part, “On determining whether an employee is an unauthorized alien, the Court shall consider only the federal government’s determination pursuant to 8 U.S.C. § 1373(c).” A.R.S. § 23-212(H). The Legal Arizona Workers Act also states that Arizona courts may take judicial notice of the federal government’s so-called “determination” under 8 U.S.C. § 1373(c). *Id.*
- (l) The Legal Arizona Workers Act does not give employers the right to call witnesses on their behalf to establish the work authorization of Affected Employees.
- (m) The Legal Arizona Workers Act does not give Affected Employees the right to call witnesses on their behalf to establish their work authorization.

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- (n) The Legal Arizona Workers Act does not give employers or Affected Employees the right to cross-examine witnesses for the federal or state government on the issue of the Affected Employee’s work authorization.
- (o) The Legal Arizona Workers Act does not provide a procedure whereby an employer or Affected Employee may challenge erroneous “determinations” of immigration status.
- (p) Due process rights are not provided to the employer or the Affected Employee under The Legal Arizona Workers Act.
- (q) There is no “determination” made under 8 U.S.C. § 1373(c). The federal government’s informational response under 8 U.S.C. § 1373(c) is not a determination, but is merely a reflection of whatever information is in the federal government’s database.
- (r) Due process rights are not provided before the federal government furnishes a response under 8 U.S.C. § 1373(c).
- (s) The absence of any “determination” pursuant to 8 U.S.C. § 1373(c) is reflected by the fact that federal immigration law does not provide for any action to be taken by the federal government against a person or employer based upon response under 8 U.S.C. § 1373(c). Determinations by the federal government of whether an employer knowingly employed an unauthorized alien are made pursuant to 8 CFR § 274a.9, and require a hearing and due process, as set forth in paragraph 131 above. Determinations of an alien’s status are made pursuant to administrative procedures that provide due process protections. Determinations are not made pursuant to 8 U.S.C. § 1373(c), and the federal immigration system does not provide a final determination of immigration status at the request of a state or local government.

1 (t) To find that an Arizona employer knowingly or intentionally  
2 employed an unauthorized alien, the Arizona Court will be  
3 required to make a determination that the Affected Employee is  
4 an unauthorized alien, but the Arizona Court has no authority to  
5 determine an alien's immigration status. Such status  
6 determinations may be made only by a federal immigration  
7 judge. 8 U.S.C. § 1229a(a)(1) and (a)(3). The Legal Arizona  
8 Workers Act does not provide due process to Employers and  
9 Affected Employees to subject them to a hearing in an Arizona  
10 Court that does not have jurisdiction to determine immigration  
11 status.

12 134. The procedures established pursuant to the Legal Arizona Workers Act  
13 do not satisfy the due process requirements of the United States Constitution.

14 135. It is a violation of Plaintiffs' due process rights for the State of Arizona  
15 to make mandatory the use of the federal government's otherwise voluntary electronic  
16 employment verification system known as E-Verify because the Legal Arizona  
17 Workers Act conflicts with federal law and information given to employers by the  
18 federal government regarding the voluntary nature of their participation in E-Verify,  
19 as alleged more fully in paragraphs 203-225 below.

20 136. It is a violation of Plaintiffs' due process rights for the Legal Arizona  
21 Workers Act to make mandatory the use of the federal government's E-Verify system  
22 because the laws of the State of Illinois prohibit the use of E-Verify unless and until it  
23 meets performance standards that it currently does not meet, as alleged more fully in  
24 paragraphs 220-224 below.

25 137. The Legal Arizona Workers Act violates the due process rights of  
26 members of Plaintiffs who have employees in both Arizona and Illinois because the  
27 Legal Arizona Workers Act places employers in the position of violating the laws of  
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1 either Arizona or Illinois and makes it impossible for such employers to comply with  
2 the laws of both states.

3 138. Plaintiffs are entitled to a declaratory judgment that the Legal Arizona  
4 Workers Act is unconstitutional because it violates the Fourteenth Amendment to the  
5 U.S. Constitution.

6 139. Plaintiffs are entitled to a preliminary and permanent injunction to  
7 enjoin the County Attorneys and Attorney General from taking actions to enforce or  
8 implement the Legal Arizona Workers Act.

9 **SECOND CLAIM FOR RELIEF**

10 **VIOLATION OF PROCEDURAL DUE PROCESS GUARANTEES OF**  
11 **ARIZONA CONSTITUTION**

12 140. Plaintiffs hereby incorporate by this reference all allegations of the  
13 preceding paragraphs of this Complaint, as if fully set forth herein.

14 141. Article II, § 4 of the Arizona Constitution prohibits state and local  
15 governments from depriving any person of property without due process of law.

16 142. Corporations, including Plaintiffs and their members, are persons  
17 entitled to due process.

18 143. Licenses or permits from the State of Arizona and/or its political  
19 subdivisions are property interests that are subject to the due process protections of  
20 Article II, § 4 of the Arizona Constitution.

21 144. The County Attorneys, the Attorney General, the Registrar of  
22 Contractors, the State of Arizona and its political subdivisions and other public  
23 officials are prohibited by Article II, § 4 of the Arizona Constitution from suspending  
24 or revoking business licenses or permits unless the State or its political subdivisions  
25 provide the holder of the license or permit due process of law.

26 145. The Defendants' actions that violate the Fourteenth Amendment to the  
27 U.S. Constitution, as alleged in paragraphs 124-139 above, also violate the Arizona  
28 Constitution.



1 146. The procedures established by the Legal Arizona Workers Act do not  
2 satisfy and are in conflict with provisions of existing Arizona law for the procedures  
3 that must be used and due process rights that must be provided in order for  
4 Defendants to suspend or revoke licenses or permits.

5 147. The procedures established under the Legal Arizona Worker Act do not  
6 satisfy the due process requirements of the Arizona Constitution.

7 148. Plaintiffs are entitled to a declaratory judgment that the Legal Arizona  
8 Workers Act is unconstitutional because it violates Article II § 4 of the Arizona  
9 Constitution.

10 149. Plaintiffs are entitled to a preliminary and permanent injunction to  
11 enjoin the County Attorneys and Attorney General from taking actions to enforce or  
12 implement the Legal Arizona Workers Act.

13 **THIRD CLAIM FOR RELIEF**

14 **VIOLATION OF COMMERCE CLAUSE**

15 150. Plaintiffs hereby incorporate by this reference all allegations of the  
16 preceding paragraphs of this Complaint, as if fully set forth herein.

17 151. The Commerce Clause of the U.S. Constitution vests Congress with the  
18 exclusive authority to “regulate Commerce... among the several states.” U.S.  
19 Constitution, Art. I, § 8, cl. 3. The Commerce Clause forbids states and local  
20 governments, including the State of Arizona, from regulating or passing laws that  
21 restrict or interfere with interstate commerce.

22 152. The Legal Arizona Workers Act purports to and will regulate interstate  
23 commerce.

24 153. Although the definition of employer contained in A.R.S. § 23-211(4)  
25 provides that the employer must have a license or permit from the State of Arizona, or  
26 one of its political subdivisions, and must have at least one employee in Arizona, the  
27 definition of employee in A.R.S. § 23-211(3) is limited to employees who were hired  
28 or who perform services within Arizona.

1           154. The definition of employee in A.R.S. § 23-211(3) includes “any person  
2 who performs employment services for an employer pursuant to an employment  
3 relationship between the employee and employer.”

4           155. By its terms, the above definition of employee contained in A.R.S. §  
5 23-211(3) includes all employees who work for any business that has one or more  
6 employees within the State of Arizona and a license or permit from the State of  
7 Arizona or one of its political subdivisions.

8           156. The definition of employee subject to regulation by the Legal Arizona  
9 Workers Act includes employees who work exclusively in states other than Arizona,  
10 who were hired in states other than Arizona and who have never worked in Arizona,  
11 but work for businesses that have at least one employee in Arizona and hold a license  
12 or permit from the Sate of Arizona or one of its political subdivisions.

13           157. The above definition of employee subject to regulation by the Legal  
14 Arizona Workers Act includes employees who were hired in states other than Arizona  
15 and who later were transferred or relocated to Arizona to perform employment  
16 services in Arizona.

17           158. The above definition of employee subject to regulation by the Legal  
18 Arizona Workers Act includes employees who were hired in states other than Arizona  
19 and who perform work in Arizona on only an occasional basis.

20           159. Under the Legal Arizona Workers Act, the Attorney General or County  
21 Attorneys will be required to investigate complaints relating to employees who were  
22 hired in states other than the State of Arizona.

23           160. Under the Legal Arizona Workers Act, the Attorney General or County  
24 Attorneys will be required to investigate complaints relating to employees who were  
25 hired in states other than Arizona and who are residents of states other than Arizona  
26 and who perform services in Arizona on only an occasional or temporary basis or not  
27 at all.

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1           161. Under the Legal Arizona Workers Act, the Attorney General or County  
2 Attorneys will be required to investigate complaints relating to employees who were  
3 hired in states other than Arizona and who perform services only in states other than  
4 Arizona, as there is nothing in the Legal Arizona Workers Act that restricts the  
5 regulation and enforcement of its provisions to employees who are performing  
6 services within the State of Arizona.

7           162. Under the Legal Arizona Workers Act, the enforcement actions of the  
8 State of Arizona will extend to employees or job sites in states other than Arizona, as  
9 there is nothing in the Legal Arizona Workers Act that restricts the regulation and  
10 enforcement of its provisions to employees performing services in the State of  
11 Arizona or work sites in the State of Arizona.

12           163. Under the Legal Arizona Workers Act, Arizona businesses could lose  
13 their Arizona licenses for conduct that occurred wholly outside the State of Arizona  
14 and that the State of Arizona has no authority to regulate.

15           164. A.R.S. § 23-214 requires employers to use E-Verify to verify the  
16 employment eligibility of its employees after December 31, 2007.

17           165. The requirement that employers use E-Verify to verify the employment  
18 eligibility of its employees is not limited to employees in the State of Arizona, but  
19 applies to all employees of businesses that have at least one employee in Arizona and  
20 a license or permit issued by the State or one of its political subdivisions.

21           166. By requiring that employers use E-Verify to verify the work  
22 authorization of employees who do not perform services in Arizona and by extending  
23 investigations and enforcement actions to employees outside of Arizona, Arizona is  
24 regulating commerce that occurs wholly outside the State of Arizona and that the  
25 State of Arizona has no authority to regulate.

26           167. Plaintiffs are entitled to a declaratory judgment that the Legal Arizona  
27 Workers Act is unconstitutional because it violates the Commerce Clause of the U.S.

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1 Constitution due to its extraterritorial effects and control of commerce that occurs  
2 outside the borders of Arizona.

3 168. Plaintiffs are entitled to a preliminary and permanent injunction to  
4 enjoin the County Attorneys and Attorney General from taking actions to enforce or  
5 implement the Legal Arizona Workers Act.

6 **FOURTH CLAIM FOR RELIEF**

7 **VIOLATIONS OF SUPREMACY CLAUSE OF U.S. CONSTITUTION AND**  
8 **PRE-EMPTION BY FEDERAL IMMIGRATION LAW**

9 169. Plaintiffs hereby incorporate by this reference all allegations of the  
10 preceding paragraphs of this Complaint, as if fully set forth herein.

11 170. Under the Supremacy Clause of the U.S. Constitution, federal law may  
12 expressly or implicitly preempt state and local laws.

13 171. In accordance with its exclusive power over matters of immigration, the  
14 U.S. Congress has adopted, pursuant to the Immigration and Nationality Act, 8 U.S.C.  
15 § 1101 et seq., and other laws, a comprehensive system of laws, regulations, and  
16 procedures and has created administrative agencies that determine, subject to judicial  
17 review, whether and under what conditions individuals may enter, stay in, and work in  
18 the U.S. and a system of civil and criminal penalties for those violating the law,  
19 including employers who knowingly employ unauthorized aliens.

20 172. When enacting the Immigration Reform and Control Act, Congress  
21 expressly pre-empted state and local laws. The Immigration Reform and Control Act  
22 provides, in part, as follows: “[Federal law] pre-empts any state or local law  
23 imposing similar criminal sanctions (other than through licensing and similar laws)  
24 upon those who employ unauthorized aliens.” 8 U.S.C. § 1324a(h)(2).

25 173. The licensing exception was designed and intended to allow state  
26 governments to take action against the business license for employers “found to have  
27 violated the sanctions provision” of 8 U.S.C. § 1324a – essentially only after the  
28 employer had been found by the federal government to have violated the federal law.

1           174. The licensing exception to the preemption clause in 8 U.S.C. §  
2 1324a(h)(2) does not allow states to pass laws prohibiting the employment of  
3 unauthorized aliens.

4           175. The federal government has enacted broad, comprehensive immigration  
5 laws that govern who is eligible to work in the United States and that govern the  
6 process by which employers must verify the eligibility of job applicants.

7           176. The federal government has occupied the field of immigration  
8 regulation through the Immigration and Nationality Act (“INA”), the Immigration  
9 Reform and Control Act of 1986 (“IRCA”), the Illegal Immigration Reform and  
10 Immigrant Responsibility Act (“IIRIRA”), and other laws, including occupying the  
11 field relating to prohibiting the employment of unauthorized workers and verifying  
12 the eligibility of job applicants.

13           177. The immigration laws, procedures, and policies created by the federal  
14 government regulate immigration and confer rights in a careful balance reflecting the  
15 national interest.

16           178. Congress carefully balanced the requirements and penalties in the  
17 federal immigration law with consideration of the tension that immigration  
18 compliance and sanctions might cause relating to race, national origin, and citizenship  
19 discrimination.

20           179. The Constitution bars Defendants from altering or obstructing the  
21 federal government’s carefully crafted comprehensive immigration regime.

22           180. The Constitution bars Defendants from enacting or enforcing laws that  
23 conflict with federal law, including federal immigration laws.

24           181. The Legal Arizona Workers Act conflicts with federal law and is  
25 therefore preempted by federal law and is unconstitutional pursuant to the Supremacy  
26 Clause of the U.S. Constitution.

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1           182. Federal law governs the documents that employers must accept to make  
2 employment decisions regarding whether persons are authorized to work in this  
3 country.

4           183. Federal law prohibits employers from conducting any further  
5 investigation or taking any steps other than reviewing any of the 24 forms of  
6 documents that employees have the right, under federal law, to present to an employer  
7 to establish eligibility for employment in this country. Once an employee has  
8 satisfied the verification requirements of 8 U.S.C. § 1324a, employers are barred by  
9 federal law from seeking additional information regarding their authorization to work.

10           184. Federal law prohibits employers from making additional inquiries,  
11 conducting additional investigations, or taking additional steps to determine an  
12 applicant's or employee's eligibility to work in this country, other than (i) having  
13 examined the original documents that the employee chose to present, (ii) if the  
14 employer voluntarily enters into an agreement, to utilize E-Verify, and (iii) taking  
15 certain steps in response to receiving a communication from the Social Security  
16 Administration that an employee's name does not match an employee's Social  
17 Security number.

18           185. Federal law prohibits the use of the Form I-9 for any law enforcement  
19 purpose other than for enforcement of IRCA or other specified federal laws. 8 U.S.C.  
20 § 1324a(d)(2)(F).

21           186. Federal law prohibits the use of the Form I-9 or any information on the  
22 I-9 except by the Department of Homeland Security, Department of Labor, or  
23 Department of Justice for purposes of enforcing IRCA or other specified federal laws.  
24 8 U.S.C. § 1324a(b)(5).

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1 187. The Legal Arizona Workers Act provides that employers who comply  
2 with the federal I-9 requirement have an affirmative defense that they did not  
3 knowingly or intentionally employ an unauthorized alien. A.R.S. § 23-212(J).<sup>1</sup>

4 188. The affirmative defense provided in A.R.S. § 23-212(J) conflicts with  
5 federal limitations on the use of the Form I-9 and thus is preempted by federal law.

6 189. The factors to be considered by Arizona courts in determining whether  
7 to suspend business licenses include “whether the employer made good faith efforts to  
8 comply with any applicable requirements,” which necessarily will require the  
9 consideration of the employer’s compliance with the Form I-9. The foregoing  
10 enforcement provisions of A.R.S. § 23-212(F)(1)(d) conflicts with the federal  
11 limitations on the use of the Form I-9 and is thus preempted by federal law.

12 190. The federal government has failed to issue tamper-proof and forgery-  
13 proof forms of identification to persons that employers may rely upon to confirm with  
14 accuracy and reliability the identity of a person or the person’s eligibility to work in  
15 the United States.

16 191. The State of Arizona has failed to issue tamper-proof and forgery-proof  
17 documents establishing the identity of residents of the State of Arizona.

18 192. Federal immigration law and federal employment discrimination laws  
19 prohibit employers from taking action to refuse to hire or discharge employees based  
20 upon their citizenship, national origin, race, ethnicity, color or other classifications  
21 protected by law.

22 193. The Legal Arizona Workers Act threatens the uniformity and primacy  
23 of the federal immigration system and conflicts with federal immigration law.

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26 <sup>1</sup> A.R.S. 23-212(J) actually provides that good faith compliance with 8 U.S.C. §  
27 1324b, the non-discrimination provisions of IRCA, is a good-faith defense. This is a  
28 typographical error. The law intended to refer to 8 U.S.C. § 1324a(b), the I-9  
employment verification system.

1           194. The Legal Arizona Workers Act stands as an obstacle to the uniform  
2 enforcement and application of federal immigration laws and the comprehensive  
3 regime created by Congress.

4           195. The Legal Arizona Workers Act imposes penalties on employers for  
5 Arizona’s state-regulated immigration enforcement measures beyond and different  
6 than what the federal government requires.

7           196. The Legal Arizona Workers Act makes unlawful an additional  
8 immigration-related employment practice that is not prohibited under federal law, that  
9 of “intentionally” employing an unauthorized alien.

10           197. The prohibition in A.R.S. § 23-212(A) against “intentionally”  
11 employing an unauthorized alien is preempted by IRCA. It is inconsistent with the  
12 uniform enforcement of federal immigration law and Congress has already acted,  
13 through IRCA, to occupy the field regarding controlling the employment of aliens.

14           198. The definition of “license” in A.R.S. § 23-211(7) subject to being  
15 suspended or revoked includes items that are not licenses within any traditional sense  
16 of the word or as the term is used in 8 U.S.C. § 1324a(h)(2).

17           199. Articles of Incorporation, a grant of authority, a Certificate of  
18 Partnership, a Partnership Registration and Articles of Organization are not  
19 “licenses.”

20           200. The Arizona Legislature exceeded the savings clause in 8 U.S.C. §  
21 1324a(h)(2) when it defined “license” to include Articles of Incorporation, a grant of  
22 authority, a Certificate of Partnership, a Partnership Registration, and Articles of  
23 Organization.

24           201. Under The Legal Arizona Workers Act, Arizona courts could order the  
25 Arizona Corporation Commission to “suspend” corporations’ Articles of  
26 Incorporation.

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1           202. There is no legal meaning to “suspending” a corporation’s Article of  
2 Incorporation. Either the corporation’s charter exists or it does not. There is no in-  
3 between concept of a “suspended” Articles of Incorporation.

4           203. The federal government does not require employers to use E-Verify. It  
5 is a strictly voluntary program, except in the few cases where the federal government  
6 requires employers that violated the employment verification laws to use E-Verify as  
7 part of a settlement with the federal government.

8           204. Authorization for E-Verify expires November 30, 2008 at which time  
9 the program expires and will no longer exist without further action by the U.S.  
10 Congress before November 30, 2008.

11           205. The fact that the federal government does not require employers to use  
12 E-Verify evidences the intent of the federal government that E-Verify remain  
13 voluntary and that employers are not to be required to use E-Verify.

14           206. In order to use E-Verify, employers must enter into a contract with the  
15 federal government that is contained in a Memorandum of Understanding issued by  
16 the federal government.

17           207. The terms of the contract with the federal government for use of E-  
18 Verify obligate employers to use E-Verify in accordance with the federal  
19 government’s requirements and procedures, including but not limited to the matters  
20 set forth in the federal government’s Memorandum of Understanding and a 64-page  
21 User’s Manual for E-Verify.

22           208. The federal government provides information to potential and actual  
23 users of E-Verify, via a computer internet connection, to inform potential and actual  
24 users of E-Verify about the terms and conditions for operation and use of E-Verify.

25           209. The information provided by the federal government to potential and  
26 actual users of E-Verify specifically informs them that the use of E-Verify by  
27 employers is voluntary.

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1           210. The Legal Arizona Workers Act is preempted by federal law and is  
2 unconstitutional under the Supremacy Clause, and is a denial of due process because  
3 of the conflicting and inconsistent provisions of the state and federal law and the  
4 conflicting and inconsistent information that employers receive from the State of  
5 Arizona and the federal government. The State of Arizona, by enacting the Legal  
6 Arizona Workers Act, and Defendants, by enforcing it, mandate that Arizona  
7 employers must log onto a federal website that provides Arizona employers with  
8 information from the federal government that is the opposite of and contradictory to  
9 the provisions of the Legal Arizona Workers Act.

10           211. The Legal Arizona Workers Act places Arizona employers, including  
11 plaintiffs and their members, at risk of being found to be in violation of Arizona law  
12 because Arizona employers followed and complied with the information from the  
13 federal government that their use of E-Verify is voluntary, as communicated to them  
14 by the federal government on the computer system maintained by the federal  
15 government and that is made mandatory by the Legal Arizona Workers Act.

16           212. It is preempted by the federal law, unconstitutional, and a denial of due  
17 process for the State of Arizona and Defendants to place Arizona employers in the  
18 position of disregarding, ignoring, or not following the information and directions  
19 given to them by the federal government on the very computer system that the State  
20 of Arizona requires Arizona employers to use in order to participate in E-Verify.

21           213. The federal government's Memorandum of Understanding provides that  
22 the federal government may revoke the right of any employer to use E-Verify if they  
23 do not comply with all of the federal government's requirements for use of the  
24 program.

25           214. Studies by the federal government document that at least half of the  
26 users of E-Verify violate the federal government's requirements in the manner in  
27 which they use the program.

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1           215. The Memorandum of Understanding that is a contract between  
2 employers and the federal government for use of E-Verify obligates the federal  
3 government to furnish to the employer the name, address and telephone number of a  
4 federal government employee who will available to answer the employer’s questions  
5 and provide support for the employer’s use of E-Verify.

6           216. The State of Arizona does not have the authority to require employers to  
7 use E-Verify, and its attempt to do so in the Legal Arizona Workers Act is preempted  
8 by federal law.

9           217. The Legal Arizona Workers Act will place burdens on the Executive  
10 Branch of the federal government including the Department of Justice, Department of  
11 Homeland Security, and Social Security Administration, that will impede the  
12 functions of those agencies.

13           218. By requiring that every complaint be investigated and that every  
14 investigation must involve querying the federal government under 8 U.S.C. § 1373(c),  
15 the Legal Arizona Workers Act places an impermissible burden on the federal  
16 government.

17           219. By requiring that every Arizona employer use E-Verify, the Legal  
18 Arizona Workers Act places an impermissible burden on the Executive Branch of the  
19 federal government, including the Social Security Administration and the Department  
20 of Homeland Security, who currently do not have the resources to successfully  
21 absorb, support, monitor and enforce the compliance of 139,500 new Arizona users of  
22 E-Verify, which currently has approximately 17,000 companies enrolled and only half  
23 that many that actively use the program.

24           220. The Legal Arizona Workers Act is preempted by the Constitution and  
25 federal law because it places some Arizona employers, including some of the  
26 Plaintiffs and some of their members in the position of being compelled to violate the  
27 laws of the State of Illinois.

28

1           221. The State of Illinois has enacted Public Act 095-0138, that states, in  
2 part, “employers are prohibited from enrolling in any employment eligibility  
3 verification system, including E-Verify, as authorized by 8 U.S.C. § 1324(a) ... until  
4 the Social Security Administration (SSA) and Department of Homeland Security  
5 (DHS) databases are able to make a determination on 99% of the tentative non-  
6 confirmation notices issued to employers within three days, unless otherwise required  
7 by federal law.”

8           222. The Social Security Administration and Department of Homeland  
9 Security databases do not meet the performance standards mandated by the State of  
10 Illinois, as set forth above.

11           223. Arizona employers who also have employees in Illinois are therefore  
12 prohibited by the State of Illinois from using E-Verify, but are compelled by the State  
13 of Arizona to use E-Verify under the Legal Arizona Workers Act effective on January  
14 1, 2008.

15           224. The Legal Arizona Workers Act violates the Supremacy Clause of the  
16 Constitution, is preempted by federal law, and violates due process rights. It places  
17 some Arizona employers, including some of the Plaintiffs and their members, in the  
18 position of mandating under Arizona law that they violate the laws of the State of  
19 Illinois.

20           225. E-Verify is intended to be and has been adopted and implemented by  
21 the federal government as a program for which enrollment by participating employers  
22 is voluntary.

23           226. The obligations imposed upon employers pursuant to the terms of E-  
24 Verify Memorandum of Understanding include the employer’s consent to certain  
25 rights of the federal government to inspect the employer’s property and documents.

26           227. As set forth in the Sixth Claim for Relief, under the Fourth Amendment  
27 to the U.S. Constitution, the federal government would not possess the right to  
28 conduct searches without a warrant of the property and documents of employers who

1 participate in E-Verify without the consent of employers to allow such searches  
2 without a warrant.

3 228. E-Verify's requirement that participating employers consent to the right  
4 of the federal government to conduct searches of the property and documents of  
5 employers who participate in E-Verify requires that the participation of employers in  
6 E-Verify must be voluntary on the part of the employers.

7 229. If employers are compelled to participate in E-Verify, they will not have  
8 consented to the rights of the federal government to conduct searches of the  
9 employers' property and documents.

10 230. The Legal Arizona workers Act compels Arizona employers, including  
11 Plaintiffs and their members, to participate in the otherwise voluntary E-Verify  
12 systems.

13 231. By compelling participation in E-Verify, the Legal Arizona Workers  
14 Act is inconsistent with and negates the voluntariness of E-Verify that is essential for  
15 there to be consent to the federal government's right to inspect the participating  
16 employers' property and documents without a warrant.

17 232. E-Verify is preempted by federal law and violates the Supremacy  
18 Clause of the U.S. Constitution by interfering with, contradicting, and negating the  
19 voluntariness of the participating in E-Verify that is essential for the participants in  
20 the program having given consent to the federal government's rights under the  
21 Memorandum of Understanding to conduct searches of the employers' property and  
22 documents without a warrant.

23 233. The requirement in A.R.S. § 32-1154(12) that would deprive Plaintiffs  
24 or their members of a contractor's license as a result of their failure to comply with  
25 the Legal Arizona Workers Act, including the mandate to enroll in the E-Verify  
26 Program, is preempted and conflicts with federal law and imposes a burden on some  
27 of the members of Plaintiff associations.

28



1           242. The Legal Arizona Workers Act contains a legislative mandate that the  
2 Executive Branch of government investigate every complaint that it receives alleging  
3 that an employer is knowingly or intentionally employing an unauthorized alien.  
4 A.R.S. § 23-212(A).

5           243. A.R.S. § 23-212(B) dictates the method by which the Executive Branch  
6 of government shall investigate each complaint. A.R.S. § 23-212(B) mandates that  
7 the investigation regarding an employee’s status shall consist solely of an inquiry to  
8 the federal government pursuant to 8 U.S.C. § 1373(c).

9           244. A.R.S. § 23-212(B) prohibits the Executive Branch of government  
10 from considering information other than a response from the federal government  
11 pursuant to 8 U.S.C. § 1373(c) in acting upon each complaint received by the  
12 Executive Branch and determining whether an alien is authorized to work in the  
13 United States.

14           245. The Legal Arizona Workers Act mandates that the Executive Branch of  
15 government prosecute each complaint that is “not frivolous.”

16           246. The Legal Arizona Workers Act does not allow the exercise of  
17 discretion by the Executive Branch in enforcing the Act. Prosecutors will be required  
18 to bring lawsuits that on balance lack merit but do not fall to the level of being  
19 “frivolous.”

20           247. The Legal Arizona Workers Act mandates that the Executive Branch  
21 take each of the above actions regardless of the resources, other duties, professional  
22 judgment and other priorities or factors that the Executive Branch would otherwise  
23 consider in discharging its duties under the Legal Arizona Workers Act and under all  
24 other laws for which it has the responsibility to take action.

25           248. Because of the mandate of the Legal Arizona Workers Act that all  
26 complaints under A.R.S. § 23-212(B) must be investigated and all non-frivolous  
27 complaints under the Legal Arizona Workers Act must be prosecuted, it is possible  
28 that the Executive Branch of the Arizona Government may be unable to discharge

1 other important duties that are the responsibility of the Executive Branch, including  
2 but not limited to prosecuting suspects for murder, rape, child molestation, hate  
3 crimes, financial fraud, driving while intoxicated, and other crimes.

4 249. The above provisions of the Legal Arizona Workers Act violate the  
5 separation of powers clause of the Arizona Constitution. Each of the provisions set  
6 forth above constitutes the exercise by the Legislative Branch of powers that are  
7 reserved to the Executive Branch.

8 250. Plaintiffs are entitled to a declaratory judgment that the Legal Arizona  
9 Workers Act is unconstitutional because it violates the separation of powers of the  
10 Arizona Constitution.

11 251. Plaintiffs are entitled to a preliminary and permanent injunction to  
12 enjoin the County Attorneys and Attorney General from taking actions to enforce or  
13 implement the Legal Arizona Workers Act.

14 **SIXTH CLAIM FOR RELIEF**

15 **VIOLATION OF PROTECTION AGAINST UNREASONABLE SEARCHES**  
16 **AND SEIZURES UNDER THE U.S. CONSTITUTION**

17 252. Plaintiffs hereby incorporate by reference all allegations of the  
18 preceding paragraphs of this Complaint, as fully set forth herein.

19 253. Pursuant to the Fourth and Fourteenth Amendments of the U.S  
20 Constitution, state and local governments are prohibited from conducting  
21 unreasonable searches and seizures. The Fourth Amendment provides:

22 The right of people to be secure in their persons, houses, papers, and  
23 effects, against unreasonable searches and seizures, shall not be  
24 violated, and no Warrants shall issue, but upon probable cause,  
25 supported by Oath or affirmation, and particularly describing the place  
to be search, and the person or things to be seized.

26 254. The Legal Arizona Workers Act mandates that after December 31,  
27 2007, every employer must verify the employment eligibility of employees through  
28 the federal government's otherwise voluntary E-Verify.





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- because it violates the procedural due process guarantees of the Fourteenth Amendment to the U.S. Constitution.
- B. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that the Legal Arizona Workers Act is unconstitutional because it violates the procedural due process guarantee of Article II § 4 of the Arizona Constitution.
- C. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that the Legal Arizona Workers Act is unconstitutional because it is preempted by federal law.
- D. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that the Legal Arizona Workers Act is unconstitutional because it violates the Commerce Clause of the U.S. Constitution.
- E. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that the Legal Arizona Workers Act is unconstitutional because it violates the separation of powers of the Arizona Constitution.
- F. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that the Legal Arizona Workers Act is unconstitutional because it violates the Fourth Amendment to the U.S. Constitution.
- G. A preliminary and permanent injunction to enjoin the County Attorneys, Attorney General and Fidelis V. Garcia from taking actions to enforce or implement the Legal Arizona Workers Act.
- H. An award of attorneys’ fees and costs, plus interest, pursuant to 42 U.S.C. § 1988.
- I. Such other relief as the Court deems just and proper.

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1 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of December, 2007.

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22 I hereby certify that on the 9<sup>th</sup> day of  
23 December, 2007, I caused the foregoing document:

24 COMPLAINT

25 To be filed electronically with the Clerk of  
26 Court through ECF; and that ECF will send  
27 an e-notice of the electronic filing to the  
28 following ECF participants:

And to be delivered as a courtesy hard copy  
To:

/s/ Kathleen Reynolds