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Attorneys for Plaintiffs

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

ARIZONA CONTRACTORS
ASSOCIATION, INC., an Arizona non-
profit corporation, ARIZONA
EMPLOYERS FOR IMMIGRATION
REFORM, INC., an Arizona non-profit
corporation, CHAMBER OF
COMMERCE OF THE UNITED
STATES OF AMERICA, a Washington
D.C. non-profit corporation, ARIZONA
CHAMBER OF COMMERCE, an
Arizona non-profit corporation,
ARIZONA HISPANIC CHAMBER OF
COMMERCE, INC., an Arizona non-
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. CV 07-1355-PHX-NVW

**SECOND AMENDED
COMPLAINT**

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

1 v.

2 JANET NAPOLITANO, Governor of
3 the State of Arizona and TERRY
4 GODDARD, Attorney General of the
State of Arizona

5 Defendants.

6 For their Complaint against the Honorable Janet Napolitano, Governor of the
7 State of Arizona, and the Honorable Terry Goddard, Attorney General of the State of
8 Arizona, (the "State"), Plaintiffs the Arizona Contractors Association, Inc. ("Arizona
9 Contractors Association"), Arizona Employers for Immigration Reform, Inc.
10 ("AZEIR"), Chamber of Commerce of the United States of America ("U.S. Chamber
11 of Commerce"), Arizona Chamber of Commerce, Arizona Hispanic Chamber of
12 Commerce, Inc. ("Arizona Hispanic Chamber of Commerce"), Arizona Farm Bureau
13 Federation ("Arizona Farm Bureau"), Arizona Restaurant and Hospitality
14 Association, Associated Minority Contractors of America ("Associated Minority
15 Contractors"), Arizona Roofing Contractors Association, the National Roofing
16 Contractors' Association ("National Roofing Contractors' Association"), Wake Up
17 Arizona! Inc. ("Wake Up Arizona!"), and the Arizona Landscape Contractors
18 Association, Inc. ("Arizona Landscaping Contractors Association"), (hereinafter
19 collectively referred to as "Plaintiffs") allege as follows:

20 SUMMARY

21 1. Plaintiffs bring this case to uphold and to prevent violations of the
22 Constitution of the United States, the laws of the United States, and the Constitution
23 of the State of Arizona.

24 2. 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 (hereinafter referred to as "HB 2779").

27 3. HB 2779 violates the United States and Arizona Constitutions and is
28 pre-empted by federal law.

1 4. HB 2779 deprives Plaintiffs and others of property without due process
2 of law. It deprives Plaintiffs of fundamental rights guaranteed by the United States
3 and Arizona Constitutions.

4 5. HB 2779 regulates and interferes with interstate commerce.

5 6. HB 2779 violates the Supremacy Clause because it conflicts with and is
6 preempted by federal law.

7 7. HB 2779 violates the separation of powers doctrine of the Arizona
8 Constitution.

9 8. Plaintiffs seek and are entitled to a declaratory judgment and a
10 preliminary and permanent injunction to declare HB 2779 unconstitutional and illegal
11 and to enjoin the Governor and the Attorney General from enforcing HB 2779.

12 **PARTIES, JURISDICTION AND VENUE.**

13 9. Plaintiff the Arizona Contractors Association is a non profit corporation
14 incorporated under the laws of the State of Arizona, with its principal place of
15 business located in the State of Arizona.

16 10. The Arizona Contractors Association is an employer that employs
17 employees in the State of Arizona. It transacts business in Arizona and holds what are
18 deemed to be licenses under HB 2779.

19 11. The Arizona Contractors Association is an association of members
20 ("Arizona Contractors Association Members"). Arizona Contractors Association
21 Members employ employees in the State of Arizona, transact business in Arizona, and
22 hold licenses and permits from the State and/or its political subdivisions.

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

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

4 14. AZEIR is an association of members ("AZEIR Members"). AZEIR
5 Members employ employees in the State of Arizona, transact business in Arizona, and
6 hold licenses and permits from the State and/or its political subdivisions.

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

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

14 17. The U.S. Chamber of Commerce is the world's largest federation of
15 businesses, professional organizations, and state and local chambers of commerce.
16 The U.S. Chamber of Commerce represents an underlying membership of more than
17 three million businesses and organizations of every size in every industrial sector and
18 geographic region of the country, including Arizona, and its members transact
19 business in Arizona and hold what are deemed to be licenses under HB 2779.

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

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

1 20. Plaintiff the Arizona Chamber of Commerce 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 21. The Arizona Chamber of Commerce employ employees in the State of
5 Arizona, transact business in Arizona, and holds what are deemed to be licenses under
6 HB 2779.

7 22. The Arizona Chamber of Commerce is an association of members
8 ("Arizona Chamber of Commerce Members"). Arizona Chamber of Commerce
9 Members employ employees I the State of Arizona, transact business in Arizona, and
10 hold licenses and permits from the State an/or its political subdivision.

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

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

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

21 26. The Arizona Hispanic Chamber of Commerce is an employer that
22 employs employees in the State of Arizona. It transacts business in Arizona and holds
23 what are deemed to be licenses under HB 2779.

24 27. The Arizona Hispanic Chamber of Commerce is an association of
25 members ("Arizona Hispanic Chamber of Commerce Members"). Arizona Hispanic
26 Chamber of Commerce Members employ employees in the State of Arizona, transact
27 business in Arizona, and hold licenses and permits from the State and/or its political
28 subdivisions.

1 28. The Arizona Hispanic Chamber of Commerce 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 29. Plaintiff the Arizona Farm Bureau is a non profit corporation
6 incorporated under the laws of the State of Arizona, with its principal place of
7 business located in the State of Arizona.

8 30. The Arizona Farm Bureau is an employer that employs employees in the
9 State of Arizona. It transacts business in Arizona and holds what are deemed to be
10 licenses under HB 2779.

11 31. The Arizona Farm Bureau is an association of members ("Arizona Farm
12 Bureau Members"). Arizona Farm Bureau members employ employees in the State
13 of Arizona, transact business in Arizona, and hold licenses and permits from the State
14 and/or its political subdivisions.

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

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

22 34. The Arizona Restaurant and Hospitality Association is an employer that
23 employs employees in the State of Arizona. It transacts business in Arizona and holds
24 what are deemed to be licenses under HB 2779.

25 35. The Arizona Restaurant and Hospitality Association is an association of
26 members ("Arizona Restaurant and Hospitality Association Members"). The Arizona
27 Restaurant and Hospitality Association Members employ employees in the State of
28

1 Arizona, transact business in Arizona, and hold licenses and permits from the State
2 and/or its political subdivisions.

3 36. The Arizona Restaurant and Hospitality Association serves as a public
4 policy advocate on behalf of its members and urges the Arizona Legislature and
5 Executive Branch agencies to adopt and implement policies that promote a favorable
6 legal and business climate in Arizona for the benefit of its members.

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

10 38. Associated Minority Contractors is an employer that employs
11 employees in the State of Arizona. It transacts business in Arizona and holds what are
12 deemed to be licenses under HB 2779.

13 39. Associated Minority Contractors is an association of members
14 ("Associated Minority Contractors Members"). Associated Minority Contractors
15 Members employ employees in the State of Arizona, transact business in Arizona, and
16 hold licenses and permits from the State and/or its political subdivisions.

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

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

24 42. The Arizona Roofing Contractors Association is an employer that
25 employs employees in the State of Arizona. It transacts business in Arizona and holds
26 what are deemed to be licenses under HB 2779.

27 43. The Arizona Roofing Contractors Association is an association of
28 members ("Arizona Roofing Contractors Association Members"). Arizona Roofing

1 Contractors Association Members employ employees in the State of Arizona, transact
2 business in Arizona, and hold licenses and permits from the State and/or its political
3 subdivisions.

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

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

11 46. The National Roofing Contractors' Association is an association of
12 roofing, roof deck, and waterproofing contractors, industry-related associate members,
13 including manufacturers, distributors, architects, engineers, and others. The National
14 Roofing Contractors' Association has more than 4,600 members from all 50 states
15 and 54 countries and is affiliated with 105 local, state, regional and international
16 roofing contractor associates. Its members transact business in Arizona and hold what
17 are deemed to be licenses under HB 2779.

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

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

23 49. Wake Up Arizona! Transacts business in Arizona and holds what are
24 deemed to be licenses under HB 2779.

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

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

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

8 53. The Arizona Landscape Contractors Association is an employer that
9 employs employees in the State of Arizona. It transacts business in Arizona and holds
10 what are deemed to be licenses under HB 2779.

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

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

20 56. Defendant Janet Napolitano is the Governor of the State of Arizona (the
21 "Governor"). She is named herein as a Defendant in her capacity as Governor.

22 57. Defendant Terry Goddard is the Attorney General of the State of
23 Arizona (the "Attorney General"). He is named herein as a Defendant in his capacity
24 as Attorney General.

25 58. Each Plaintiff and the members of each Plaintiff are affected by the
26 actions of the State of Arizona in enacting into law HB 2779, to be codified at Title
27 23, Chapter 2, Article 2, of the Arizona Revised Statutes.

28 59. Each Plaintiff has standing to sue in this action.

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

4 61. This Court has jurisdiction over the Due Process, Commerce Clause and
5 Supremacy Clause/Preemption claims of Plaintiffs pursuant to 28 U.S.C. §§ 1331 and
6 1343 because they arise under the Constitution and laws of the United States.

7 62. This Court has jurisdiction over the Plaintiffs' state law claims pursuant
8 to 28 U.S.C. § 1367.

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

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

12 **ALLEGATIONS COMMON TO ALL CLAIMS**

13 65. On July 2, 2007, the Honorable Janet Napolitano, the Governor of
14 Arizona, signed into law HB 2779, a bill passed by the Arizona Legislature on June
15 20, 2007.

16 66. HB 2779 prohibits employers from "knowingly" or "intentionally"
17 employing an unauthorized alien.

18 67. HB 2779 requires the Arizona Attorney General and the County
19 Attorneys of the several counties in Arizona to investigate all complaints that an
20 employer is knowingly or intentionally employing an unauthorized alien.

21 68. HB 2779 requires County Attorneys to prosecute all complaints that are
22 considered to be "not frivolous."

23 69. When investigating complaints pursuant to HB 2779, the County
24 Attorneys or the Attorney General must verify an individual's work authorization
25 exclusively by communicating with the federal government pursuant to 8 U.S.C. §
26 1373(c).

27 70. Under HB 2779, effective January 1, 2008, employers that are deemed
28 to have "knowingly" or "intentionally" hired unauthorized aliens may have their

1 business licenses suspended for a first violation of HB 2779 and permanently revoked
2 for a second violation of HB 2779.

3 71. HB 2779 requires that after December 31, 2007, every employer must
4 verify the employment eligibility of employees through the federal government's
5 otherwise voluntary Basic Pilot Program.

6 72. Plaintiffs are entitled to injunctive relief. They have a strong likelihood
7 of success on the merits and will suffer irreparable harm if HB 2779 is not enjoined
8 and is enforced against employers in Arizona, including Plaintiffs.

9 73. Plaintiffs will suffer irreparable harm as a result of the potential
10 enforcement of HB 2779, as a result of the legal uncertainty that they face due to HB
11 2779's vagueness and its provisions that conflict with other laws and the Constitution.

12 74. Plaintiffs are entitled to recover the costs and attorneys' fees of bringing
13 this suit pursuant to 42 U.S.C. § 1988.

14 **FIRST CLAIM FOR RELIEF**

15 **VIOLATION OF PROCEDURAL DUE PROCESS GUARANTEES UNDER** 16 **THE U.S. CONSTITUTION**

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

19 76. Under the 14th Amendment to the U.S. Constitution, state and local
20 governments are prohibited from depriving any person of property without due
21 process of law.

22 77. Corporations, including Plaintiffs and their members, are persons
23 entitled to due process.

24 78. Licenses or permits from the State of Arizona and/or its political
25 subdivisions are property interests that are subject to the due process protections of
26 the 14th Amendment to the U.S. Constitution.

27 79. The Governor, the Attorney General, the State of Arizona and its
28 political subdivisions and other public officials are prohibited by the 14th Amendment

1 from suspending or revoking business licenses or permits unless the State or its
2 political subdivisions provide due process of law to the holder of the license or
3 permit.

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

- 7 (a) Notice and a reasonable definite statement of the charges or
8 matters at issue.
- 9 (b) Notice of the time and place of a hearing.
- 10 (c) The right to produce witnesses at a hearing.
- 11 (d) The right to examine witnesses at a hearing.
- 12 (e) The right to a full consideration and determination of the issues
13 based on the evidence.

14 81. HB 2779 does not provide Plaintiffs, their members, or other employers
15 with due process before the State may deprive them of property interests.

16 82. In contrast to HB 2779, federal immigration law contains provisions to
17 provide due process rights to employers. Under federal immigration law, before an
18 employer is found to have violated the law, the employer is provided the following
19 due process rights:

- 20 (a) A signed, written complaint must be filed with sufficient
21 information to identify the complainant and the potential violator,
22 including names and addresses.
- 23 (b) The federal government investigates only those complaints
24 “which, on their face, have a substantial probability of validity.”
25 8 U.S.C. § 1324a(c)(1)(B).
- 26 (c) After investigation the federal government issues a warning
27 Notice of Intent to Fine.
28

- (d) The Notice of Intent to Fine must include the basis for the charges, the statutory provisions alleged to have been violated, and the penalty to be imposed.
- (e) The Notice of Intent to Fine must also notify the employer of its rights, including the right to counsel, that any statement may be used against the employer, and the employer's right to a hearing.
- (f) The respondent employer has a right to request a hearing before a federal administrative law judge. 8 CFR § 274a.9(e) and 8 U.S.C. § 1324a(e)(3).
- (g) The employer has the right to an evidentiary hearing, with appellate review, as is customary in other federal administrative/adjudicative proceedings.
- (h) At the hearing, the employer has the right to present evidence and to cross-examine witnesses regarding the evidence presented against it.

83. Under HB 2779, Plaintiffs, their members, and other employers will not be provided any of the due process rights of federal law set forth in the preceding paragraph.

84. Under HB 2779, Plaintiffs, their members and other employers will be subject to an enforcement scheme that includes the following:

- (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 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.

- 1 (i) The County Attorneys are compelled to prosecute the employer
2 in every case in which a complaint was investigated and found
3 “not frivolous.”
- 4 (j) In any proceedings in Arizona courts to impose penalties under
5 HB 2779, including the suspension or revocation of all business
6 licenses or permits of Plaintiffs, their members, and other
7 employers, HB 2779 restricts the evidence that may be
8 considered.
- 9 (k) HB 2779 provides in part, “On determining whether an employee
10 is an unauthorized alien, the Court shall consider only the federal
11 government’s determination pursuant to 8 U.S.C. § 1373(c).”
12 [A.R.S. § 23-212(H).] HB 2779 also states that Arizona courts
13 may take judicial notice of the federal government’s so-called
14 “determination” under 8 U.S.C. § 1373(c).
- 15 (l) HB 2779 does not give employers the right to call witnesses on
16 their behalf to establish the work authorization of Affected
17 Employees.
- 18 (m) HB 2779 does not give Affected Employees the right to call
19 witnesses on their behalf to establish their work authorization.
- 20 (n) HB 2779 does not give employers or Affected Employees the
21 right to cross-examine witnesses for the federal or state
22 government on the issue of the Affected Employee’s work
23 authorization.
- 24 (o) HB 2779 does not provide a procedure whereby an employer or
25 Affected Employee may challenge erroneous “determinations” of
26 immigration status.
- 27 (p) Due process rights are not provided to the employer or the
28 Affected Employee under HB 2779.

- 1 (q) There is no “determination” made under 8 U.S.C. § 1373(c).
2 The federal government’s informational response under 8 U.S.C.
3 § 1373(c) is not a determination, but is merely a reflection of
4 whatever information is in the federal government’s database.
- 5 (r) Due process rights are not provided before the federal
6 government furnishes a response under 8 U.S.C. § 1373(c).
- 7 (s) The absence of any “determination” pursuant to 8 U.S.C. §
8 1373(c) is reflected by the fact that federal immigration law does
9 not provide for any action to be taken by the federal government
10 against a person or employer based upon response under 8 U.S.C.
11 § 1373(c). Determinations by the federal government of whether
12 an employer knowingly employed an unauthorized alien are
13 made pursuant to 8 CFR § 274a.9, and require a hearing and due
14 process, as set forth in paragraph 82 above. Determinations of an
15 alien’s status are made pursuant to administrative procedures that
16 provide due process protections. Determinations are not made
17 pursuant to 8 U.S.C. § 1373(c), and the federal immigration
18 system does not provide a final determination of immigration
19 status at the request of a state or local government.
- 20 (t) To find that an Arizona employer knowingly or intentionally
21 employed an unauthorized alien, the Arizona Court will be
22 required to make a determination that the Affected Employee is
23 an unauthorized alien, but the Arizona Court has no authority to
24 determine an alien’s immigration status. Such status
25 determinations may be made only by a federal immigration
26 judge. 8 U.S.C. § 1229a(a)(1) and (a)(3). HB 2779 does not
27 provide due process to Employers and Affected Employees to
28

1 subject them to a hearing in an Arizona Court that does not have
2 jurisdiction to determine immigration status.

3 85. The procedures established under HB 2779 do not satisfy the due
4 process requirements of the United States Constitution.

5 86. It is a violation of Plaintiffs' due process rights for the State of Arizona
6 to make mandatory the use of the federal government's otherwise voluntary electronic
7 employment verification system known as the Basic Pilot Program because HB 2779
8 conflicts with federal law and information given to employers by the federal
9 government regarding the voluntary nature of their participation in the Basic Pilot
10 Program, as alleged more fully in paragraphs 169-174 below.

11 87. It is a violation of Plaintiffs' due process rights for HB 2779 to make
12 mandatory the use of the federal government's Basic Pilot Program because the laws
13 of the State of Illinois prohibit the use the Basic Pilot Program unless and until it
14 meets performance standards that it currently does not meet, as alleged more fully in
15 paragraphs 182-186 below.

16 88. HB 2779 violates the due process rights of members of Plaintiffs who
17 have employees in both Arizona and Illinois because HB 2779 places employers in
18 the position of violating the laws of either Arizona or Illinois and makes it impossible
19 for such employers to comply with the laws of both states.

20 89. Plaintiffs are entitled to a declaratory judgment that HB 2779 is
21 unconstitutional because it violates the 14th Amendment to the U.S. Constitution.

22 90. Plaintiffs are entitled to a preliminary and permanent injunction to
23 enjoin the Governor and Attorney General from taking actions to enforce or
24 implement HB 2779.

SECOND CLAIM FOR RELIEF

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

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

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

93. Corporations, including Plaintiffs and their members, are persons entitled to due process.

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

95. The Governor, the Attorney General, the State of Arizona and its political subdivisions and other public officials are prohibited by Article II, § 4 of the Arizona Constitution from suspending or revoking business licenses or permits unless the State or its political subdivisions provide the holder of the license or permit due process of law.

96. The State's actions that violate the 14th Amendment to the U.S. Constitution, as alleged in paragraphs 75-90 above, also violate the Arizona Constitution.

97. The procedures established by HB 2779 do not satisfy and are in conflict with provisions of existing Arizona law for the procedures that must be used and due process rights that must be provided in order for the State to suspend or revoke licenses or permits of the State.

98. The procedures established under HB 2779 do not satisfy the due process requirements of the Arizona Constitution.

99. Plaintiffs are entitled to a declaratory judgment that HB 2779 is unconstitutional because it violates Article II § 4 of the Arizona Constitution.

100. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 2779.

THIRD CLAIM FOR RELIEF

VIOLATION OF SUBSTANTIVE DUE PROCESS UNDER THE U.S. CONSTITUTION

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

102. Under the 14th Amendment to the U.S. Constitution, state and local governments are prohibited from arbitrarily and capriciously depriving a person of a fundamental right guaranteed by the U.S. Constitution.

103. Corporations, including Plaintiffs and their members, are persons entitled to fundamental rights under the 14th Amendment.

104. Plaintiffs and their members have a fundamental right to associate with whomever Plaintiffs choose.

105. HB 2779 is so broad and vague that it infringes on Plaintiffs' fundamental right to associate with whomever Plaintiffs choose to associate.

106. Plaintiffs have a fundamental right to not have the State of Arizona interfere with interstate commerce.

107. HB 2779 infringes on Plaintiffs' fundamental right to not have the State interfere with interstate commerce, as HB 2779 regulates and interferes with interstate commerce.

108. Plaintiffs are entitled to a declaratory judgment that HB 2779 is unconstitutional because it violates the substantive due process guarantees of the 14th Amendment to the U.S. Constitution.

109. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 2779.

FOURTH CLAIM FOR RELIEF

**VIOLATION OF SUBSTANTIVE DUE PROCESS GUARANTEES OF THE
ARIZONA CONSTITUTION**

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

111. Under the Arizona Constitution, state and local governments are prohibited from arbitrarily and capriciously depriving a person of a fundamental right guaranteed by the Arizona Constitution.

112. Corporations, including Plaintiffs and their members, are persons entitled to fundamental rights under the Arizona Constitution.

113. Plaintiffs and their members have a fundamental right to associate with whomever Plaintiffs choose.

114. HB 2779 is so broad and vague that it infringes on Plaintiffs' fundamental right to associate with whomever Plaintiffs choose to associate.

115. Plaintiffs have a fundamental right to not have the State of Arizona interfere with interstate commerce.

116. HB 2779 infringes on Plaintiffs' fundamental right to not have the state interfere with interstate commerce, as HB 2779 regulates interstate commerce.

117. Plaintiffs are entitled to a declaratory judgment that HB 2779 is unconstitutional because it violates the substantive due process guarantees of Article II, § 4 of the Arizona Constitution.

118. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 2779.

FIFTH CLAIM FOR RELIEF

VIOLATION OF COMMERCE CLAUSE

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

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

6 121. HB 2779 purports to and will regulate interstate commerce.

7 122. Although the definition of employer contained in HB 2779 provides that
8 the employer must have a license or permit from the State of Arizona, or one of its
9 political subdivisions, and must have at least one employee in Arizona, HB 2779 does
10 not contain a definition of employee that is limited to employees who were hired or
11 who perform services within Arizona.

12 123. The definition of employee in HB 2779 includes “any person who
13 performs employment services for an employer pursuant to an employment
14 relationship between the employee and employer.” A.R.S. § 23-211(3).

15 124. By its terms, the above definition of employee contained in HB 2779
16 includes all employees who work for any business that has one or more employees
17 within the State of Arizona and a license or permit from the State of Arizona or one of
18 its political subdivisions.

19 125. The definition of employee subject to regulation by HB 2779 includes
20 employees who work exclusively in states other than Arizona, who were hired in
21 states other than Arizona and who have never worked in Arizona, but work for
22 businesses that have at least one employee in Arizona and hold a license or permit
23 from the Sate of Arizona or one of its political subdivisions.

24 126. The above definition of employee subject to regulation by HB 2779
25 includes employees who were hired in states other than Arizona and who later were
26 transferred or relocated to Arizona to perform employment services in Arizona.

1 127. The above definition of employee subject to regulation by HB 2779
2 includes employees who were hired in states other than Arizona and who perform
3 work in Arizona on only an occasional basis.

4 128. Under HB 2779, the Attorney General or County Attorneys will be
5 required to investigate complaints relating to employees who were hired in states
6 other than the State of Arizona.

7 129. Under HB 2779, the Attorney General or County Attorneys will be
8 required to investigate complaints relating to employees who were hired in states
9 other than Arizona and who are residents of states other than Arizona and who
10 perform services in Arizona on only an occasional or temporary basis or not at all.

11 130. Under HB 2779, the Attorney General or County Attorneys will be
12 required to investigate complaints relating to employees who were hired in states
13 other than Arizona and who perform services only in states other than Arizona, as
14 there is nothing in HB 2779 that restricts the regulation and enforcement of its
15 provisions to employees who are performing services within the State of Arizona.

16 131. Under HB 2779, the enforcement actions of the State of Arizona will
17 extend to employees or job sites in states other than Arizona, as there is nothing in
18 HB 2779 that restricts the regulation and enforcement of its provisions to employees
19 performing services in the State of Arizona or work sites in the State of Arizona.

20 132. Under HB 2779, Arizona businesses could lose their Arizona licenses
21 for conduct that occurred wholly outside the State of Arizona and that the State of
22 Arizona has no authority to regulate.

23 133. HB 2779 requires employers to use the Basic Pilot Program to verify the
24 employment eligibility of its employees after December 31, 2007.

25 134. The requirement that employers use the Basic Pilot Program to verify
26 the employment eligibility of its employees is not limited to employees in the State of
27 Arizona, but applies to all employees of businesses that have at least one employee in
28 Arizona and a license or permit issued by the State or one of its political subdivisions.

135. By requiring that employers use the Basic Pilot Program to verify the work authorization of employees who do not perform services in Arizona and by extending investigations and enforcement actions to employees outside of Arizona, Arizona is regulating commerce that occurs wholly outside the State of Arizona and that the State of Arizona has no authority to regulate.

136. Plaintiffs are entitled to a declaratory judgment that HB 2779 is unconstitutional because it violates the Commerce Clause of the U.S. Constitution due to its extraterritorial effects and control of commerce that occurs outside the borders of Arizona.

137. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 2779.

SIXTH CLAIM FOR RELIEF

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

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

139. Under the Supremacy Clause of the U.S. Constitution, federal law may expressly or implicitly pre-empt state and local laws.

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

141. When enacting the Immigration Reform and Control Act, Congress expressly pre-empted state and local laws. The Immigration Reform and Control Act

1 provides, in part, as follows: “[Federal law] pre-empts any state or local law
2 imposing similar criminal sanctions (other than through licensing and similar laws)
3 upon those who employ unauthorized aliens.” 8 U.S.C. § 1324a(h)(2).

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

8 143. The licensing exception to the preemption clause in 8 U.S.C. §
9 1324a(h)(2) does not allow states to pass laws prohibiting the employment of
10 unauthorized aliens.

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

14 145. The federal government has occupied the field of immigration
15 regulation through the Immigration and Nationality Act, the Immigration Reform and
16 Control Act of 1986 (“IRCA”), the Illegal Immigration Reform and Immigrant
17 Responsibility Act, and other laws, including occupying the field relating to
18 prohibiting the employment of unauthorized workers and verifying the eligibility of
19 job applicants.

20 146. The immigration laws, procedures, and policies created by the federal
21 government regulate immigration and confer rights in a careful balance reflecting the
22 national interest.

23 147. Congress carefully balanced the requirements and penalties in the
24 federal immigration law with consideration of the tension that immigration
25 compliance and sanctions might cause relating to race, national origin, and citizenship
26 discrimination.

27 148. The Constitution bars the State from altering or obstructing the federal
28 government’s carefully crafted comprehensive immigration regime.

1 149. 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.

4 150. Federal law prohibits employers from conducting any further
5 investigation or taking any steps other than reviewing any of the 29 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.

10 151. 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 the Basic Pilot Program, and
15 (iii) taking certain steps in response to receiving a communication from the Social
16 Security Administration that an employee's name does not match an employee's
17 Social Security number.

18 152. The federal government has failed to issue tamper-proof and forgery-
19 proof forms of identification to persons that employers may rely upon to confirm with
20 accuracy and reliability the identity of a person or the person's eligibility to work in
21 the United States.

22 153. The State of Arizona has failed to issue tamper-proof and forgery-proof
23 documents establishing the identity of residents of the State of Arizona.

24 154. Federal immigration law and federal employment discrimination laws
25 prohibit employers from taking action to refuse to hire or discharge employees based
26 upon their citizenship, national origin, race, color or other classifications protected by
27 law.
28

1 155. HB 2779 threatens the uniformity and primacy of the federal
2 immigration system and conflicts with federal immigration law.

3 156. HB 2779 stands as an obstacle to the uniform enforcement and
4 application of federal immigration laws and the comprehensive regime created by
5 Congress.

6 157. HB 2779 imposes penalties on employers for Arizona's state-regulated
7 immigration enforcement measures beyond and different than what the federal
8 government requires.

9 158. HB 2779 makes unlawful an additional immigration-related
10 employment practice that is not prohibited under federal law, that of "intentionally"
11 employing an unauthorized alien.

12 159. The prohibition in HB 2779 against "intentionally" employing an
13 unauthorized alien is preempted by IRCA. It is inconsistent with the uniform
14 enforcement of federal immigration law and Congress has already acted, through
15 IRCA, to occupy the field regarding controlling the employment of aliens.

16 160. The definition of "license" in HB 2779 subject to being suspended or
17 revoked includes items that are not licenses within any traditional sense of the word or
18 as the term is used in 8 U.S.C. § 1324a(h)(2).

19 161. Articles of Incorporation, a grant of authority, a Certificate of
20 Partnership, a Partnership Registration and Articles of Organization are not
21 "licenses."

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

26 163. Under HB 2779, Arizona courts could order the Arizona Corporation
27 Commission to "suspend" corporations' Articles of Incorporation.
28

1 164. 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.

4 165. The federal government does not require employers to use the
5 Employment Eligibility Verification System (Basic Pilot Program). It is a strictly
6 voluntary program, except in the few cases where the federal government requires
7 employers that violated the employment verification laws to use the Basic Pilot
8 Program as part of a settlement with the federal government.

9 166. The fact that the federal government does not require employers to use
10 the Basic Pilot Program evidences the intent of the federal government that the Basic
11 Pilot Program remain voluntary and that employers are not to be required to use the
12 Basic Pilot Program.

13 167. In order to use the Basic Pilot Program, employers must enter into a
14 contract with the federal government that is contained in a Memorandum of
15 Understanding issued by the federal government.

16 168. The terms of the contract with the federal government for use of the
17 Basic Pilot Program obligate employers to use the Basic Pilot Program in accordance
18 with the federal government’s requirements and procedures, including but not limited
19 to the matters set forth in the federal government’s Memorandum of Understanding
20 and a 95-page User’s Manual for the Basic Pilot Program.

21 169. In order to enroll in the federal government’s Basic Pilot Program,
22 Arizona employers must access the Basic Pilot Program through a computer and the
23 use of the Internet.

24 170. The federal government provides information to potential and actual
25 users of the Basic Pilot Program, via a computer internet connection, to inform
26 potential and actual users of the Basic Pilot Program about the terms and conditions
27 for operation and use of the Basic Pilot Program.
28

1 171. The information provided by the federal government to potential and
2 actual users of the Basic Pilot Program specifically informs them that the use of the
3 Basic Pilot Program by employers is voluntary.

4 172. HB 2779 is preempted by federal law and is unconstitutional under the
5 Supremacy Clause, and is a denial of due process because of the conflicting and
6 inconsistent provisions of the state and federal law and the conflicting and
7 inconsistent information that employers receive from the State of Arizona and the
8 federal government. The State of Arizona, by enacting HB 2779, mandates that
9 Arizona employers must log onto a federal website that provides Arizona employers
10 with information from the federal government that is the opposite of and contradictory
11 to the provisions of HB 2779.

12 173. HB 2779 places Arizona employers, including plaintiffs and their
13 members, at risk of being found to be in violation of Arizona law because Arizona
14 employers followed and complied with the information from the federal government
15 that their use of the Basic Pilot Program is voluntary, as communicated to them by the
16 federal government on the computer system maintained by the federal government
17 and that is made mandatory by HB 2779.

18 174. It is preempted by the federal law, unconstitutional, and a denial of due
19 process for the State of Arizona to place Arizona employers in the position of
20 disregarding, ignoring, or not following the information and directions given to them
21 by the federal government on the very computer system that the State of Arizona
22 requires Arizona employers to use in order to participate in the Basic Pilot Program.

23 175. The federal government's Memorandum of Understanding provides that
24 the federal government may revoke the right of any employer to use the Basic Pilot
25 Program if they do not comply with all of the federal government's requirements for
26 use of the program.

1 176. Studies by the federal government document that at least half of the
2 current users of the Basic Pilot Program violate the federal government's
3 requirements in the manner in which they use the program.

4 177. The Memorandum of Understanding that is a contract between
5 employers and the federal government for use of the Basic Pilot Program obligates the
6 federal government to furnish to the employer the name, address and telephone
7 number of a federal government employee who will available to answer the
8 employer's questions and provide support for the employer's use of the Basic Pilot
9 Program.

10 178. The State of Arizona does not have the authority to require employers to
11 use the Basic Pilot Program, and its attempt to do so in HB 2779 is preempted by
12 federal law.

13 179. HB 2779 will place burdens on the Executive Branch of the federal
14 government including the Department of Justice, Department of Homeland Security,
15 and Social Security Administration, that will impede the functions of those agencies.

16 180. By requiring that every complaint be investigated and that every
17 investigation must involve querying the federal government under 8 U.S.C. § 1373(c),
18 HB 2779 places an impermissible burden on the federal government.

19 181. By requiring that every Arizona employer use the Basic Pilot Program,
20 HB 2779 places an impermissible burden on the Executive Branch of the federal
21 government, including the Social Security Administration and the Department of
22 Homeland Security, who currently do not have the resources to successfully absorb,
23 support, monitor and enforce the compliance of 139,500 new Arizona users of the
24 Basic Pilot Program, which currently has approximately 17,000 companies enrolled
25 and only half that many that actively use the program.

26 182. HB 2779 is preempted by the Constitution and federal law because it
27 places some Arizona employers, including some of the Plaintiffs and some of their
28 members in the position of being compelled to violate the laws of the State of Illinois.

1 183. 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 the Basic Pilot Program, as authorized by 8 U.S.C.
4 § 1324(a) ... until the Social Security Administration (SSA) and Department of
5 Homeland Security (DHS) databases are able to make a determination on 99% of the
6 tentative non-confirmation notices issued to employers within three days, unless
7 otherwise required by federal law.”

8 184. 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.

11 185. Arizona employers who also have employees in Illinois are therefore
12 prohibited by the State of Illinois from using the Basic Pilot Program, but are
13 compelled by the State of Arizona to use the Basic Pilot Program under HB 2779
14 effective on January 1, 2008.

15 186. HB 2779 violates the Supremacy Clause of the Constitution, is
16 preempted by federal law, and violates due process rights. It places some Arizona
17 employers, including some of the Plaintiffs and their members, in the position of
18 mandating under Arizona law that they violate the laws of the State of Illinois.

19 187. The federal government’s Basic Pilot Program is intended to be and has
20 been adopted and implemented by the federal government as a program for which
21 enrollment by participating employers is voluntary.

22 188. In order to enroll and participate in the Basic Pilot Program, employers
23 must agree to a Memorandum of Understanding that imposes obligations upon
24 employers.

25 189. The obligations imposed upon employers pursuant to the terms of the
26 Basic Pilot Program Memorandum of Understanding include the employer’s consent
27 to certain rights of the federal government to inspect the employer’s property and
28 documents.

1 190. As set forth in the Eighth Claim for Relief, under the Fourth
2 Amendment to the U.S. Constitution, the federal government would not possess the
3 right to conduct searches without a warrant of the property and documents of
4 employers who participate in the Basic Pilot Program without the consent of
5 employers to allow such searches without a warrant.

6 191. The Basic Pilot Program's requirement that participating employers
7 consent to the right of the federal government to conduct searches of the property and
8 documents of employers who participate in the Basic Pilot Program requires that the
9 participation of employers in the Basic Pilot Program must be voluntary on the part of
10 the employers.

11 192. If employers are compelled to participate in the Basic Pilot Program,
12 they will not have consented to the rights of the federal government to conduct
13 searches of the employers' property and documents.

14 193. HB 2779 compels Arizona employers, including Plaintiffs and their
15 members, to participate in the otherwise voluntary Basic Pilot Program.

16 194. By compelling participation in the Basic Pilot Program, HB 2779 is
17 inconsistent with and negates the voluntariness of the Basic Pilot Program that is
18 essential for there to be consent to the federal government's right to inspect the
19 participating employers' property and documents without a warrant.

20 195. HB 2779 is preempted by federal law and violates the Supremacy
21 Clause of the U.S. Constitution by interfering with, contradicting, and negating the
22 voluntariness of the participating in the Basic Pilot Program that is essential for the
23 participants in the program having given consent to the federal government's rights
24 under the Memorandum of Understanding to conduct searches of the employers'
25 property and documents without a warrant.

26 196. Plaintiffs are entitled to a declaratory judgment that HB 2779 is
27 unconstitutional because it is preempted by federal law.
28

1 197. Plaintiffs are entitled to a preliminary and permanent injunction to
2 enjoin the Governor and Attorney General from taking actions to enforce or
3 implement HB 2779.

4 **SEVENTH CLAIM FOR RELIEF**

5 **VIOLATION OF THE SEPARATION OF POWERS DOCTRINE OF THE**
6 **ARIZONA CONSTITUTION.**

7 198. Plaintiffs hereby incorporate by this reference all allegations of the
8 preceding paragraphs of this Complaint, as if fully set forth herein.

9 199. The Constitution of Arizona divides the State Government of Arizona
10 into three branches, the executive, legislative and judicial. Article III of the
11 Constitution states as follows:

12 The powers of the government of the State of Arizona shall be divided
13 into three separate departments, the Legislative, the Executive, and the
14 Judicial, and, except as provided in this Constitution, such departments
shall be separate and distinct, and no one of such departments shall
exercise the powers properly belonging to either of the others.

15 200. The Arizona Constitution prohibits each branch of government from
16 exercising the powers that are given by the Constitution to a separate branch of
17 government.

18 201. The Constitution of Arizona prohibits the Legislative Branch of
19 government from exercising executive powers that properly belong to the Executive
20 Branch of government.

21 202. The Legislative Branch has the power to write and pass laws. The
22 Executive Branch has the sole power to carry out the provisions of the law.

23 203. HB 2779 contains a legislative mandate that the Executive Branch of
24 government investigate every complaint that it receives alleging that an employer is
25 knowingly or intentionally employing an unauthorized alien.

26 204. HB 2779 dictates the method by which the Executive Branch of
27 government shall investigate each complaint. HB 2779 mandates that the
28

1 investigation regarding an employee's status shall consist solely of an inquiry to the
2 federal government pursuant to 8 U.S.C. § 1373(c).

3 205. HB 2779 prohibits the Executive Branch of government from
4 considering information other than a response from the federal government pursuant
5 to 8 U.S.C. § 1373(c) in acting upon each complaint received by the Executive
6 Branch and determining whether an alien is authorized to work in the United States.

7 206. HB 2779 mandates that the Executive Branch of government prosecute
8 each complaint that is "not frivolous."

9 207. HB 2779 does not allow the exercise of discretion by the Executive
10 Branch in enforcing HB 2779. Prosecutors will be required to bring lawsuits that on
11 balance lack merit but do not fall to the level of being "frivolous."

12 208. HB 2779 mandates that the Executive Branch take each of the above
13 actions regardless of the resources, other duties, professional judgment and other
14 priorities or factors that the Executive Branch would otherwise consider in
15 discharging its duties under HB 2779 and under all other laws for which it has the
16 responsibility to take action.

17 209. Because of the mandate of HB 2779 that all complaints under HB 2779
18 must be investigated and all non-frivolous complaints under HB 2779 must be
19 prosecuted, it is possible that the Executive Branch of the Arizona Government may
20 be unable to discharge other important duties that are the responsibility of the
21 Executive Branch, including but not limited to prosecuting suspects for murder, rape,
22 child molestation, hate crimes, financial fraud, driving while intoxicated, and other
23 crimes.

24 210. The above provisions of HB 2779 violate the separation of powers
25 clause of the Arizona Constitution. Each of the provisions set forth above constitutes
26 the exercise by the Legislative Branch of powers that are reserved to the Executive
27 Branch.
28

1 211. Plaintiffs are entitled to a declaratory judgment that HB 2779 is
2 unconstitutional because it violates the separation of powers of the Arizona
3 Constitution.

4 212. Plaintiffs are entitled to a preliminary and permanent injunction to
5 enjoin the Governor and Attorney General from taking actions to enforce or
6 implement HB 2779.

7 **EIGHTH CLAIM FOR RELIEF**

8 **VIOLATION OF PROTECTION AGAINST UNREASONABLE SEARCHES**
9 **AND SEIZURES UNDER THE U.S. CONSTITUTION**

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

12 214. Pursuant to the Fourth and Fourteenth Amendments of the U.S
13 Constitution, state and local governments are prohibited from conducting
14 unreasonable searches and seizures. The Fourth Amendment provides:

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

19 215. HB 2779 mandates that after December 31, 2007, every employer must
20 verify the employment eligibility of employees through the federal government's
21 otherwise voluntary Basic Pilot Program.

22 216. Every employer that participates in the Basic Pilot Program must sign a
23 Memorandum of Understanding that states responsibilities and obligations of the
24 employer. Article II, Section C(14) of the Memorandum of Understanding requires
25 employers to allow the Department of Homeland Security, or authorized agents to
26 make periodic visits to the employers, to review Basic Pilot-related records, to
27 interview employees of the employer, and to inspect other employment records.
28

1 substantive due process guarantees of the 14th Amendment to the U.S.
2 Constitution.

3 D. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202
4 declaring that HB 2779 is unconstitutional because it violates the
5 substantive due process guarantees of Article II § 4 of the Arizona
6 Constitution.

7 E. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202
8 declaring that HB 2779 is unconstitutional because it is preempted by
9 federal law.

10 F. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202
11 declaring that HB 2779 is unconstitutional because it violates the
12 commerce clause of the U.S. Constitution.

13 G. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202
14 declaring that HB 2779 is unconstitutional because it violates the
15 separation of powers of the Arizona Constitution.

16 H. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202
17 declaring that HB 2779 is unconstitutional because it violates the Fourth
18 Amendment to the U.S. Constitution.

19 I. A preliminary and permanent injunction to enjoin the Governor and
20 Attorney General from taking actions to enforce or implement HB 2779.

21 J. An award of attorneys' fees and costs, plus interest, pursuant to 42
22 U.S.C. § 1988.

23 K. Such other relief as the Court deems just and proper.
24
25
26
27
28

1 RESPECTFULLY SUBMITTED this 29th day of August, 2007.

2 BALLARD SPAHR ANDREWS &
3 INGERSOLL, LLP

4 By: /s/ David A. Selden

5 David A. Selden

6 Julie A. Pace

7 Heidi Nunn-Gilman

8 3300 N. Central Avenue, Suite 1800

9 Phoenix, Arizona 85012

10 Attorneys for Plaintiffs

11 I hereby certify that on the 29th day of
12 August, 2007, I caused the foregoing document:

13 SECOND AMENDED COMPLAINT

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

16 Mary O'Grady

17 Christopher Munns

18 Arizona Attorney General's Office

19 1275 W. Washington Street

20 Phoenix, AZ 85007

21 Mary.OGrady@azag.gov

22 Christopher.Munns@azag.gov

23 And to be delivered as a courtesy hard copy
24 To: The Honorable Neil V. Wake

25 /s/ Kathleen Reynolds