

# **Fowl Lawsuit**

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Conservatives have long opposed the liberal abuse of class action lawsuits to punish business and redistribute income. But that hasn't stopped some on the anti-immigration right from resorting to the same abuse, and this Wednesday they were appropriately thrown out of court.

A federal judge in Chattanooga, Tenn., finally dismissed a class action lawsuit against Tyson Foods that was first filed in 2002. "The plaintiffs failed to demonstrate Tyson was harboring or concealing illegal aliens," said U.S. District Judge Curtis Collier in his motion granting summary judgment. The judge added that the plaintiffs also "failed to provide evidence to show Tyson's violations . . . caused their injuries."

This private civil action seeking millions in damages came on the heels of a criminal case brought (and ultimately lost) by the federal government in 2001. Hence, the plaintiffs' claims were largely based on federal charges that Tyson had already successfully defended. And after enduring more than 40 depositions and hundreds of thousands of dollars in legal fees, Tyson prevailed again. That's all well and good. But the larger issue is whether corporations acting in good faith deserve to be put through the wringer for the sin of hiring willing workers with the proper papers.

The charge that Tyson knowingly employed illegals to depress wages is absurd on its face. Even if Tyson wanted to do such a thing, it would require the sort of company-town market power that Tyson simply doesn't have. The reality is that unemployment in the U.S. has been relatively low, reflecting tight labor markets. A low-skill worker who didn't like what the Tyson plant was paying could find a job at a lumber yard or hanging dry wall. Six of the eight plants named in the suit were unionized, which means that Tyson didn't "set" wages. It negotiated them.

Tyson was also one of the first companies to volunteer for the Basic Pilot program -- now known as eVerify -- set up by the government to vet new hires. In addition, the company uses a hiring-compliance protocol that includes outside consultants and auditors. But none of these good-faith efforts mattered to the plaintiffs lawyers, who thought they could swoop in on the heels of the criminal case and collect treble damages under RICO statutes that are intended for going after mobsters.

Employers can and should make a reasonable effort to determine if someone is legally able to work in the U.S. But the government also has a responsibility to make sure that companies are equipped with reliable tools to make that determination, especially in today's legal environment. When Swift & Co., another large meat processor targeted for employing illegals, decided to go even beyond the Basic Pilot requirements for screening job applicants, it was promptly sued for employment discrimination.

Conservatives normally have little tolerance for civil justice abuse and government harassment of business. Nevertheless, Howard Foster, the plaintiffs lawyer who filed the

class action against Tyson and has filed similar suits against other companies, has strangely become something of a hero on the nativist right.

Frivolous lawsuits and federal raids on businesses are much more likely to damage the economy than to stop illegal border crossings. What's needed is immigration reform that reflects the demands of our labor markets, not more attempts to punish companies for practicing capitalism.