



Written by [Joe Wolverton, II, J.D.](#) on February 10, 2012

Arizona Files its First Brief in Supreme Court Immigration Case

On Monday, attorneys representing Arizona Governor Jan Brewer (left) filed their opening brief with the clerk of the U.S. Supreme Court. In the filing, the Governor asks the high court to overturn an injunction handed down by the district court blocking the enforcement of several key provisions of the Grand Canyon State's controversial anti-illegal immigration statute passed in 2010



The case arrived at the high court on appeal from a decision of the 9th Circuit Court of Appeals wherein that court upheld an injunction issued by federal District Court Judge Susan Bolton in July 2010 that prevented four key provisions of the law from being enforced.

Unwilling to concede defeat, however, Arizona filed a petition for a writ of certiorari requesting that the Supreme Court issue a final ruling on the matter. As *The New American* reported last December, the Supreme Court granted certiorari in the case of *Arizona v. the United States* and will hear oral arguments from both sides, and ultimately issue a ruling deciding whether the legislature and Gov. Brewer were preempted by federal law from enacting a law establishing immigration policy.

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As has been [reported previously](#), the law, S.B. 1070, authorizes law enforcement to require production of immigration documents from an individual already the subject of a lawful stop who is reasonably suspected of being illegally present in the state.

Governor Brewer was pleased with the high court's decision to grant her state's petition. In [a statement](#), she said:

I would like to commend the U.S. Supreme Court for its decision to review and hear arguments pertaining to the federal court injunction against critical portions of SB 1070. I am confident the High Court will uphold Arizona's constitutional authority and obligation to protect the safety and welfare of its citizens.

This case is not just about Arizona. It's about every state grappling with the costs of illegal immigration. And it's about the fundamental principle of federalism, under which these states have a right to defend their people.

Governor Brewer's assessment of the fundamental issue is at the core of the case.

Since the beginning of the federal government's assault on Arizona's right (and that of each state) to govern itself and set guidelines for who may and may not enter its sovereign territory, the Obama administration has insisted that the federal government has exclusive jurisdiction over immigration and



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states are preempted from entering that field.

The argument is that once the feds have “occupied the field” of this or that area of the law or policy, then no other government (state or local) may trespass therein.

This theory of constitutional law is known as preemption.

As [a story in Forbes](#) explained:

Corporate lawyers love preemption when it prevents a civil jury in, say, Illinois, from deciding that a drug is unreasonably dangerous even though the Food and Drug Administration ruled it safe and effective. Liberal politicians and the plaintiff lawyers who contribute to their campaigns hate preemption because they believe it prevents ordinary citizens from dispensing justice as they see fit. The states, they argue, should have broad police powers to protect their citizens from rapacious corporations.

In short, the question before the Court is this: At what point does the federal government have such a compelling interest in the establishing of laws and policies in a certain area that any legislation in that area passed by another entity would interfere with the enforcement of the federal statutes?

In its brief on the key issues, Arizona argues that enactment of S.B. 1070 is necessary because of the threat posed to the citizens and to the economic health of Arizona by the unchecked flow of illegal immigrants across the border it shares with Mexico. Congress, Gov. Brewer’s legal counsel avers, has been derelict in its duty to enforce the federal government’s prodigious slate of immigration laws. The brief asserts:

1. Lack of effective enforcement of the existing immigration rules has permitted an estimated 11 million aliens to reside in the United States unlawfully.
- 2 Compounding this problem for Arizona is the fact that, despite Congress’ manifest resolution that “the immigration laws of the United States should be enforced vigorously and uniformly,” Immigration Reform & Control Act of 1986, Pub. L. No. 99-603, § 115, 100 Stat. 3359, 3384, in the last decade federal enforcement efforts have focused primarily on areas in California and Texas, leaving Arizona’s border to suffer from comparative neglect.
- 3 The result has been the funneling of an increasing tide of illegal border crossings into Arizona.

The brief goes on to persuasively list the many dangers posed by illegal “cross-border activity.” The violent crime, the trafficking of drugs and human beings, the fiscal and economic detriment caused by the employment of thousands of immigrants without proper work authorization, and the increased prison population are all set forth in a very convincing fashion; the data are compelling and condemn the federal government’s lassitude.

Given Arizona’s stance that it can legislate in this area despite the fed’s claim of exclusivity, some observers have noted that it is strange that the Governor’s lawyers are not citing the 10th Amendment and the lack of any constitutional grant of exclusive authority to the federal government over immigration as evidence of that state’s right to regulate the movement of people into its sovereign territory. Were the lawyers to make such an argument, it would perhaps force the Supreme Court to issue a much more powerful ruling than the one it will eventually hand down, wherein it is likely that the boundaries of federal constitutional immigration authority are placed far within the borders of the sovereignty guaranteed by the 10th Amendment.

After news of the Supreme Court’s grant of certiorari in the Arizona case was heard, the attorneys



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general of other states embroiled in their own legal battles with Washington [filed motions in the 11th Circuit Court of Appeals](#) asking the court to temporarily halt challenges currently proceeding against their immigration laws pending a ruling by the Supreme Court in the case of *Arizona v. United States*.

In all of the complaints filed against the various states that have enacted Arizona-style immigration laws, U.S. Attorney General Eric Holder insists that the federal footprint has marked the legal limits within which a state may make laws in the field of immigration.

Constitutionalists are hopeful that the Supreme Court's decision will address the critical question of where, exactly, in the Constitution is found congressional authority to regulate immigration. The enumeration in the Constitution of specific powers delegated to the federal government is the cornerstone of American political theory and of the constitutional Republic established in 1787. The basic definition of enumerated powers is that the best limitation on power is to not give it in the first place. Powers, as understood by Madison, Jefferson, et al., were only legitimate *if they had been granted to the government by the people* and written specifically in the document through which the governed gave life to the government — the Constitution.

As stated above, the Constitution makes no such exclusive endowment of power over immigration to the federal government; therefore, the 10th Amendment guarantees that the right to rule in that area is reserved to the states and to the people.

Regardless of whether the Supreme Court upholds the principle of federalism and rules in favor of Arizona, the states have a natural right to govern themselves and needn't be bound by actions of the federal government that exceed the boundaries placed by the Constitution around its very limited sphere of authority.



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