



Written by [Bruce Walker](#) on July 19, 2010

Federal Failure Sparks State Responses

John Morton, Director of the United States Immigration and Customs Enforcement (ICE) has urged other states and local governments not to pass new immigration laws like Arizona has recently done. What is his rationale? “I don’t think that fifty different immigration laws is the answer to our immigration troubles. I understand the frustration that many communities feel over the question of illegal immigration, but having a patchwork of state laws, I don’t think is the right way to do.”



The federal government under our constitutional system has no role in advising state governments what state policy should be. It is rather the other way around: sovereign state legislatures choose presidential electors (not the people, unless the state legislature so provides), sovereign state legislatures alone may amend the constitution (with or without, depending upon the method of proposing the amendment, any action by Congress), and sovereign state legislatures use to choose our senators. States were intended to control the federal government and not the other way around.

The role of the Executive Branch of the federal government is even more limited. Although the president may present a State of the Union along with a legislative package, the actual duty of the Executive Branch is just this: to see that the laws passed by Congress are faithfully enforced. The president and his subordinates have no duty to tell states what laws they should pass. The Supremacy Clause, so often touted as a panacea for all federal failures and excesses, has no relevance here. States are no passing laws which conflict with federal laws at all.

The conflict comes only when states pass laws in direct conflict with federal laws ... and do so when those federal laws are within the powers granted Congress by the Constitution. The Arizona law is in utter and absolute accord with existing federal law. The state’s statute is constructed entirely around federal law. If the federal law is unconstitutional, or if the Executive Branch feels that the federal law is unconstitutional, then the Obama Administration has a constitutional duty to challenge that law in federal courts, and, until a federal judge rules otherwise, to enforce the law (whether Obama and his subordinates like the law or not.)

Mr. Morton is simply wrong when he suggests that states will create a patchwork of laws by requiring



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that existing federal law be enforced. No state is trying to tighten (or loosen) the requirements of legal immigration. States simply want existing federal law executed. The constitutional failure is entirely Mr. Morton and his agency, which have the duty to see that the law is faithfully executed and, by extension, President Obama, who in his oath of office promised solemnly to see that the laws were faithfully executed.

A number of states, frustrated by the failure of Mr. Morton to carry out his oath of office, are introducing measures to do the job he will not. These states are not all border states either, nor are the states connected with one political party. South Carolina, Pennsylvania, Minnesota, Rhode Island, Michigan, Nebraska, and North Dakota are all lining up to do what Mr. Morton fears: see that federal laws are enforced. The tide of popular unrest with open borders and sanctuary cities is stretching clear across the nation. Inevitably, if the federal government proves incompetent or insincere in its duty to enforce the laws, people will turn to state legislatures which will respond.

Photo: Director of U.S. Immigration and Customs Enforcement, John Morton during a news conference in San Antonio on Aug. 11, 2009: AP Images



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