



Written by [Joe Wolverton, II, J.D.](#) on November 30, 2011

Harry Reid's Bill Could Nullify State Illegal Immigration Laws

As has been [thoroughly covered](#) in *The New American*, the Obama administration has filed suit in several federal courts challenging the constitutionality of laws passed by state legislatures that have drawn the attention of the media for their more controversial provisions.

To date, the complaints filed by the Department of Justice (typically with the Department of Homeland Security listed as a co-plaintiff) have named as defendants the Attorneys General of the states whose laws they are seeking to set aside.



This latest effort by the federal government to redraw the lines of power laid out by the Founding Fathers in the Constitution would authorize the Department of Justice to file suit against state and local governments suspected of using racial profiling to carry out the new anti-illegal immigration laws passed by legislators.

Sponsored by Senate Majority Leader Harry Reid (D-Nev.) and Senator Ben Cardin (D-Md.), the [End Racial Profiling Act of 2011](#) would "withhold federal law enforcement funding if local and state governments failed to adopt effective policies that prohibit racial profiling" and "require the Attorney General to report on ongoing discriminatory profiling practices."

A companion measure will be introduced into the House of Representatives by U.S. Rep. John Conyers, Jr. (D-Mich.), Ranking Member of the House Judiciary Committee.

Another key provision of the measure then authorizes the Department of Justice to use the reports as the underlying cause for complaint in suits filed against state or local governments. The same information could also be supplied by the Department of Justice to private individuals suing the state or local authorities for civil rights violations through racial profiling.

Opponents of the bill reacted quickly to this newer version of a similar bill forwarded by Senator Reid back in 2004.

One familiar foe of federal meddling in the application of strict state anti-illegal immigration laws is the Federation for American Immigration Reform (FAIR). In a statement, [FAIR claimed](#) that if a bill such as the one sponsored by Senators Reid and Cardin were to become law, states could be beaten "into submission" by the stick of federal funding. According to provisions in the Reid/Cardin bill, states which fail to conform to federal "racial profiling" guidelines would be cut off from the pipeline of money from Washington to local law enforcement.

For their part, the two chief co-sponsors of the bill claim that laws such as the now famous SB 1070 in Arizona is the "legalization of racial profiling." In a statement, [Reid praised](#) both the purpose of the new measure and the courage of Senator Cardin in signing on as a sponsor:



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Racial profiling has no place in our law enforcement. Our law enforcement officials who put their lives on the line every day handle their jobs with professionalism, diligence, and fidelity to the rule of law. It's imperative that they use their scarce resources for real law enforcement that targets those who engage in criminal activity, not one group of people based on their race, ethnicity, or national origin.

I applaud Sen. Cardin for leading the way in this very important issue. I will continue working to build support for this crucial legislation while also working to create jobs and turn the economy around.

Cardin echoed Reid's sentiments in his own [press release](#) announcing the End Racial Profiling Act:

Racial profiling is bad policy, but given the state of our budgets, it also diverts scarce resources from real law enforcement. Law enforcement officials nationwide already have tight budgets. The more resources spent investigating individuals solely because of their race or religion, the fewer resources directed at suspects who are actually demonstrating illegal behavior. Racial profiling has no place in modern law enforcement.

The vast majority of our law enforcement officials who put their lives on the line every day handle their jobs with professionalism, diligence, and fidelity to the rule of law. However, Congress and the Justice Department can and should still take steps to prohibit racial profiling and finally root out its use.

One legally historic aspect of the new bill is that for the first time, the guidelines promulgated by this bill applicable to the Department of Justice would be applied to state and local governments, as well. This is a giant leap toward the absolute abolition of the right of states to govern themselves. The Constitution specifically protects the authority of states to legislate in all areas not explicitly enumerated as within the federal bailiwick. The Tenth Amendment could not be clearer: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Time and again, *The New American* has published articles explaining the lack of [federal exclusivity](#) over the issue of immigration. In fact, there is no mention of a grant of power whatsoever to the federal government regarding the establishment of immigration policy.

Such irrefutable constitutional arguments will never be enough to dissuade a federal government determined to reduce states to mere vassals of the princes on the Potomac.

The racial profiling guidelines that several members of Congress now intend to enforce on the states are derivative of the following definition of "racial profiling" as contained in the End Racial Profiling Act:

This Title would ban racial profiling, defined as the practice of a law enforcement agent or agency relying, to any degree, on race, ethnicity, religion, or national origin in selecting which individuals to subject to routine or spontaneous investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality or and time frame, that links persons of a particular race, ethnicity, religion, or national origin to an identified criminal incident, or scheme, or [organization].

To lead the state governments in the direction that would have them go in order to toe the line drawn



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by the federal government, the bill lists a sample of situations in which the law enforcement officer should be cognizant of the possible profiling pitfalls. Those scenarios include: "interviews; traffic and pedestrian stops; frisks and other types of body searches; consensual or nonconsensual searches of the persons or possessions (including vehicles) of individuals using any form of public or private transportation, including motorists and pedestrians."□□ A near universal aspect of all the state laws considered so noxious by the three branches of the federal government is the authority given to police to inquire into the immigration status of individuals detained as a result of ordinary stops. Arizona's S.B. 1070, for example, grants such power to police when a "reasonable suspicion exists that the person is an alien who is unlawfully present in the United States."

As the bill moves through the Senate Judiciary Committee, the struggle for state sovereignty moves from the courts to the Congress.

Photo of Sen. Harry Reid: AP Images



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