Written by **Joe Wolverton, II, J.D.** on February 23, 2012

Judge Won't Rule on Utah Immigration Law Until Supreme Court Rules on Ariz.

On Tuesday, Judge Clark Waddoups (left) of the U.S. District Court for the District of Utah announced that he would hold off issuing a ruling in the case challenging Utah's recently enacted immigration statute until the Supreme Court hands down its decision in the case against the Arizona statute currently pending.

In his order, Judge Waddoups explained that:

Although Arizona's law is different from Utah's law in several respects, some aspects are sufficiently similar that the Supreme Court's ruling likely will inform this court in its decision. Because this case addresses significant constitutional issues, the court does not believe it would be helpful to the parties for the court to rule on the present motions before it receives the additional guidance from the Supreme Court. It therefore will reserve ruling until the Supreme Court has issued its decision.

According to a report published by the *Salt Lake Tribune*:

> The hearing on HB497 pitted U.S. Department of Justice lawyers and attorneys with the National Immigration Law Center (NILC) and the American Civil Liberties Union of Utah against Attorney General Mark Shurtleff's office when they argued for more than six hours in federal court Friday.

The law (H.B. 497) — entitled the "Utah Illegal Immigration Enforcement Act" — was passed by the Utah legislature and signed by Gov. Gary Herbert in March 2011, but almost immediately was enjoined from enforcement when Judge Waddoups granted the ACLU and the NILC a temporary restraining order.

As it has done with other states whose legislatures have passed laws to staunch the flow of illegal immigrants into their sovereign borders, the Obama administration sued the state of Utah over H.B. 497.

The complaint filed on behalf the Department of Justice was accompanied by a statement from Attorney General Eric Holder:

> A patchwork of immigration laws is not the answer and will only create further problems in our immigration system. While we appreciate cooperation from states, which remains important, it is clearly unconstitutional for a state to set its own immigration policy.

Co-claimant, Secretary of the Department of Homeland Security, Janet Napolitano, was quoted as saying that laws such as the one passed in Utah will encourage discrimination and will ultimately subvert "the vital trust between local jurisdictions and the communities they serve."

In defense of his state and the measure lawfully enacted by the duly elected representatives of his state, Utah Attorney General Mark Shurtleff lamented the decision of the Department of Justice to file the suit, as he insisted he has made every good faith effort to work with the Obama administration. In a statement made after the filing of the suit with the federal district court, Shurtleff declared,

> We feel strongly that we made significant changes with our law compared to Arizona's at the time. We think the way our law is, with our changes, we think we can defend it, that we can prevail on this and have it held constitutional.

Waddoups' order makes it clear that although the Utah law differs from the version passed in Arizona, there are enough similarities to warrant delay.

Earlier this month, attorneys representing Arizona Governor Jan Brewer 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.

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 issue is not just about Arizona or Utah. 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.

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.

Pending the Supreme Court's decision in the Arizona case, the temporary restraining order issued by Judge Waddoups in May will remain in force. The practical effect of this order is that the Utah law will continue in abatement until a final decision is reached, that is expected to be issued sometime after the district court considers the eventual ruling in the Supreme Court case.

The name of the case at bar is *Utah Coalition of La Raza v. Herbert*, 11cv401, U.S. District Court for the District of Utah (Salt Lake City).