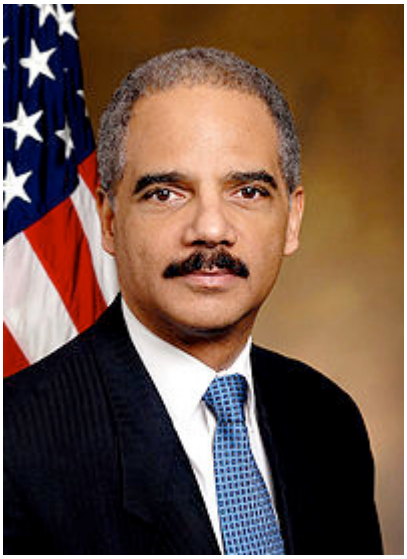
Written by **Joe Wolverton, II, J.D.** on November 23, 2011

Obama Administration Challenges Utah Immigration Law



In the next phase of its litigious campaign to perpetuate the constitutionally unsupportable position that the federal government has exclusive authority in all matters of immigration policy, the Obama administration has sued the state of Utah over its recently enacted anti-immigration law.

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

> "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 recent statute 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 insists 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.

The DOJ's complaint isn't the first legal challenge faced by HB 497. The American Civil Liberties Union, the National Immigration Law Center, and other special-interest immigration advocacy groups filed to enjoin enforcement of the law before it was to go into effect in May. At a hearing on the motion, U.S. District Court Judge Clark Waddoups issued a temporary restraining order against the law.

Although a final hearing on the groups' motion for an injunction was on the docket for December 2, counsel for the Justice Department requested that Judge Waddoups hold hearings for the two suits (that which was filed by the federal government and the one filed by the private organizations) at the same time, likely in February.

Specifically, the Obama administration's complaint cites three sections of HB 497 that it claims exceeds

Utah's constitutional legislative authority. The suit avers:

> In our constitutional system, the federal government has preeminent authority to regulate immigration matters and to conduct foreign relations. This authority derives from the Constitution and numerous acts of Congress.

Online journal *Politico* reported that although the feds found other recent laws passed by the Utah legislature constitutionally repugnant, it was HB 497 which was the focus of the present suit:

> The Justice Department said in a statement that two of the other bills passed at the same time pertaining to guest workers "are clearly preempted by federal law." But the department said it is still discussing those measures with Utah officials and doesn't plan to file suit over them right away since they don't take effect until 2013.

As has been well-chronicled in *The New American*, Utah is the fourth state that has passed a bill designed to crack down on illegal immigration which has incurred the legal wrath of the Justice Department. Arizona, Alabama, and South Carolina have all been sued as well, for similar statutes passed in those states.

In this latest legal challenge of laws passed by a state assembly, the Obama administration continues to perpetuate the myth of federal exclusivity in the area of immigration law.

However, no matter the accumulation of judicial decisions or federal lawsuits filed by the executive branch claiming exclusivity, the fact is that the Constitution of the United States nowhere grants the national government the exclusive authority to regulate matters of immigration.

The entire universe of powers delegated to the Congress of the United States is contained with Article I, Section 8 of the Constitution. Therein are enumerated the powers ceded by the states and the people to the national legislature. Not one of the roughly 20 powers listed authorizes Congress *at all*, much less exclusively, to establish immigration policy.

The closest the Constitution comes to placing anything even incidentally related to immigration within the bailiwick of Congress is found in the clause of Article I, Section 8 that empowers Congress to "establish an uniform Rule of Naturalization." That's it. There is no other mention of immigration in the text of the Constitution. Somehow, though, the enemies of the right of states to govern themselves have extrapolated from that scant reference to "naturalization" the exclusive and unimpeachable right to legislate in the arena of immigration.

The difference between immigration and naturalization is one of definition.

Immigration is the act of coming to a country of which one is not a native. Naturalization, however, is defined as the conference upon an alien of the rights and privileges of a citizen. It is difficult to understand how so many lawyers, judges, and legislators (most of whom are/were lawyers) can innocently confuse these two terms.

Before the states sent delegates to a convention in Philadelphia in 1787 to amend the Articles of Confederation (the result of which was the Constitution), they were already defending their sovereign borders by setting rules governing the means by which one could lawfully enter the state. That is to say, they were policing the immigration of aliens, an act undeniably within their right as a sovereign government.

On not one single occasion during that summer of 1787 did any one of the 55 (on and off) representatives of the 13 states suggest the endowment of the new national government with the

authority to set immigration policy for the entire nation. That is significant. Not even the most strident advocate of a powerful national government ever proposed granting the power in question to the central authority.

In fact, the sole reference to the federal government's power to regulate immigration is Article I, Section 9 wherein the Constitution forbids Congress from interfering in the "migration or importation" of persons into the several states until 1808. That this limitation touched and concerned the slave trade and only the slave trade is patently obvious to anyone reading the debates of the delegates as recorded by James Madison and others who were present at the time. In fact, Article I, Section 9 is precisely worded so as not to be confused with any other article of the Constitution.

With all this in mind, it is a curious thing to consider how so many men and women trained in the law generally and in the interpretation of the Constitution specifically could collectively misread the plain language of that document. Do they not know that not a single pen stroke was made on that revered parchment ceding to Congress the power to control immigration?

Not only does the federal government *not* have exclusive authority over immigration law, but the silence of the document itself on the matter, as well as the legislative history of the laws enacted to carry out the Constitution's endowment of power, reveals that our Founding Fathers intended for the states to retain the plenary power to police their own borders, including deciding who may or may not pass through them or reside within them.

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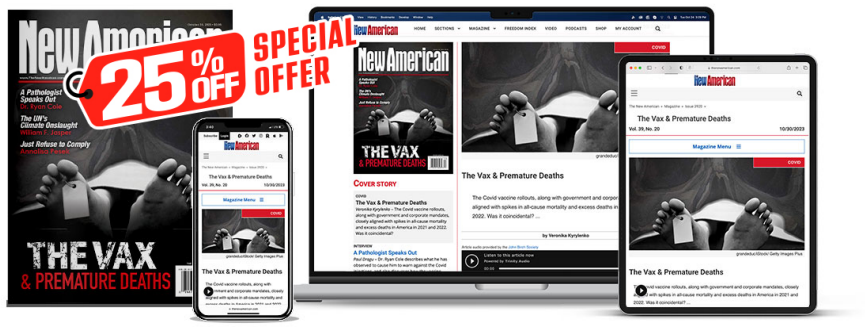

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