



Written by [Raven Clabough](#) on December 7, 2010

## Supreme Court to Hear Arizona Immigration Law Case Wednesday

On Wednesday, the Supreme Court will begin hearing the debate over an Arizona law that punishes employers who knowingly hire illegal aliens in the United States.

The law was instituted by Arizona's state government in an effort to control Arizona's role as a center for immigrant smuggling by requiring employers to verify new workers' eligibility through a federal database called E-Verify. Violators of the law are subject to having their business licenses revoked or suspended.

The law, Legal Arizona Workers Act, was signed by then-Governor Janet Napolitano in 2007. The state defends the act, contending it "ensures that workers who are hired by Arizona employers are legally authorized to work in this country."



According to the *Star Tribune*, "Prosecutors have used Arizona's employer sanctions law just three times in three years, but business interests and civil rights groups, backed by the Obama administration, have banded together to argue that only the federal government may enforce immigration laws."

The results of the Supreme Court case could have implications on SB 1070, legislation that is already being challenged by the Obama administration, and one whose key provisions, such as the requirement on police to verify the legal residency of people who come into contact with police through being questioned about a crime or involved in a traffic stop, have been struck down by a federal judge.

Peter Spiro, who teaches at Temple University's law school, indicates, "It could take this less visible case and do something that impacts substantially on the SB1070 litigation by making some broader observations."

A survey conducted by the Associated Press shows that of the 101 employer sanctions complaints indicated since the law was enacted in January 2008, only three have led to civil cases being filed against employers.

However, according to the *Star Tribune*, "Dozens of business raids in metropolitan Phoenix during employer sanctions investigations have led to the arrests of 131 workers who are illegal immigrants on criminal charges, such as using forged documents on stolen identities to get jobs. The law intended to target employers has been used more often against workers."

Groups such as the U.S. Chamber of Commerce, the National Immigration Law Center, and the Mexican American Legal Defense Fund, all joined in the lawsuit against the state of Arizona in the case. ABC



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News explains, "The groups argue that the Legal Arizona Workers Act, and similar legislation in other states, unconstitutionally conflict with existing federal law."

Likewise, the United States Justice Department has filed a brief in support of the groups, asserting that the state is infringing upon the role of the federal government, and that the law does not do a good enough job differentiating between employers and employees.

Of particular concern is that the state law imposes harsher penalties than the federal law does.

Acting Solicitor General Neal Katyal explains, "Those provisions disrupt a careful balance that Congress struck nearly 25 years ago between two interests of the highest importance: ensuring that employers do not undermine enforcement of immigration laws by hiring unauthorized workers, while also ensuring that employers do not discriminate against racial and ethnic minorities legally in the country."

The Chamber of Commerce's Robin Conrad notes, "American businesses are overwhelmed by the cacophony of complex and often conflicting state and local immigration regulations." He adds, "The confusing patchwork of immigration regulations doesn't solve our immigration problems, and instead makes it more difficult for employers to create jobs and grow the economy."

Another point of contention for the coalition of groups on the lawsuit is the E-Verify mandate in the law. Carter G. Phillips, lawyer for the groups, claims that E-Verify "historically has been error-prone, and requires participating employers to weigh possible benefits against serious burdens."

Others see vast benefits in upholding the Arizona law. Judicial Watch, for example, defends the act, citing the following reasons:

- Petitioners assert that the "Legal Arizona Workers Act" is preempted by federal law regulating the employment of aliens. Nearly thirty-five years ago, however, this Court unequivocally affirmed that States possess broad authority under their police powers to regulate employment even if such regulation touches on immigration.
- Despite this well-established precedent, Petitioners assert that the State of Arizona lacks the authority to penalize employers for hiring unauthorized workers, allegedly because the legislation burdens employers. In other words, employers who put profits over patriotism by hiring unlawfully present aliens would be "burdened" by losing the substantial benefit of paying sub-standard wages.
- The Act prohibits employers from knowingly or intentionally employing unauthorized workers. Additionally, all Arizona employers must use the federal "E-Verify" program to confirm the employment eligibility of new employees. The [Act] falls well within the traditional police powers of the State. This Court therefore must reject Petitioners' attempt to protect scofflaw employers at the expense of legal Arizona workers by overturning well-established law.

As explained by Judicial Watch, the case deals with states' rights. A victory for Arizona in this case would greatly impact other states that find themselves in the difficult position of trying to control their illegal immigration issues.

Newly appointed Supreme Court Justice Elena Kagan will not participate in the case, as she has already dealt with the issue in her role as Solicitor General of the United States.



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