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## **COURT URGED TO REJECT U.S. CHALLENGE TO ARIZONA IMMIGRATION LAW**

*(United States v. State of Arizona)*

The Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Ninth Circuit in San Francisco to reject the Obama Administration's challenge to the new Arizona law that cracks down on illegal aliens. WLF urged the appeals court to overturn a preliminary injunction against enforcement of the law, issued in July by an Arizona federal district judge.

In a brief filed in *United States v. State of Arizona*, WLF argued that the Arizona statute (known as SB 1070) does not conflict with federal law but rather is a well-designed effort to provide enforcement assistance to federal immigration officials. WLF filed its brief on behalf of seven clients, including four members of the U.S. House of Representatives (Dan Burton, Lynn Jenkins, Tom McClintock, and Jerry Moran) and three organizations (the Allied Educational Foundation, Concerned Citizens and Friends of Illegal Immigration Law Enforcement; and the National Border Patrol Council).

“State and local governments have an important role to play in enforcing our Nation’s immigration laws,” said WLF Chief Counsel Richard Samp after filing WLF’s brief. “Unless they are both permitted and encouraged to assist the federal government in enforcing those laws, it is unlikely that we will ever be able to stem the flood of illegal immigrants,” Samp said.

SB 1070 is a multi-faceted effort to assist federal authorities in implementing several well-established federal policies: removing illegal aliens from the U.S. and eliminating incentives that cause many such aliens to seek to remain here. SB 1070 includes numerous safeguards to ensure that it does not result in harassment of citizens and resident aliens, including provisions that prevent Arizona officials to take action until after they have been informed by federal officials that a suspect is, indeed, an illegal alien.

Congress has adopted many laws designed to encourage state and local governments to assist in the immigration enforcement effort. Nonetheless, the Obama Administration has determined that it does not want States to provide the level of assistance that Arizona is offering, and in early July it filed a lawsuit seeking an injunction against enforcement of SB 1070. Pending before the Ninth Circuit is

Arizona's appeal from the district court's grant of the Administration's motion for a preliminary injunction; but for the injunction, the law would have taken effect on July 29, 2010.

WLF's brief focused on Section 5 of SB 1070, which makes it a misdemeanor for anyone to solicit or perform employment if (s)he is not legally present in the country. The Obama Administration argued that Section 5 conflicts with federal law because it provides for penalties that are in excess of those provided for under federal law. WLF responded that Congress adopted a statute in 1986, the Immigration Reform and Control Act (IRCA), whose express purpose was to eliminate all employment of illegal aliens, thereby eliminating a major incentive for aliens to enter the U.S. without authorization. WLF argued that a state statute (such as Section 5) that adopts additional measures to prevent the employment of illegal aliens cannot possibly be deemed to conflict with federal immigration policy.

The Obama Administration argues that IRCA established a careful balance between preventing the employment of illegal aliens and ensuring that illegal aliens are treated compassionately, and that Section 5 upsets the congressional balance. WLF responded that there is no evidence that compassion toward illegal aliens played any role in Congress's adoption of IRCA.

WLF also accused the Obama Administration of hypocrisy in its assertion of federal preemption claims in this case. WLF noted that the Administration has adopted anti-preemption positions in other areas of the law – particularly with respect to preemption of state common-law tort actions – that are extremely difficult to reconcile with the position that it has taken in its challenge to SB 1070.

The Washington Legal Foundation is a nonprofit public interest law and policy center based in Washington, D.C. with members and supporters in all 50 States, including many in Arizona. WLF has appeared in courts across the country to ensure that governments at all levels possess the resources to combat illegal immigration.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302.

A copy of WLF's brief is posted on its web site, [www.wlf.org](http://www.wlf.org).