

Obama Immigration Victory Adds to Pressure for Federal Action

By Greg Stohr and William McQuillen - Jul 30, 2010

The Obama administration won the first round in its fight to stop Arizona and potentially more than a dozen other states from cracking down on illegal immigration. The battle ahead may prove more treacherous.

A federal trial judge's ruling this week blocking Arizona's new law sets up a legal and political gauntlet for the administration over the coming months. The Justice Department, which sued to challenge the law, ultimately may have to persuade the [U.S. Supreme Court](#) that the state intruded too far into the traditionally federal sphere of immigration policy.

At the same time, the administration's stance is helping to ratchet up political pressure on it to take charge of the issue. A courtroom victory might increase the risk that the public will blame President [Barack Obama](#) and the Democratic-led Congress for failing to stem the tide of illegal immigration.

"The administration should be pleased with this victory, but this is a continuing struggle here," said Peter Spiro, immigration professor at Temple University's law school. "You end up with an unintended consequence of rebuffing states from acting on their own. It forces them to go to Washington."

U.S. District Judge [Susan Bolton](#) in Phoenix on July 28 [blocked](#) central provisions in the Arizona law, including the requirement that police determine the immigration status of people stopped for questioning.

Federal Policy

Bolton said that provision would interfere with federal immigration policy because it would sweep in legal residents. "This requirement imposes an unacceptable burden on lawfully present aliens," wrote the judge, a 2000 appointee of President [Bill Clinton](#).

The law would have taken effect yesterday.

Arizona yesterday asked the 9th U.S. Circuit Court of Appeals based in San Francisco to review thePr...

ruling and requested an expedited schedule that could mean a decision later this year.

“America is not going to sit back and allow the ongoing federal failures to continue,” Arizona Governor [Jan Brewer](#), a Republican, said in a statement. “We are a nation of laws and we believe they need to be enforced. If the federal government wants to be in charge of illegal immigration and they want no help from states, it then needs to do its job.”

The case may be ticketed for the Supreme Court, which long ago assigned the federal government the lead role in fashioning national immigration policy, according to Kevin Johnson, an immigration expert and the dean of the University of California at Davis School of Law.

Clear Precedent

“The Supreme Court precedent is very clear that immigration regulation is exclusively a federal power,” said Johnson, a board member of the Mexican American Legal Defense and Education Fund, which is challenging the Arizona law in a separate case. “States can do some things at the margins, but primarily immigration regulation is for the federal government.”

Recent high court decisions have tended to side with immigrants, Johnson said. That includes a 7-2 ruling in March that said criminal lawyers have a duty to inform non-American clients considering a guilty plea about the risk of deportation.

Even so, those rulings didn’t address the power of states to enact their own immigration laws. The court hasn’t considered that subject in more than 30 years, said [Richard Samp](#), chief counsel of the [Washington Legal Foundation](#), which opposes the law.

Samp said he expects the Supreme Court would divide over some of the Arizona provisions. In other contexts, the court lately has proven skeptical of arguments that federal laws preempt state measures.

Court Trend

“The general trend of the court in the last couple of years has been against preemption,” Samp said.

The high court will give a clue about its inclinations in its 2010-11 term when it considers a separate Arizona immigration statute, a law that puts companies at risk of losing their corporate charters if they hire illegal aliens. The U.S. Chamber of Commerce, backed by the Obama administration, is challenging that measure.

For now, Bolton’s ruling may dampen efforts around the country to enact similar measures.

“There had been a great deal of chatter that states would wholesale adopt what Arizona was doing,” said [Dennis Burke](#), who as U.S. attorney for Arizona was involved in the federal government’s lawsuit [toomberg](#)

“There’re going to have to take a pause.”

Similar Proposals

As of June 30, legislatures in five states -- Michigan, Minnesota, Pennsylvania, Rhode Island and South Carolina -- had introduced similar bills, according to the National Conference of State Legislatures. If Arizona were to be successful, 22 states could follow with similar measures, according to [Reform Immigration for America](#), which backs amnesty programs for illegal aliens.

With congressional elections barely three months away, the political fight may prove more difficult than the legal fight for the administration. A June 3-10 ABC News/Washington Post [poll](#) found that 58 percent of adults surveyed favored the Arizona provision to have police check immigration status.

The nationwide poll also found that just 39 percent of adults approve of Obama’s handling of the immigration issue, while 51 percent disapprove. The survey of 1,004 adults had a margin of error of plus or minus 3.5 percentage points.

‘A Losing Side’

“The administration is on something of a losing side of this,” said [John Fortier](#), a congressional scholar with the [American Enterprise Institute](#). “There’s a real possibility that they will motivate more voters who are worried about immigration than they are likely to get a huge turnout of the Hispanic vote.”

White House Press Secretary [Robert Gibbs](#) yesterday said Congress “should act now to enact comprehensive immigration reform.”

A spokesman for Senate Majority Leader [Harry Reid](#) said this week that the Nevada Democrat is considering whether to seek a vote on a narrower immigration bill.

Obama’s ability to win passage of broad-based immigration changes is all but certain to weaken after the November elections because Republicans are likely to pick up seats in both chambers -- and could even retake the House -- Fortier said.

Members of the Congressional Hispanic Caucus said yesterday that Bolton’s ruling increases the pressure on Congress.

“Legislative action is absolutely necessary and it has to be timely,” said Representative [Charles Gonzalez](#), a Texas Democrat. “We can’t kick the can down the road and hope it’s going to get any better.”