

Defining Roles: Federal vs. State Immigration Authority

Closing the Floodgates and Reasserting the Constitution

Released on Tue, Jun 22, 2010

Washington D.C. - Today, the small town of Fremont, Nebraska is in the headlines after passing an ordinance that requires among other things that renters apply for an occupancy license - which also requires a legal immigration status check - before renting an apartment or home.

Although Fremont, Nebraska, and Arizona are the latest localities to propose measures designed to control and manage immigration, there have been many more attempts over the past seven years to pass similar bills. Like the other efforts before them, there will be rationalizations for their passage and legal challenges to their implementation. Millions of dollars will be spent as these laws are battled in state houses, city halls, and the courts. However, the larger question is whether the federal government will continue to sit idly by as a patchwork of legislation proliferates around the country or will it finally assert its role, as defined by the Constitution, and delineate local authority with respect to federal immigration law?

States have always played a role in federal immigration enforcement. While the inherent authority of the states was historically limited to criminal violations of immigration law, the federal government could delegate broader authority to the local level. Programs like 287(g) have formalized this delegation process, while still maintaining some level of federal oversight. However, with laws like SB 1070 and local ordinances taking root, the states are taking it one step further and deciding for themselves what role they will play in federal immigration law. In other words, what was once given by the federal government is now being taken by the states. What we are also losing in this process is the ability of the federal government to establish a uniform immigration policy and then be held accountable to it. In the current environment it is unclear who is responsible for setting immigration enforcement priorities and who is accountable for their success or failure.

The federal government needs to act swiftly to re-assert its authority over immigration law and policy," said Benjamin Johnson, Executive Director of the American Immigration Council. "This is why a legal challenge by the Department of Justice against Arizona's SB1070 is relevant and necessary. A federal lawsuit isn't meant to discount the frustration with our broken immigration system, it's meant to define and then protect the federal government's Constitutional authority to manage immigration. The Administration can and should also withdraw a hastily crafted and politically motivated 2002 White House Office of Legal Counsel opinion that opened the floodgates for state involvement in enforcing the civil provisions of federal immigration law."

At the end of the day a lawsuit alone will not end the vacuum created by the lack of workable immigration laws. While the Department of Justice takes up the legal challenge, the Obama Administration and Congress must put the immigration issue squarely back where it belongs - in the halls of Congress and on the desk of the President of the United States.

[View Release](#) [1]

Source URL:

<http://www.americanimmigrationcouncil.org/newsroom/release/defining-roles-federal-vs-state-immigration-authority>

Links:

© Copyright • American Immigration Council • All Rights Reserved | [Contact Us](#)

Defining Roles: Federal vs. State Immigration Authority

Published on American Immigration Council (<http://www.americanimmigrationcouncil.org>)

[1] http://www.americanimmigrationcouncil.org/sites/default/files/docs/Defining_Roles-__Fed_vs_State_Authority_062210.pdf