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Justices seek White House input on illegals

By McClatchy Newspapers

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WASHINGTON -- The Obama administration will enter the politically tricky immigration arena, courtesy of the Supreme Court.

On Monday, the court asked the administration for its views in a challenge to an Arizona law that punishes companies for hiring illegal immigrants. Other states with large immigrant populations will watch the next steps closely, because their own laws and ballot measures could be on the line.

"This case involves a question of exceptional national importance: whether state legislatures and municipal governments may override Congress' judgment concerning United States immigration policy," attorney Carter Phillips wrote in a legal brief.

Phillips noted that "in the first three months of 2009 alone, over 1,000 immigration-related bills and resolutions were introduced, in all 50 states" and "at least 150 of these bills related specifically to employment." He called the result "a cacophony."

A famed Supreme Court litigator, Phillips represents the U.S. Chamber of Commerce. The business group is challenging the Arizona law as part of a coalition of corporate, labor and immigrant groups that range from the American Civil Liberties Union to the Arizona Farm Bureau Federation.

The challenged law, written in 2006, allows private complaints to be filed against employers. Those found to have "knowingly or intentionally" hired illegal immigrants could have their Arizona state business licenses suspended or revoked.

The law "reflects rising frustration with the United States Congress' failure to enact comprehensive immigration reform," the 9th U.S. Circuit Court of Appeals said in a ruling that upheld the law.

In a closed-door conference Friday of which the outcome was released yesterday, the justices agreed to ask Obama's solicitor general, Elena Kagan, to submit a brief outlining the administration's views. The justices will review this brief before they decide whether to take up the case.

For the Obama administration, the legal challenge now dubbed *Chamber of Commerce v. Candelaria* poses some potentially thorny questions.

During last year's presidential campaign, then-candidate Barack Obama declared that the proliferation of state immigration laws "underscores the need for comprehensive immigration reform so local communities do not continue to take matters into their own hands."

The Arizona governor who signed the state law was Janet Napolitano, who serves in the Obama administration as the secretary of the Department of Homeland Security.

Congress first imposed penalties for hiring illegal immigrants under the 1986 Immigration Reform and Control Act. The federal law explicitly pre-empts state action, save for regulations that cover business "licensing."

Twenty-one years later, the Arizona legislature approved the Legal Arizona Workers Act. The law requires Arizona employers to participate in an electronic employee-verification program called E-Verify. In other states, E-Verify participation is strictly voluntary.

The law hasn't yet been enforced. The so-called "facial challenge" that the Supreme Court is considering asserts that there's no way the state law can be enforced without violating federal law.

Arizona officials had hoped to avoid the court challenge.

"Although no one disputes the general importance of immigration policy, that does not mean every dispute about a state or local measure regarding illegal immigrants merits this court's review," Arizona Solicitor General Mary R. O'Grady said in a legal brief.