

State immigration law challenges to move forward

By Jay Reeves on June 26, 2012

BIRMINGHAM, Ala. (AP) — Monday's Supreme Court ruling overturning key provisions of Arizona's illegal-immigration law opens the door for courts to strike down similar measures in states that have tried to make it a crime for illegal immigrants to live and work in the U.S.

Supporters of immigration crackdowns, however, say the ruling also gives states a critical role in enforcing federal law by allowing local authorities to check the immigration status of those suspected of being in the country illegally.

"I'm encouraged at least by that glimmer of hope in the decision that we'll have the opportunity to interact more closely with the federal government on undocumented residents when we encounter them," said South Carolina state Sen. Larry Martin, a Republican who sponsored his state's legislation. "Beyond that, I think our hands are tied by the federal law."

The high court struck down Arizona's requirement that all immigrants obtain or carry immigration registration papers; a provision making it a crime for an illegal immigrant to seek or hold a job; and a provision allowing police to arrest suspected illegal immigrants without warrants.

In the majority opinion written by Justice Anthony Kennedy, the court ruled that those provisions conflicted with federal law. In other words, enforcing the nation's immigration laws is a task for the federal government, not state or local governments.

Laws passed in Alabama, Georgia, South Carolina, Indiana and Utah were modeled at least in part upon the one passed by Arizona in 2010. Now that the Supreme Court has weighed in on the issue, challenges to the laws in those states can now likely move forward.

Parts of those laws had been temporarily blocked. Federal judges in many cases had been waiting to issue a final ruling until the Supreme Court made its decision, believing the high court ruling would set important legal precedent.

Both supporters and detractors of the crackdowns describe Alabama's law as the toughest in the nation. It adopted much of the Arizona law and incorporated other provisions, including a requirement that public schools verify the citizenship status of new students.

Also, Alabama is the only state where courts allowed a provision to go into effect that requires officers to make a "reasonable attempt" during any traffic stop or other police encounter to determine the immigration status of a person if there is suspicion of someone being an illegal immigrant.

The high court ruling clears the way for the 11th U.S. Circuit Court of Appeals to decide whether those provisions can stand. The 11th Circuit is also considering Georgia's law, which contains provisions allowing police to check people's immigration status.

For Georgia to avoid having that law overturned based on arguments that such checks amount to racial profiling, officers would have to investigate the immigration status of every person they detain, said Charles Kuck, an Atlanta immigration attorney and former president of the American Immigration Lawyers Association. He said it was a mistake for supporters of the law to interpret the high court's ruling as a victory.

"This is a massive defeat for those who believe states can regulate immigration," Kuck said. "I think it's funny that anybody could read that decision and come to any other conclusion."

The ruling also could clear the way for a federal court to make permanent an injunction that struck down a provision in Indiana's law that went even further than Arizona's law. That provision allowed police to arrest anyone who had been ordered by federal authorities to be detained or deported — even if those people were not suspected of any other crime. Groups including the American Civil Liberties Union had argued that provision gave police unprecedented arrest powers.

"If nothing else, (the high court ruling) just reinforces the unconstitutionality of the Indiana law," said Ken Falk, legal director of the ACLU of Indiana.

In Utah, Attorney General Mark Shurtleff called the Supreme Court ruling a win, saying his state's law differed significantly from Arizona's. Utah's law requires people arrested for serious crimes to prove their citizenship, though police can use their discretion for people arrested for lesser crimes.

Lawsuits over Utah's law are still pending in federal court, and Shurtleff acknowledged "there's going to be ongoing litigation, civil rights lawsuits, people living in fear."

The Supreme Court left untouched one complaint raised in numerous lawsuits: that immigration crackdown laws encourage police to engage in racial profiling. That leaves open the possibility that, based on those arguments, lower courts could still overturn parts of various laws.

Other states including Mississippi, Nebraska and Oklahoma had previously considered immigration crackdowns that ultimately failed. It's possible the Supreme Court ruling will deter other states from considering their own laws in the future, or at least discourage them from including provisions similar to those struck down.

"I don't think this is a total victory for our side by any stretch of the imagination," said Mary Bauer, legal director of the Montgomery-based Southern Poverty Law Center, which is challenging Alabama's law. "But I think it's a blow to other states that would think about going down this road."

Nebraska state Sen. Charlie Janssen, who sponsored a bill modeled after Arizona's last year, said he was encouraged that the Supreme Court at least upheld the one key provision allowing local authorities to check the immigration status of those suspected of being in the country illegally. But he said he wasn't sure if he would try to resurrect another immigration proposal.

"I certainly wouldn't bring something back that the U.S. Supreme Court just shot down," Janssen said.

In Oklahoma, one state lawmaker vowed to resurrect a proposal cracking down on illegal immigration. Last year, Sen. Ralph Shortey sponsored legislation that would have allowed police to confiscate property belonging to illegal immigrants. The Oklahoma City Republican said he would "absolutely" resurrect that proposal, adding that the Supreme Court ruling — in his view — says states can enforce immigration laws.

"That's all that we've asked, just let us (states) handle the problem on our own," he said.

<http://www.businessweek.com/ap/2012-06-26/state-immigration-law-challenges-to-move-forward>