

The arizona senate bill 1070: federalism positives and negatives

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Immigration & Federalism

On April 23, 2010, Arizona Governor Jan Brewer signed into effect The Support Our Law Enforcement and Safe Neighborhoods Act, also known as Arizona Senate Bill 1070. The Law stated that law enforcement officers have the right to demand to see anybody's citizenship papers if there is "reasonable doubt" of their citizenship. This law sparked a nationwide debate about the powers of the states and federal government in the power to pass immigration laws. Both sides have valid arguments. The constitution does not directly state the powers of immigration in the constitution to be of the federal government, and therefore the argument can be made as to whether these acts fall under the Necessary-and-Proper clause in Article I, Section 8 of the Constitution.

Federalism has many positives and negatives that must be examined before a presumption can be made on the state of immigration. "Federalism promotes national unity while permitting local 'diversities to continue' (Merits & Demerits of Federalism). Federalism also can sensitize people to their civic duties by stimulating the interest of citizens in local affairs. It prevents the rise of a central despotic government, and encourages local experiment and reforms in political life, filtering up new policies from the state to the federal level. However on the other hand, federalism "encourages wasteful duplication of services between the levels of government." There are also problems caused by inequities between states, such as unequal opportunities for students, and in spending on public services. (Merits & Demerits of Federalism) There are also negative

differences on even the state level. For example in Pema Co., Arizona, law enforcement officers are doing nothing different in immigration policing and are still referring all cases to the border patrol, whereas Maricopa County is enforcing it to the full extent of the law.

To answer this question, we will first analyze the constitutionality of Arizona Senate Bill 1070. “ The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized” (4th Amendment). This section of the Bill of Rights guarantees that a warrant must be issued for a search or seizure of private property. This is not required in the Bill, and there is no clear line between reasonable suspicion and unreasonable searches and seizures. Secondly the 14th amendment also states that “ No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the united states, nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws” (14th amendment), meaning that even if someone is not a citizen of the United States, by being within the jurisdiction of the United States, they are guaranteed the rights of all citizens. In allowing law enforcement officers to search people suspected as illegal and demand their papers, it is violated their fundamental right in the Bill of Rights which prevents illegal search and seizure.

In creating and enforcing immigration laws, the power falls upon the federal government. The Constitution states that “ The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive against domestic violence” (Article III Section 4). This states that the federal government is responsible for protection from outside forces, which includes illegal aliens from other countries. Also, the power of naturalization is listed as one of the enumerated powers (Article I, Section 8), meaning that all naturalization powers fall with the federal government. The constitution later says that To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof” (Article I, Section 8) or that all powers related to naturalization are federal powers, and not of the states.

“ The federal government alone establishes the content of ‘ pure’ immigration law- the rules governing the admission and removal of non-citizens. Courts and scholars, however, widely accept this description of federal dominance as constitutionally mandated, believing that the Constitution commits authority over immigration law solely to the federal government. This is the structural preemption view of immigration authority: an understanding that the Constitution withdraws immigration authority from the states and grants it to the national government.” (Vanderbilt Law Review)

Since there is federal immigration law, it is the jurisdiction of the government, and the federal law, as stated in the constitution's "Supremacy Clause" (Article VI, Section 1). The Federal Government has the authority to make and enforce the immigration laws, not the state government. The State cannot pass laws that are not the same as the federal government's policy because the federal policies preempt those of the state government.

In Conclusion the Federal Government is responsible for immigration control. They have the enumerated power of Naturalization, which through the necessary and proper clause gives them the power to control immigration.