

Justices' Arizona Ruling On Illegal Immigration May Embolden States

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Body

The decision by the Supreme Court this week upholding an **Arizona** law punishing employers for hiring **illegal** immigrants was an energy boost for **state** lawmakers across the country who have proposed bills this year to curb **illegal immigration**. As if they needed it.

According to the National Conference of **State** Legislatures, **state** lawmakers set a new record in the first three months of the year, proposing 1,538 bills related to **immigration**, with 141 measures in 26 **states** passed into law. While some of those laws extended new opportunities to **illegal** immigrants, like permitting them to pay lower in-**state** tuition rates at public colleges, most of the laws imposed restrictions on them.

With its decision on the hiring law that **Arizona** passed in 2007, the Supreme Court indicated that it would not flat out disallow any action by **states** on **immigration** enforcement, even though federal law generally pre-empts **state** measures in that area. **State** lawmakers now know for certain that there is some firm legal ground for the recent round of bills that seek to drive **illegal** immigrants out of the country by preventing them from taking jobs and even living here.

But it remains unclear just how large the playing field is that the Supreme Court has opened. **Arizona**'s employer law was carefully tailored to conform to specific, narrow terms in federal **immigration** law, and it was never suspended by any federal court. To date, only a handful of **states** have passed laws with requirements and penalties for employers similar to **Arizona**'s.

Instead, this year many more **states** weighed whether to emulate the more sweeping and politically polarizing law that **Arizona** passed last year, known as S.B. 1070, which expanded the powers of the **state** and local police to ask about the **immigration** status of people they detain. The Supreme Court has not yet considered that law, which has been largely suspended by federal courts.

By now, however, with the legislative season either winding down or over in most **states**, it seems clear that lawmakers' decisions on whether to follow **Arizona**'s lead on police enforcement ultimately had more to do with **state** politics than with concerns about potential legal challenges and Supreme Court rulings.

Kris Kobach, the constitutional lawyer who has been the intellectual if not the actual author of many of the **state** **immigration** enforcement laws, was elated by the court's recent decision. The **ruling** "has vindicated our position that **states** are not pre-empted by federal law from these actions," said Mr. Kobach, who is now secretary of **state** of Kansas.

He predicted that many more **states** would soon "jump on the bandwagon" to impose new responsibilities on employers.

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Arizona's statute includes the most severe penalties of any **state** hiring law, imposing what employers call a "business death penalty": on the second offense of knowingly hiring an **illegal** immigrant, the business loses its license permanently. **Arizona** also mandated the use by all employers of a federal electronic program for verifying the work authorization of new hires, known as E-Verify.

Only Mississippi and South Carolina followed **Arizona** in requiring all employers to use the verification system. In the storm of lawmaking this year, Georgia and Utah passed laws requiring larger businesses to use the system (in Georgia, by July 2013). Virginia required employers to use it, but only for **state** contracts.

Far larger is the number of **states** where **Arizona**-style enforcement laws were debated, voted, praised and protested. According to the National **Immigration** Forum, which opposes such laws, bills like **Arizona's** failed after sometimes furious debate in 15 **states**.

Georgia was the first **state** to pass a law close to **Arizona** S.B. 1070, and Gov. Nathan Deal, a Republican, signed it into law this month. Georgia growers raised an outcry against the law, saying it would cripple their labor force. But Republicans who control the legislature strongly supported the law, which built on an earlier set of measures against **illegal immigration** Georgia passed in 2006.

In March, Utah passed an enforcement law that echoed **Arizona's**, but tempered it politically with a measure that would create a temporary guest worker program. A federal court has temporarily held up the enforcement law.

With their session in its last days, Alabama lawmakers are close to passing a broad measure that could be even tougher than **Arizona's**. In addition to requiring most employers to use the verification system, Alabama's bill would ban **illegal** immigrant students in public schools from participating in band, cheerleading and any other extracurricular activity. The bill has faced little organized opposition.

An enforcement measure is also close to passage in South Carolina.

Several **states** stood down at the last minute. After intense opposition by Florida growers and the tourism industry, legislators let an enforcement measure die in the final hours of their session. On Thursday, Democrats in the Texas Senate blocked a measure that would have stepped up **immigration** enforcement in cities. Texas police chiefs turned out forcefully against the measure, although Gov. Rick Perry, a Republican, had made it a priority.

Finally, Maryland and Connecticut, with small but rapidly growing Latino populations, went a different way entirely, passing laws to allow **illegal** immigrant students to attend public colleges at in-**state** rates.

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