

Supreme Court Upholds Arizona Law On Illegal Immigration

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Yesterday, the Supreme Court held in *Chamber of Commerce v. Whiting* that the controversial Arizona law on illegal immigration—the Legal Arizona Workers Act of 2007—was not preempted by federal immigration laws. The federal Immigration Reform and Control Act (IRCA) bars employers from employing individuals who are not authorized to work in the United States. In doing so, IRCA limits states ability to regulate such conduct. States may not impose civil or criminal sanctions on employers who employ unauthorized workers, except through licensing and similar laws. Further, federal law permits, but does not require, employers to use E-Verify, an internet-based system that allows an employer to verify a workers work authorization status. The issue before the Court in *Whiting* was whether the Legal Arizona Workers Act was inconsistent with these federal immigration laws. A majority of the Court held that it was not.

The Legal Arizona Workers Act of 2007 is one of many statutes recently enacted by the states to limit employment of unauthorized aliens. It allows the Arizona state courts to suspend or revoke the licenses necessary to do business in that state if an employer knowingly or intentionally employs an unauthorized alien. Further, the statute requires all employers in the state to verify employment eligibility using the E-Verify system. The U.S. Chamber of Commerce, along with other business and civil rights organizations, brought suit in federal court, alleging that the law was expressly or impliedly preempted by federal immigration law. The district court held that the Arizona law was not preempted, and the Court of Appeals agreed.

On certiorari, the Supreme Court affirmed that the law was not preempted. First, the Court held that the law fell within the exception to IRCA for state licensing laws. The Court broadly defined a license as a right or permission to engage in some business, occupation or transaction. It thus held that the Arizona laws provision for the revocation or suspension of an employers business licenses in the state constituted a licensing law within the meaning of the exception. It rejected the Chamber of Commerces arguments that such sanctions on employers interfered with the operation of the federal immigration scheme. Further, the Court concluded that Arizona could mandate an employers use of E-Verify, explaining that federal law does not prohibit this.

The majoritys decision in *Whiting* means that under the rubric of licensing laws, a state may restrict an employers ability to transact business there as a sanction for employing unauthorized aliens. As noted by Justice Sotomayor in her dissent, employers may be subjected to a patchwork of enforcement schemes wherever they do business. At least ten other states (Colorado, Mississippi, Missouri, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Georgia, and Utah) have passed laws similar to that of Arizona, and the decision may encourage other states to do the same.

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