



Written by [Joe Wolverton, II, J.D.](#) on December 8, 2011

Alabama AG Recommends Changing State Immigration Law

In a letter sent last week to members of the state legislature, Alabama's Attorney General recommends repealing key provisions of the state's well-publicized anti-illegal immigration statute.

Attorney General Luther Strange (left) suggests the repeal of at least two of the law's more controversial sections, both of which are currently not being enforced per an injunction handed down by a federal appeals court. Specifically, the sections suggested for scrapping include one that makes it a crime for illegal aliens to be detained while not in possession of proper immigration documentation, and another mandating that the state's public schools maintain a registry of their students' immigration status.



In the memo dated December 1, Strange set out his purpose in making the recommendation for removal of elements of the state statute: "My goals are to (1) make the law easier to defend in court; (2) assist law enforcement in implementation; and (3) remove burdens on law abiding citizens. All while not weakening the law."

In October, both of these portions of the law ([HB 56](#)) were blocked from being enforced by the 11th Circuit Court of Appeals sitting in Atlanta. The [Obama administration sued Alabama](#), asserting that by enacting the law the state legislature and Governor violated the Constitution by legislating in an area over which the federal government has exclusive authority.

[Many similar state laws have been challenged](#) by the Obama Department of Justice. Arizona, South Carolina, and Georgia have all been taken to court by Attorney General Eric Holder for having allegedly usurped federal authority by passing laws seeking to regulate the immigration of aliens.

As [has been covered many times](#) by *The New American*, this interpretation of the Constitution is incorrect and contrary to both the intent of the Framers and the constraints placed on the federal government by the enumerated, limited powers granted to it by the Constitution.

Nowhere in that document is the federal government given any power, not to mention exclusive power, to set national immigration policy. Therefore, according to the terms of the Tenth Amendment, the states and the people retain the right to govern in that arena.

The [Tenth Amendment](#) reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved by the states respectively, or to the people."

Undaunted by those irrefutable facts, however, in November the U.S. Department of Justice sent a



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letter to Attorney General Strange instructing him that despite the position taken in his earlier correspondence to the department, the DOJ has authority to conduct investigations into possible violations of the civil rights of immigrants.

The letter from the DOJ was written by Assistant U.S. Attorney General Thomas Perez in response to a letter from Strange sent earlier that month. In that letter, Strange demanded that the federal department inform him as to the authority granted to it to require schools in Alabama to report demographic enrollment data to the DOJ.

Alabama has defended its anti-illegal immigration law by pointing out that it contains provisions “safeguarding against unlawful discrimination on the basis of race, color, or national origin.” Such illustrations will likely be made in some future federal courtroom, as well. The problem is that asking a federal court to restrain the powers of the federal government is like asking a drug addict to pass stricter drug laws.

[Reports](#) indicate that this apparent reversal of opinion came as a result of a [statement made on CNN](#) by the President Pro Tempore of the Alabama Senate, Del Marsh. In that interview, Marsh responded to a question about the law by stating that the state’s legislature would consider amending the law only if such a request were made by the state Attorney General.

“The legislative leadership asked for our opinion and we provided it,” Strange told the [Associated Press](#).

Marsh was joined in his request for the AG’s opinion by the state Speaker of the House, [Mike Hubbard](#). Thereafter, Hubbard’s office issues a statement reassuring voters that the baby was not being thrown out with the bathwater.

Make no mistake, the Legislature is not going to repeal this law and have Alabama become a sanctuary state for illegal immigrants. Speaker Hubbard is focused on making our illegal immigration law work better, clearing up misconceptions and correcting any portions that might be vague or require additional definitions.... Speaker Hubbard wants a positive work environment for Alabama citizens and legal immigrants. We can have that while also shutting off the magnet drawing illegal immigrants into our state.

The “magnet” spoken of by Speaker Hubbard no doubt includes the panoply of welfare benefits made available to residents of many states — legal or illegal.

Without delay, Strange accordingly provided his views to the state lawmakers, insisting that the elimination of those two provisions would make the law less susceptible to legal challenges and would facilitate the unimpeded implementation of other equally critical parts of the law. Moreover, Strange asserted that cutting those parts of the statute would improve law enforcement and remove the burden of compliance from citizens.

It is in relation to that last point that the American Civil Liberties Union (ACLU) has filed a brief with the 11th Circuit Court of Appeals to overturn the entirety of the law. The ACLU’s filing avers that the law places the onus on compliance with the law directly on the immigrant community, with the intent of creating so inhospitable an atmosphere in the Heart of Dixie that immigrants will have no choice but to leave the state.

Another opponent of the law, Karen Tumlin of the Immigration Law Center, said that the state government was forced into changing the law after witnessing its “devastating” effects.

The state’s case wasn’t helped after one particular attempt by police to enforce the law made the news



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nationwide. In November, [a German Mercedes executive was detained](#) by the Tuscaloosa Police Department after he could not produce the requisite legal immigration documents during a routine stop for not having proper tags on the rental car he was driving.

After that incident, the Governor immediately reached out to the business community, assuring it that he would work to ensure that HB 56 was not enforced in such a way as to harm efforts to recruit international businesses to Alabama.

This pro-business attitude was echoed by a spokesman for Speaker of the House Hubbard: "Lawmakers are right now working with industry leaders to see what updates might be necessary to maintaining what is arguably the most business-friendly environment anywhere in America."

Other recommendations made by Attorney General Strange in the memo include removing the law's ban on eligibility for the issuing of bail bonds to illegal aliens. The constitution of the state of Alabama protects the people's "absolute right to bail in all noncapital cases."

The law's current prohibition on entering into contracts with illegal aliens would be tweaked slightly so as to apply only to those contracts made after the enforcement date of the law.

HB 56 was signed into law by Governor Robert Bentley on June 9, 2011 in a ceremony held at the Old House Chamber at the Alabama State Capitol in Montgomery.



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