



Written by [Joe Wolverton, II, J.D.](#) on December 19, 2011

## State Attorneys General Seek Halt to Challenges to Immigration Laws

On Thursday, motions were filed in the 11th Circuit Court of Appeals by attorneys general of Alabama, Georgia, and South Carolina asking the court to temporarily halt challenges currently proceeding against their immigration laws pending a ruling by the Supreme Court in the case of *Arizona v. United States*, scheduled to be heard by the highest court sometime during this term.

The Obama Administration has challenged the constitutionality of all three recently enacted immigration statutes, arguing that the federal government has exclusive jurisdiction to legislate in the arena of immigration.



Early last week, [the Supreme Court announced](#) that it will hear oral arguments in the matter and ultimately issue a ruling deciding whether the legislature and Governor of the Grand Canyon State were preempted by federal law from enacting a law establishing immigration policy.

As [has been reported previously](#), S.B. 1070 authorizes law enforcement to require production of immigration documents from an individual already the subject of a lawful stop who is reasonably suspected of being illegally present in the state.

The case is on appeal from [a decision of the Ninth Circuit Court of Appeals](#) wherein that court upheld an injunction issued in April by the federal district court that prevented four key provisions of the law from being enforced.

The attorney general for the state of Alabama, Luther Strange (pictured above), has recently recommended changes to several key (and controversial) provisions of his own state's law that in many respects mirrors the Arizona statute. It comes as no surprise, then, that Strange is anxious to push pause on the legal drama playing out over the Alabama immigration law.

In a [statement released by his office](#), Strange said:

The Arizona case will substantially affect many of the legal questions that are critical to Alabama's appeals pending in the 11th Circuit. Alabama has supported Arizona in its legal effort from the beginning, and Alabama will continue to vigorously support Arizona as the case moves to the Supreme Court. It is vital that all of our effort and attention be focused on helping Arizona win, and we hope to take a leadership role in the amicus process to do just that.

The office of attorney general of Georgia, Sam Olens, published a brief statement on its website:

Earlier this week, the U.S. Supreme Court announced that it has agreed to review the decision of the U.S. Court of Appeals for the Ninth Circuit striking down portions of the State of Arizona's immigration law. My office, along with 10 other Attorneys General, asked that the U.S. Supreme



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Court review the fundamental question of preemption which was raised in the State of Arizona's lawsuit. I am pleased that the Court recognizes the great uncertainty that exists in the states due to this question and has agreed to review Arizona's jurisdiction to enforce federal immigration laws. It is appropriate that an issue of this gravity be decided by our highest Court, and I look forward to the Court's guidance on the ability of the states to encourage compliance with federal immigration laws.

In his motion, the South Carolina Attorney General, Alan Wilson, [requested that the court allow his state's immigration law take effect](#) January 1, 2012 as planned.

He joined his colleagues, however, in seeking a stay on all legal action against South Carolina's immigration statute until the Supreme Court issues its ruling in the Arizona case, possibly late next year.

Said Wilson, "A ruling by the Supreme Court in Arizona is likely to resolve most or all of the issues" in the South Carolina case.

The reaction to the filings by the state attorneys general by of one of the groups fighting the enactment of the state immigration laws was quoted in an article published by CBS News:

Sam Brooke, an attorney with the Southern Poverty Law Center, which is one of the parties challenging the law, said the organization's reaction to the motions by Alabama and Georgia is divided.

The law in Alabama "is continuing to cause havoc in our state because several provisions have been permitted to go into effect, and are in effect today. We oppose any request that these harms be permitted to continue, and oppose Alabama's request for a stay," he said. "Since the parts we challenged are enjoined in Georgia, we did not oppose the request for a stay by Georgia."

Similar laws [were recently passed in Utah and Indiana](#), but attorneys general in those states did not join their colleagues in filing stays on Thursday.

Mark Shurtleff, attorney general for the state of Utah, said Thursday he has no plans to file a motion seeking a delay.

"We will ask the courts to hear the lawsuit immediately but the Department of Justice will likely oppose our motion to have it heard immediately," said Paul Murphy, a spokesman for Shurtleff's office.

Indiana Attorney General Greg Zoeller is reportedly undecided as to whether he will ultimately join in the motion filing movement. Accordingly, his statement on the Supreme Court's grant of cert in the Arizona case is non-committal.

"It's a welcomed development that the U.S. Supreme Court has agreed to hear the Arizona case to provide the only real guidance coming out of Washington on the issue of immigration," Zoeller said.

Since the beginning of the federal government's case against Arizona's anti-illegal immigration law (and that of each of the other states who have passed similar bills), the Obama administration has insisted that the federal government has exclusive jurisdiction over immigration and states are preempted from entering that field.

Once the feds have "occupied the field," so the argument goes, of this or that area of the law or policy, then no other government (state or local) may trespass therein.

In all of the complaints filed against the various states that have enacted Arizona-style immigration



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laws, U.S. Attorney General Eric Holder insists that the federal footprint has marked the legal limits within which a state may make laws in the field of immigration.

Constitutionalists are hopeful that the Supreme Court's decision will address the critical question of where, exactly, in the Constitution is found congressional authority to regulate immigration. The enumeration in the Constitution of specific powers delegated to the federal government is the cornerstone of American political theory and of the constitutional Republic established in 1787. The basic definition of enumerated powers is that the best limitation on power is to not give it in the first place. Powers, as understood by Madison, Jefferson, et al., were only legitimate if they had been granted to the government by the people and written specifically in the document through which the governed gave life to the government — the Constitution.

The Constitution makes no such endowment of power over immigration to the federal government, therefore, the Tenth Amendment guarantees that the right to rule in that area is reserved to the states and to the people.

Regardless of whether the Supreme Court upholds the principle of federalism and rules in favor of Arizona, the states have a natural right to govern themselves and needn't be bound by actions of the federal government that exceed the boundaries placed by the Constitution around its very limited sphere of authority.



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