

Erickson Column: Arizona flexes its enforcement muscle

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It has long been the responsibility of the federal government to pass the immigration laws of our nation. It is the fed that is supposed to take the actions necessary to regulate immigration. However, waiting for the fed to take action has proven to be a frustrating experience for some states that want to see action taken sooner than later. In Arizona, one of the nation's busiest roadways for illegal immigrant smuggling, they have taken a more aggressive approach in getting new immigration laws passed.

Arizona is keenly aware that it serves as a primary gatekeeper for immigrants because it is a border state. Because of that border flow, Arizona has apparently tired of waiting for solutions from the fed. As a result, the state legislature is well on its way in becoming the only state to criminalize the presence of illegal immigrants through an expansion of its trespassing laws.

The Associated Press reported recently that the Arizona proposal, which has already been approved by the state Senate and is currently being considered by the House, would authorize police to inquire into those cases where they have reasonable suspicion that the person may not have a valid immigration status.

The bill's sponsor, state Senator Russell Pearce, noted that some local politicians "don't have the courage to stand up for their citizens."

In a state where immigration has become a huge issue, it's a safe bet that the measure will be enacted soon. The Senate approved the bill by a vote of 16-12 last week. The House will decide the bill's fate soon.

One noteworthy piece of the bill concerns legal sanctions. A first offense would be treated as a top-tier misdemeanor. Anyone convicted of a first offense would face a sentence of up to 6 months in jail. A conviction of a second offense would be viewed as a felony and result in the individual facing in excess of 2 years in prison. Even first-time offenders would face the prospect, at the choice of the arresting agency, of being turned over to the federal government for prosecution.

Even if the bill passes, there will undoubtedly be pushback from immigration advocacy groups who argue that states can't enact statutes that operate as immigration laws. The issues surrounding the constitutionality of state statutes on immigration will likely be argued loudly. However, Maricopa County Attorney Andrew Thomas, his office a participant in drafting the bill, argues that the states have police powers that allow them

to assist and participate in the efforts against illegal immigration. He sums up what others are undoubtedly thinking when he says: “The argument that the states can’t do anything to combat illegal immigration is just wrong.”

Supporters of tougher immigration laws maintain that racial profiling won’t be an issue because it will still be necessary for officers to have and articulate probable cause prior to any arrest. It’s a given that appearance alone will not be enough to hurdle the probable cause requirement. “It’s almost impossible for it to be applied without relying on racial profiling and without committing egregious errors,” said Jennifer Allen, director of the Border Action Network, an immigrant- rights group based in southern Arizona. In order to avoid, or at least be prepared to defend litigation, the state would be well served to make sure that its officers are well trained on probable cause and our immigration laws.

Arizona’s decision to adopt a tougher statewide stance on immigration enforcement could be a portent of things to come. In the past, only localities, like Prince William County, have taken additional enforcement measures to address immigration issues. Time will tell if other states follow suit in attempting, like Arizona, to take actions into their own hands.

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