



UNITED STATES V. ARIZONA: CONSTITUTION WINS OVER THE TYRANNY OF THE MAJORITY

Posted on July 29, 2010 by Cyrus Mehta

In Round 1 of the legal battle against Arizona's Immigration Law, S.B. 1070, the Constitution triumphed. Judge Susan R. Bolton agreed with the United States that the State of Arizona had invaded into an area that has always been occupied by the federal government, <http://www.scribd.com/doc/35017735/USA-v-Arizona-Order-Granting-Preliminary-Injunction>. The judge blocked the most controversial provisions – allowing local enforcement to determine immigration status based on a reasonable suspicion that one is unlawfully present and criminalizing failure to carry registration documents.

The following extract from Judge Bolton's order is particularly revealing of the mischief that SB 1070 would unleash tomorrow, July 29, 2010, if these provisions were not preempted under the Supremacy Clause of the Constitution:

Requiring Arizona law enforcement officials and agencies to determine the immigration status of every person who is arrested burdens lawfully-present aliens because their liberty will be restricted while their status is checked. Given the large number of people who are technically "arrested" but never booked into jail or perhaps even transported to a law enforcement facility, detention time for this category of arrestee will certainly be extended during an immigration status verification. (See Escobar, et al. v. City of Tucson, et al., No. CV 10-249-TUC-SRB, Doc. 9, City of Tucson's Answer & Cross-cl., ¶ 38 (stating that during fiscal year 2009, Tucson used the cite-and-release procedure provided by A.R.S. § 13-3903 to "arrest" and immediately release 36,821 people).) Under Section 2(B) of S.B. 1070, all arrestees will be required to prove their immigration status to the satisfaction of state authorities, thus increasing the intrusion of police presence into the lives of

legally-present aliens (and even United States citizens), who will necessarily be swept up by this requirement.

Under our Constitution, a court can block and subsequently strike down a law that is *ultra vires*, however popular it might be among the people. It is true that SB 1070 had broad support among people in Arizona. Even in national polls, a majority of people were in favor of this law. Yet if the majority were to have its way, the minority would get oppressed in the same way that a tyrant or despot would trample upon a despised group of people, which is why the term [*tyranny of the majority*](#), coined by Tocqueville, has gained added significance after the passage of SB 1070 . If the majority of people in a town hypothetically supported a proposal and passed into law a provision to banish all immigrant children from its public school and playgrounds, notwithstanding their status, this would surely be struck down even if it was most popular. The court would serve as a check against the majority, and be guided by the bill of rights and other provisions in our Constituion.

As a lawyer and a naturalized US citizen who might have potentially gotten ensnared under SB 1070 if I ever visited Arizona (but I have chosen to boycott the state until SB 1070 gets completely extinguished), I am proud that the Constitution won over the views of the majority in Round 1. This issue is going to ultimately land up in the Supreme Court, and I do hope that the Constitution will continue to triumph all the way till the end!