

require them to verify electronically that the people they hired were in the country legally. Three years later, Gov. Jan Brewer signed a bill that would empower local police to enforce federal immigration standards, requiring those it thought might be here illegally to produce documentation and imposing state sanctions on those who could not produce such documentation. Both pieces of legislation were challenged in the courts. Setting aside the civil rights issues involved, which have their own political stakes, what was at stake for federalism in the passage of these two laws?

For the state of Arizona, what was at stake was the management of a problem with implications that are economic (where cheap immigrant labor is available, legal workers have to work for a similarly cheap rate or go unemployed), social (a heightened crime rate), and political (anger over both of the former problems threatens to unseat officials who are unresponsive to those issues). Secretary Napolitano, arguing from inside the federal government now, claimed that the law she signed was necessary to manage illegal immigration and should not be challenged.⁹⁷ Governor Brewer said that the law she had signed “represents another tool for our state to use as we work to resolve a crisis we did not create and the federal government has refused to fix.”⁹⁸ Other states share Arizona’s stakes and echo its concerns; almost all have passed or attempted to pass legislation dealing with some aspect of immigration.

For the federal government, however, the stakes were equally critical. Federal law imposes sanctions on employers who hire undocumented workers and on immigrants who do not carry their documentation, but it forbids states to impose their own sanctions. “While we understand the frustration of Arizonans with the broken immigration system, a patchwork of state and local policies would seriously disrupt federal immigration enforcement and would ultimately be counterproductive,” federal Justice Department officials said. “States can and do play a role in cooperating with the federal government in its enforcement of immigration laws, but they must do so within our constitutional framework.”⁹⁹ If states were to create their own legal systems for dealing with this problem, there would be fifty separate sets of rules and sanctions for federal officials to navigate. In fact, the U.S. Supreme Court basically agreed with the Justice Department’s arguments when it ruled, five to three in June 2012, that immigration was a federal matter. The Court allowed to stand Arizona’s requirement that police ascertain whether those they stop or arrest are citizens, but they said it would depend on how that portion of the law was implemented, and indicated that it might be susceptible to further legal challenge; the other essential components of the law were struck down.¹⁰⁰

But Arizonans were right that the federal government had not dealt effectively with the issue of illegal immigration, which is a constant problem for states along that extensive and porous border. In general, as we saw in Chapter 2, the federal government has had difficulty passing a comprehensive immigration bill in recent years. Although people like Sen. John McCain blame President Obama, it was President Bush who first tried to update our immigration laws. He was ultimately defeated by the more conservative members of his party, who want a tougher stance on undocumented workers, preferring to ship them back to Mexico rather than create a formal guest worker program that would give workers a legal way to come to the United States and help fill our labor needs. Bush’s plan, like the Development, Relief and Education for Alien Minors (DREAM) Act debated off and on in Congress since 2001, provides a path by which some illegal immigrants already here (students, in the case of the DREAM Act) can eventually earn citizenship. The DREAM Act passed in the House of Representatives in 2010 but failed to pass in the Senate. With Senator McCain, once a friend to immigration reform, now taking a hard line that borders must be secured before reform can be addressed, and with a Republican majority in the House of Representatives in 2011, the impasse in Washington seemed irresolvable. In June 2012 President Obama announced that he had directed Homeland Security not to deport young illegal immigrants who had been brought to this country as children and who were in college or the military. He said it was a matter of priorities, and his administration believed they should focus on older and more dangerous illegal immigrants, but it was clear that frustration with the failure of the DREAM Act to pass was leading him to take what steps he could on his own.

In August 2010 President Obama signed the Southwest Border Security Bill, which allocates \$600 million to help secure the border between the United States and Mexico, but absent more comprehensive reform, it is unlikely to stop the flow of workers here in search of opportunities.¹⁰¹ Frank Sharry, executive director of America’s Voice, a national interest group that lobbies for comprehensive immigration reform, summarizes the state of immigration reform this way:

Years ago, you had President George W. Bush and Mexican President Vicente Fox talking about how to modernize immigration policy between the two countries so that, as they put it in their own words, immigration became safe, legal and orderly. And now, you have Arizona politicians saying, “Kick them out and keep them out.” The vision of a 21st-century immigration policy that delivered control and promised humanity has been replaced by hard-edged rhetoric and mean-spirited policies that have strained relations between the two countries.¹⁰²