

NINTH CIRCUIT UPHOLDS LEGAL ARIZONA WORKERS ACT

On September 17, 2008, the Ninth Circuit court of appeals upheld the LEGAL ARIZONA WORKERS ACT. That law targets employers who hire illegal aliens and its principal sanction is the revocation of state licenses to do business in Arizona. It has yet to be enforced against any employer.

Various business and civil-rights organizations (collectively, “plaintiffs”) brought these actions against the fifteen county attorneys of the state of Arizona, the Governor of Arizona, the Arizona Attorney General, the Arizona Registrar of Contractors, and the Director of the Department of Revenue of Arizona (collectively, “defendants”).

Plaintiffs allege in this case that the Legal Arizona Workers Act (“the Act”) is expressly and impliedly preempted by the federal Immigration Reform and Control Act of 1986 (“IRCA”), and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). They also allege that the Act violates employers’ rights to due process by denying them an opportunity to challenge the federal determination of the work-authorization status of their employees before sanctions are imposed.

The district court held that the law was not preempted. The main argument on appeal is that the law is expressly preempted by the federal immigration law provision preempting state regulation “other than through licensing and similar laws.” In view of the Ninth Circuit, the district court correctly determined that the Act was a “licensing” law within the meaning of the federal provision and therefore was not expressly preempted.

While upholding the statute in all respects against this facial challenge, the Ninth Circuit observes: “This case is brought against a blank factual background of enforcement and outside the context of any particular case. If and when the statute is enforced, and the factual background is developed, other challenges to the Act as applied in any particular instance or manner will not be controlled by our decision”.