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Provision left after immigration ruling could be model for other laws

Patricia Zapor Catholic News Service | Jul. 5, 2012

WASHINGTON -- The Supreme Court's June 25 ruling overturning much of Arizona's 2010 immigration law should limit other states' efforts to pass some kinds of immigration controls, but legal experts predict more costly litigation lies ahead over the boundaries of the "show me your papers" provision the court let stand.

Doris Meissner, former head of the federal immigration agency, said she would expect states that want to dive into immigration-law waters might find something of a model for types of laws that could pass muster with the court, by targeting areas of law usually left to the states.

In a 5-3 ruling, the Supreme Court tossed out as unconstitutional several key provisions of the law known as S.B. 1070.

Namely, it rejected sections of the law that criminalized the act of failing to carry proof of legal immigration status (under federal law, being in the country illegally -- called illegal presence -- is a civil code violation); criminalized the act of applying for employment without a federal work permit; and allowed police to arrest someone without a warrant if the officer suspects the individual might be subject to deportation. The three sections were rejected as pre-empting federal jurisdiction.

The Supreme Court let stand a fourth provision, which allows police to investigate the immigration status of an individual if the officer has reason to suspect the person might be in the country illegally.

In the ruling written by Justice Anthony Kennedy, the court said the so-called "show me your papers" provision didn't on its face conflict with the Constitution or impinge on federal jurisdiction. But Kennedy and the other four justices warned that the key to the provision's survival is it is not interpreted in a way that prolongs the detention of people who are stopped by police.

Writing for a website that watches the high court, SCOTUSblog, attorney Amy Howe explained the court "left open the possibility that opponents of the law could return to court to challenge it once it has been enforced and Arizona courts have a chance to interpret it."

She said the upshot of the ruling is "that if a person is arrested, Arizona can check his immigration status while it holds him. But if the person is merely detained -- for example, at a traffic stop -- the immigration check will probably take too long and he will probably have to be released."

Meissner, senior fellow and director of the U.S. immigration policy program at the Migration Policy Institute, told Catholic News Service in a phone interview Tuesday that the court was "very clear that they are inviting future challenges" to how the "show me your papers" law is enforced.

Meissner, who headed the Immigration and Naturalization Service from 1993 to 2000, said the opinion is "certainly a warning" to states that are contemplating similar legislation, that they are likely to face litigation. Considering how lengthy and expensive such litigation can be, Meissner said, "that's a strong implicit

disincentive" to jump into the pool with Arizona and other states that also have such laws.

She said Kennedy's opinion also might be used by states as a guideline for how to construct laws that could pass Supreme Court muster because they steer clear of aspects of federal jurisdiction. For example, she said, Alabama's immigration law passed in 2011 includes a requirement that public schools gather and report data about which students are undocumented immigrants.

The Supreme Court ruled in 1982 that immigration status may not be used as a bar to receiving an education through high school. Alabama's law does not prohibit undocumented immigrants from attending school, but the section was included in the bill as an incentive to people who are in the state illegally to "self-deport" or at least to leave the state.

Administrators of Alabama schools with large populations of immigrants reported steep declines in attendance when the law took effect. Most of Alabama's law has been blocked pending court challenges.

But as Meissner noted, education is an area of law that generally is left to the purview of the states, meaning there might be more latitude given by the court to provisions like Alabama's.

"There was nothing that says states can't do that," Meissner said. "It's absolutely within the authority of a state-based institution to decide education laws."

Restrictions on renting or opening accounts for utility services might also arguably be interpreted as matters of state, not federal jurisdiction, she added.

On the other hand, Meissner said given that the ruling threw out three of the four provisions that went before the Supreme Court, supporters of a federal comprehensive immigration reform might be emboldened to ramp up pressure on Congress to finally deal with the mess of immigration law at the federal level.

Faith-based organizations that had opposed Arizona's law issued statements of support for the court's action and said they would be vigilant to ensure that the "show me your papers" provision is not enforced in a way that targets certain groups for harassment.

Maria Odom, director of the Catholic Legal Immigration Network, said the ruling's "broad affirmation of federal supremacy in the area of immigration" was very positive.

CLINIC affiliates handle immigration-related cases through church-based agencies around the country.

The Arizona Catholic Conference, the public policy arm of the bishops of the dioceses of Tucson, Phoenix and Gallup, N.M., which includes a portion of Arizona, said the Catholic leaders believe the "show me your papers" provision "will not enhance security, benefit the economy of our state or foster its well-being."

"Rather this provision might separate families, create the possibility of racial profiling even if unintended by the law, heighten fear in the immigrant community, jeopardize community policing, and not fix the federal immigration policy which many across the political spectrum have said is broken," the conference said.

United Methodist Bishop Minerva Carcano, leader of the Methodists' Desert Southwest Conference, based in Phoenix, said the law has already had a devastating impact on the state.

"The centerpiece of this legislation has allowed for racial profiling, which has created fear in Arizona's residents and weakened trust in local law enforcement," said a statement from Bishop Carcano, who also co-chairs the United Methodist Interagency Immigration Task Force.

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