



KANSAS REPUBLICAN PARTY

February 3, 2016

Testimony in Support of HB 2466, Prohibiting “Sanctuary” Ordinances and Resolutions

We support HB 2466 and its two prongs, prohibiting Kansas cities and counties from adopting policies or rules that limit or restrict the enforcement of federal immigration laws and policies or rules that restrict the gathering or communicating of information on immigration status.

Public Policy of HB2466: (1) To prevent the unnecessary presence of potentially dangerous criminals in our communities. There should be no more Kate Steinle incidents. (2) Ensure that the rule of law is followed in Kansas

I. PUBLIC SAFETY

This statement from ICE’s 2016 Report makes the point.

“The enactment of numerous state statutes and local ordinances reducing and/or preventing cooperation with ICE, . . . , led an increasing number of jurisdictions to decline to honor immigration detainers in FY 2015. . . . resulting in convicted criminals being released back into U.S. communities with the potential to re-offend, notwithstanding ICE’s request for those individuals. Moreover, these releases further constrained ICE’s civil immigration enforcement efforts because it required ICE to expend additional resources to locate and arrest convicted criminals who were at-large rather than transferred directly from jails into ICE custody, drawing resources away from other ICE enforcement efforts.”

<https://www.ice.gov/sites/default/files/documents/Report/2016/fy2015removalStats.pdf> at pg 5.

II. RULE OF LAW

Federal Supremacy: The policies or rules prohibited by HB 2466 are contrary to federal law and, therefore, illegal. HB 2466 merely reinforces the illegality. Current federal law prescribes any restriction or limitation by local government on communication between local police or officials and federal immigration authorities regarding a person's immigration status. 8 USC §§ 1373, 1644. This includes any prohibition on sharing information with federal immigration officials regarding the alien status of a person. To the extent that a local government prohibits or restricts a police officer from asking a person about his or her immigration status, it constitutes a substantial restriction on officers’ ability to communicate information to federal immigration officials about the person's immigration status. 8 USC §§ 1373, 1644.

HB2466, therefore, prevents violations of federal law.

Federal Preemption: Policies prohibited by HB2466 are preempted by federal law. The US Supreme Court has declared that "the power to regulate immigration is unquestionably exclusively a federal power." DeCanas v Bica, 424 U.S. 351, 354 (1976). DeCanas set out three alternative tests of when federal immigration law preempts local rules. First, if local enactments constitute a regulation of immigration. Second, where Congress has unmistakably indicated its intent to occupy the field of regulation. Third, where local activity stands as an obstacle to the execution of the full purposes and objectives of Congress.

Under these three alternative tests, sanctuary policies are preempted under the second and third alternatives, namely, existence of an unmistakable federal mandate and because these policies stand as obstacles to the accomplishment and execution of the purposes and objectives Congress expressed in 8 USC §§ 1373, 1644 and the legislative record thereto.

HB2466, therefore, prevents local Kansas governmental entities from regulating in a field completely preempted by federal law.

State Control of Municipalities: The state legislature can prohibit local governments from adopting any policy, including sanctuary policies, because municipalities are subject to the legislature. A municipality is the creature of the state legislature and in the absence of a constitutional bar the powers and privileges of a municipality may be changed or modified at the discretion of the legislature.

HB2466, therefore, is within the power of the state legislature to control the policy of its own administrative subdivisions.

III. **PUBLIC SUPPORT**

Voters Oppose Local Policies Which Conflict with Federal Law: A recent poll found 62% of American voters wanted federal legal action brought against cities that frustrated federal immigration law enforcement and 58% wanted federal funds cut off to those cities.

Source:

http://www.rasmussenreports.com/public_content/politics/current_events/immigration/july_2015/voters_want_to_punish_sanctuary_cities

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