

Summary of Testimony

Kris W. Kobach

Before the House Federal and State Affairs Committee

In Opposition to H.B. 2712

February 14, 2012

Members of the Committee:

There are three reasons to oppose this bill. They are as follows.

(1) H.B. 2712 is a legal impossibility

Under federal law there is no mechanism by which a state can confer employment authorization on aliens unlawfully present in the United States—even if the state were to have the cooperation of the U.S. Department of Homeland Security. There is no “waiver” under federal law that the executive branch can give to a state to legalize a group of illegal aliens *en masse*.

Any attempt by the State of Kansas to do so would be preempted. The United States Supreme Court made this clear in the case of *De Canas v. Bica*, 424 U.S. 351 (1976). In that case, the Supreme Court explained that a state cannot attempt to confer legal immigration status (or deny legal immigration status) on any person.

(2) The U.S. Department of Justice has denied Utah’s attempt to create a similar program.

If ever there were an Administration in Washington, D.C., that would be willing to try to find a way to make such a state-level amnesty possible, it would be the Obama Administration. Yet even they have conceded that it is impossible. See the attached letter from the Obama Justice Department to the Utah Attorney General explaining that Utah’s program is preempted under federal law.

(3) This Kansas Amnesty bill is an affront to the 95,500 Kansans who are Unemployed.

According to the Bureau of Labor Statistics, as of December 2011, there were 95,500 Kansans actively seeking work. Proponents of amnesties like H.B. 2712 will tell you that “Americans won’t do these jobs.” But that is statistically untrue. According to the U.S. Census Bureau, the majority of workers in both agricultural and meat packing sectors of the economy continue to be native born U.S. citizens. Americans *are* doing these jobs, right alongside authorized alien workers and unauthorized alien workers.

House Fed & State Affairs

Date: 2-14-12

Attachment 1



U. S. Department of Justice

Civil Division

Assistant Attorney General

Washington, D.C. 20530

November 21, 2011

The Honorable Mark Shurtleff
Attorney General, State of Utah
Office of the Attorney General
Utah State Capitol Complex
350 North State Street, Suite 230
Salt Lake City, Utah 84114

Dear Attorney General Shurtleff:

This is to follow up on our ongoing dialogue in connection with Utah's Immigrant Guest Worker statutes, H.B. 116 and H.B. 469, which were passed during Utah's most recent legislative session and which are scheduled to go into effect in 2013. During the course of our discussions, I have expressed the view of the Department of Justice that these provisions are clearly preempted by federal law. This continues to be the Department's position.

Given that the provisions do not take effect until 2013, and in light of the constructive conversations we continue to have with you about these provisions pursuant to the Justice Department's long-standing policy of exploring resolution short of litigation before filing suit against a State, we are hopeful that Utah's upcoming legislative session will provide an opportunity for Utah to comply with federal law in this area. If, however, this is not possible, we will not hesitate to take the legal action necessary to vindicate the important federal interests in this matter before these laws go into effect.

I look forward to continuing our discussions, and we will continue to carefully monitor the situation in Utah pertaining to these provisions.

Sincerely,

Tony West
Assistant Attorney General

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