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Democracy in America and the Federal, State, and Local Government Battles Over SB 54

By Isra Shah

Isra Shah serves as Interim City Attorney to the City of Buena Park and Deputy City Attorney to the City of Upland. She received her JD at the University of California, Irvine School of Law, where she was a member of the inaugural class, and practices law in the Orange County and Los Angeles offices of Richards, Watson and Gershon.



I. INTRODUCTION

On January 1, 2018, Senate Bill (“SB”) 54 became effective. The key part of this legislation enacted the California Values Act, which is codified at Government Code Section 7284 et seq. SB 54 is intended to limit the involvement of state and local law enforcement agencies in federal immigration enforcement efforts. The Legislature declared the following

purposes for doing so: “to ensure effective policing, to protect the safety, well-being, and constitutional rights of the people of California, and to direct the state’s limited resources to matters of greatest concern to state and local governments.”¹ What followed

1. Cal. Gov. Code § 7284.2(f).

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was a (perhaps predictable) assertion of preemption rights by the federal government, and (perhaps less predictable and rather remarkable) pushback from local agencies about their own communities' right to determine policing methods, public safety measures, and the use of resources.

Two months later, the U.S. Department of Justice ("DOJ") filed a complaint against the State of California over, amongst other immigration-related laws, the California Values Act, on the basis that its provisions are preempted by federal law.² Shortly thereafter, the City of Los Alamitos adopted an ordinance purporting to exempt itself from the California Values Act on the grounds that SB 54 conflicts with the U.S. Constitution. Los Alamitos also indicated its intent to file an amicus brief in support of the DOJ in the litigation against the State. In April, amidst a cascade of cities and counties taking formal positions on SB 54, the City of Huntington Beach filed its own complaint against California, asserting its right to govern its own municipal affairs (including its police department), under the power granted to charter cities by the California Constitution.³

The purpose of this article is to describe: 1) the constitutional framework for analyzing the SB 54 legislation; 2) California's attempt to craft the legislation in a way that fits this constitutional framework; 3) the various arguments made by the DOJ, Los Alamitos, and Huntington Beach asserting that SB 54 is unconstitutional; and 4) the implications of California's decision to regulate local-federal cooperative agreements on topics extending beyond immigration.⁴



II. CONSTITUTIONAL FRAMEWORK

The litigation surrounding SB 54 collectively depends on an analysis of a number of constitutional principles, which are summarized as follows:

1. Both the federal and state governments have elements of sovereignty the other is bound to respect, pursuant to the Tenth Amendment of the U.S. Constitution.
2. The federal government has "broad, undoubted power over the subject of immigration and the status of aliens." This authority rests, in part, on the federal government's constitutional power to "establish an uniform Rule of Naturalization," and its inherent power as sovereign to control and conduct relations with foreign nations.⁵
3. The U.S. Constitution delegates certain powers to the states through the Tenth Amendment. The Amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This general power of governing, possessed by the state

governments, is called the police power.⁶ The police power is generally exercised by a state's legislature, except as limited by the state's constitution.⁷

4. In turn, the California Constitution expressly confers on cities the power to make and enforce within their limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.⁸ In addition, the organization, maintenance, and operation of a police department by a charter city is a municipal affair; as such, it is not subject to the control of the Legislature.⁹

5. The Supremacy Clause of the U.S. Constitution addresses scenarios where federal and local laws are in conflict or at cross-purposes. Under this principle, Congress has the power to preempt state law.¹⁰ Generally, state law must give way to federal law if the law regulates conduct in a field that Congress has determined must be regulated by its exclusive governance, or when the state law conflicts with federal law.¹¹ This includes cases where compliance with both federal and state regulations is a physical impossibility, as well as those instances where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and

2. The case is entitled *United States of America v. State of California, et al.*, 2:18-cv-00490-JAM-KJN (E.D. Cal).

3. The case is entitled *City of Huntington Beach v. State of California et al.*, 30-2018-00984280-CU-WM-CJC (Superior Court, Orange County).

4. Note that a fourth lawsuit, entitled *Los Alamitos Community United et al. v. City of Los Alamitos et al.*, 30-2018-00987018-CU-WM-CXC (Superior Court, Orange County) is not discussed in this article. At issue in that case are specific actions taken by the City of Los Alamitos with respect to its response to the SB 54 legislation.

5. *Arizona v. United States*, 567 U.S. 387, 394–95 (2012) (citing *Toll v. Moreno*, 458 U.S. 1, 10 (1982); *U.S. Const.* art. I, § 8).

6. *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012).

7. *Max Factor & Co. v. Kunsman*, 5 Cal. 2d 446 (1936), aff'd, 299 U.S. 198 (1936).

8. *Cal. Const.* art. XI, § 7.

9. *Brown v. City of Berkeley*, 57 Cal. App. 3d 223 (1st Dist. 1976).

10. The Supremacy Clause provides a clear rule that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any state to the Contrary notwithstanding." *U.S. Const.* art. VI, cl. 2. See *Gade v. National Solid Wastes Management Assn.*, 505 U.S. 88, 115 (1992).

11. The intent to displace state law altogether can be inferred from a framework of regulation "so pervasive ... that Congress left no room for the States to supplement it" or where there is a "federal interest ... so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); see *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990).

objectives of Congress.¹²

III. OVERVIEW OF SB 54

SB 54 places significant new restrictions on when and how California law enforcement agencies cooperate with immigration authorities.¹³ California generally takes the position that SB 54 simply directs the expenditure of police resources, a subject of local control, away from federal immigration efforts. It further takes the position that SB 54 protects the civil rights of California residents. Among other things, the statute specifically prohibits California law enforcement agencies from

12. *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–143 (1963); *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

13. The term “California law enforcement agency” covers state and local law enforcement agencies, and includes school police or security departments. Cal Gov. Code § 7284.4(a). The term “immigration authority” essentially covers any federal, state, or local officer or employee performing investigation or enforcement efforts related to a federal immigration law. Cal Gov. Code § 7284.4(c), (f).

performing the following activities:

- Inquiring into an individual’s immigration status;
- Detaining an individual on the basis of a “hold” request;
- Providing information about an individual’s release date, unless the information is publicly available or is in response to a notification request made in accordance with Section 7282.5;
- Providing personal information about an individual, such as a home or work address, unless the information is publicly available;
- Transferring an individual to immigration authorities, unless authorized by a judge or in accordance with Section 7282.5;
- Making or participating in an arrest

based on a civil immigration warrant;

- Participating in certain border patrol activities, including warrantless searches; and
- Performing the functions of an immigration officer.

In addition, Section 7284.6(a) bars California law enforcement agencies from placing peace officers under the supervision of federal agencies, and from employing peace officers who have been deputized as special federal officers or special federal deputies for purposes of immigration enforcement. The statute also bars California law enforcement agencies from using immigration authorities as interpreters for law enforcement matters relating to individuals in custody. Finally, law enforcement agencies are barred from contracting with the federal government to house federal detainees and from providing

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office space for exclusive use by immigration agents.¹⁴

Section 7284.6(b) provides limited exceptions to these prohibitions. One exception is that a California law enforcement agency is not precluded from responding to a request for information about a specific person's criminal history, as accessed through the California Law Enforcement Telecommunications System (CLETS). Another exception allows an agency to participate in joint law enforcement task forces with the federal government if the following criteria are satisfied: (i) the task force's primary purpose is not immigration enforcement; (ii) the enforcement or investigative duties are primarily related to a violation that is unrelated to immigration enforcement; and (iii) participation in the task force does not violate a local law or policy.

Notably, the SB 54 legislation is not the first time that California acted to regulate law enforcement agencies' cooperation with immigration authorities. In 2013, the Legislature enacted Assembly Bill ("AB") 4, known as the Trust Act, to address when law enforcement agencies may continue to detain an individual pursuant to a hold request from federal immigration authorities. AB 4 limited the time a law enforcement agency could continue to detain an individual to 48 hours, and only if certain criteria were met, including that the individual had been convicted of certain types of felonies. The latest limitation on law enforcement's discretion to respond to a notification request revises the 48-hour rule imposed by the Trust Act. The Trust Act did not result in litigation brought by any local agency.

IV. ASSOCIATED LITIGATION

A. DOJ

On March 6, 2018, the U.S. Department of Justice filed a complaint in the United

14. SB 54 allows for the continuance of contracts entered into prior to June 15, 2017.

States District Court for Eastern District of California, seeking to invalidate and enjoin enforcement of certain provisions of California law, including the California Values Act. The complaint generally alleges that the California laws violate the Supremacy Clause and the provisions of a federal statute, 8 U.S.C. Section 1373 ("Section 1373"). That section generally provides that a government entity or official may not prohibit or restrict any other government entity or official from sending to or receiving from the Immigration and Naturalization Service information regarding an individual's citizenship or immigration status, or from maintaining and/or sharing the information with other government entities.

B. Los Alamitos

On March 19, 2018, the City of Los Alamitos approved, by a 4-1 vote, the first reading of an ordinance declaring its itself "exempt" from SB 54. Authored by Los Alamitos' Mayor Pro Tem, the agenda report for the ordinance asserted that: 1) SB 54 is contrary to the U.S. Constitution and/or federal law; 2) this conflict between the U.S. Constitution and the California Constitution must be resolved in favor of the U.S. Constitution; and 3) failure to favor the U.S. Constitution/federal law in this scenario constitutes a violation of a city councilmember's oath to support and defend the U.S. Constitution. On April 18, 2018, the Los Alamitos City Council, after four hours of public comment, approved the ordinance on second reading on a 4-1 vote. In doing so, Los Alamitos took the unusual step of "opting out", without city attorney input, of the SB 54 legislation rather than challenging some or all of its provisions in court.¹⁵

In addition to adopting the ordinance, the Los Alamitos City Council decided at its March 19, 2018 meeting to file an amicus

15. Cindy Carcamo, *Can tiny Los Alamitos take on California's 'sanctuary state' movement?* Los Angeles Times, March 21, 2018, available at <http://www.latimes.com/local/lanow/la-me-sanctuary-state-los-alamitos-20180321-story.html>.

brief in support of the DOJ in its litigation against the State of California.

C. Huntington Beach

On April 4, 2018, the City of Huntington Beach took a different approach in response to SB 54. Rather than join the existing federal litigation brought by the DOJ, and rather than declare itself "exempt" from the legislation, Huntington Beach filed a Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief against the State of California in the Orange County Superior Court.¹⁶ Huntington Beach generally alleged that:

- As a charter city, it has authority over municipal affairs including the investment and expenditure of city funds and the provision of a police department.
- Immigration and naturalization is within the exclusive purview of the Federal Government; therefore it cannot be a matter of statewide concern.
- SB 54 interferes with the city's charter authority to enforce local laws and regulations, including the receipt and expenditure of the city's revenues, operation of the city's police department, as well as interfering with the city's ability to contract with the federal government and elected officials' duty to carry out their respective oaths of office.

V. CONSTITUTIONAL ISSUES

A. Supremacy Clause vs. Tenth Amendment considerations

At the heart of the issues surrounding the SB 54 legislation in the DOJ case is the boundary line between the federal government's immigration powers and California's powers under the Tenth Amendment to establish and enforce laws

16. *City of Huntington Beach v. State of California et. al*, 30-2018-00984280-CU-WM-CJC.



protecting the welfare, safety, and health of the public.

On one side is the argument that SB 54 is a proper exercise of a state's authority to determine how to expend law enforcement resources. To that end, in *Printz v. United States*, the U.S. Supreme Court struck down certain provisions of a federal law that required local law enforcement officers to conduct background checks prior to the sale of firearms. The U.S. Supreme Court ruled that, under the Tenth Amendment, the federal government may not "commandeer" states into becoming the enforcement agents of federal law.¹⁷

On the other side is the issue of whether SB 54 actually thwarts federal enforcement of immigration laws. SB 54 acknowledges and explicitly authorizes compliance with all aspects of Section 1373, the federal statute prohibiting restrictions on the flow of information regarding individuals' legal status amongst government agencies.¹⁸ In response to the DOJ's argument in a related litigation that SB 54 itself violates Section 1373, California has argued that the Tenth Amendment prevents Section 1373 from being constitutionally enforced

against state statutes.¹⁹

In *Arizona v. United States*, the State of Arizona enacted legislation requiring registration of immigrants and authorizing officers to arrest without a warrant a person "the officer has probable cause to believe has committed any public offense that makes the person removable from the United States." The U.S. Supreme Court held that the legislation was preempted by the removal system created by Congress. In doing so, the Court acknowledged that federal law specifies limited circumstances in which state officers may perform the

functions of an immigration officer, but the Court concluded that the Arizona statute attempted to provide state officers even greater authority than Congress had given to trained federal immigration officers. The Court thus found that Arizona's action violated the Supremacy Clause of the U.S. Constitution.²⁰

SB 54 is essentially the "mirror image" of the Arizona legislation. While Arizona afforded its law enforcement officers with responsibilities that belonged to federal immigration authorities, SB 54 directs law enforcement to take only the minimum action with respect to immigration enforcement required under federal law. Whether this distinction is enough for a court to uphold the SB 54 legislation is an issue that will be decided in the DOJ case. The recent attention to SB 54 following Los Alamitos's decision to adopt its exemption ordinance resulted in the filing of dozens of amicus briefs on behalf of individuals, public officials, advocacy groups, cities, and states in just the initial stages of the DOJ litigation. Ultimately, the issue will likely be

resolved by the U.S. Supreme Court.

B. Matters of Statewide Concern vs. Municipal Affairs

While the DOJ litigation against the State of California tests the boundary line between the federal and state governments' respective sovereign powers, the Huntington Beach litigation will test the boundary line between California's ability to regulate matters of statewide concern and charter cities' authority to manage their own municipal affairs.

Notably, Huntington Beach elected to challenge SB 54 by pointing to Article XI, Section 5 of the California Constitution. The California Constitution provides that cities that adopt their own charter have supreme authority over municipal affairs.²¹ With respect to municipal affairs, charter cities' laws supersede other inconsistent laws.²² And, although the term "municipal affairs" is undefined, certain "core" categories, including the regulation of a city's police force, are generally considered municipal affairs.²³ Accordingly, Huntington Beach alleged that because SB 54 regulates the circumstances in which local police may work with federal authorities, Huntington Beach's ability to regulate its police force is impaired, in violation of the California Constitution.

Whether the SB 54 legislation properly applies to charter cities will be determined by the court through a four-part inquiry:

"First, a court must determine whether the city ordinance at issue regulates an activity that can be characterized as a "municipal affair." Second, the court "must satisfy itself that the case presents an actual conflict between [local and state law]." Third, the court must

21. *Cal. Const.* art. XI, §§ 3(a), 5(a). By contrast, "general law cities" must adhere to the state's general law, even if a regulation concerns a municipal affair.

22. *Cal. Const.* art. XI, § 5(a).

23. *Cal. Const.* art. XI, § 5(b); *Johnson v. Bradley*, 4 Cal. 4th 389, 399 (1992).

17. *Printz v. United States*, 521 U.S. 898 (1997).

18. Cal. Gov. Code § 7284.6(e).

19. *California v. Sessions*, 3:17-cv-04701-WHO (N.D. Cal).

20. *Arizona v. United States*, 567 U.S. 387, 398–400 (2012); *U.S. Const.* art. VI, cl. 2; 8 U.S.C. §§ 1226(a), 1357(g)(10)

(B); A.R.S. § 13-3883(A)(5).

decide whether the state law addresses a matter of “statewide concern.” Finally, the court must determine whether the law is “reasonably related to...resolution” of that concern and “narrowly tailored” to avoid unnecessary interference in local governance. “If ... the court is persuaded that the subject of the state statute is one of statewide concern and that the statute is reasonably related to its resolution [and not unduly broad in its sweep], then the conflicting charter city measure ceases to be a ‘municipal affair’ pro tanto and the Legislature is not prohibited by article XI, section 5(a), from addressing the statewide dimension by its own tailored enactments.”²⁴

Although the focus of the court’s inquiry will be the regulation of police versus cooperation with federal authorities with respect to immigration enforcement, the court’s decision in this area may have far-reaching consequences for cities.

VI. IMPLICATIONS AND CONCLUSION

The DOJ and Huntington Beach cases will clarify the appropriate constitutional limitations of federal, state, and local governments with respect to federal immigration enforcement. For cities, the outcome of the cases may soon become instructive in responding to future legislation that extends beyond the topic of immigration. Already, one proposed bill, AB 1578, sought to similarly restrict state and local agencies from cooperating with federal investigations of cannabis activities that are illegal under federal law, but legal under state law.²⁵ The extent to which local agencies must comply with regulations mandating how they interact with federal agencies may hinge on the courts’ interpretation of arguments made in the current slate of cases with respect to SB 54.



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24. *State Bldg. and Constr. Trades Council of California, AFL-CIO v. City of Vista*, 54 Cal.4th 547, 556 (2012) (citations omitted).

25. The bill is currently inactive. See https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201720180AB1578.