

ABA Praises Decision in *Arizona v. United States*

ABA President Bill Robinson praised the United States Supreme Court's decision in *Arizona v. United States*, which held that three provisions of S.B. 1070, Arizona's immigration law, were preempted by federal law. The ABA filed an amicus brief in the case, arguing that the law should be overturned. The Association maintained that "immigration law and policy are and must remain uniquely federal, with states having no role in immigration enforcement except pursuant to federal authorization and oversight." The ABA's Commission on Immigration influenced the ABA's brief in the case. The Commission has provided pro bono assistance to detainees on the Mexican border.

The leadership of the ABA has opposed the Arizona legislation since its adoption in 2010. At the time, then-ABA President Carolyn Lamm declared, "The recently signed immigration law in Arizona runs contrary to the fundamental tenets of our Constitution relative to equal protection and due process. This draconian, and likely unconstitutional, law threatens to reverse nearly 50 years of civil rights advancements in our nation. It is, quite simply put, a law based on prejudice and fear, one whose purpose is to be divisive." She charged that the law amounted to racial profiling, was "divisive," and derived from "fear and prejudice."

Robinson stated after the decision, "In light of the Court's ruling that upholds immigration status checks by state law-enforcement officials under Section 2(B) that are conducted consistent with federal immigration and civil rights laws, the ABA calls on authorities to avoid unnecessary, prolonged detention of individuals who are lawfully present in the United States."

Robinson's statement came ten days after he praised the Obama Administration's decision to allow youths who illegally came to the United State the right to remain in the country if they were to meet certain criteria. Robinson stated, "These young people deserve a chance to pursue the American dream. . . . The [Obama Administration's] announcement is consistent with American ideals of fairness and opportunity. Children should not be punished for the acts of their parents." Robinson "urge[d] Congress to pass the Development, Relief, and Education for Alien Minors Act, which would give deserving young people an opportunity to remain in our country for the longer term and to earn citizenship. The DREAM Act would give children who were brought here through no fault of their own the opportunity to become fully contributing members of our society."

ABA Urges Confirmation of Judicial Nominees

On June 20, the ABA sent a letter to Senate Majority Leader Harry Reid and Senate Minority Leader Mitch McConnell voicing its concerns about the slow pace of the judicial confirmation process. The ABA is concerned that judicial nominations will come to a halt because of the so-called "Leahy-Thurmond Rule," in which the Senate stops confirming "long-standing" judicial nominees during a presidential election year. The last circuit-court nominees were confirmed in June during the 2004 and 2008 presidential campaigns, and in July during the 2000 campaign.

The letter submitted by ABA President Bill Robinson expressed "grave concern" for the prospects of confirming a number of judicial vacancies. He urged the Senate leaders "to schedule floor votes on three pending, noncontroversial circuit court nominees before July and on district court nominees who have strong bipartisan support on a weekly basis thereafter." Robinson noted that the appellate court nominees—William Kayatta,

Jr. of Maine, nominated to the First Circuit; Robert Bacharach of Oklahoma, nominated to the Tenth Circuit; and Richard Taranto, nominated to the Federal Circuit—all had either bipartisan support and support from home-state Republican senators. Kayatta was nominated on January 23, 2012 and received a hearing in March. Bacharach was also nominated on January 23. On November 10, 2011, Taranto was nominated to the Federal Circuit. All three nominees were rated unanimously "well-qualified" by the ABA's Standing Committee on the Federal Judiciary.

On June 24, Senator McConnell and ranking Senate Judiciary Committee Member Charles Grassley sent a letter to respond to Robinson's request. They expressed their "surprise" at their receipt of the letter, noting that vacancies at this point in an election year were about the same or lower than at the same point in 2008. The senators observed that several long-standing, noncontroversial Bush nominees, including Robert

Conrad, Steve Matthews, and Glen Conrad on the 4th Circuit, did not receive similar attention from the ABA. Others, like Rod Rosenstein in Maryland and Peter Keisler in D.C., also received little attention from the ABA. The senators also noted the ABA's silence on these questions in 2004, when the circuit vacancy rate was much higher than it is now. They also remarked that 151 judicial nominees, along with two Supreme Court nominees, were confirmed in President Obama's first term, a figure "far greater than what was achieved under comparable circumstances during the last Administration."

Senators McConnell and Grassley also commented:

The ABA presents itself to the public as a non-partisan, professional organization. However, it has chosen to advocate for this Administration's circuit court nominees in the few remaining months before this presidential election, when it chose not to do so before either of the last two presidential elections despite much more compelling circumstances. This sort of selective advocacy is precisely why so many people question the ABA's professed neutrality.

In July 2011, then-ABA President Stephen Zack wrote Senate Majority Leader Reid and Minority Leader McConnell, urging them to "redouble your efforts to fill existing judicial vacancies promptly so that the federal courts will have the judges they need to uphold the rule of law and deliver timely justice." He noted that "There is no priority higher to the Association than to assure that we have a fully staffed and fully operating federal bench." His predecessor, Carolyn Lamm, wrote a similar letter to senators in 2009.

Interview with ABA President-elect

To read an interview with ABA President-elect Laurel Bellows, visit the following link: <http://www.fed-soc.org/publications/detail/february-2012-bar-watch-update>.

ABA House of Delegates Considers Policies on Religious Profiling, SLAPPs, and Campaign Finance

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criminal activity in the absence of specific and articulable facts.

The recommendation also suggests that such legislation should require "(1) that law enforcement agencies have written policies, training, and supervision necessary to effectively implement the ban and funding necessary for these purposes; (2) data collection, on all police stops and searches, whether of drivers and their vehicles or pedestrians; (3) where feasible, independent analysis of data collected, and publication of both the data and analysis; and (4) funding for police agencies to be made contingent on compliance with these requirements."

According to the ABA Criminal Justice Section, such anti-profiling laws have been shown to be a necessary response to an ineffective method of identifying possible criminals that ultimately contributed to the deterioration of relationships between law enforcement and citizens within communities. The recommendation originally included only race and ethnicities as protected characteristics, and was written in response to a growing belief that African Americans and Latinos have been targeted by police for stops and searches. In the 1990s, this belief was put forward with data suggesting that minorities were disproportionately stopped. In June 2003, the Department of Justice issued a Policy Guidance regarding profiling that states: "Racial profiling in law enforcement is not merely wrong, but also ineffective. Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to society." With that Policy Guidance, federal agencies were directed not to use race or ethnicity in making decisions about whom to target for routine law-enforcement activities. In 2004, the ABA adopted a policy recommending that state and federal governments should establish criminal-justice task forces on race and ethnicity to "conduct studies to determine the extent of racial and ethnic disparities in the criminal justice system." In 2008, the ABA "updated and expanded" its previous resolutions with new recommendations for federal, state, local, and tribal governments urging the enactment of legislation and policies to ban racial and