

No. 11-182

In The
Supreme Court of the United States

—————◆—————
ARIZONA, et al.,

Petitioners,

v.

UNITED STATES,

Respondent.

—————◆—————

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Ninth Circuit**

—————◆—————

**BRIEF *AMICUS CURIAE*
OF LAWRENCE J. JOYCE IN
SUPPORT OF PETITIONERS**

—————◆—————

LAWRENCE J. JOYCE
1517 N. Wilmot Rd., #215
Tucson, AZ 85712
(520) 584-0236
lawyerlj@aol.com
Counsel of Record

INTEREST OF THE *AMICUS*

Your *amicus*, Lawrence J. Joyce, who is a member of the bar of the Supreme Court of the State of Arizona and of this Honorable Court, was a member of the now-disbanded Civil Homeland Defense (CHD), an organization which was based in Tombstone, Arizona.¹ Civil Homeland Defense was one of several groups of private citizens which sought within the past ten years to bring to public attention the complete disregard which many elected officials of the United States and of the State of Arizona have had for the many problems associated with illegal entry into the United States generally, and into our state specifically. Civil Homeland Defense also sought to bring to light the contempt for the rule of law, the indifference to the needs of our citizens, and the indifference to the impact on our state treasury which such disgraceful disregard by public officials entails. Your *amicus* walked armed patrols with CHD along the Arizona-Mexico border, in full accordance with the law of the State of Arizona and the law of the United States, without incident.

The goal of Civil Homeland Defense was to goad our elected officials into taking action. S.B. 1070 was

¹ Your *amicus* states that your *amicus*, who is counsel of record, is the sole author of this brief, and no person or entity other than your *amicus* made a monetary contribution intended to fund the preparation or submission of this brief. This brief is filed with the consent of all parties.

the fruit of the efforts of your *amicus* and of many others. Your *amicus* does not wish to see the efforts of so many good people become nullified by an incorrect understanding of the Constitution.



SUMMARY OF ARGUMENT

S.B. 1070 protects the State of Arizona against certain illegal invasions which themselves do not constitute violations of federal immigration law. For under S.B. 1070 a person could invade the state illegally by entering into the state from any other state just as much as by entering from a foreign country; and the crossing of state lines by an illegal entrant does not by itself constitute a violation of federal immigration law. Thus, S.B. 1070 does more than just uphold federal immigration law. It also helps uphold separate state interests as well. It is not preempted by federal law, and this Court's doctrines on preemption, the Tenth Amendment, and the original articles of the Constitution require reversal of the Court of Appeals.



ARGUMENT

I. S.B. 1070 Upholds State Interests Against Illegal Invasions Which Are Not Themselves Violations Of The Immigration Law Of The United States.

Not all invasions of the State of Arizona by illegal entrants violate federal immigration law. An illegal entrant may enter the state illegally from the State of California, for example, or from the States of Nevada, Utah, Colorado, or New Mexico. For that matter, an illegal entrant may enter the state illegally by boarding an airplane in Minneapolis that lands in Phoenix. None of these types of illegal entry into the state would, by themselves, constitute a violation of the immigration law of the United States, for the illegal entrant would already be present illegally in the United States anyway before entering Arizona, and the crossing of state lines into Arizona by an illegal entrant does not constitute a violation of federal immigration law.

Thus, although S.B. 1070 does help uphold the immigration law of the United States, it is also the case simultaneously that S.B. 1070 helps protect the people of the State of Arizona and their state treasury from the effects of illegal invasion in a manner which is separate and distinct from the extent to which it helps to uphold federal immigration law. Furthermore, on the basis of the record, Arizona might also be rightly concerned that it now bears, and will continue to bear, a heavier share of the costs and problems associated with illegal entrants than might be

suffered, on average, by the other states. And thus, under this Court's own doctrines, in order for S.B. 1070 to be preempted by federal immigration law, it would somehow have to be the case that Congress intended for federal immigration law to preclude even state action which is designed to protect certain interests that a state has separate and apart from those of the United States,² even though federal immigration law itself is concerned only with crossings of our international borders, not our state borders. The idea that preemption could then somehow apply to S.B. 1070 is thus far-fetched.

Of course, if Congress had passed legislation intended to occupy the field of illegal entrants crossing from state to state, an issue of preemption would arise; no federal legislation does occupy that field, therefore no issue of preemption can arise.³ Furthermore, in the absence of federal legislation intended to occupy the field of illegal entrants crossing from state to state, not allowing Arizona to enforce S.B. 1070 on the grounds that some of the illegal entrants may have crossed the international border into Arizona rather than a state border into Arizona would vitiate the state's Tenth Amendment right to protect itself and those interests which it has separate and distinct

² See, *Skiriotes v. State of Florida*, 313 U.S. 69, 74-77 (1941), and *DeCanas v. Bica*, 424 U.S. 351, 354-363 (1976).

³ *Ibid.*

from those of the United States.⁴ Likewise, this Court has recognized that our states, in ratifying the Constitution of the United States, did not divest themselves of their character of being actual states, of being genuinely robust and invigorated sovereign bodies of general jurisdiction;⁵ consequently, not allowing the states to protect their own vital interests would even run afoul of this Court's jurisprudence on the original articles of the Constitution.



CONCLUSION

WHEREFORE, the judgment of the Court of Appeals must be reversed, and this case should be remanded to the District Court with instructions to enter judgment in favor of the Defendants/Petitioners.

Respectfully submitted,

LAWRENCE J. JOYCE
Counsel of Record

⁴ *Ibid.* See also, *Gregory v. Ashcroft*, 501 U.S. 452, 463-464 (1991); *United States v. Lopez*, 514 U.S. 549, 558-559, 564 (1995); *Printz v. United States*, 521 U.S. 898, 923-925 (1997); *United States v. Locke*, 529 U.S. 89, 109 (2000); and *United States v. Morrison*, 529 U.S. 598, 615-618 (2000).

⁵ See, *Poole v. Fleeger*, 36 U.S. (11 Peters) 185, 209 (1837) (construing the "Compact" provision of Art. I, § 10, Cl. 3), and *Hinderlider v. La Plata*, 304 U.S. 92, 104 (1938) (construing the "Compact" provision of Art. I, § 10, Cl. 3).