

**Opening Statement of
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**Public Hearing of the House State Government Committee
on the *National Security Begins at Home* Legislative Package**

Good Morning. I'm Michael Bekesha, an attorney at Judicial Watch. Judicial Watch is a Washington, D.C.-based public interest group dedicated to promoting transparency, integrity, and accountability in government, politics, and the law.

Thank you Chairman Metcalfe for inviting me here today. It is an honor for me, on behalf of Judicial Watch, to appear before this Committee. As you know, the illegal alien problem is an important issue, not only in Pennsylvania, but around the country. The adverse effects of illegal immigration can be seen almost everywhere.

In areas touching on illegal immigration, Judicial Watch advances its mission through education, investigations and when necessary, litigation. We educate Americans about the problems associated with illegal immigration. We investigate and uncover how the government fails to enforce the law or disobeys it, and we go to court to try to enforce and defend the strong enforcement of our nation's immigration laws and states' authority to police within its borders.

Regardless of what you may have read or heard, the immigration debate is not abating. There continues to be a vast disconnect between everyday Americans and the federal government. For example, Judicial Watch conducted an Election Day poll of actual voters in partnership with The Polling Company. We asked a question relevant to the recent debate over Arizona's SB 1070. The poll asked voters whether local law enforcement officers should be more involved, less involved, or as involved as they are now in areas touching upon immigration. An impressive 53% of voters thought local law enforcement should be more involved, and 26% were of the opinion that local police should be as involved as they are. In other words, more than 75% of the respondents urged local officers to either maintain or increase their level of involvement in addressing illegal immigration. Incredibly, only 15% of voters thought local police should be less involved in protecting its citizens from the effects of illegal immigration.

Although Americans overwhelmingly want the rule of law enforced, the federal government continues to look for ways to avoid enforcing the law. Moreover, and more startlingly, the federal government has taken the rare action of suing two states – Arizona and Alabama – for seeking to assist the federal government in enforcement and regulate activity within its borders. In other words, the federal government is proactively preventing states from policing within its borders and protecting its citizens.

With respect to Arizona, Judicial Watch currently represents the Arizona State Legislature in its effort to defend SB 1070, the latest of a series of law enforcement provisions enacted by the Arizona State Legislature under its well-recognized police powers. Since 2002, the Arizona State Legislature has enacted various initiatives to ensure the safety of its citizens. They include: denying bond to illegal aliens who commits a serious crime in Arizona; preventing

illegal aliens who sue an American citizen from receiving punitive damages; requiring individuals to produce proof of citizenship before they may register to vote; and finally, and most significantly, SB 1070, which codifies as Arizona law certain already existing enforcement provisions of federal law.

And its efforts have overwhelmingly succeeded. According to the Phoenix Law Enforcement Association, the organization that represents the rank-and-file police officers in Phoenix, violent and property crimes decreased to a 20-year low in 2009. Similarly, arrests in Phoenix have dropped by over 10% from 2009 to 2010. Although city hall will not recognize the effect of the legislative initiatives on crime rates, the Phoenix Law Enforcement Association has no doubts: the various law enforcement provisions enacted by the Arizona State Legislature have worked.

And I am pleased to be here today to support this Committee's efforts to protect the citizens of this Commonwealth from the adverse effects of illegal immigration.

First, let me reiterate why we are here today. We are here because the federal government has decided not to enforce the law. As you all are probably well aware, recently, the Supreme Court decided in favor of the state of Arizona in a legal challenge to its E-Verify Law. During oral argument in that case, Justice Scalia commented that "nobody would [have thought] that . . . the Federal Government would not enforce [immigration laws]. Of course, no one would have expected that." States, such as Pennsylvania, have no choice but to enact legislation designed to minimize the adverse effects of the federal government's lack of enforcement.

Everyone knows that proactive legislation works. It is clear in Arizona. And, neither the federal government nor the interest groups challenging the various laws around the country claim that the laws do not protect the public from additional lawlessness. The only issue is whether a specific state law is preempted by federal law.

Contrary to public perception, not every law related to aliens is preempted by federal law. Only state laws that regulate immigration are *de facto* preempted by federal law. Almost 40 years ago, the Supreme Court made it clear that the mere fact that aliens are the subject of a state statute does not render it a regulation of immigration. And, importantly, only the determination of who should or should not be admitted into the country, and the conditions under which that person may remain, is the regulation of immigration. Therefore, as long as states do not impair or interfere with the federal government's enforcement activity (if it chose to enforce the law), states have the authority to legislate in areas touching on immigration.

The *National Security Begins at Home* legislative package does not impose new restrictions on the manner in which an alien enters the country. Nor does it create any new requirements for such individuals to remain in the country. It certainly does not impose new conditions under which a legal entrant may remain in the country. The various pieces of legislation before this Committee today simply codify already existing enforcement provisions of federal law.

And, once again, according to the Supreme Court, states have authority to act with respect to illegal aliens where such action mirrors federal objectives and furthers a legitimate state goal. Now let me address several of the proposed initiatives before the Committee today and explain how they not only mirror federal objectives but also further a legitimate state goal.

House Bill 41 does no more than mirror federal objectives and furthers a legitimate state goal. Under federal law 8 U.S.C. § 1621, illegal aliens are not eligible for state or local public benefits. HB 41 therefore simply codifies this federal provision and requires individuals who apply for such benefits to provide identification of lawful presence so that state and local agencies do not provide benefits contrary to federal law. Moreover, HB 41 furthers a legitimate state goal because Pennsylvania taxpayers currently spend over \$500 million yearly on state and local benefits for illegal aliens.

House Bill 439 simply reinforces federal law. Under federal law 8 U.S.C. § 1324a, it is unlawful for a person or business knowingly to hire an illegal alien for employment. HB 439 does no more than provide guidance to certain licensees on what procedures to undertake to avoid violating federal law. Moreover, it creates penalties for those licensees that fail to take affirmative steps to follow federal objectives. Finally, it is well-established that states possess broad authority under their police powers to regulate employment to protect workers within the state. HB 439 simply protects the jobs of those who may lawfully work from those who cannot lawfully work under federal law.

House Bills 798 and 801 do not give state and local law enforcement officers any new authority. State and local law enforcement officers already have authority to investigate possible violations of the criminal provisions of federal immigration laws, including the authority to inquire about a person's immigration status. Therefore, these bills simply define in what circumstances and in what manner state and local law enforcement officers must inquire about a person's immigration status. Moreover, these bills reinforce federal law 8 U.S.C. § 1373, which prevents an arresting authority from prohibiting, or in any way restricting, any of its employees from sending to, or receiving from, the federal government information regarding the immigration status of any individual. In addition to the obvious effects of violent and property crimes on the public, taxpayers spend \$74 million yearly for costs associated to police, corrections, and judicial expenses for illegal aliens.

House Bills 810 and 865 mirror federal objectives and further a legitimate state goal by reinforcing federal law 8 U.S.C. § 1373. The goal of HB 810 and 865 is to prevent municipalities from becoming safe-havens or sanctuaries for illegal aliens. Many cities around the country have adopted sanctuary policies to the detriment of its citizens. For example, Judicial Watch currently represents Joslyn Johnson, a Houston police sergeant, whose husband Rodney Johnson was shot and killed by an illegal alien who had been previously deported, had reentered illegally, and subsequently had multiple interactions – including at least one arrest for driving under the influence – with the Houston Police Department before killing Officer Johnson. However, because of Houston Police Department's policies, practices, and procedures that substantially restrict, if not prohibit, officers from communicating with the federal government about illegal aliens, the illegal alien remained free in Houston to continue his lawlessness. Unfortunately, such a tragedy is not an isolated incident in Houston. In fact,

Officer Johnson's death is one of four deaths of a Houston police officer at the hands of a previously deported illegal alien in the last few years. Most recently in May, Officer Kevin Hill was killed by an illegal alien who had six arrest warrants, multiple encounters with law enforcement and had been caught driving without a license four times. He also had been cited by police on eight occasions. Clearly, sanctuary cities only favor one group of people: illegal aliens. Therefore, HB 810 and HB 865 are essential to ensure that such safe havens are not established in Pennsylvania.

House Bill 858 seeks to replicate the Legal Arizona Workers Act in Pennsylvania. As I briefly mentioned early, in May, the Supreme Court held that Arizona's unauthorized alien employment law does not conflict with federal immigration law. Moreover, the Court reinforced that states have broad authority under their police powers to regulate employment within their borders and, more specifically, that prohibiting the employment of illegal aliens is within the authority of a state's police power. Therefore, federal law clearly does not preempt HB 858.

Let me conclude by saying that the *National Security Begins at Home* Legislative Package could not be clearer. Its intended purpose is to protect the citizens of Pennsylvania from the adverse effects of illegal immigration. As a whole, these legislative initiatives mirror federal objectives and further a legitimate state goal. They ensure compliance of federal law and attempt to curb the effects of the estimated 140,000 illegal aliens and to decrease the approximate \$1.4 billion yearly costs associated to healthcare, education, incarceration, and other expenses for illegal aliens.

Thank you.