

November 19, 2007  
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**A VIEW FROM THE INSIDE State Representative Ruth Fahrbach**



**Feds have authority to curb illegal immigration**

In light of all the discussion regarding illegal aliens and their right to seek government assistance offered to U.S. citizens, at my request, the non-partisan Office of Legislative Research has compiled an interesting report on whether state or federal law pertains to illegal aliens.

According to the report, many, but not all, state laws addressing immigration are pre-empted by federal law. The U.S. Supreme Court has ruled that the federal government has broad and exclusive power to regulate immigration, pre-empting state and local laws that also attempt to do so.

In this context, state regulation of immigration means a state law or local ordinance that makes a determination of who should or should not be admitted into the country and the conditions under which a legal entrant may remain **are pre-empted by federal law**. State laws that tangentially affect immigration, such as employment licensing laws that can be revoked for violations of federal immigration laws, are expressly permissible.

There is no concrete litmus test for determining when states can validly act in the immigration arena; litigants must seek court rulings on a case-by-case basis. This has resulted in substantial uncertainty and significant inconsistencies in court approaches to these questions.

The OLR report indicates that the Supremacy Clause of the U.S. Constitution invalidates state laws that interfere with or are contrary to federal law (Article VI, Cl. 2). With respect to immigration-related matters, the U.S. Supreme Court has held that:

Preemption can be express (i.e., stated in statute) or implied from a federal statutory scheme. Examples of implied preemption include state or local actions (1) in areas in which Congress intended to completely occupy the regulatory field or (2) that conflict with the federal scheme (*De Canas v. Bica*, 424 U.S. 351 (1976)).

There are some avenues available to state government with regards to illegal immigration. Federal immigration law expressly allows states and localities to independently regulate the employment of illegal aliens through licensing and similar

laws. State and local enforcement efforts cannot impose new or additional penalties upon criminal immigration law violators.

States that administer federal public benefits programs are permitted to follow federal rules for determining and verifying an applicant's citizenship status if that is a criterion for eligibility. Connecticut's attorney general recently ruled that while this rule is applicable to the Department of Social Services' administration of the federal Low Income House Energy Assistance Program, it is inapplicable to the community action agencies to whom the department had delegated the program's administrative functions.

It appears that states can also limit access to state public benefit programs to people who are deemed "qualified aliens" under federal public benefit program laws. But laws and regulations targeting "illegal aliens," which is not defined in federal law, may be pre-empted because they require state officials to make independent assessments of the legality of an applicant's presence in the United States.

For a copy of the OLR report on states' ability to police illegal aliens, contact my office at 240-8700.

*Rep Ruth Fahrbach represents the 61<sup>st</sup> District, including Suffield, and parts of Windsor and East Granby, in the General Assembly.*