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WHEN STATES PUT OUT THE UNWELCOME MAT

By Lawrence Downes
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There is one area, besides copper mining and home foreclosures, where Arizona is a national leader. It's at the front of a movement by states and local governments to seize control of immigration from the federal government. In 2010 it passed a law, S.B. 1070, that made the mass deportation of undocumented immigrants its official policy with a grab bag of enforcement schemes that turned federal immigration infractions into state crimes. Among other things, the law required immigration checks by local police, required immigrants to carry papers with them, and made it illegal for the undocumented to live or look for work in the state, or for people to knowingly hire, harbor or transport them.

A state with its own immigration law – that is, its own foreign policy – raises obvious constitutional issues. The Supreme Court is taking up S.B. 1070 next month, addressing the question of whether federal authority pre-empts state and local immigration crackdowns. A decision is expected this summer. The court could help bottle up a dangerous trend, or unleash more mischief across the country.

Last year was a banner year for immigration laws in the states. Arizona's law set a low standard that other states have tried to match or outdo. Thirty-one states introduced legislation in 2011 imitating all or part of S.B. 1070, and five – Alabama, Georgia, Indiana, South Carolina and Utah – went whole hog, passing Arizona-style omnibus laws.

Despite evidence that such laws are terrible for business and constitutionally unsound – courts have blocked key parts of the laws in Arizona and the copycat states, while employers and residents have complained bitterly about their burdens and expense – lawmakers have not been deterred. Missouri, Kansas, Mississippi, Tennessee and West Virginia are considering similar crackdowns. (Mississippi's bill also includes a provision that shields "international business executives" from being hassled by the police, perhaps inspired by an incident in Alabama where a manager from Mercedes-Benz was arrested under the new immigration law.)

The restrictionist trend is hitting cities and local governments, too, hundreds of which have passed laws and ordinances touching on immigration, including requiring employers to certify workers' legal status, cracking down on rental housing, mandating English as an official language, and forbidding day laborers to seek work in public. Some of these have faced legal challenges – notably the anti-solicitation laws, which have had a string of defeats in federal district and appellate courts.

The new legal crazy quilt isn't all hostile to immigrants. Some places are trying to be more welcoming while ensuring that immigration remains a federal responsibility. New York City and Cook County, Ill., are among the governments that have passed laws limiting the role of local police in immigration arrests, and California is considering such a law. While lawmakers in 37 states last year proposed bills requiring the use of a federal database, E-Verify, to check the immigration status of job applicants, most of those measures were

rejected; only eight states adopted new E-Verify regulations last year. Arizona, Mississippi, South Carolina and Utah already had such laws; California and Illinois have laws forbidding governments to force employers to use E-Verify.

The zeal to crack down locally is based on several fallacies. One is that the federal government hasn't enforced immigration laws, even though it has greatly expanded border security in the last decade and the Obama administration is deporting immigrants at a record clip. Another is that illegal immigration is soaring, when it has ebbed in the last few years.

The final myth is that voters really want unrelenting harshness. In fact, polls show broad support for a comprehensive federal solution with tougher border and workplace enforcement, but also a path to legalization for the undocumented and a streamlined process for new legal immigrants.

The reaction in places like Alabama, where civil rights advocates who re-enacted the Selma-to-Montgomery march last week demanded the repeal of the state's immigration law, shows that citizens are willing to fight back when their lawmakers go too far.