

SUMMARY OF LEGAL ARGUMENTS AGAINST SB4

In a lawsuit filed in United States District Court for the Western District of Texas in San Antonio challenging SB 4, MALDEF highlighted several violations of the U.S. Constitution and federal law contained in the statute. “SB 4,” the lawsuit reads, “is unconstitutional because it violates the Supremacy Clause, Contract Clause, and the First, Fourth, and Fourteenth Amendments of the United States Constitution, as well as Section 2 of the Voting Rights Act.” Here is a summary of some of the legal bases for each.

First Amendment

SB 4 violates the Free Speech Clause of the First Amendment because it prohibits speech that is critical of SB 4 and current immigration enforcement. Specifically, the law bans elected officials, local government employees and campus police officials from endorsing policies that the state believes would prohibit or limit enforcement of immigration laws.

- The state of Texas has already attempted to stifle criticism of SB 4 by filing a pre-emptive lawsuit against MALDEF for merely stating the intention to challenge SB 4 in court. MALDEF started the process to seek court sanctions against Texas for filing an abusive lawsuit and Texas dropped its claims against MALDEF.

SB 4 also violates the Fifth Amendment’s Due Process Clause because it does not specifically define what is meant by “endorsing” policies limiting or prohibiting enforcement of immigration. As a result, officials and public employees cannot understand what speech about immigration could potentially violate SB4 and subject them to lawsuits and money penalties.

Finally, SB 4 violates the First Amendment-based academic freedom rights of colleges and universities that wish to provide a safe space to immigrant students.

Fourth Amendment

SB 4 violates the Fourth Amendment because it requires local jails to hold individuals at the request of ICE even when there is no probable cause for the detention. Since being undocumented is generally a civil violation, local police lack a constitutional basis, such as a judicial warrant, to hold an individual in jail after that person has posted bail or charges have been dropped. SB4 requires local jails to hold individuals after receiving ICE detainer requests even when there is no probable cause, which would violate detainees’ constitutional rights.

Supremacy Clause

In the area of immigration, the U.S. Constitution provides that the federal government has sole authority over immigration matters, including enforcement. SB4 is unconstitutional because it is a state law that attempts to regulate immigration enforcement. Neither Texas, nor any other state, can

establish its own immigration enforcement policy. Also, Texas cannot authorize local police agencies to decide on their own what would constitute sufficient proof of lawful immigration status.

The state of Arizona similarly attempted to enforce federal immigration law under its controversial SB 1070 law. The U.S. Supreme Court concluded that Arizona's law was preempted in several respects and struck down those provisions of Arizona's law.

Fourteenth Amendment

There are several Fourteenth Amendment violations spelled out in the lawsuit. Among them:

Due Process

- Under SB 4, individual officers are granted complete discretion to enforce immigration law – in other words, they get to decide whether to question, who to question, who to detain, and who has provided sufficient proof of immigration status. Erratic and arbitrary application of any law is a violation of the due process clause of the Fourteenth Amendment.
- The free speech restrictions of SB4 (described above) also violate the Due Process Clause of the Fourteenth Amendment, which requires that statutes, especially those that impose criminal liability, must clearly state what conduct is unlawful. SB 4 fails to describe sufficiently the conduct that would constitute a violation.
- Similarly, since SB 4 requires local jurisdictions to honor all ICE detainer requests, they can't decide against complying on the grounds that they lack probable cause under the Fourth Amendment. Texas can't force a local jurisdiction to violate the Constitution.

Equal Protection

- SB 4 violates the Equal Protection Clause of the Fourteenth Amendment because it discriminates against Texans based on their race, national origin and ethnicity. SB 4 was enacted with the purpose of discriminating against Latinos and undocumented immigrants.
- SB 4 strikes down local ordinances and policies that try to protect immigrants and Latinos. That violates equal protection rights because it robs immigrant and Latino communities of the right to influence local policymakers to enact protections for immigrants.

Voting Rights Act

SB 4 violates Section 2 of the Voting Rights Act of 1965 because it provides for the removal of elected officials, many of them officials elected by Latino voters, for violation of SB 4.

- The removal of an elected official who is the preferred candidate of Latino voters denies them the equal opportunity to participate in the political process and elect representatives of their choice.

Contract Clause

SB 4 violates the Contract Clause, Article I, Section 10, Clause 1 of the U.S. Constitution because it interferes with the private contracts of immigrant college and university students. Once students are admitted, colleges and universities are contractually obligated to allow all students, including immigrants, to complete their studies so long as the students comply with academic and behavioral standards.

SB 4 is scheduled to take effect on Sept. 1. The lawsuit filed today asks the court to declare SB 4 unconstitutional and to issue an injunction prohibiting the state from implementing or enforcing it.