

SUMMARY OF LEGAL ARGUMENTS AGAINST SB4

In a lawsuit filed today 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.

Supremacy Clause

SB 4 violates the Supremacy Clause, Article VI, Clause 2 of the U.S. Constitution, under the concept of pre-emption. Under federal law, the federal government has sole authority over immigration matters, including enforcement. Texas, or any other state, can’t establish its own immigration enforcement policy. Also, Texas cannot unilaterally decide what constitutes “lawful immigration status” and can’t authorize local police agencies to decide on their own what would constitute sufficient proof of that vague standard.

The state of Arizona similarly attempted to allow local law enforcement to enforce federal immigration law under its controversial SB 1070 law. The U.S. Supreme Court cited preemption in striking down several provisions of that law.

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.

First Amendment

SB 4 violates the Free Speech Clause of the First Amendment because it prohibits speech that is critical of SB 4 and other immigration policies. 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.

SB 4 also violates what is known as the void-for-vagueness doctrine because it does not specifically define what is meant by “endorsing” policies limiting or prohibiting enforcement of immigration.

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 fosters detentions and arrests without requiring sufficient cause. Since unlawful presence or being undocumented is generally a civil violation, local police who attempt to enforce immigration law could not legally establish the required cause, which would violate detainees’ constitutional rights.

SB 4 also violates the Fourth Amendment by requiring all local jurisdictions to honor detainer requests from federal immigration authorities even where doing so would mean holding people in jail without adequate reason under the Constitution.

Fourteenth Amendment

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

Due Process

- SB 4 requires local law enforcement agencies to comply with all ICE detainer requests – but since the subjects of those requests aren’t given any advance notice of the detainer, or any chance to contest it, they are denied procedural due process as required by the Fourteenth Amendment.
- 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.
- 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.
- As with the First Amendment argument, the void-for-vagueness doctrine applies under 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 sufficiently spell out for local officials the conduct that would constitute a violation.

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 also violates the Equal Protection Clause because it allows only citizens, as opposed to permanent residents or other lawfully present immigrants, to file complaints of noncompliance with the law with the Texas attorney general.
- SB 4 strikes down any ordinance or policy that declares it won't enforce immigration law – that is to say, “sanctuary” policies. 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 allows 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.

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