

Montana 2012 immigration law tossed out

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HELENA — A district court judge has ruled that enactment of the 2012 voter-approved law banning undocumented immigrants from accessing state services is pre-empted by federal law and is unenforceable.



Haque-Hausrath

Legislative Referendum 121, which would have required certain state agencies to certify

through a federal database that people requesting services are United States citizens, was set to take effect Jan. 1, 2013.

More than 80 percent of Montana voters supported the law in the November 2012 general election.

The immigrants' rights group Montana Immigrant Justice Alliance sued in December 2012 to block the law, arguing the measure violated U.S. citizens' rights to privacy, due process and equal protection under the Montana and U.S. constitutions and was pre-empted by federal law.

On Friday, District Judge Jeffrey Sherlock of Helena, agreed with the plaintiffs and struck down significant portions of the law.

In an 18-page order for summary judgment, Sherlock ruled the mandates upon state agencies to determine immigration status and deny a wide variety of state services to "illegal aliens," is pre-empted by federal law as an impermissible regulation of immigration.

"The Immigration and Nationality Act ... provides no definition for the term 'illegal alien' or the term 'lawfully present,'" Sherlock wrote.

Sherlock wrote that by making up its own definition of "illegal alien," the state is not only in a pre-emption conflict with federal law, but it also attempts to regulate immigration, which is prohibited by the Constitution.

"As noted by one court, state agents are unqualified and unauthorized to make independent determinations of immigration status," Sherlock wrote. "Such determinations amount to immigration regulation that is pre-empted by the United States Constitution."

Shahid Haque-Hausrath, a Helena immigration attorney and president of the Montana Immigrant Justice Alliance, was the lead attorney for the plaintiffs in the case.

"In this ruling, the court has prevented the state from engaging in misguided efforts to enforce federal immigration laws, which the state is not qualified nor authorized to do," Haque-Hausrath said.

John Barnes, spokesman for Attorney General Tim Fox, said his office received a copy of Sherlock's ruling Monday morning and was reviewing it.

"We have a period of time in which to make a decision on appealing," Barnes said. "It is premature at this point as to whether or not we're going to appeal."

A spokesman for Gov. Steve Bullock, who is also named as a defendant in the

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