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American Freedom Law Center Files Brief in U.S. Supreme Court Defending Arizona's Immigration Law

Washington, D.C. (February 13, 2012)—Today, the American Freedom Law Center (AFLC) filed a "friend of the court" brief in the U.S. Supreme Court in defense of Arizona's new immigration law. To address the serious illegal immigration crisis, Arizona enacted the Support Our Law Enforcement and Safe Neighborhoods Act (S.B. 1070) in 2010. The law was immediately challenged by the Obama administration's Department of Justice. A federal judge in Arizona enjoined several provisions of S.B. 1070, and that ruling was upheld by the U.S. Court of Appeals for the Ninth Circuit. The Supreme Court has decided to take up the case.

The brief, which was authored by AFLC Co-Founders and Senior Counsel David Yerushalmi and Robert Muise, was filed, in part, on behalf of the Center for Security Policy (CSP), a Washington, D.C.-based, nonprofit policy think tank dealing with matters relating to national security. As explained in the brief, since 9/11 CSP has focused much of its resources on the underlying enemy threat doctrine known to jihadists as sharia. In turn, this work has lead CSP to investigate the narco-terrorism connection between Middle East arms dealers, Hezbollah, and Central American drug traffickers such as Fuerzas Armadas Revolucionarias de Colombia (FARC).

As revealed by the federal government's own investigations, there is a working conspiracy between the U.S. State Department-designated Hezbollah jihadist group and militaristic drug traffickers who routinely use the Mexican-American border to transport drugs, money, arms, and personnel between the two countries. This jihad presence on our southern border turns an out-of-control immigration problem into an existential security threat beyond measure for individual border States, such as Arizona, and the Nation at large. As noted in the brief, from a national

security policy perspective, it makes no sense for the federal government to prevent Arizona from providing a first layer of defense for itself and the Nation.

Yerushalmi commented, "This case is shocking to the conscience and should concern all American citizens. The Obama administration refuses to enforce the existing laws prohibiting illegal immigration. And when a border State like Arizona decides that it must take action to protect its citizens from a clear and present threat to their physical safety and security, the Obama administration goes to court to stop it. One must seriously question the motives of a President who cares so little about the safety of the people in Arizona and our national security at large."

As Yerushalmi and Muise argued in the brief:

> Pursuant to its police powers, the Arizona Legislature duly enacted the provisions of S.B. 1070 at issue here. However, these provisions have now been rendered unenforceable by the blunt force of the district court's ruling and the divided opinion of the Ninth Circuit, which affirmed. The analysis of the lower courts, when juxtaposed against the actual provisions of S.B. 1070 and the federal legislation purportedly preempting the state law, reveals a legal proposition that finds no refuge in the Constitution or in any Supreme Court rulings. This new statement of federal preemption envisions a federalism where an Executive Branch agency's decision not to enforce federal law trumps a State's exercise of its police powers even when the state law is patently in accord with and compatible to the federal legislation purportedly at the heart of the preemption. The lower courts erred by stretching the existing preemption doctrine beyond any reasonable constitutional parameters.

AFLC's brief asks the high court to reverse the Ninth Circuit decision and uphold the authority of Arizona to exercise its police powers—powers that are protected by the Tenth Amendment—to protect its citizens. As noted in the brief:

> While the Constitution grants Congress the authority "[t]o establish an uniform Rule of Naturalization," this authority does not deprive the States of their right to exercise their police powers to protect their citizens from threats arising from within and without their physical borders. Moreover, these police powers were expressly reserved for the States by our Founding Fathers through the Tenth

> Amendment. Indeed, our Republic was designed as a federal system with a limited national government. As James Madison explained in the *Federalist Papers*: "In the first place it is to be remembered, that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects. . . ." Thus, far from depriving States their independent rights as sovereigns, the Constitution expressly preserves those rights in the States vis-à-vis the powers of the federal government. In fact, the States, and not the federal government, have the paramount right to exercise their police powers to provide for the physical protection and safety of persons within their respective borders. . . . S.B. 1070 was validly enacted pursuant to this authority.

Muise concluded, "Under the Obama administration, any notion of constitutionally mandated federalism is dead letter law. It is evident by Obama's passing of the new healthcare mandate and now by challenging Arizona's sovereign right as a State to exercise its police powers, that he seeks to expand his power and the power of the federal government overall, thereby effectively converting our Republic, designed as a federal system with a limited national government, into a single omnipresent national polity with absolute power to regulate all spheres of human existence. In short, Obama is taking us to the brink of a constitutional crisis."

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