

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

UNION BENEFICA MEXICANA	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No.
	)	
STATE OF INDIANA, GOVERNOR	)	
MITCH DANIELS, in his official	)	
Capacity, GREG ZOELLER, Attorney	)	
General of Indiana, in his official capacity,	)	
BERNARD A. CARTER, County Prosecutor	)	
of Lake County, in his official capacity,	)	
JOHN BUNCICH, County Sheriff of Lake	)	
County, in his official capacity, BRIAN	)	
GENSEL, County Prosecutor of Porter	)	
County, in his official capacity, DAVID	)	
LAIN, County Sheriff of Porter County, in	)	
his official capacity, BOB SZILAGYI,	)	
County Prosecutor of La Porte County, in his	)	
official capacity, and MICHAEL	)	
MOLLENHAUER, County Sheriff of	)	
La Porte County, in his official capacity.	)	
	)	
Defendants	)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF/NOTICE OF  
CHALLENGE TO CONSTITUTIONALITY OF STATE STATUTE**

**INTRODUCTION**

1. This action challenges the constitutionality of Indiana Code §§ 22-4-39.5 and 22-5-6 added to the Indiana Code through the enactment of Senate Bill 590 (“SB 590”).
2. SB 590 is a comprehensive set of state immigration laws intended to regulate in areas exclusively apportioned to the federal government. The legislation creates an array of new state-law criminal and civil offenses relating to immigration. The law

was signed by Governor Mitch Daniels on May 10, 2011, and went into effect on July 1, 2011.

3. SB 590 attempts to create a legal regime regulating and restricting immigration and punishing those whom Indiana deems to be in violation of immigrations laws. It is an impermissible encroachment into an area of exclusive federal authority and will interfere and conflict with the comprehensive federal immigration system enacted by Congress and implemented through a complex web of federal regulations and policies.

4. Indiana Code §§ 22-4-39.5 and 22-5-6, specifically, are unconstitutional. They violate the Fourth and Fourteenth Amendments, the Supremacy Clause and the Contracts Clause.

5. The Plaintiff and its members will suffer serious violations of their constitutional rights and civil liberties if Indiana Code §§ 22-4-39.5 and 22-5-6 continue to be enforced. The named Plaintiff brings this action to obtain preliminary and permanent injunctive relief and a declaration that Indiana Code §§ 22-4-39.5 and 22-5-6 violate the U.S. Constitution.

#### **JURISDICTION, VENUE AND CAUSE OF ACTION**

6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Plaintiff's claims under the U.S. Constitution, as well as under 42 U.S.C. §§ 1981 and 1983. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution and laws of the United State of America, and as a preemption claim brought pursuant to the decision of the United States Supreme Court in *Shaw v. Delta Airlines, Inc.*, 463 U.S.

85, 96 n. 14 (1983) (holding that a plaintiff presenting a preemption claim “presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve” even in the absence of a cause of action under 42 U.S.C. § 1983.)

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b). All Defendants are sued in their official capacity.

8. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

## **PARTIES**

### **Organizational Plaintiff**

9. Plaintiff Union Benefica Mexicana (“UBM”) is a non-profit membership organization based in East Chicago, Indiana, whose mission is to provide cultural, educational, and health programs to the Hispanic community and others in Northwest Indiana.

10. UBM advocates for membership issues of interest, among which were opposing the passage of SB 590.

11. UBM also provides mutual aid for members and others, and sponsors social and cultural events.

12. The members of UBM include U.S. citizens, legal permanent residents, and undocumented individuals; business owners; and workers, including day laborers.

13. SB 590 has forced UBM to divert scarce resources from critical programs in order to educate and assist individuals affected by SB 590, and will continue to do so in the future.

14. UBM's mission and organizational goals will also be negatively impacted by SB 590 because the organization will have a more difficult time encouraging members to partake in UBM's various activities and UBM also fears that its current and prospective members will be deterred from seeking immigration relief because local law enforcement will continue to stop and detain them, notwithstanding their application for relief.

### **Defendants**

15. Governor Mitch Daniels is the standing elected governor of Indiana and the person who signed SB 590 into law.

16. Defendant Bernard A. Carter is the County Prosecutor of Lake County, Indiana. As such, Defendant Carter is responsible for the enforcement of SB 590 within Lake County. Defendant Carter is sued in his official capacity.

17. Defendant John Buncich is the County Sheriff of Lake County, Indiana. As such, Defendant Buncich is responsible for the enforcement of SB 590 within Lake County. Defendant Buncich is sued in his official capacity.

18. Defendant Brian Gensel is the County Prosecutor of Porter County, Indiana. As such, Defendant Gensel is responsible for the enforcement of SB 590 within Porter County. Defendant Gensel is sued in his official capacity.

19. Defendant David Lain is the County Sheriff of Porter County, Indiana. As such, Defendant Lain is responsible for the enforcement of SB 590 within Porter County. Defendant Lain is sued in his official capacity.

20. Defendant Bob Szilagyi is the County Prosecutor of La Porte County, Indiana. As such, Defendant Szilagyi is responsible for the enforcement of SB 590 within La Porte County. Defendant Szilagyi is sued in his official capacity.

21. Defendant Michael Mollenhauer is the County Sheriff of La Porte County, Indiana. As such, Defendant Mollenhauer is responsible for the enforcement of SB 590 within La Porte County. Defendant Mollenhauer is sued in his official capacity.

## **FACTUAL ALLEGATIONS**

### **History and Intent of SB 590**

22. On April 29, 2011, the Indiana Legislature enacted SB 590, a comprehensive system of state laws whose purpose is to express that Indiana will not be a sanctuary for illegal immigrants.

23. Another purpose of SB 590, as stated by its sponsor, is to act in a realm specifically set aside for the federal government “because of our federal government's failure to act on illegal immigration.”

24. The bill is comprehensive legislation that expands the use of the federal E-Verify system and increases tough sanctions on conduct involving certain immigrants.

25. Provisions of SB 590 criminalize conduct relating to immigrants in regards to employment, contracting, criminal investigation and detainment; identification; and transport, concealment and shielding from detection illegal immigrants.

26. On May 10, 2011, Governor Mitch Daniels signed the bill into law. Daniel's stated that the bill "simply says we want to uphold the law. It commands the support of a huge majority of Hoosiers."

27. Prior to SB 590, Senator Mike Delph acknowledged that the constitutionality of the bill would be challenged and stated that the bill is “certainly pushing the envelope,” and that “people can make an argument.”

### **Key Provisions of SB 590**

#### **Unemployment reimbursement for unauthorized aliens (Indiana Code § 22-4-39.5)**

28. Authorizes the Department of Workforce Development (“DWD”) to file civil actions against employers to obtain the reimbursement of amounts paid as unemployment to any of those employers’ workers if it is found that the employers knowingly employed unauthorized aliens.

#### **Day laborer federal attestation (Indiana Code § 22-5-6)**

29. Prohibits individuals from commencing day labor without completing an attestation of employment authorization as purportedly required under 8 U.S.C. §1324a(b)(2). Also, provides that a law enforcement officer may submit a complaint to USCIS concerning violations if he or she has probable cause to believe that an individual has violated this section.

### **Comprehensive Federal Immigration System**

30. The federal government has exclusive power over immigration matters. The U.S. Constitution grants the federal government the power to “establish a uniform Rule of Naturalization,” U.S. Const. art. I, § 8, cl. 4, and to “regulate Commerce with foreign Nations,” U.S. Const. art. I, § 8, cl. 3. In addition, the Supreme Court of the United States has held that the federal government’s power to control immigration is inherent in the nation’s sovereignty.

31. The U.S. Congress has created a comprehensive system of federal laws regulating and enforcing immigration in the Immigration and Nationality Act (“INA”). *See* 8 U.S.C. § 1101 *et seq.* This extensive statutory scheme leaves no room for supplemental state laws.
32. The federal government has also issued numerous regulations, policies, and procedures interpreting the provisions of the INA and has established a large and complex administrative apparatus to carry out its mandates.
33. The INA carefully calibrates the nature (criminal or civil) and degree of penalties applicable to each possible violation of its terms.
34. The INA contains complex and exclusive procedures for determining immigration and citizenship status, deciding whether the civil provisions of the immigration laws have been violated, and determining whether an individual may lawfully be removed from the United States.
35. Under federal law, there is no single, readily ascertained category or characteristic that establishes whether a particular person may or may not remain in the United States. The answer to that question is a legal conclusion that can only be reached through the processes set forth in the INA and may depend on the discretionary determinations of federal officials.
36. There are many non-citizens who are present in the United States without formal permission to remain in this country who would not be removed even if placed in federal removal proceedings. For example, an individual may be eligible for some form of immigration relief, such as asylum, adjustment of status, or withholding of removal. Some of these individuals are known to the federal government; others will

not be identified until they are actually placed in proceedings by the federal government and their cases are adjudicated.

37. Indiana Code §§ 22-4-39.5 and 22-5-6 creation of a state immigration system fundamentally conflicts with the INA's statutory scheme, impermissibly encroaches on the federal government's exclusive power to regulate immigration, and will lead to erroneous determinations by state and local officials of an individual's immigration status.

38. Moreover, Indiana Code §§ 22-4-39.5 and 22-5-6 conflict with and are preempted by provisions of the INA that set forth comprehensive federal schemes addressing: (1) work authorization and sanctions for unauthorized work; and (3) arrest authority for immigration violations.

**Federal Employment Authorization and Sanctions System**

39. The INA contains a comprehensive scheme to regulate the employment of aliens that reflects a careful balance between multiple objectives, including the desire to reduce unauthorized employment, to protect workers against discrimination, and to impose manageable standards on employers and workers.

40. The comprehensiveness of that federal scheme has been recognized by the United States Supreme Court.

41. Congress chose to regulate alien employment in the INA by focusing on employers. Employers are required to verify the employment authorization of applicants on Form I-9, and employers who knowingly employ unauthorized workers are subject to civil penalties or criminal penalties if the violation is sufficiently severe.



42. By subjecting employers to sanctions for knowingly employing unauthorized workers, the INA expressly preempted state or local laws from penalizing employers for hiring such workers.

43. Indiana's decision to penalize employers for hiring unauthorized workers directly conflicts with federal law.

**Federal Employment Authorization System and Independent Contractors**

44. Congress excluded independent contractors from the comprehensive scheme established under the Immigration Reform and Control Act (IRCA) to regulate the employment of aliens.

45. 8 C.F.R. § 274a.1(f) specifically provides that “[t]he term employee . . . does not mean independent contractors . . . or those engaged in casual domestic employment . . . .”

46. Indiana's decision to prohibit individuals from soliciting work as day laborers without completing an attestation of employment authorization despite Congress's choice not to regulate independent contractors and casual domestic employees directly conflicts with federal law.

**DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

47. An actual and substantial controversy exists between Plaintiff and Defendants as to their respective legal rights and duties. Plaintiff contends that it and its members face an imminent threat of harm if SB 590 is enforced, and that SB 590 violates the Fourth and Fourteenth Amendments, the Supremacy Clause and the Contracts Clause of the U.S. Constitution. Defendants are obligated to enforce SB 590 unless it is found to be illegal.

48. In violating Plaintiff's rights under the Fourth and Fourteenth Amendments, the Supremacy Clause and the Contracts Clause of the U.S. Constitution, Defendants have acted and will be acting under color of law.

49. If allowed to go into effect, Indiana Code §§ 22-4-39.5 and 22-5-6 will cause irreparable injury to Plaintiff.

50. Plaintiff and its members have no plain, speedy, and adequate remedy at law against Indiana Code §§ 22-4-39.5 and 22-5-6 other than the relief requested in this Complaint.

51. It is in the public interest that a preliminary injunction be granted to vindicate individual constitutional rights.

52. Plaintiff is entitled to a declaration that Indiana Code §§ 22-4-39.5 and 22-5-6 are unconstitutional on their face and to an order preliminarily and permanently enjoining their enforcement.

## **CAUSES OF ACTION**

### **COUNT ONE**

#### **SUPREMACY CLAUSE; 42 U.S.C. § 1983**

53. The foregoing allegations are repeated and incorporated as though fully set forth herein.

54. The Supremacy Clause, Article VI, Section 2, of the U.S. Constitution provides:

This Constitution, and the Laws of the United States, which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding.

55. The Supremacy Clause mandates that federal law preempts state law in any area over which Congress expressly or impliedly has reserved exclusive authority or which is constitutionally reserved to the federal government, or where state law conflicts or interferes with federal law.

56. Indiana Code §§ 22-4-39.5 and 22-5-6 are preempted because they attempt to bypass federal immigration law and to supplant it with a state policy of “attrition through enforcement,” in violation of the prohibition on state regulation of immigration.

57. Indiana Code §§ 22-4-39.5 and 22-5-6 conflict with federal laws and policies, usurps powers constitutionally vested exclusively in the federal government, attempts to legislate in fields occupied by the federal government, imposes burdens and penalties on legal residents not authorized by and contrary to federal law, and unilaterally imposes burdens on the federal government’s resources and processes, each in violation of the Supremacy Clause.

## **COUNT TWO**

### **CONTRACTS CLAUSE; 42 U.S.C. § 1983**

58. The foregoing allegations are repeated and incorporated as though fully set forth herein.

59. The Contracts Clause, Article I, Section 10, Clause 1, of the U.S. Constitution states in relevant part that “[n]o State shall...pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts...”

60. The Contracts Clause prohibits states from enacting any law that retroactively impairs contract rights.

61. The threshold inquiry is “whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.”

62. If there is no significant and legitimate public purpose behind the regulation then it is not justified.

63. Indiana Code § 22-4-39.5 substantially impairs the contractual relationship between Plaintiff and the State of Indiana by allowing the state to file an action against an employer for reimbursement of benefits paid to any of its workers even though the employer may have dutifully paid the premiums to the state and had a reasonable expectation his workers could receive unemployment benefits once the state made the determination they were eligible.

64. Indiana Code § 22-4-39.5 is not based on a significant and legitimate public purpose and as a result violates the Contracts Clause.

### **COUNT THREE**

#### **DUE PROCESS OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION**

65. The foregoing allegations are repeated and incorporated as though fully set forth herein.

66. Indiana Code §§ 22-4-39.5 and 22-5-6 deprive Plaintiff and its members of liberty and property interests without due process of law and are void for vagueness.

### **COUNT FOUR**

#### **UNREASONABLE SEARCH AND SEIZURE - FOURTH AMENDMENT; 42 U.S.C. § 1983**

67. The foregoing allegations are repeated and incorporated as though fully set forth herein.

68. The Fourth Amendment to the U.S. Constitution prohibits “unreasonable searches and seizures.” The Fourth Amendment’s guarantees are applied to the States through the Fourteenth Amendment.

69. Indiana Code § 22-5-6 provides that law enforcement officers shall file complaints with U.S. Immigration and Customs Enforcement if they have probable cause to believe that an individual has violated this section of the law by working without proper authorization.

70. While this section does not specifically state that law enforcement officers can detain a day laborer, that will necessarily be the effect since there is no other manner in which an officer will be able to obtain the information needed to file a complaint against an individual.

71. Such detention would be premised on the officer having probable cause of conduct that is not criminal in nature, in violation of the Fourth Amendment.

### **PRAYER FOR RELIEF**

WHEREFORE, in light of the foregoing facts and arguments, Plaintiffs request that the Court:

- a. Assume jurisdiction over this matter;
- b. Declare that SB 590 is unconstitutional in its entirety OR Declare that the challenged sections of SB 590 are unconstitutional;
- c. Issue a preliminary injunction, later to be made permanent, enjoining Defendants from enforcing the provisions of SB 590 challenged in this action;
- d. Grant Plaintiff’s costs of suit, and reasonable attorney’s fees and other expenses pursuant to 28 U.S.C. § 1988; and

e. Grant such other relief as the Court may deem appropriate.

Dated this 20<sup>th</sup> day of December, 2011.

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