

Substantial Disruption



Arizona Walks the Immigration Tightrope

By Mike Tully

Sarah Palin famously said, “I can see Russia from my house!” Except she didn’t. That line was [uttered by Tina Fey](#) on “Saturday Night Live.” The impersonation is more memorable than anything Palin uttered (the consequence of satire’s target being a human cartoon). But those of us in Southern Arizona who live within an hour of the Mexican border can relate to the statement. While we can’t see Mexico from our houses, we can see the monsoon clouds build in the summer and, when we first see them, they are over Mexico. We can’t see Mexico, but we have a pretty good idea when it’s raining in Sonora.

Proximity to our southern neighbor has made Arizona ground-zero in immigration policy. [Senate Bill 1070](#), derided by some as the “Papers, Please!” bill, led to demonstrations and condemnation and was largely invalidated by the Courts. The streets of Tucson and Phoenix were jammed with anti-SB 1070 protesters and, while the bill easily passed the Legislature, it was never popular with most Arizonans. The Arizona – Mexico border has historically been porous, with nationals of Mexico and the U. S. routinely crossing and returning. Much of Southern Arizona is bilingual and street names are filled with “Caminos,” “Avenidas,” and “Calles.” The first mayor of Tucson was Mexican-born merchant Estavan Ochoa. (My adopted Great-Grandfather, Pinkney R. Tully, was Ochoa’s business partner and the seventh mayor of Tucson.) In my childhood, I attended Spanish-language Mass with my Grandparents, had menudo for breakfast afterward, and visited the border town of Nogales nearly every weekend in bull-fighting season. I attended my first bull-fight at the age of six months and one of my earliest heroes was Luis Procuna, who was featured in the movie, [“Torero.”](#) That was a long, long way from “Papers, Please!”

But “Papers, Please!” is a part of our reality now, since the [U. S. Supreme Court](#) upheld the portion of S.B. 1070 requiring local law enforcement to verify legal immigration status under some circumstances. That presented a quandary for local police: how to comply with S.B. 1070 without violating the Constitutional rights of citizens and lawful immigrants. Law enforcement authorities had to walk a legal tightrope the legislature had strung for them. Tucson’s Police Department adopted procedures for walking the tightrope and Phoenix copied them, leading to a battle with a State Senator who said Phoenix was acting illegally.

Why would a State Senator feud with local police? Welcome to Arizona, where preposterous folly does not invalidate legislation. Our legislature is dominated by Republicans who claim to support local control, but don’t really mean it. In Arizona, if a member of the State Legislature believes a local ordinance violates state law, he or she can complain to the Attorney General – even though the ordinance was passed by a chartered city that, under Arizona law, is relatively autonomous. For example, Tucson adopted a policy of destroying firearms that were confiscated in a criminal proceeding or obtained in a “buy-back” program. The intent was to reduce the number of firearms in circulation and, hopefully, firearm deaths and injuries. Most of the guns

the City obtained were unwanted and relatively worthless, but Mark Finchem, a self-righteous legislator from Oro Valley, complained to the A.G., who directed Tucson to stop destroying guns. The City fought and lost in court and no longer destroys confiscated and surrendered firearms because the Court agreed with the A.G. that the policy impeded the right to bear arms by removing them from commerce. There's hardly a gun shortage in Arizona, but preposterous folly does not invalidate laws here. Another example: the City of Bisbee passed an ordinance banning plastic bags, which had become a blight on the environment. (Try removing a plastic bag from a cactus; it's painful!) Warren Petersen, a Senator from Mesa and (you guessed it) a Republican, objected, because the State of Arizona has a law against banning plastic bags (just as it has a law against destroying guns). Mesa is a long way from Bisbee and the ban does not affect Petersen in any way, but the law empowers him to bully cities and Petersen decided to bully Bisbee. Bisbee's City Attorney [argued](#) the ordinance is not a matter of state-wide concern, stating: "If Bisbee's exercise of its charter powers to eliminate local litter and blight can't survive, it's hard to imagine what possibly could."

A rational interpretation of S. B. 1070 could survive, even one that provides, as does the [Phoenix Police procedure](#), "Officers will not arrest, stop, detain, or contact an individual based on race, religion, national origin, gender, sexual orientation, or economic status, unless it is part of a suspect description or otherwise authorized by law." The Procedure prevents police from asking about immigration status during consensual contacts or asking witnesses about their immigration status. Police are also prohibited from asking about immigration status while on school grounds. Senator John Kavanaugh, a Fountain Hills Republican, complained to Republican Attorney General Mark Brnovich, who [upheld the Phoenix Police procedure](#). While his opinion is limited to Phoenix, it logically applies to Tucson and other cities with similar procedures.

The immigration battle is going to continue on the national level, given the influence of white supremacists in the Trump Administration. But, in Arizona, for the time being, preposterous folly took a face-plant and the tightrope walk continues.