



THE LAWSUITS AGAINST SB 4, THE TEXAS BILL SIGNED TO TERRORIZE IMMIGRANTS

Breaking Down the Legal Arguments

Introduction

On May 7, 2017, Texas Governor Greg Abbot signed SB 4 into law, the harshest anti-immigrant legislation in the country.¹ Since its signing, SB 4 has faced fierce legal backlash from localities across the state of Texas concerned about its harmful and discriminatory effect on their communities.

To date, multiple jurisdictions have filed lawsuits against the State of Texas, Governor Abbot, and other state actors in an effort to stop SB 4 from going into effect on September 1, 2017. Several cities filed separate lawsuits, which have been joined together, and many more jurisdictions and elected officials have sought to join the combined lawsuit as plaintiffs.

At this point, the complaining parties include: the City of El Cenizo, Sheriff Tom Schmerber, Constable Mario A. Hernandez, LULAC – Texas Chapter, the City of San Antonio, Councilmember Rey A. Saldana, Texas Association of Chicanos in Higher Education (TACHE), La Union del Pueblo Entero (LUPE), Workers Defense Project, City of Austin, City of Dallas, City of Houston, El Paso County, Sheriff Richard Wiles, County Attorney Jo Bernal, MOVE San Antonio, Texas Organizing Project Education Fund (TOPEF), Travis County, Sheriff Sally Hernandez, County Judge Sarah Eckhardt, and the Texas Association of Hispanic County Judges and County Commissioners.

This brief advisory explains what SB 4 does, what the lawsuits are about, and why these cities and counties are fighting back against this discriminatory law.

Why did they sue?

SB 4 is Texas' way of ordering Texas communities to be actively involved in immigration enforcement and punishing any locality that seeks to avoid spending its resources helping the federal government. It empowers the Texas Attorney General to fine jurisdictions and even remove elected individuals who adopt, enforce, or

endorse policies that appear to “prohibit or materially limit the enforcement of immigration laws.”²

SB 4 encourages local law enforcement—from city police departments to campus police at colleges and universities—to serve as immigration agents, authorizing them to inquire about a person's immigration status and ask for their “papers” so that they can be referred to ICE and be deported.

This law threatens the livelihood of Texas' immigrant community by encouraging racial profiling of individuals of Mexican and/or Latin American descent, as well as anyone else who could be perceived as undocumented.

The law is unprecedented its forced conscription of local law enforcement into collaborating with ICE and its broad authority for the state Attorney General to remove from office any local elected officials who seek prioritize the safety and security of immigrant communities over acting as deportation agents.

For these and other reasons, the aforementioned localities decided to pursue legal action against SB 4 and the state of Texas before the law goes into effect. They believe it will waste local resources, encourage racial profiling, weaken public trust, and disproportionately target immigrants and people of color in the state.

What are their legal arguments?

Generally, the lawsuits against SB 4 argue that the State of Texas does not have the power to regulate immigration law in the way it seeks to do. They argue the state cannot coerce local officials and jurisdictions to enforce the country's immigration laws, because it undermines their autonomy.

The lawsuits also claim SB 4 violates Constitutional protections afforded to these localities and their people, because its inherent purpose is to discriminate against

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¹ SB 4 Text, May 7, 2017, available at <https://legiscan.com/TX/text/SB4/id/1608435>

² City of San Antonio Complaint. June 1, 2017. Available at: <https://www.texascivilrightsproject.org/en/wp-content/uploads/2017/06/SATX-Complaint-6.1.17.pdf>

immigrants, people of color, and places that would shield them against this racist law.

Each lawsuit also raises unique concerns and claims against SB 4. Together, they highlight the detrimental impact SB 4 will have on Texans as a whole.

The general legal claims against SB 4 assert that it:

1. **Violates the Supremacy Clause of the Constitution** because it attempts to regulate immigration, “a field over which Congress has exercised exclusive authority.”³ They claim SB 4 is preempted by the federal government because it compels localities to comply with ICE detainers—which are voluntary—and forces local police to act as immigration agents.
2. **Violates Due Process under the 14th Amendment** because it is unconstitutionally vague, meaning it fails to identify the exact type of conduct needed to break the law. This means that, since it is unclear what is actually prohibited by SB 4, localities and elected officials could be punished for almost any decision on providing assistance to ICE or CBP.
3. **Violates Equal Protection Clause under the 14th Amendment** because its main purpose is to discriminate against Hispanics, immigrants, and people of color. It promotes “profiling based upon race, ethnicity, national origin, and perceived status.”⁴
4. **Violates First Amendment Freedom of Speech Protections** because it tries to prohibit speech that is critical of SB 4, and does so by threatening to remove from office individuals who speak up against it, or speak in favor of alternative policies or legislation.
5. **Violates Fourth Amendment protections** against unreasonable searches and seizures because it orders local law enforcement, including college campus police, to detain people for ICE without ascertaining that there is probable cause for arrest.
6. **Violates the Texas Home Rule Amendment to the State Constitution** because it illegally seizes state power to regulate immigration.

³ San Antonio Complaint at 29.

⁴ City of Austin Complaint. June 2, 2017, available at: http://www.twcnews.com/content/dam/News/static/docs/Texas/AUS_SB4_Motion.pdf

What did they ask the court to do?

Given the racial animus of the bill and its harmful impact on Texas communities, these jurisdictions are looking to the courts to disarm and stop SB 4 before it goes into effect. They do not want to be forced into wasting local resources and terrorizing their constituents for the sake of pushing a racist, anti-immigrant agenda. Their lawsuits against SB 4 generally ask for the following:

That the court **declare** that SB 4 is unconstitutional, in its entirety, on its face.

That the court **order** that the state cannot enforce SB 4.

In essence, the lawsuits ask that SB 4 be declared invalid and that the courts enjoin—meaning, block—the law from ever going into effect.

What has the court decided so far?

Since the initial lawsuits were filed by the City of El Cenizo and others, more parties have come forward to intervene as plaintiffs. Given the similarity of their legal claims against SB 4, the lawsuits have been consolidated into one by the courts. .

On June 26, 2017, U.S. District Judge Orlando Garcia from the Western District of Texas heard arguments on the plaintiffs’ motion for a preliminary injunction—which would block the law—in San Antonio.⁵

What happens next?

Opponents of SB 4 are hopeful that Judge Garcia will hand down a decision on their motion for a preliminary injunction in the coming weeks. With the law set to go into effect on September 1, 2017, they hope he will strike it down before then.

Regardless of what Judge Orlando decides, the legal battle over SB 4 will likely continue for months. If Judge Garcia grants the injunction stopping SB 4, the State of Texas is sure to appeal. If it is not, those challenging the law will appeal.

⁵ See “Sanctuary Cities’ Law Opponents Hopeful After Hearing,” last accessed July 17, 2017, available at <http://www.ksa.com/sanctuary-cities-law-opponents-hopeful-hearing/>.