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SYMPOSIUM: HOW STATES SHOULD APPROACH IMMIGRATION

How can states address their concerns about illegal immigration, without overstepping their power?

LET STATES EXPERIMENT

By Tamar Jacoby
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If only it were clear what is within the states' power on immigration and what isn't. That would make things a lot easier for everyone.

The problem is we don't know. Throughout American history, the pendulum of states' rights and federal power has swung back and forth, and not just on immigration. Today, we're in the middle of a federalist revolution of historic proportions, with states across the country taking immigration lawmaking into their own hands – and getting a yellow if not green light from the U.S. Supreme Court. This summer, the court will issue its second immigration opinion in two years, and I predict that again it will be at least a yellow light.

So what are states to do? Virtually all the state immigration laws enacted in the last decade have been enforcement measures. That's understandable; lawmakers and voters want to get control of illegal immigration.

What they don't understand is that enforcement alone won't bring control. Too many farmers and nonfarm seasonal employers and other industries that require physical labor need immigrants to do jobs for which, even in the downturn, there are few willing and able Americans. Nor can enforcement alone undo the problems created by decades of American hypocrisy – years when we relied on immigrants to take these jobs but gave them no way to enter the country legally. Trying to address these issues with enforcement alone is like using a hammer to fix a computer.

Can state lawmakers address these other dimensions? Utah tried, passing a law last year that created a guest worker program and gave work permits to unauthorized immigrants. But the Obama administration, desperate to limit states' rights and keep the lid on state immigration enforcement, hasn't let Utah implement either measure.

Other states too are eager to address these other issues. Laws along those lines were considered this year in many states, including Kansas, Oklahoma, New Mexico, Vermont and California.

Will a Supreme Court yellow light open the way for these measures? Would a Republican president friendlier to states' rights?

The best antidote to illegal immigration is a legal immigration system that works. If Congress can't pass immigration reform and Democrats can't hold the line on the federalist revolution, they should give the laboratories of democracy a chance to work – give states leeway to experiment with constructive solutions.