Editorial: Fixing immigration is Congress' job

Arizona's response to federal inaction mostly tossed by the Supreme Court.
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America's immigration mess has become messier with the U.S. Supreme Court's 5-4 decision Monday on Arizona's 2010 crackdown on illegal immigration, SB1070. The Obama administration sued to overturn parts of the law, contending that only federal law comprehensively deals with immigration.

The court upheld section 2(B), which mandates that state and local police inquire about whether someone lawfully detained is in the country legally, if "reasonable suspicion" warrants the question. This is what some critics have called the "show us your papers" section of the law.

But three major elements of SB1070 were thrown out because, as the court's majority decision, written by California native Anthony Kennedy, maintained, "Arizona may have understandable frustrations with the problems caused by illegal immigration, but the state may not pursue policies that undermine federal law."

The court overturned these elements: Section 3 said that it's also a violation of Arizona law to violate federal immigration law. Section 5(C) said it is unlawful for an illegal immigrant to "knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor." And Section 6 allowed that a state or local officer "without a warrant, may arrest a person if the officer has probable cause to believe ... [the person] has committed any public offense that makes [the person] removable from the United States."

In a statement, President Barack Obama said, "I am pleased that the Supreme Court has struck down key provisions of Arizona's immigration law. What this decision makes unmistakably clear is that Congress must act on comprehensive immigration reform. A patchwork of state laws is not a solution to our broken immigration system – it's part of the problem."

The president is right on that; but now he's in campaign mode for the November election. The time for enacting immigration reform was during Mr. Obama's first two years in office, when both houses of Congress were held by Democrats, and the Senate had a filibuster-proof 60-40 majority. Mitt Romney, the presumptive Republican nominee for president, criticized the president Monday for failing to reform immigration law. But Gov. Romney's own positions on immigration seem to fluctuate daily.

"What we need is to take the leadership of both houses of Congress, and the committee chairmen, and lock them in a room to work out immigration reform," Ilya Shapiro told us; he's a senior fellow in constitutional studies at the libertarian Cato Institute. He said reform should include some form of a guest-worker program and a path to U.S. citizenship for those who have been here illegally for many years but haven't violated other laws. Enacting such processes also would improve law enforcement and national security.

Mr. Shapiro said divisions within the political parties have stalled reform. Most Republicans are OK with bringing in foreign engineers and scientists, who quickly become employed and pay taxes, but Democrats also insist on regularizing unskilled immigrants. Within Democratic Party constituencies, there's a division between organized labor, which fears new immigrants will put downward pressure on union wages, and immigrant-rights groups. And within the Republican Party, there's also a division between generally pro-immigrant business groups and the more restrictionist rank-and-file.

California has nothing like Arizona's SB1070, so the court ruling does not have direct impact here. However, Mr. Shapiro said, the ruling provides general guidelines for immigration laws in all states. "States can tinker around the edges of immigration law, but if the feds are involved, then their actions take precedence," he said.

With the preeminent role of the federal government in immigration affirmed by the high court, national reform by Congress can move to center stage – but, no doubt, not until after voters have their say this November.