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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA ET AL. *v*. WHITING ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 09–115. Argued December 8, 2010—Decided May 26, 2011

The Immigration Reform and Control Act (IRCA) makes it "unlawful for a person or other entity . . . to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien." 8 U. S. C. §1324a(a)(1)(A). Employers that violate that prohibition may be subjected to federal civil and criminal sanctions. IRCA also restricts the ability of States to combat employment of unauthorized workers; the Act expressly preempts "any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens." §1324a(h)(2).

IRCA also requires employers to take steps to verify an employee's eligibility for employment. In an attempt to improve that verification process in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress created E-Verify—an internet-based system employers can use to check the work authorization status of employees.

Against this statutory background, several States have recently enacted laws attempting to impose sanctions for the employment of unauthorized aliens through, among other things, "licensing and similar laws." Arizona is one of them. The Legal Arizona Workers Act provides that the licenses of state employers that knowingly or intentionally employ unauthorized aliens may be, and in certain circumstances must be, suspended or revoked. That law also requires that all Arizona employers use E-Verify.

The Chamber of Commerce of the United States and various business and civil rights organizations (collectively Chamber) filed this

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federal preenforcement suit against those charged with administering the Arizona law, arguing that the state law's license suspension and revocation provisions were both expressly and impliedly preempted by federal immigration law, and that the mandatory use of E-Verify was impliedly preempted. The District Court found that the plain language of IRCA's preemption clause did not invalidate the Arizona law because the law did no more than impose licensing conditions on businesses operating within the State. Nor was the state law preempted with respect to E-Verify, the court concluded, because although Congress had made the program voluntary at the national level, it had expressed no intent to prevent States from mandating participation. The Ninth Circuit affirmed.

Held: The judgment is affirmed.

558 F. 3d 856, affirmed.

THE CHIEF JUSTICE delivered the opinion of the Court with respect to Parts I and II–A, concluding that Arizona's licensing law is not expressly preempted.

Arizona's licensing law falls well within the confines of the authority Congress chose to leave to the States and therefore is not expressly preempted. While IRCA prohibits States from imposing "civil or criminal sanctions" on those who employ unauthorized aliens, it preserves state authority to impose sanctions "through licensing and similar laws." §1324a(h)(2). That is what the Arizona law does—it instructs courts to suspend or revoke the business licenses of in-state employers that employ unauthorized aliens. The definition of "license" contained in the Arizona statute largely parrots the definition of "license" that Congress codified in the Administrative Procedure Act (APA).

The state statute also includes within its definition of "license" documents such as articles of incorporation, certificates of partnership, and grants of authority to foreign companies to transact business in the State, Ariz. Rev. Stat. Ann. §23–211(9), each of which has clear counterparts in APA and dictionary definitions of the word "license." And even if a law regulating articles of incorporation and the like is not itself a "licensing law," it is at the very least "similar" to one, and therefore comfortably within the savings clause. The Chamber's argument that the Arizona law is not a "licensing" law because it operates only to suspend and revoke licenses rather than to grant them is without basis in law, fact, or logic.

The Chamber contends that the savings clause should apply only to certain types of licenses or only to license revocation following an IRCA adjudication because Congress, when enacting IRCA, eliminated unauthorized worker prohibitions and associated adjudication procedures in another federal statute. But no such limits are even

remotely discernible in the statutory text.

The Chamber's reliance on IRCA's legislative history to bolster its textual and structural arguments is unavailing given the Court's conclusion that Arizona's law falls within the plain text of the savings clause. Pp. 9–15.

THE CHIEF JUSTICE, joined by JUSTICE SCALIA, JUSTICE KENNEDY, and JUSTICE ALITO, concluded in Part II–B:

The Arizona licensing law is not impliedly preempted by federal law. At its broadest, the Chamber's argument is that Congress intended the federal system to be exclusive. But Arizona's procedures simply implement the sanctions that Congress expressly allowed the States to pursue through licensing laws. Given that Congress specifically preserved such authority for the States, it stands to reason that Congress did not intend to prevent the States from using appropriate tools to exercise that authority.

And here Arizona's law closely tracks IRCA's provisions in all material respects. For example, it adopts the federal definition of who qualifies as an "unauthorized alien," compare 8 U. S. C. §1324a(h)(3) with Ariz. Rev. Stat. Ann. §23–211(11); provides that state investigators must verify the work authorization of an allegedly unauthorized alien with the Federal Government, making no independent determination of the matter, §23–212(B); and requires a state court to "consider only the federal government's determination," §23–212(H).

The Chamber's more general contention that the Arizona law is preempted because it upsets the balance that Congress sought to strike in IRCA also fails. The cases on which the Chamber relies in making this argument all involve uniquely federal areas of interest, see, *e.g., Buckman Co.* v. *Plaintiffs' Legal Comm.*, 531 U. S. 341. Regulating in-state businesses through licensing laws is not such an area. And those cases all concern state actions that directly interfered with the operation of a federal program, see, *e.g., id.,* at 351. There is no similar interference here.

The Chamber asserts that employers will err on the side of discrimination rather than risk the " 'business death penalty' " by "hiring unauthorized workers." That is not the choice. License termination is not an available sanction for merely hiring unauthorized workers, but is triggered only by far more egregious violations. And because the Arizona law covers only knowing or intentional violations, an employer acting in good faith need not fear the law's sanctions. Moreover, federal and state antidiscrimination laws protect against employment discrimination and provide employers with a strong incentive not to discriminate. Employers also enjoy safe harbors from liability when using E-Verify as required by the Arizona law. The most rational path for employers is to obey both the law

barring the employment of unauthorized aliens and the law prohibiting discrimination. There is no reason to suppose that Arizona employers will choose not to do so. Pp. 15–22.

THE CHIEF JUSTICE delivered the opinion of the Court with respect to Part III–A, concluding that Arizona's E-Verify mandate is not impliedly preempted.

Arizona's requirement that employers use E-Verify is not impliedly preempted. The IIRIRA provision setting up E-Verify contains no language circumscribing state action. It does, however, constrain federal action: absent a prior violation of federal law, "the Secretary of Homeland Security may not require any person or . . . entity" outside the Federal Government "to participate in" E-Verify. IIRIRA, §402(a), (e). The fact that the Federal Government may require the use of E-Verify in only limited circumstances says nothing about what the States may do. The Government recently argued just that in another case and approvingly referenced Arizona's law as an example of a permissible use of E-Verify when doing so.

Moreover, Arizona's use of E-Verify does not conflict with the federal scheme. The state law requires no more than that an employer, after hiring an employee, "verify the employment eligibility of the employee" through E-Verify. Ariz. Rev. Stat. Ann. §23–214(A). And the consequences of not using E-Verify are the same under the state and federal law—an employer forfeits an otherwise available rebuttable presumption of compliance with the law. Pp. 23–24.

THE CHIEF JUSTICE, joined by JUSTICE SCALIA, JUSTICE KENNEDY, and JUSTICE ALITO, concluded in Part III–B:

Arizona's requirement that employers use E-Verify in no way obstructs achieving the aims of the federal program. In fact, the Government has consistently expanded and encouraged the use of E-Verify, and Congress has directed that E-Verify be made available in all 50 States. And the Government has expressly rejected the Chamber's claim that the Arizona law, and those like it, will overload the federal system. Pp. 24–25.

ROBERTS, C. J., delivered the opinion of the Court, except as to Parts II–B and III–B. SCALIA, KENNEDY, and ALITO, JJ., joined that opinion in full, and THOMAS, J., joined as to Parts I, II–A, and III–A and concurred in the judgment. BREYER, J., filed a dissenting opinion, in which GINSBURG, J., joined. SOTOMAYOR, J., filed a dissenting opinion. KAGAN, J., took no part in the consideration or decision of the case.