



A Judicial Setback for the Rule of Law

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What do you get when you combine unchecked illegal immigration with judicial activism? A perfect storm for the rule of law. Unfortunately, that storm recently arrived in Pennsylvania.

On July 26, 2007, federal Judge James Munley of the Middle District of Pennsylvania issued an opinion striking down the efforts of Hazleton, Pennsylvania, to address the consequences of illegal immigration within its jurisdiction.

Hazleton -- a small town in the Pocono Mountains with just over 30,000 residents -- had enacted ordinances that prohibited landlords from knowingly renting apartments to illegal aliens and prohibited local businesses from knowingly employing illegal aliens.

In Hazleton, the impact of illegal immigration has been severe. Illegal aliens have committed several murders in the past two years in a town that previously saw murder occur only once about every seven years. Drug-trafficking and gun-running gangs comprised mostly of illegal aliens, MS-13 included, moved to this sleepy town. Drug crimes increased, with illegal aliens representing 30 percent of those arrested.

At the same time, the City's budget became stretched to the breaking point. Illegal aliens working off the books were consuming city services without contributing anything to the City's income tax base.

Predictably, as soon as Hazleton passed its ordinance, the ACLU, the Puerto Rican Legal Defense and Education Fund (PRLDEF), and liberal allies at the silk-stocking Philadelphia law firm of Cozen O'Connor took Hazleton to court.

The ACLU advanced a grab-bag of legal theories against Hazleton. It claimed that cities and states cannot impose sanctions on employers who hire unauthorized aliens -- when in fact federal law expressly permits cities and states to do impose licensing sanctions on such employers (8 U.S.C. § 1324a(h)(2)). The ACLU also claimed that landlords have a right to knowingly harbor illegal aliens in an apartment, even though federal law makes it a crime (8 U.S.C. §1324(a)(1)(A)). The ACLU's arguments fall under the rubric of federal preemption -- the constitutional doctrine by which Congress may displace state and local authorities from

regulating in particular areas.

Under normal circumstances, the ACLU would have a hard time selling these arguments. The Supreme Court has long made it clear that there is a heavy judicial presumption against finding a local law to be preempted. And the will of Congress must guide any judicial assessment of a preemption claim. The Hazleton ordinance had been painstakingly drafted to conform exactly to what Congress allows.

However, the ACLU lucked out when Judge Munley was assigned to the case. In a 206-page opinion, the judge bent over backward to agree with even the most far-fetched arguments offered by the plaintiffs.

For example the plain language of federal law clearly allows cities to impose "licensing" sanctions on employers who knowingly employ unauthorized aliens. And that is exactly what Hazleton did.

Undaunted by the text of federal law, Judge Munley effectively changed its meaning. He declared that "it would not make sense" for Congress to give cities the ability strip such employers of their business licenses, because that was such a heavy sanction. So he gave the law a different meaning, completely at odds with the text of the statute.

Judge Munley also had to find some other form of conflict with the objectives of Congress if he was going to rule against the provisions of the Hazleton ordinance concerning landlords. This would not be easy, since Congress has over the past 21 years enacted a series of statutes requiring cities to deny public benefits for illegal aliens and encouraging cities to assist the federal government in immigration law enforcement.

In the face of this unequivocal congressional intent, Judge Munley concocted the following theory: immigration laws governing the interior of the country were never meant to be fully enforced. Therefore, by reinforcing federal law and discouraging illegal immigration, Hazleton would cause what Judge Munley called "excessive enforcement." And that, Judge Munley supposed, would thwart the will of Congress.

It is quite possible that Judge Munley is the only person in America who thinks the country is in danger of suffering "excessive enforcement" of immigration laws. If all federal judges adopted his theory, Congress could pass the strictest immigration laws imaginable and still have no effect in curbing illegal immigration. Judges like Munley would just assume that Congress didn't really intend the laws to be enforced in the interior of the country.

Then, in internationalist twist that undoubtedly brought smiles to ACLU attorneys across the

land, Judge Munley stated that enforcing our immigration laws too vigorously might anger neighboring countries. He noted the Mayor and City Council had failed to "consider the implications of the ordinances on foreign policy."

Adding insult to injury, Judge Munley allowed several of the illegal alien plaintiffs in the case to sue Hazleton anonymously, under the names John and Jane Doe. These illegal aliens did not have to take the stand and endure cross examination. Nor did they have to answer the City's question about any "injuries" that they claimed to suffer. This was an extraordinary and unprecedented ruling. The Supreme Court has long insisted that plaintiffs in federal court must identify themselves, with only a few narrow exceptions -- minors, and people bringing claims involving intensely private personal matters (such as abortion). Now Judge Munley wants to add illegal aliens to this list of protected plaintiffs. It is worth remembering that U.S. citizens virtually never have the right to sue a municipality anonymously.

These are only a few of the more outrageous aspects of Judge Munley's ruling. All of these holdings and several other aspects of the opinion will be appealed to the U.S. Court of Appeals for the Third Circuit, which sits in Philadelphia. Mayor Barletta and the Hazleton City Council have said that they will take their case to the Supreme Court if necessary.

That is not what the ACLU attorneys want. They know that their arguments will not survive the scrutiny of the nation's highest court. They had hoped that Hazleton would roll over when faced with a legion of liberal lawyers marching into town. All too often, that is exactly what happens when the ACLU starts throwing its weight around in a small community. Most small towns have no full-time city attorney, and they have no room in their budget to wage a major legal battle. Looking down the barrel of a lawsuit that could cost hundreds of thousands of dollars to win, they surrender without a fight.

Instead, Hazleton is standing its ground. And Americans across the country have responded by helping this small town defray its legal expenses, by sending contributions to www.smalltowndefenders.com. Two other towns -- Valley Park, Missouri, and Farmers Branch, Texas -- are defending similar ordinances against the ACLU in other federal courts. They can be assisted at www.valleyparkmo.org/news2.htm and www.farmersbranchlegaldefensefund.com, respectively.

Ironically, Judge Munley's ruling was announced only a few days after New Haven, Connecticut, enacted an ordinance that combined its sanctuary policy with new local ID cards designed to assist illegal aliens who wish to remain in the country in violation of federal law. At the very moment that New Haven joined the long list of cities openly violating federal law, a federal judge was about to rule against one of the few towns that is actually trying to help the federal government and reinforce federal law.

This situation makes it painfully clear that returning the rule of law to immigration will take more than a committed Congress and a President who is determined to enforce the law. It will also take judges who are willing to faithfully apply the laws that Congress passes and cities that are willing to reinforce, not undermine, federal law.

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