

STREETCAR LINE

Yes, States May Restrict Illegal Aliens

By Quin Hillyer on 6.10.11 @ 6:08AM

MOBILE, Ala. -- Here in Alabama, Gov. Robert Bentley has just signed the nation's toughest immigration law, amidst the predictable cries from the Left that states don't have real authority of their own to enforce laws against illegal immigration. The information the professional Left hasn't yet processed is that the legal basis for its arguments continues to erode. The erosion continued earlier this week in a new, little-noticed action by the Supreme Court in a case called *City of Hazleton v. Lozano* -- the Pennsylvania dispute that made Hazleton's then-mayor Lou Barletta famous, and launched him towards a seat in Congress.

To understand the import of the *Hazleton* case, let's first set the scene, which is framed by another high court decision from just two weeks ago. When the Supreme Court ruled on May 26 in *Chamber of Commerce v. Whiting* that the state of Arizona did not exceed its authority in denying business licenses from companies that knowingly employ illegals, the Left interrupted its outraged squawking to try to minimize the case's importance. On the one hand, the Left said the decision was an awful affront to federal executive power. On the other hand, it said the decision didn't mean much. The reach of the Whiting case was limited, argued the immediate revisionists, because it involved only business hiring rather than broader immigration enforcement, and because it turned on a specific clause in federal law giving states enforcement authority through business licensing.

Aside from that specific clause regarding business licenses, they said, and aside from the subject of employment, states, and localities still are not free to enforce immigration laws to an extent greater than the U.S. president (through his appointees) desires.

Enter the *Hazleton* case. The city of Hazleton went farther than Arizona did. The city doesn't merely target business hiring; instead, it also suspends the rental licenses of landlords who knowingly and recklessly allow illegals to dwell in the landlords' property.

If one buys into the Left's spin, one would think that *Whiting* would have little bearing on *Hazleton*, because the ordinance in the latter is so much broader. Surely, according to this logic, the Supreme Court would reject Hazleton's law out of hand, just as the Third Circuit Court of Appeals had done last Sept. 9.

Think again. On Monday, the Supreme Court vacated the Third Circuit's decision against Hazleton's law, and remanded it back to the appeals court to reconsider specifically in light of

the *Whiting* decision. In other words, Hazleton's law still stands against landlords who knowingly rent to immigrants, at least for now.

While this is far from the final chapter in the *Hazleton* case, and while it does not represent a full ruling on its merits by the Supreme Court, it does mean that the Left's spin is out of control. The high court, if it so wanted, could have remanded the case only for reconsideration of the business-hiring part of Hazleton's law, not for reconsideration of the whole law. Instead, it sent the whole case back for review, with specific reference to its *Whiting* decision.

"This at least gives an indication that the Supreme Court believes its *Whiting* decision is applicable not only to employment but also to housing," said Rich Samp, chief counsel at the Washington Legal Foundation, in an interview with me yesterday. The WLF had filed an *amicus* brief supporting the city in the *Hazleton* case, arguing that the Third Circuit ruling against the city "interferes to an unwarranted degree with the authority of state and local governments to exercise their traditional police powers -- including the regulation of employment and housing within their jurisdictions."

The WLF also argues that the Pennsylvania city really hasn't put itself at odds with federal law anyway:

In recent years, Congress has adopted legislation requiring States to adopt practices designed to reduce the incentives for illegal aliens to remain in the country It also adopted numerous statutory provisions encouraging state and local governments (and their employees) to cooperate with federal authorities in enforcing the immigration laws.... It defies logic to suggest that Congress demands that States ferret out illegal aliens to ensure that they are not receiving welfare benefits and actively solicits their cooperation in enforcing immigration laws, yet simultaneously prohibits them from taking steps to prevent illegal aliens from seeking rental housing.

Samp and the WLF are right. What is evident in Hazleton and Arizona and now Alabama is anything but states or cities going rogue. Instead, the states and cities are merely asserting their own authority to implement laws passed by Congress that a presidential administration, *against congressional intent*, refuses to adequately enforce on its own. It is the national executive, not the local governments, that is going rogue.

It is in that light that the new Alabama law should be weighed -- at least from a legal standpoint. I make no judgment whatsoever about the wisdom or advisability of any particular provision of the new Alabama law. (I myself am sort of a moderate on immigration policy, although I utterly oppose amnesty and its various spin-offs.) What merits defending aren't the policy choices themselves, but the ability of the local governments to make those choices. A form of federalism is under assault from the Left, spearheaded by the Obama administration -- but federalism merits preservation. State and local governments have good reasons to want to keep away illegal aliens; and even if their reasons weren't good, those governments have every right, under our constitutional system, to make those judgments for themselves.

It is a derailment of the American tradition for a presidential administration to be less interested in upholding federal law than state and local governments are. It is an abdication of order that should not be countenanced. States and localities merit support, legal and otherwise, for their efforts to ensure that the laws are faithfully executed.

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