



FOR IMMEDIATE RELEASE

August 21, 2008

COURT URGED TO UPHOLD LOCAL LAW BARRING EMPLOYMENT OF ILLEGAL ALIENS

(Gray v. City of Valley Park)

The Washington Legal Foundation (WLF) this week urged the U.S. Court of Appeals for the Eighth Circuit in St. Louis to uphold an ordinance adopted by a Missouri city for the purpose of preventing illegal aliens from being employed within the city.

In a brief filed in *Gray v. City of Valley Park*, WLF argued that local governments are within their rights in passing ordinances designed to assist the federal government in enforcing immigration laws. WLF filed its brief on behalf of itself, the Allied Educational Foundation, and three Members of Congress: Brian Bilbray (California), Steve King (Iowa), and Lamar Smith (Texas).

“State and local governments have an important role to play in enforcing our Nation's immigration laws,” said WLF Chief Counsel Richard Samp after filing WLF’s brief. “Unless they are both permitted and encouraged to assist the federal government in enforcing those laws, it is unlikely that we will ever be able to stem the flood of illegal immigrants,” Samp said.

The challenged ordinance – adopted by Valley Park, Missouri in February 2007 – makes it unlawful for businesses located within the city to hire any worker not authorized to work in the United States. An employer found to have violated the ordinance risks the temporary loss of its business license until such time as it comes back into compliance with the ordinance. Importantly, the ordinance does not authorize city officials to decide on their own whether an alien is authorized to work in the United States. Rather, a finding that an employer has violated the ordinance can be made only *after* federal immigration officials have told the city that a challenged employee is not authorized to work.

The ordinance was challenged by a business that operates in Valley Park, as well as by the business’s owner. A federal district court dismissed the lawsuit, rejecting the plaintiffs’ claim that Congress has barred state and local governments from regulating the employment of illegal aliens. The plaintiffs appealed that dismissal to the Eighth Circuit.

In its brief, WLF argued that nothing in federal law suggests that Congress intended to preempt state and local laws that seek to regulate the employment of illegal aliens. WLF noted that Valley Park cannot be accused of second-guessing immigration decisions made by federal officials because the city only enforces the ordinance against companies that employ workers determined by the federal government itself to be illegal aliens. WLF argued that while Congress has indicated that it does not want local governments imposing fines on companies that hire illegal aliens, Congress explicitly authorized local governments to use their business license regimes to control the employment of illegals. WLF argued that the Valley Park ordinance quite clearly qualifies as a “business license” law because the only permissible sanction against violators is the temporary suspension of business licenses.

WLF also argued that the appeals court should not countenance the plaintiffs’ efforts to scuttle their own case as a means of erasing the district court decision that went against them. The plaintiffs now argue that they lack “standing” to challenge the city’s ordinance because (they allege) they are not in any way affected by the ordinance. They argue that the proper disposition of the case is a determination that the lack of “standing” deprives the federal courts of jurisdiction to decide the case and requires that it be remanded to Missouri state court for decision. WLF’s brief responded that: (1) the plaintiffs’ assertion is inconsistent with their position in the district court, where they argued that they were being injured by the Valley Park ordinance; (2) the plaintiffs quite clearly do have standing; and (3) even if they did not have standing, a remand to state court would not be permissible – rather, a “no standing” finding would require outright dismissal of the plaintiffs’ case.

The Washington Legal Foundation is a nonprofit public interest law and policy center based in Washington, D.C. with members and supporters in all 50 States, including many in Missouri. WLF has appeared in courts across the country to ensure that governments at all levels possess the resources to combat illegal immigration.

* * *

For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF’s brief is posted on its web site, www.wlf.org.