

Immigration Belongs At The Federal Level

by Bob Barr

The New Testament Book of Matthew recounts the story in which Jesus is asked whether it is proper to pay taxes to Caesar. Jesus admonishes those questioning him to "render therefore to Caesar the things that are Caesar's, and to God the things that are God's."

There is no language in our Constitution or in the Federalist Papers that accompanied, explained and defended that magnificent document, to suggest the drafters had in mind this biblical passage as they labored. But they might as well have harkened back to Matthew 22:21 as they sought to balance and apportion power between the federal, state and local government, and the people .

Even as Jesus understood there were powers properly exercised by the earthly government authority, so too did James Madison, the "Father of the Constitution," recognize the need to establish a clear division of governing power between federal laws and other authorities.

Article VI of the Constitution, therefore, declares that the Constitution and laws of the United States shall be "the supreme Law of the Land." This "Supremacy Clause," has come to mean that a federal law — so long as it is based on a proper power of the national government — not only can and must be enforced by state and federal judges, but state or local laws in contravention of it are null and void.

The Supremacy Clause bit the mayor and City Council of Hazleton, Pa., just last week. This small Pennsylvania town, frustrated as are many local jurisdictions in our country with the failure of the national government to stem the tide of illegal immigration, had passed a series of ordinances designed to force local businesses and landlords to confirm whether individuals with whom they proposed to do business were in fact in the country lawfully. It prohibits them from hiring or renting to those they determined were "illegals." However, when those popular ordinances were challenged, federal Judge James Munley cited the Supremacy Clause in striking down the regulations.

Local governments in Georgia and other states would be well-served to review Munley's extensively researched, 206-page order. While likely to be appealed, the judge's decision is supported by other rulings in diverse parts of the country. It should serve as a cautionary light to local politicians anointing themselves federal government surrogate enforcers.

Regardless of whether local elected officials believe they are under a calling — as Hazleton Mayor Louis Barletta has said — to "not sit back because the federal government has refused to do its job," the Constitution establishes clearly that they do not possess that power. Immigration policy is a power reserved to the federal government, and especially where you have a federal law (the largely discredited, but still valid 1986 "Immigration Reform and Control Act") that explicitly provides that it pre-empts state

laws regarding employment of non-citizens. The Supremacy Clause rears its head whether one likes it or not.

Munley did not base his order on a single law or constitutional principle. Later sections of his opinion addressed the application of other provisions in the Constitution — procedural due process and equal protection of the laws, for example — as constituting additional reasons to invalidate the city's restrictive measures.

While the Hazleton ordinance is similar to one passed late last year by Cherokee County (but currently on hold), it is substantially different from the measure adopted last week by the Cobb County Commission. Cobb decided to paint with a broader brush — severely restricting the number of people who can live in a house. The limitations apply regardless of whether the occupants are here legally or illegally, although common sense tells us the measure is designed to address the problem perceived by many in the area that Latino immigrants are crowding more densely into homes than critics prefer.

Still, Cobb's leaders should review the Pennsylvania decision, which might have considerable appeal and relevance in the eyes of more than one federal judge in Atlanta to whom a challenge to the ordinance might be directed. Taking the time to study these and other provisions might reveal that the pressure needs to be brought to bear on our "leaders" in Washington not against local property and business owners.

About The Author

Bob Barr is a former Republican member of the U.S. House of Representatives from Georgia and a former U.S. Attorney there.