The Eye of the STORM

By Linda Kaiser Conley and Ilan Rosenberg

Litigation over Hazleton’s effort to regulate immigrants drew intense media coverage and pushed the city to center stage in the national immigration debate.
Debate over the state of immigration in America has been on a steady rise since Sept. 11, 2001. Concerns regarding the federal government’s stance on enforcement of a national immigration scheme have become heartfelt and divisive, even across political party lines. One side of the debate, seeking more stringent enforcement of the existing laws, contends a sweeping “amnesty” for people who entered or remain in this country without authorization invites those who would cause harm to our way of life and take jobs from U.S. citizens. The other side contends a crackdown on those who enter this country in search of a better life for themselves and their families ignores the historic roots that have served to make the nation both strong and culturally diverse.

Sensing public frustration with the federal government’s failure to enforce border control and to enact immigration reform legislation, state and local governments have attempted to fill the void by regulating immigration within their borders.

Ground zero in the legal battle over illegal immigration and local efforts to legislate in this arena is the City of Hazleton in Luzerne County. By Mayor Lou Barletta’s account, Hazleton saw an influx of immigrants from the New York area after 9/11, an unknown number of whom were undocumented immigrants who either had entered the country illegally or overstayed their student or work visas.

So the city took matters into its own hands. In the summer of 2006, blaming many of the city’s criminal, economic and social ills on “illegal aliens,” Hazleton’s mayor pushed through city council several ordinances designed to regulate the housing and employment of those viewed as unlawfully present in the United States.
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Hazleton’s ordinances were the first in the nation and spurred well over a hundred local governments nationwide to enact similar laws. Even before Hazleton’s ordinances went into effect, city officials proclaimed them a success in light of an exodus of Latinos from Hazleton. Some left in fear of being found in violation of the ordinances; others did so due to the discomfort of remaining in a community now perceived to be hostile toward Hispanics.

The Federal Court Challenge
Hazleton’s ordinances were also the first to be challenged in the federal courts. A group of plaintiffs, including landlords, tenants, business owners, civic and business organizations, and undocumented residents of Hazleton, asked the U.S. District Court for the Middle District of Pennsylvania to declare the ordinances unconstitutional and illegal.

The plaintiffs were represented by the Philadelphia law firm of Cozen O’Connor and several local attorneys, the Puerto Rican Legal Defense and Education Fund (PRLDEF), the American Civil Liberties Union (ACLU) and the Community Justice Project (CJP).

Although the named plaintiffs were all U.S. citizens or legal permanent residents, the “John/Jane Doe” plaintiffs were not. Despite the risks involved in pursuing their claims, these individuals had the courage to fight city hall. U.S. District Court Judge James M. Munley recognized the importance of affording these plaintiffs the necessary tools to vindicate their civil rights without unreasonably exposing them to harm or retribution. Therefore, one of the most significant issues addressed by the court was whether the Doe plaintiffs had the right to proceed anonymously. Citing the fears and concerns of the Doe plaintiffs over personal safety, loss of employment and housing, rejection by the broader Hazleton community and statements by Hazleton’s mayor and one of the city’s attorneys that no one could prevent the city from seeking the plaintiffs’ deportation, the court permitted the Does to proceed under pseudonyms.

In October 2006, Tom Wilkinson and Tom Fiddler of Cozen O’Connor argued for and obtained a temporary restraining
order prohibiting enforcement of the Hazleton illegal immigration ordinances. During that stay, which was extended pending a preliminary injunction hearing, Hazleton enacted several amendments to the challenged ordinances, all designed to undermine the court challenge.

While the mayor portrayed the city before the national media as the proverbial David in a pitched battle with the ACLU as Goliath, Hazleton was well represented in the case. First, the city’s insurance carrier retained the Philadelphia firm of Deasey, Mahoney & Valentini Ltd., which specializes in the defense of civil rights cases against municipalities. Additionally, Hazleton hired Kris Kobach, a constitutional law professor from the University of Missouri and author of the ordinances and the series of amendments enacted after the action was commenced (in fact, Kobach announced the last amendment during closing argument). Kobach’s fees were funded by donations solicited by a Web site promoted by the mayor, CNN’s Lou Dobbs and the Federation for American Immigration Reform (FAIR), an organization whose mission includes advocating a moratorium on legal immigration from Mexico, a position at odds with Hazleton’s professed welcome for all “legal immigrants.” The city’s defense team also included attorneys from the Mountain States Legal Foundation, an advocacy group that used the litigation to solicit donations by alleging that Latin-American immigrants would bring about America’s demise and charging that an open immigration policy would turn the country into a “socialist, multicultural ‘Tower of Babel.’”

The case presented important questions of law, namely whether local ordinances are pre-empted by the federal immigration regulatory scheme and whether these ordinances violate other rights available to all persons in the United States, regardless of their immigration status. Although in the end the relevant factual questions were few, the parties engaged in extensive discovery and pleading during a very compressed timeframe.

The media propelled the Hazleton case into the midst of the national policy debate on immigration. No one was surprised to see extensive media coverage of the two-week trial that unfolded in Scranton in March 2007. The mayor’s sound bites could be seen daily on local, state and national media outlets during the months leading up to trial. But what made coverage of this trial most unusual was the fact that the press filled the jury box throughout the proceedings. The extensive coverage permitted counsel to “poll the jury” on a daily basis by watching the evening news or reading the newspaper.

The Landmark Decision

The trial included everything from police detective testimony concerning local crime data to testimony concerning the adverse financial impact of the ordinances on Latino businesses. Local community leaders testified to a climate of anti-immigrant sentiment, fear and derision fueled by the aggressive rhetoric behind the ordinances. The parties also presented national immigration law and policy experts, former U.S. Immigration and Naturalization Service enforcement officers, anti-immigration advocates and experts on the impact of immigration on health and education costs; even an individual who claimed an expertise in interpreting Latino gang graffiti testified.

In closing argument, Witold “Vic” Walczak, legal director of the ACLU of Pennsylvania, highlighted trial evidence
demonstrating that Hazleton’s mayor had exaggerated the problems caused by undocumented immigrants to buttress the ordinances. In fact, the community had been long-distressed economically but was revitalized with the recent influx of immigrants from Latin America, Eastern Europe and elsewhere. Further, police data confirmed a disproportionately low number of crimes attributable to undocumented immigrants (less than 1 percent of the city’s total) and a decline in the overall crime rate, even as undocumented immigrants were being used as the proverbial scapegoats for Hazleton’s ills.

Hazleton’s effort to regulate immigrants living and working in the city were brought to a resounding halt when the court permanently enjoined the ordinances as unconstitutional. After an extensive analysis of the parties’ contentions and the law, the court found that the challenged ordinances violated the Constitution’s supremacy clause and due process under the 14th Amendment (along with the federal right to contract, Pennsylvania’s home rule charter law and Hazleton’s police powers).

The decision was handed down in late July 2007, in the midst of an unsuccessful effort to revive comprehensive immig-ration reform in Congress. The 206-page opinion found that the federal government had expressly pre-empted the fields that Hazleton attempted to occupy when Congress enacted the Immigration Reform and Control Act of 1986 (IRCA). IRCA prohibits the employment of unauthorized workers and preempts “any state or local law imposing civil or criminal sanctions … upon those who employ … unauthorized aliens.”

The court additionally found that the ordinances were pre-empted because they would deny housing to all aliens lacking legal status, including those not removed by the federal government while they adjust their status. The court ruled that only the federal government has the authority to determine if a person is in the United States lawfully or not, while the ordinances attributed this power to local authorities.

Hazleton’s ordinances were also struck down on due process grounds. Although employers and landlords were to be advised of potential violations of the ordinances, employees and tenants were not afforded such luxury. The ordinances further failed to detail the manner in which employers or landlords could administratively challenge a violation.
George Garcia, 37, of Scranton, originally from Mexico, watches an anti-illegal immigration rally. A U.S. citizen for 10 years, Garcia said, “I work for what I own, nobody gives me anything for free.”

Finally, but importantly, the ordinances were flawed because any question concerning an individual’s immigration status was to be ultimately submitted for determination by the courts of the Commonwealth of Pennsylvania, which lack the authority to adjudicate issues pertaining to lawful presence in the United States.

Notwithstanding the public appeal of the mayor’s mantra that “illegal is illegal,” the court recognized that a violation of law does not deprive an individual of the right to notice and a hearing prior to being sanctioned. Indeed, why would we as a nation of laws be committed to the notion that murderers and rapists are entitled to their day in court while denying the same benefit to those who jump over or crawl under a fence in an effort to seek a better life? As the court pointed out, “Such argument ... flies in the face of long-established principles of constitutional law, not to mention the concept of justice. All persons in the United States have rights under the 14th Amendment to the United States Constitution, whether they are citizens or not.”

The Decision’s Impact
The court’s opinion establishes clear precedent that local ordinances designed to supplement or mimic federal immigration laws are not tolerable under the Constitution. Furthermore, the Hazleton opinion squarely recognized that all persons located in this country — citizens and all immigrants alike — are

Foster Maer (left), of the Puerto Rican Legal Defense and Education Fund, and Witold “Vic” Walczak (second from left), legal director of ACLU of Pennsylvania, with members of the media as they leave the courthouse following a day of the Hazleton illegal immigration trial proceedings.
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entitled to protection under established constitutional principles. The PBA House of Delegates’ June 22, 2007, action approving a PBA Civil and Equal Rights Committee resolution opposing local and state regulation of immigration and recognizing the importance of having a single, national immigration scheme presaged the Hazleton ruling. Recognizing the fundamental and evident problems in establishing a patchwork of local, inconsistent immigration regulations, the PBA resolution emphasizes that federal authority to regulate immigration is plenary and pre-empts state and local governments from enacting laws regulating that subject.

While the Hazleton decision is not binding in other districts, the opinion is likely to have a much broader impact. More than 100 municipalities across the country have adopted ordinances that are modeled after or are simply carbon copies of Hazleton’s. Moreover, hundreds if not thousands of other state and local governments are considering similar measures. These other ordinances presumably are doomed to the same fate as Hazleton’s Illegal Immigration Relief Act.

The Hazleton decision, however, will not bring a final conclusion to the issues raised in the immigration debate by local municipalities. Hazleton has appealed to the 3rd U.S. Circuit Court of Appeals, and its mayor has promised a further appeal to the U.S. Supreme Court (while he contemplates a run for Congress). Legal challenges to Hazleton-like ordinances continue in other towns across the country and spirited debate over immigration reform continues in the media and government forums. Hazleton’s attempt to force “illegal aliens” from the local community, while failing legally, has forced some of the intended results: Hispanic residents have moved; businesses catering to Latinos have closed due to lack of patrons; and individuals who look and sound foreign now know or at least feel they are not welcome in Hazleton. Hazleton’s case has been decided, but the long-term practical effects of local governments attempting to regulate in this field have not.

In the meantime, perhaps Congress will heed the Hazleton decision and other calls for reform and undertake the task constitutionally assigned to it by adopting a humane and rational overhaul of our current immigration system.

Linda Kaiser Conley and Ilan Rosenberg are members of Cozen O’Connor in Philadelphia and are part of the legal team representing the plaintiffs in the Hazleton action. The Cozen O’Connor pro bono team included lawyers Thomas G. Wilkinson Jr., Thomas B. Fiddler, Doreen Y. Trujillo and Elena Park, with legal assistants Peggy Gallizia and Catherine Branka. A full copy of the opinion is available at 496 F. Supp. 2d 477 (M.D. Pa. 2007).

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