

Arizona: Right Lawsuit; Wrong Reason

Michael Sean Winters | Jul. 7, 2010 | Distinctly Catholic

The Justice Department has filed a lawsuit seeking an injunction against the Arizona law that invites state law enforcement officials to demand "papers" from anyone they suspect of being in the country illegally. The suit also seeks a court declaration that the law is null and void. The Justice Department brief cites the Supremacy Clause of the Constitution as the justification for the ruling it seeks. This is a classic case of doing the right thing for the wrong reason. And, in this case, it shows once again that some officials in the Obama administration have a tin ear for politics.

To be clear, the Arizona law is a disgrace. Cardinal Roger Mahony of Los Angeles appropriately called it "the country's most retrogressive, mean-spirited and useless anti-immigrant legislation." It is also wildly popular. According to CNN, it is supported by 57% of the American people with only 37% opposed. Moving those poll numbers will take more than an appeal to the Supremacy Clause. [As I argued last week](#) [1], the entire immigration debate needs to be cast in explicitly moral terms if the administration hopes to shift public opinion.

Lawyers, I understand, are always playing inside baseball. I am not a lawyer so for all I know the brief filed by the Justice Department puts forward the most compelling legal strategy for stopping the unjust Arizona law. Perhaps, they would have to wait until the law takes effect to challenge it on the policy merits because it is discriminatory. Perhaps, the Supremacy Clause argument is a legal slam dunk. As I say, I am not a lawyer still less a judge.

But, if the President is serious about passing comprehensive immigration reform, he needed to confront the Arizona law with a different argument, a moral argument. In his speech last week calling for immigration reform, the President spoke about his participation in a naturalization ceremony where men and women in the armed forces became citizens. People who have risked their lives for this country as immigrants with green cards are now citizens. But, could an Arizona patrolman tell the difference between one of these brave men and women the day before they became citizens from the day after? Can an Arizona patrolman tell the difference between one of these soldiers and their undocumented cousin? Of course not.

Conservatives like to argue that President Obama is all about big government, but do they support a legal regime that requires citizens to carry "papers" with them at all times or risk being thrown in jail? Evidently they do. It is unclear to me how government regulation of the financial sector or the health insurance companies constitutes an assault on our freedoms, but giving local law enforcement the obligation to demand "papers" is somehow not an assault on our freedoms. I get pretty tan in the summer. Will I be pulled over in Arizona? What about Albert Pujols?

Ah yes, Mr. Pujols. If the Democrats are serious about challenging the Arizona law, and about passing immigration reform, they should invite Mr. Pujols and all the other Latinos who will dominate the upcoming All-Star game to do an ad about the Arizona law and about immigration reform more generally. Run it on ESPN as well as CNN. Sports stars are understandably reluctant to get involved in politics; as Michael Jordan once said in explaining his unwillingness to campaign on behalf of a Democratic candidate, Republicans buy sneakers too. But, this aversion to political involvement did not prevent the Phoenix Suns from protesting the

Arizona law when it was first enacted. This issue strikes more deeply than most. For many Americans, immigration reform is an existential issue, affecting not merely a person's conception of the way the polity should be ordered, but bringing real hope to a beloved cousin or spouse or child. I am sure Mr. Pujols has his papers but I am also sure he knows people who do not and can empathize with their plight. There are actors and singers, too, who should be enlisted, to reach groups that politicians have a hard time reaching. Where is the group of singers who will champion America's immigrants the way they sang for Haiti relief after the earthquake?

In his book *The Promise*, Jonathan Alter suggests that President Obama is keen to keep politics away from policy discussions. If this is true, then the President misunderstands his role in the American system of government. There is something admirable in trying to do the right thing free from political calculations. But, the President's job is not just to decide what policy is best but to get it enacted. Politics is a necessary consideration and, in a democracy, it is a noble consideration. This can be taken to extremes, as we saw in the Bush-Rove years, which poll-tested everything and apparently never had a policy debate that was not dominated by political concerns. But, the Obama administration has swung the pendulum too far in the other direction. They have replaced Bush's provincialism with a wonky parochialism.

In each and every debate, the President and his staff must ask two questions: What is the right thing to do? How do we persuade the American people that it is the right thing to do? Both questions are essential. I do not see how the second question was asked when the Justice department drew up its brief.

The American people have their faults, but an essential sense of fairness is a part of our national character. The President and his Attorney General need to speak to that sense of fairness in this debate. Instead, they have put forward a legal argument that will leave most Americans scratching their heads or hitting the clicker. The Arizona law may well violate the Supremacy Clause. But, the law is wrong and unjust. It allows policemen to judge people by the color of their skin, not the content of their character. The latter argument may be more difficult to win in a court of law, but it is much easier to win in the court of public opinion.

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