

It's Not About Federalism #17: Minimum Wage Preemption

Today's INAF installment celebrates popular entertainment's discovery of the "new federalism." Last night's episode of NBC's White House drama *The West Wing* featured two federal judges debating the 1995 *Lopez* decision, which struck down the Gun Free School Zones Act as being outside Congress's Commerce Clause power.

We never thought we would see Glenn Close asserting on prime time television, with the passion that she brought to *Fatal Attraction* and *Dangerous Liaisons*, that there was a sufficient nexus between school violence and the national economy to permit Congress to act under Article I of the Constitution. But there she was.

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Back in the world of reality, conservative politicians continue to betray their supposed commitment to local control. Last June, INAF #3 reported on Florida's adoption of a law prohibiting any locality from adopting minimum wage legislation. Similar laws are on the books or under consideration in at least 15 states.

The latest battlegrounds are Wisconsin and Georgia. In both states, when cities began to consider living wage or minimum wage legislation, business interests successfully lobbied conservative state legislators to preempt the localities' proposals.

Responding to pressure from community and labor groups, Wisconsin Governor Jim Doyle last week vetoed a bill that would have preempted local minimum wage laws. Doyle had previously acted administratively to raise the statewide minimum wage from \$5.15 to \$6.50 per hour over two years. When Madison began considering a local minimum wage of \$7.75 per hour, the legislature attempted to intervene. Thanks to Governor Doyle's veto, Wisconsin's statewide minimum wage will act as a floor, not a ceiling; municipalities will be free to require greater wages and benefits within their jurisdictions. (This is a marked contrast to Florida, where the state law is a ceiling but not a floor: the state has no minimum wage, but it preempts localities from adopting one on their own).

In Georgia, it was Atlanta's city government that triggered business groups' rush to the Capitol. Mayor Shirley Franklin appointed a commission in January to study the likely effects of a living wage ordinance. The commission was to hold public hearings and gather data on the costs and benefits of a living wage law. Anti-living wage lobbyists convinced the state legislature to preempt localities from passing living wage laws, using their usual argument that such laws cause unemployment and raise costs for city governments.

Of course, because they managed to pass the preemption law before Atlanta's commission could do its research, the empirical validity of that argument was not put to the test. Research by the Brennan Center and others suggests that such arguments are, generally speaking, unfounded (the Brennan Center has worked with other advocates in support of the proposed Madison and Atlanta legislation).

The Georgia bill is especially objectionable because it is aimed at a proposed living wage ordinance. While minimum wage laws require all employers in a city to pay their employees a

specified minimum, living wage laws apply only to companies that have contracts with the city government. The Georgia legislature, in other words, forbade Atlanta from deciding how to spend its own money. When Governor Sonny Perdue signs the bill, as he is expected to do, Georgia will join Utah as the only states in the Union where local taxpayers are forced to give public money to companies that don't pay their workers enough to stay out of poverty.

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This installment began on a lighthearted note, so why not end on one? The Supreme Court will decide several preemption cases this Term, but yesterday's decision in *Nixon v. Missouri Municipal League* is in a category by itself: meta-preemption. The question, stated as simply as possible, was whether the Telecommunications Act requires the Federal Communications Commission to preempt state governments from preempting local governments from operating telecommunications facilities. Even for us devotees of the federalism wars, this was a mind-bender.

By the way, the Supreme Court's answer, by an 8-1 vote, was no.

It's not about federalism; it's about poverty wages

On the Internet:

The Brennan Center report assessing the effects of living wage laws enacted since 1994: http://www.brennancenter.org/programs/living_wage/elmorereport.html

Governor Doyle's veto message: http://www.wisgov.state.wi.us/docs/031604VetoMessage_AB633.pdf

Nixon v. Missouri Municipal League: <http://laws.findlaw.com/us/000/02-1238.html>

The *Lopez* case: <http://laws.findlaw.com/us/514/549.html>

Home page of *The West Wing*, with a link to video of Glenn Close talking about her guest role: "Just being here and doing this one episode has taught me about the Constitution." http://www.nbc.com/The_West_Wing/index.html