



**Town of Arlington
Legal Department**

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To: Town Meeting Members

Cc: Arlington Board of Selectmen
Arlington Human Rights Commission
Adam Chapdelaine, Town Manager
John Leone, Town Moderator

 Date: April 28, 2017

Re: Sanctuary/Trust Act Resolution Legal Update

I write to provide Town Meeting with a brief update and analysis of a noteworthy development relative to so-called "Sanctuary Cities" for your consideration of Article 59. On Tuesday, April 25, 2017, the Honorable William H. Orrick granted a "nationwide preliminary injunction" enjoining the Trump Administration from enforcing section 9 of Executive Order 13768 ("Enhancing Public Safety in the Interior of the United States") in the joined matters of Santa Clara v. Donald J. Trump, et al. No. 17-cv-0574-WHO (N.D. Cal.) and City and County of San Francisco v. Donald J. Trump, 17-cv-0485-WHO (N.D. Cal.). In furtherance of the healthy, informed, and civic public discourse on Article 59, Town Meeting should know that the Court's decision blocks the Administration from broadly withholding funds from cities, towns, and

counties which it deems “sanctuary jurisdictions.”¹ The Court’s 50-page, detailed analysis covers much ground, not all of which is equally relevant to your consideration. It should not be conflated with a final word on the substantive local arguments to favor or disfavor Resolution 59. However, it does firmly legally support the Town’s expectation that affirmative action on Resolution 59 presents very low risk to Arlington in terms of loss of federal funds.

Impact of the Court’s Order on Executive Order 13768 and “Sanctuary” Communities

Foremost, the Court’s decision prevents any effort by the Trump Administration to withhold otherwise available federal funds from sanctuary communities for programs *unrelated to immigration enforcement* in the immediate term. The decision recognizes that the federal government has the right to withhold certain immigration enforcement monies from local governments for violating already existing conditions of federal grants, especially Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373).² However, the end result is what the Town expected. As stated by Judge Orrick, “the Executive Order’s attempt to condition all federal grants on compliance with Section 1373 clearly runs afoul of the nexus requirement: there is no nexus between Section 1373 and most categories of federal funding, including... transportation, child welfare services, immunization and vaccination programs, and emergency preparedness.” (p. 38).

Similarly, the Court’s decision also confirms that the federal government may not unduly coerce, or otherwise marshal local governments into implementing federal initiatives. Federal agencies may offer incentives, but they may not issue vague and powerful threats of

¹ As highlighted by the Board of Selectmen and other Town officials, and of relevance to the Court’s decision, “sanctuary jurisdiction” is not well defined with Executive Order 13768.

² The Resolution before Town Meeting does not violate 8 U.S.C. 1373.

indiscriminate funding cuts for non-cooperation. As summarized by the Court, “[t]he Executive Order attempts to use coercive methods to circumvent the Tenth Amendment’s direct prohibition against conscription. While the federal government may incentivize states to adopt federal programs voluntarily, it cannot use means that are so coercive as to compel their compliance.” (p. 41).

Potential Future Legal Developments

The Court’s decision recognizes that there are a variety of steps the Trump Administration and Congress could take to correct *some* of the defects that favored granting the injunction. For example, noting that the Executive Order’s definition of “sanctuary jurisdiction” was impermissibly vague, further guidelines or regulations could clarify its position. Similarly, the Court held that the President’s directive violated the separation of powers doctrine. It is of course possible that the Congress could legislate new conditions for federal funds to mirror the President’s perspective, though the coercion, conscription, and the nexus of those conditions to such funds would still present significant barriers to a legislative version of the Executive Order. Finally, the United States may or may not appeal the District Court’s decision. As such, the landscape could change, though the overall quality and strength of the opinion of the Court engenders confidence that constitutional norms at issue strongly suggest otherwise.

Conclusion

Based on the Court’s decision this Office is even more confident that the risk of federal funding loss posed by Resolution 59 is extremely low. There are important arguments to be heard for and against the resolution, but Town Meeting can engage in such a debate confident that those arguments should not be eclipsed by concerns over loss of funding. I very much look forward to your reasoned dialogue and judgment on this matter of local and national interest.