



‘Illegal alien’: NYC’s regulation of that term is alien to the US Constitution

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SAN DIEGO — In New York City, the term “illegal alien” is no longer allowed if it’s used with “intent to demean, humiliate or harass a person.” This law was put into action by the city’s Commission on Human Rights. Residents of the city could be slapped with a fine of up to \$250,000.00 for failure to comply. But this new law is clearly incompatible with our free speech rights as outlined in the First Amendment to the US Constitution.

Prohibitions related to this law encompass a list of actions immigrants might find offensive. This includes calling the Immigration and Customs Enforcement (ICE) if such a call is “motivated by discrimination, derogatory use of the term ‘illegal alien,’ and discrimination based on limited English proficiency.”

Banning the use of “illegal alien.” Is New York City illegally regulating free speech?

The authority of NYC Commission on Human Rights to make such rulings appears in Title 8 of the Administrative Code of New York City. So, depending on context and “motive,” “illegal alien” is one hair away from being an illegal phrase in New York City.

Three ironies immediately become apparent:

1. Usage of the term “alien” rather than “immigrant” is still a valid legal term in 8 U.S.C. 1101 (a) (3). That section of the code defines the term as meaning “any person not a citizen or national of the United States.”
2. Our Supreme Court, while ruling on many cases concerning federal immigration law, also uses the term “illegal alien.”
3. New York City did not ban an alternative term, “undocumented worker.” And yet, “undocumented worker” is defined exactly the same way! People are reacting to sounds and emotion rather than true meaning.

But we need to look at a broader concern here regarding the Constitutionally protected right to freedom of speech in general. The censoring of specific words is nothing new for New York City. Previous bans from NYCCHR included the usage of gender pronouns used by employers or landlords to address employees and tenants. Such violations also earned a \$250,000.00 fine, provided the court determined a defendant used such terms in a “willful, wanton, or malicious” manner.

Who gets to determine the “motive” behind the use of free speech?

But exactly how do lawmakers and courts actually determine motive for any of these verbal expressions? Since nobody can read minds, nobody can objectively answer such a question.

New York City is not alone in its gender hypersensitivity. In many parts of our country, public school administrators actually forbid teachers and other government employees to use gender pronouns. However, in its recent legislation, York City kicked this tendency up another notch. One can argue that individuals make certain concessions when agreeing to take a job. But NYC's rulings regarding gender and immigrant language references do not limit their application exclusively to government employees. They apply to all city residents!

In addition to protecting our basic rights as citizens, our Constitution's First Amendment says "Congress shall make no law ...abridging the freedom of speech..."

The US Constitution and its Supremacy Clause

The Constitution also contains a Supremacy Clause. It states that state laws cannot interfere with Federal law.

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding" (Article IV, clause 2).

Of course, this clause also applies to what a state allows its cities to do. For this reason, New York City's bans stand in clear violation of United States law. Perhaps the current atmosphere of political correctness running on steroids tends to cloud such Constitutional clarity.

Where will the PC Language Police show up next?

So now, the PC Language Police have opened Pandora's Box. Where will this madness stop? What happens next? Will the United States follow in the ruinous socialist footsteps of Europe?

An example:

In Ireland, the 1989 Prohibition of Incitement to Hatred Act forbids "incitement to hatred on account of race, religion, nationality or sexual orientation." This law covers public speaking, broadcasts and written materials. One would think that a "hateful motive" would be in the eye of the beholder. But not in Ireland. Violation of this law includes "insulting." And that actual word appears in the language of the Hatred Act. Similar laws exist in England, Norway, Canada and Sweden.

Make no mistake: Many Americans would like to see similar laws in the United States. According to the CATO Institute, 51 percent of Democrats favor a law that would force people to honor a transgender individual's pronoun choice.

America's New Puritanism, 21st Century style

Whatever one's view of transgenderism, same-sex lifestyles or any other sexual practices, such a forced change in our public understanding of freedom should send chills up our spines.

The scope of this newly re-created version of Puritanism becomes even broader.

YouGov did a poll in which 51 percent of Democrats were in favor of banning what they call “hate speech” in general. Obviously, nobody should be in favor of hate, provided it’s real hate. But how exactly do we legislate an emotion? We can only accomplish this by eroding the First Amendment. But such erosions are completely subjective. Individuals, judges and legislators can define practically anything as hate speech today. The extensive target list ranges from religious and conservative values to the desire to protect our national borders.

Speech the First Amendment actually protects

When our Founding Fathers drafted the First Amendment, they meant to specifically protect offensive speech. They knew that benign speech needed no safeguards. Nobody needs protection for following the pack or repeating universally popular talking points. But our Founders established the United States to embrace independence on all levels. These include independent thought and independent speech. They also include the use of legal terminology such as “illegal alien.”

That founding message seems lost on far too many of today’s politicians. US citizens elect politicians to office precisely for the purpose of protecting their Constitutional rights and our republic. But increasing numbers of these politicians ignore the expressed wishes of their constituents. And their followers are growing!

Conversely, our Constitution is shrinking.

This is Bob Siegel, making the obvious, obvious.