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The Ninth U.S. Circuit Court of Appeals on Friday upheld a decision striking down ordinances in two Northern California cities barring military recruitment of minors.

A three judge-panel said the Arcata and Eureka ordinances violated the doctrine of intergovernmental immunity by impermissibly seeking to regulate the government directly and by discriminating against it.

Voters in each city overwhelmingly approved the ordinances in November 2008 barring the federal government and its agents from recruiting, initiating contact for recruiting purposes, or promoting enlistment of anyone under 18 into the armed forces. The Youth Protection Acts subjected military recruiters to civil penalties for each infraction, but did not prohibit anyone not employed by the government from encouraging military enlistment.

The federal government quickly sued seeking a declaration that both ordinances were invalid under the Supremacy Clause. The cities requested an order prohibiting the government recruiting any Arcata or Eureka resident under 17 into the military, but U.S. District Judge Sandra B. Armstrong of the Northern District of California declared the ordinances invalid and enjoined their enforcement.

Armstrong said the ordinances were unconstitutional because they sought “to subject the conduct of the federal government directly to local government control,” violating the doctrine of intergovernmental immunity. The doctrine prevents the federal government and the individual states from intruding on one another’s sovereignty.

On appeal, the Ninth Circuit affirmed in an opinion by U.S. District Judge Matthew F. Kennelly of the Northern District of Illinois, sitting by designation.

Kennelly agreed with the lower court's ruling that the ordinances impermissibly sought to regulate the federal government directly and impermissibly discriminated against the government, writing:

"[T]he ordinances do not merely regulate the federal government incidentally; rather, they are expressly intended to do so."

He rejected the cities' argument that the ordinances merely prohibit conduct "already forbidden" by federal law, including the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, noting that they offered no authority to support such an exception to intergovernmental immunity.

Kennelly also said the ordinances were not a proper use of police powers reserved to the states under the Tenth Amendment because the ordinances dealt with the power to raise armies, the province of the federal government.

In a separate part of the opinion, he rejected the cities' argument that the government alleged only a hypothetical negative impact on recruiting and could not show an injury that would give the district court subject matter jurisdiction.

"The cities' adoption and threatened enforcement of the ordinances...subjects the government to an imminent adverse impact," he wrote.

The judge similarly rebuffed the cities' contention that the government was trying to sue on what was a defense, misusing the Declaratory Judgment Act to manufacture a federal claim.

"The government's complaint posed a federal question in its own right because it sought invalidation of the ordinances under federal law," he said.

Chief Judge Alex Kozinski and Judge Pamela Ann Rymer joined Kennelly in his opinion.

The case is United States v. City of Arcata, 09-16780.