

No. 33807 *Eastham v. The City of Huntington, et al.*

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Benjamin, Justice, concurring:

In view of the current statutory law of this state, and the absence of a sufficiently convincing constitutional argument to the contrary, the majority did not err in reaching the conclusion that the City of Huntington's residency requirement ordinance is valid. However, I believe that this case presents an opportunity for the Legislature to give consideration to whether such arcane residency requirements as is in place in Huntington continue to be appropriate in a modern era. I question whether, from a policy standpoint, such requirements continue to be defensible.

Justice is defined by a court's measured application of the rule of law. It should not be the ambition of judges to elevate their own personal policy preferences over the rule of law. When judges advance their own notions of what they believe the law should be rather than what the law is, such judges engage in a judicial activism which is disrespectful to our constitutional system of governance and which is ultimately destructive to public confidence in the judiciary. A judge's positive disregard of the rule of law, no matter the excuse, reveals an arrogance unbecoming of this Court. Such behavior has no place in a judicial system which values precedent, stability, predictability and certainty.

Although I personally favor the freedom of the City of Huntington's workers

to live where they choose to live, I must acknowledge that my personal policy preference is not supported by the law applicable to this case. I therefore concur with the conclusion of the majority. I observe, however, that residency requirements may pose the potential for municipal liability when used as a political weapon to retaliate against municipal police and firefighter groups.