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JOHN F. KENNEDY SCHOOL OF GOVERNMENT

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# Local Immigration Regulation: A Problematic Trend in Public Policy

By Jill Esbenshade and Barbara Obzurt

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## Abstract

The years 2006 and 2007 witnessed an unprecedented trend in local governments passing ordinances aimed at undocumented immigrants. This article lays out the contours of this phenomenon, as well as the legal, logistical, and civil rights questions raised by the ordinances. We also explore the fiscal and community relations impacts. Finally, we look at some of the misperceptions that underlie the ordinances, including the perception of an “immigration crisis” that appears to be driven by an increase in Latino and immigrant residents of these mostly small cities and towns. We argue that local ordinances have fueled anti-Latino sentiment in these areas and pose a threat of widespread discrimination if enforced. Moreover, they violate the principles of a democratic society.

## Introduction

A looming issue for Latinos across the country is the proliferation of new local ordinances targeting undocumented immigrants. Such ordinances usually seek to impose harsh sanctions on landlords who rent to undocumented immigrants and/or employers who hire them. In many of the debates around such ordinances there is a fusion of undocumented immigrants and Latinos. This blurring of distinct (but overlapping) populations is dangerous, as such debates have heightened anti-Latino sentiment and such ordinances are likely to cause discrimination against Latinos through landlord and employer efforts to avoid possible violations. These ordinances are, therefore, of particular concern for those interested in public policy that affects Latinos.

Between May 2006 and September 2007, 131 cities and counties in thirty states considered ordinances targeting undocumented immigrants.<sup>1</sup> These ordinances contain five major aspects: rental provisions, employer sanctions, English as the official language, day labor prohibitions, and police enforcement of immigration law. The first three often come as a package and are sometimes called the Illegal Immigration Relief Act, or IIRA. Other locales have considered a wide variety of other measures. For instance, Prince William County, VA, adopted an ordinance (07-894) denying undocumented immigrants county services such as elder care, drug abuse prevention, and aid to the disabled.<sup>2</sup> According to the 9 July 2006 *San Francisco Chronicle*, the town of Milford, MA, amended their city regulations to prohibit any check cashing businesses, which often cater to immigrants.<sup>3</sup> Forty-four percent of localities have passed at least one prohibition. While this article focuses exclusively on the local level, it should be noted that there are also an unprecedented number of bills being considered and passed at the state level (NCSL 2007).

This article seeks to lay out the contours of the local ordinance phenomenon and also the principal arguments against such regulation. The article is based on over sixty interviews with members of communities where such ordinances have been considered. The members of the community are mainly representatives of non-governmental organizations, landlords, business owners, public officials, and police officers. Half of the interviews were conducted in a case study of Escondido, CA, and the others via telephone in fifteen cities in fourteen states. We also reviewed news articles from across the country, legal documents, proposed and passed ordinances, and videos of city council debates. Finally, we analyzed census data for the 131 localities. It is clear from the data collected that there has been a general lack of accurate information in the consideration of these ordinances. We will conclude by reviewing some of the common faulty assumptions on which the ordinance movement relies and the demographic shifts that have driven the perceived crisis.

### Background of Ordinances

There is no doubt that undocumented immigration has increased significantly in recent years. The leading demographer in the field, Jeffrey Passel, estimates that the unauthorized population nearly tripled between 1990 and 2004. Perhaps more significant to the proliferation of ordinances is the dispersal of undocumented immigrants to states that had previously seen any unauthorized and in many cases any immigrants and Latinos in general. In 1990, six states accounted for 80 percent of the undocumented population. By 2004, these six states were home to only 59 percent of undocumented immigrants (Fortuny, Capps, and Passel 2007, 45). While still housing the majority of undocumented immigrants, the six states account for fewer than 20 percent of the ordinances. Although the diffusion certainly contributed to rising concern across much of the country, we have not found a direct correlation between the number of proposed ordinances and the rise in the undocumented population in a particular state. By far the largest number of proposed ordinances is in Pennsylvania, with thirty-two locales (24 percent of the total number of ordinances). Pennsylvania saw the number of undocumented persons quintuple between 1990 and 2004, although the undocumented only make up 1 percent of the state's population—less than a third of the national average. On the other hand, an estimated 5 percent of the population of Oregon is undocumented and the state has seen a seven-fold increase (Fortuny, Capps, and Passel 2007, 34–37), but appears to have no locales considering ordinances. The rise in the number of undocumented persons has provided a basis for concern, but it has often required the media and politicians to raise the level to one of alarm.

The National Election Poll conducted in Iowa at the opening of the 2008 presidential election season showed that “illegal immigration” was the number-one concern among Republican caucus-goers, according to a *Los Angeles Times* article on 4 January 2008. While the centrality of the issue varies by poll and by group, it is clear that politicians are capitalizing on a growing nativist sentiment. This is particularly true among Republican politicians. Political scientists Karthick Ramakrishnan and Tom Wong's (2007) analysis of demographic, labor market, and political factors in relation to proposed local ordinances shows the strongest corre-

lation with political factors. They found, after controlling for demographic factors, that a locale in a Republican majority area was twice as likely as a Democratic area to propose, and even more likely to pass, an ordinance targeting the undocumented.

Several related trends of media coverage, national politics and widespread protests encouraged the spate of ordinances in 2006 and 2007. According to our LexisNexis search, in 2006 the number of articles in major newspapers headlined with the terms *undocumented* or *illegal immigrant/immigration* doubled over the number for each of the previous nine years. Media coverage of the subject was partly driven by renewed efforts in Congress to address the issue and vice-versa. Not since twenty years earlier, with the passage of the Immigration Reform and Control Act (IRCA), had Congress so intensely debated the issue.

However, Congress failed to pass a substantive immigration bill. Proposed measures ranged from draconian “enforcement-only” legislation to “comprehensive bills.” The proposed enforcement-only legislations would have turned millions of undocumented immigrants into felons and their abetting family members into criminals. The comprehensive bills included both increased enforcement (fences, new fines and penalties for illegal status, shifting of visas away from family preferences) and an easing on restrictions (path to citizenship, legalization of students, expanded guest worker programs). Nevertheless, despite intense negotiation, Congress failed to pass any measures in 2006 or 2007, with the exception of the expanded border fence. One reaction to the early efforts at enforcement-only solutions (particularly HR 4437) was an outburst of protests mainly organized by Latinos with support from organizations such as churches, unions, and civil rights groups. The protests in the spring of 2006 culminated with the Great American Boycott of 1 May, the one-day boycott of schools and businesses by legal and undocumented immigrants. Frustration at the lack of federal action, and what some perceived as the audacity of the protestors, resulted in the proposal of local ordinances.

The trend began when Joseph Turner, the founder of Save Our State (SOS), a nationwide organization that targets illegal immigration, attempted to put the original IIRA on the ballot in San Bernadino, CA. SOS is named after the official title of Proposition 187, a comprehensive ban on services to undocumented immigrants that was passed by California voters in 1994 but was found to be unconstitutional. While Turner was unable to get IIRA on the ballot in San Bernadino, his campaign inspired Mayor Lou Barletta of Hazleton, PA, who in turn motivated mayors and city councils across the country to consider similar ordinances.

One notable aspect of these local ordinances is that more than half include a housing provision, which is a new realm of regulating immigration. Employment prohibitions were enshrined in IRCA in 1986. English as the official language provisions have been adopted by over half the states and have been proposed on the federal level a number of times. Day labor restrictions have been introduced in many localities over the past twenty years. While there are federal statutes against harboring undocumented immigrants, there has been no previous effort to require landlords to check the legal status of tenants and to fine the landlords and/or revoke their licenses for failing to do so.<sup>4</sup>

### Principal Arguments against Local Ordinances

The following is an overview of some of the principal problems with these local ordinances, particularly with the housing sections. These arguments consider legal, logistical, economic, civil rights, and community relations impacts. While many of the ordinances have not yet been implemented and in several locales have been enjoined by the courts, the approval of the ordinances in and of themselves has had significant consequences. The most notable impact has been a public venting of hostility toward Latinos in many communities, and Latinos' (native-born, legal, and undocumented) heightened sense of being under attack.

### Legal Arguments

The main legal arguments against the local ordinances prohibiting landlords from renting to undocumented immigrants and employers from hiring them center around three areas: federal preemption, due process, and discrimination. The American Civil Liberties Union (ACLU), along with other leading civil rights organizations such as the Mexican American Legal Defense and Education Fund and the Puerto Rican Legal Defense and Education Fund, have successfully filed suit in six cities. In five of the six, preliminary injunctions have been issued, while in the sixth—Hazleton, PA—the ordinance was found unconstitutional after full trial and is now pending appeal.<sup>5</sup>

In July 2007, Judge James Munley of the U.S. District Court, in *Lozano et al. v. City of Hazleton*, returned a lengthy and detailed decision in which he found the Hazleton ordinances (the IIRA and the Tenant Registration Ordinance, or RO) to be unconstitutional because they were preempted by federal law and violated due process. Considering the federal government has already “occupied the field” of immigration law, and immigration is expressly a federal issue, local action is preempted by federal regulation. Moreover, the ordinances violate employers', employees', tenants' and landlords' right to due process conferred by the 14th amendment to the United States Constitution. The RO also violates an alien's right to contract under the federal Fair Housing Act, which, interpreted by Judge Munley, protects the right to contract of all persons, not contingent on legal status.

Judge Munley, however, did not find that the housing ordinance was discriminatory prima facie. Rather, he noted that a valid legal challenge may arise based on the application of the ordinance. The city avoided the discrimination claim by including in the ordinance a specific prohibition on complaints against tenants based on race or ethnicity. However, it is unclear exactly what will be required when a complaint process is actually implemented. It seems likely that complainants would use racial markers, national origin, and language ability in formulating the accusations of illegal status that will trigger the documentation checks. In fact, California passed AB 976 in October 2007, which prohibited cities from enacting laws requiring landlords to check legal status and went so far as to prohibit landlords from voluntarily conducting such checks, in order to prevent widespread discrimination.

District Court Judge John Houston, who granted a preliminary injunction on the housing prohibition in Escondido, CA, also upheld the plaintiffs' argument of conflict with the federal law. The housing provisions cause conflict preemption by

burdening the federal government with the obligation of providing information on thousands of renters, when the federal government has already set other priorities for the database which provides such information. Pennsylvania Judge Munley also questioned the ability of local governments to make a determination of immigration status by simply checking a database. Judge Munley found that the ordinances were based on the faulty assumption that “a conclusive determination by the federal government that an individual may not remain in the United States can somehow be obtained outside of a formal removal hearing.” The judge explained that the issue of legal status is much more complex than the dichotomous view of legal and illegal immigrants would indicate.

### **Logistical Concerns**

There are a number of logistical obstacles to implementing the ordinances as written. Because of the technical problems with a complaint-based system, and the likelihood that it could generate discriminatory practices, the city of Farmers Branch, TX, rewrote its ordinance to require that the legal status of all renters in the city be verified.<sup>6</sup> Under this alternative system, verification would occur for all renters at the time a rental contract is embarked or renewed. While this would avoid the issue of potential discrimination, such an all-encompassing process would create a huge bureaucratic burden for city administrators, not to mention the strain on the federal system.

Many cities are acting on the assumption that the status of noncitizens would be checked through the federal government’s database called SAVE (Systematic Alien Verification for Entitlements). Not only is there a question of whether this database can provide the appropriate information, as noted above in legal arguments, but there are also significant concerns over how well the system runs its basic services. Several government and academic reports have found that the SAVE system has serious problems with accuracy and timeliness. Moreover, these reports emphasize that the database is unable to handle new demand (ISR and Westat 2002; CIS 2004; GAO 2005; NGA, NCSL, and AAMVA 2006).

The federal government has already set priorities for this system, which include providing information to offices that grant government benefits, Departments of Motor Vehicles (DMV) that issue drivers’ licenses and identity cards, and employers who use the system as part of e-Verify (formerly Basic Pilot). The DMV’s use of the system is now required by the Real ID Act. Under this 2005 legislation, all DMVs must verify legal status for driver license and identity card applicants. The system is expected to be fully functional in 2008. However, a report by the National Governors Association, the National Conference of State Legislatures, and the American Association of Motor Vehicle Administrators in 2006 called into question the current efficiency of the database: “Insufficient information is available for states to reliably identify and validate an individual’s ‘pending’ immigration status. States also report real-time verification is not attainable approximately one-quarter of the time, which necessitates a time-consuming process to meet this requirement” (12).

Similarly, there is growing demand on the system through the expansion of Basic Pilot into e-Verify. In 2005, less than one-quarter of 1 percent of employers

nationwide used the system to check employees as they were hired, and yet the Government Accountability Office (2005) found the system was at its capacity. By 2007, the number of users had risen dramatically but was still under 1 percent. As of 1 January 2008, Arizona State's HB 2779 requires that all employers use the system. Meanwhile, under HB 1744, Illinois has prohibited its employers from using the system because of the inaccuracies that unfairly result in the loss of jobs.

### **Economic Issues**

Businesses, landlords, and cities have already felt the economic impact of local ordinances, often without the ordinances ever going into effect. These impacts have taken the form of loss of revenue, lowered property values, decreased city income, and heightened expenditures. Several cities have decided not to further pursue their ordinances or to rescind them in order to mitigate the negative fiscal results.

Businesses that cater to Latino clientele have experienced such a decline that owners have sued the city for damages, as was the case in Farmers Branch, TX. On 12 January 2007, the *Houston Chronicle* reported that businesses in Farmers Branch with a Hispanic clientele had seen a sales decline of 20-50 percent since the ordinance was read into the record two months earlier. According to Robert S. Nix of the Hispanic Bar Association of Pennsylvania, in a 20 March 2007 interview, "both in Hazleton, PA, and Riverside, NJ, there are 'for rent' signs . . . everywhere both for stores and apartments because people have moved out; they've left, both legal and those presumably illegal as well." Ironically, the influx of Latinos had contributed to an economic revitalization in cities such as Hazleton, Riverside, and Milford according to the *Philadelphia Inquirer* of 20 January 2007. Cities in turn have lost the attendant taxes from declines in sales and rents.

Landlords have also been party to lawsuits against cities for such ordinances. Landlords are worried about their precarious legal position by having to abide by antidiscrimination laws and at the same time avoid violating the new regulations on not renting to undocumented immigrants. Landlords also point out that such ordinances may affect their property values and their other renters. Property values decline not only because of a reduced number of renters but also due to the added legal complications involved in owning rental property under these ordinances. Kathy Belville, president of the San Diego Apartment Association, noted in a personal interview on 9 April 2007 that landlords may not even be aware of undocumented residents living in a unit with a documented tenant. If landlords' licenses are revoked for violations, as contemplated by the ordinances, this would affect the renters in all units owned by the landlord.

City residents may be affected as "innocent bystander renters" and as taxpayers as well. While these ordinances are supposedly meant to save local governments money in services given to undocumented immigrants, in fact they have cost cities hundreds of thousands of dollars in legal fees. Escondido spent \$200,000 defending its ordinance only through the preliminary injunction stage. Farmers Branch spent over a quarter of a million dollars on the first round of its defense, as did Hazleton. These two cities have set up Web sites to solicit donations to help with

the costs of their defense. Hazleton also had the assistance of Lou Dobbs, who advertised the Hazleton site on his CNN program. Farmers Branch mayor Bob Phelps, previous mayor David Blair, and city attorney Richard Escalante wrote in a 8 May 2007 open letter to the town that costs of full trials are estimated in the millions.

### **Civil and Human Rights Violations**

The trials over these ordinances have centered on their constitutionality, centrally under the principle of federal preemption. However, a number of other important civil and human rights concerns emerge from the housing ordinances in particular. These include the likely violation of privacy rights, racial profiling, and children's rights.

Many of the ordinances contemplate a citizens' complaint procedure, raising the specter of spying and harassment particularly of Latinos. Because Latinos make up approximately 80 percent of the undocumented population, it is likely that Latinos will receive particular scrutiny from landlords and community residents intent on bringing complaints under the ordinance procedures. Such scrutiny could certainly involve violation of privacy rights and could be used as a form of harassment against minority members of these small, largely White, communities.

The ordinances may also violate international law by depriving undocumented immigrants and their families, both documented and undocumented, of shelter. For more than fifty years the United Nations has included the right to adequate housing in various declarations adopted by the General Assembly, including the United States. The original 1948 United Nations Universal Declaration of Human Rights includes the right to adequate housing as a recognized basic human right. The 1966 Covenant on Economic, Social and Cultural Rights reiterated housing as a basic human right. In 1989, the UN Convention on the Rights of Children also enumerates shelter as a basic right. Finally, the 1990 United Nations International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families also enshrines access to housing as a right.

Violations of the right to shelter are always troubling. This right has been recognized for all peoples, as well as for migrant families and for children specifically. Deprivation of the right to housing is particularly appalling when it involves children. Almost five million children live in households headed by undocumented immigrants, with almost two-thirds of these born in the United States. While most of these children do not live in communities with housing ordinances, 41 percent of the families targeted by these ordinances include children. Moreover, 31 percent of targeted families include U.S. citizen children (Passel 2006).

### **Community Relations Impacts**

Ordinances have also had negative impacts on community relations. Across the country, Latinos report feeling under attack. The 5 December 2007 *Washington Post* quoted a local Latino community leader in Culpeper, Virginia: "Things have really picked up since Prince William came out with that plan. They are blaming us for everything that's going wrong in this country and with the economy." This sentiment was echoed by many of our interviewees. In our case study of



Escondido, CA, we found both a general sense of heightened hostility toward the Latino community and specific instances of loss of community services.

In Escondido and elsewhere community members reported a proliferation of anti-Latino sentiment as a result of the ordinance debates. This sentiment often extended to legal residents and native-born Latinos. Anti-Latino sentiments were legitimized by city officials, who often group undocumented immigrants with Latinos. According to the president of Hazleton's Hispanic Chamber of Commerce in the *Pittsburgh Post-Gazette* on 9 March 2007, "the mayor has created a climate of fear among Latinos, even those in the country legally." In Escondido, numerous references were made to Latinos during the debates. In Valley Park, MO, the local paper, the *Riverfront Times*, on 28 February 2007, quoted the mayor: "You got one guy and his wife that settle down here, have a couple kids, and before long you have Cousin Puerto Rico and Taco Whoever moving in." While not all officials have been so blatant, the ordinance debates often served as a venting process for pent-up frustration and anger about the increasing numbers of Latinos in ordinance locales. Arcela Nunez-Alvarez, interim director of the Latino Research Institute, California State University at San Marcos, said in a personal interview on 16 February 2007, that Escondido, CA, observed a rise in tensions between White and Latino students at the local high school.

The ordinances and the environment surrounding their promotion serve to further isolate Latino and other immigrants. Ironically, such isolation is an impediment to the process of assimilation, which ordinance supporters often demand from immigrants. For example, the Web site set up by the supporters of the Farmers Branch ordinance declares that "those who enter our country legally should obey our laws, learn the English language, and assimilate into American society." The fear created by the ordinances makes immigrants less likely to seek out opportunities to incorporate into the community and may affect services offered to facilitate this process. For instance, according to a personal interview with the city librarian in Escondido, Laura Mitchell, on 16 March 2007, the library lost financial support for a bilingual program in the wake of the ordinance debates. According to Nunez-Alvarez, a teacher in Escondido also reported that parents were not sending their children to school for fear that the parents might be detained while waiting for the children outside school.

The negative reputation engendered by the perception of many as intolerance can disadvantage the entire community. A prestigious charter school that had considered locating its newest campus in Escondido changed its plan in part because, according to the principal, Nicole Hinostro, in an interview on 6 March 2007, "when we found out about that ordinance and the politics behind it, it didn't feel like it was fostering a multicultural type of community." Staff of community-based organizations across the country expressed similar concerns about growing intolerance.

#### **Lack of Substantiation for Ordinance Claims**

Much of the debate around ordinances consists of blaming undocumented immigrants for a variety of social ills. Many ordinances are preceded by a preamble similar to that of the original San Bernadino IIRA, which found:

Illegal immigration leads to higher crime rates, contributes to overcrowded classrooms and failing schools, subjects our hospitals to fiscal hardship and legal residents to substandard quality of care, and destroys our neighborhoods and diminishes our overall quality of life.

While rising crime, overcrowded schools and burdened medical systems are the most common social ills enumerated, the Farmers Branch ordinance also referred specifically to September 11 terrorist attacks in their ordinance and the desire to counter terrorism has been cited in other cities as a justification.

Cities need to carefully scrutinize the data on whether problems attributed to undocumented immigrants exist or have been fabricated. Local reporters in the Valley Park, MO, *Riverfront Times* reported that the ordinance justifications there were unfounded. One 28 February 2007 article observes that “crime rates are at an all-time low, and school officials haven’t a clue what prompted claims of overcrowding.” Similarly, during the Escondido City Council debate on the ordinance, members used rising crime rate as a basis for their support. However, according to the FBI crime index, the crime rate dropped by 10 percent between 1998 and 2002 and dropped again between 2004 and 2005. In the case of Avon Park, FL, the ordinance was defeated precisely because the justification language on social ills—copied from Hazleton—was clearly untrue in Avon.

It is essential for proper legislative consideration that a causal relationship between undocumented immigration and social ills is not drawn without evidence. Many statements and statistics quoted by the proponents of the ordinances have been found to be unreliable, misconstrued, or anecdotal. During the Escondido debate, a council member referred to the “fact” that undocumented immigrants were responsible for 80 percent of gang-related crime, but the police chief later testified that only 10 percent of the city’s gang members were noncitizens. The lack of substantiation for these claims was clear in Hazleton, the only city to have a full trial on the ordinance. The *Pittsburgh Post-Gazette* reported on 9 March 2007:

During five hours on the witness stand, [Mayor] Barletta said Hazleton is being ruined by violent crime, crowded schools and a clogged emergency room at the city’s private hospital. He attributed many of the problems to what he called “illegal aliens,” even though he admitted he has no idea how many such immigrants are in his city. Lawyer Witold Walczak, of the American Civil Liberties Union, got the mayor to concede that he could not name a single instance where illegal immigrants had received service from Hazleton’s fire department or health officer. Mr. Barletta also was forced to admit he had no proof that illegal immigrants were the source of schools so crowded that numerous classes have to be taught in trailers.

The testimony went on to show that while crimes by undocumented immigrants had prompted the ordinance, only twenty of the 8,575 felonies in the city had been committed by undocumented immigrants. The same article noted that there was also no evidence that students taking classes in English as a second language, whose funding was also cited as a problem, were undocumented. This point exem-

plifies the tendency in these debates to assume that all immigrants, and non-English-speaking children, are undocumented.

There is also a tendency to equate Latinos with undocumented immigrants. This was seen in the Escondido debate in which a community assessment of the Latino population in the city, which did not mention immigration status, was repeatedly used to justify the ordinance. Reports from around the country confirm that discussion of the ordinances centered on Latinos. In fact, approximately 80 percent of the undocumented population is from Latin America (Passel 2005). However, most Latinos are NOT undocumented immigrants. According to the U.S. Census Bureau (2004) only 40 percent of Latinos are foreign born and fewer than 20 percent of Latinos are undocumented. Nevertheless, the influx of Latino and immigrant populations into new areas seems to have led some to conclude that the undocumented population is increasing dramatically.

### Shifting Demographics in Ordinance Locales

An analysis of the demographic data for the ordinance locales reveals that the great majority have immigrant and Latino populations below the national average. We do not know exactly what the undocumented population in the locales is, a problem that city administrators also face. However, estimates of the undocumented population use a residual method based on census data of the foreign-born from which the legal population is subtracted and a 10 percent adjustment for the undercount of undocumented immigrants is added (Fortuny, Capps, and Passel 2007, 60). This adjustment would occur in both national and local figures. While certainly the percentage of the undocumented foreign-born population varies in different areas, the ordinances are evenly divided between states in which the proportion of undocumented persons is more than the national average of 29 percent of foreign-born and states where the proportion is lower.

It is clear from this data that most locales considering these ordinances are not large metropolitan areas. Only 18 percent of the ordinances have been proposed in cities over 65,000. Another 15 percent are considered or passed in counties made up of a number of smaller cities and towns. Small cities with between 10,000 and 65,000 residents account for 30 percent of ordinances and finally, towns with a population of under 10,000 make up the largest group with 37 percent of ordinance locales.

U.S. Census data is available for all locales for 1990 and 2000. However, 2005 data is only available for locales over 65,000—that is for the twenty-three large cities and twenty counties that have considered or passed ordinances. An analysis of this data reveals that ordinance consideration is not correlated with *large numbers* of immigrant or Latino populations, but with *large increases* in these populations.

Table 1 shows both the percentage of Latinos and immigrants in the locales, as well as the increase in each of these populations. A review of the entire group of 131 locales on the left side of the table shows the percentage of both Latinos and immigrants is considerably below the national average. However, the increase of Latinos from 1990 to 2000 is above the national average and the increase of immigrants is at the national average. The right side of the table shows data for 2005

and increases from 2000 to 2005 but *only* for the locales over 65,000—one-third of the locales. This data shows that the percentage of Latinos is above the national average and the percentage of immigrants is slightly below. However, the increase in both categories is considerably above the national average.

As shown in Table 2, in 2000 only about 20 percent of the 131 locales had higher percentages than the national average of Latinos and of immigrants. Almost 40 percent, however, had above-average increases. Looking at only the largest locales, one-third had higher than average percentages of Latinos and 40 percent had higher than average percentages of immigrants. The majority, however, saw higher than the average increases in these populations.

Tables 3 and 4 are included because we believe that large cities actually skew the 2005 data and that the 2005 data from Tables 1 and 2 are not necessarily representative of the entire group. Counties, which are generally made up of smaller cities and towns, are closer to the small locales in demographics and more likely to represent entire samples for 2005 averages and 2000–2005 increases. However, they are lower in Latino population and slightly higher in immigrant population than small cities when compared to 2000 (not shown here). In looking at Tables 3 and 4, it is clear that in 2005 these locales have average Latino and immigrant populations far below the national average but increases above the national average. Table 4 shows that, in 2005 few counties considering ordinances had either Latino or immigrant populations above the national average, but over 40 percent had increases in Latino population above the national average, and over half had immigrant increases above the national average. Therefore, the data from all tables indicate that the increase in the foreign-born and Latino populations of ordinance localities probably plays a stronger role than the actual *number* of Latinos or immigrants in shaping popular perceptions of an “immigration crisis.”

In terms of the relationship between demographics and *passage* of ordinances, the data is less clear. Out of 131 ordinance initiatives, 44.3 percent of locales passed at least one provision of the ordinance and the same number have postponed their ordinances. The ordinances were rejected in 11.5 percent of the localities. The data indicates that the status of the ordinances is not directly correlated with the size of the Latino and immigrant population shares. Locales that passed ordinances had higher Latino and foreign-born populations than those localities in which they were postponed. However, locales that rejected ordinances had the highest percentage of Latinos and equal or higher percentages of foreign-born. It appears that having a large Latino population, with a significant native-born component, aids in ordinance rejection.

Finally, ordinances are not correlated with high local unemployment rates. Tables 1 and 2 show that the average of unemployment rates was below the national average in both 2000 and 2005 and changes were similar or identical to the national increase or decrease. Tables 3 and 4 reconfirm this, although it appears that the counties—again which may be more representative of the entire sample—do have a higher increase in unemployment. However, their average unemployment rate is still lower than the nationwide average.

## Conclusion

The proliferation of ordinances in communities that have experienced high influxes of Latinos and immigrants relative to their traditional population is cause for concern on many levels. This article has laid out some of the principal practical considerations involved in adopting such an ordinance: validity, enforceability, legal costs, and economic impacts. But even more importantly we should take into account the meaning of such ordinances in a democratic society. Judge Munley, in *Lozano et al. v. City of Hazleton*, concluded in his decision that such ordinances were unconstitutional,

The genius of our Constitution is that it provides rights even to those who evoke the least sympathy from the general public. In that way all in this country can be confident of equal justice under its laws.

These local ordinances bring into question our commitment to such equality and justice.

The ordinances alienate immigrants and Latinos, contributing to isolation rather than to incorporation into our increasingly diverse country. If enforced housing ordinances will foster racial profiling and discrimination, they also clearly violate the human rights of persons whose legal status may be in question but whose humanity must be recognized. The housing ordinances will only serve to drive undocumented persons and their family members (including many U.S. citizen children) into more precarious conditions. We have already seen the result of prohibitions in the employment sector, where many undocumented immigrants are exploited.

Of course, local ordinances could drive immigrants—and Latinos who feel the atmosphere is too hostile—to other towns or regions. This may serve to stem the flow of immigrants and Latinos into new areas, which appears to be an underlying motive of some ordinance supporters. However, it will not address the presence of millions of people, mainly workers, in the United States with no clear status. The contradiction between our labor practices and our immigration policies is something only the federal government should, and can effectively, address.

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### Endnotes

<sup>1</sup> Our list of 131 localities was obtained by cross-referencing the lists of all localities where ordinances had been proposed compiled by the Fair Immigration Reform Movement and the Puerto Rican Legal Defense and Education Fund. We double-checked any discrepancies against news reports. These numbers are as of October 2007 and all references to numbers of localities in this paper are derived from our cross-referenced list.

<sup>2</sup> For ordinance, see <http://www.pwccgov.org/documents/bocs/briefs/2007/1016/res07-894.pdf>.

<sup>3</sup> Amendment noted in city regulations at <http://www.milford.ma.us/zoning-by-laws.pdf>.

<sup>4</sup> We would like to note that while most of the housing provisions require landlords to check immigration documents, a few cities have developed other more generalized strategies to stop immigrants from obtaining housing. These include provisions that redefine “blood relative” or “family” in a much more limited way and restrict the sharing of housing in certain zones to this limited group of individuals and overcrowding regulations that limit the number of tenants in a unit.

<sup>5</sup> See ACLU site for updates and all legal documents (<http://www.aclu.org/immigrants/discrim/27452res20061115.html>).

<sup>6</sup> While both the city council and the 68 percent of voters in Farmers Branch approved versions of their ordinance, courts have enjoined them based on preemption. The ballot initiative was modified to exclude children and elderly people.

**Table 1. Select Demographic Characteristics of All Ordinance Locales**

ALL LOCALITIES	2000		2005		
	Average in Ordinance Locales	All Locales N = 131	National Average	Largest Locales N = 43*	National Average
Latino population share		8.6	12.5	16.2	14.5
Immigrant population share		7.2	11.1	12.1	12.4
Unemployment rate		3.3	3.7	4.3	4.5
Average Increase in Ordinance Locales	1990–2000	2000–2005			
Latino population share	4.2	3.6	3.4	2.0	
Immigrant population share	3.1	3.1	2.4	1.3	
Unemployment rate	-0.3	-0.4	1.0	1.0	

\*For Latino population shares, N = 42 locales; for unemployment, N = 34 locales.  
Source: 1990 Census; 2000 Census; 2005 American Community Survey.

**Table 2. Share of All Ordinance Locales Rating “Above Average” in Select Demographic Indicators**

ALL LOCALITIES	All N = 131	Largest Locales N = 43*
Percent of Locales with High Average**	2000	2005
Latino population share	19.1%	33.3%
Immigrant population share	20.6%	39.5%
Unemployment rate	28.2%	32.4%
Percent of Locales with Above-Average Increase	1990–2000	2000–2005
Latino population share	38.9%	57.1%
Immigrant population share	36.6%	65.1%
Unemployment rate	60.3%	61.8%

\*For Latino population shares, N = 42 locales; for unemployment, N = 34 locales.

\*\* High average is any average higher than the national average. See Table 1.

Source: 1990 Census; 2000 Census; 2005 American Community Survey.

**Table 3. Select Demographic Characteristics for Ordinance Locales, Excluding Large Cities**

SMALLER CITIES AND COUNTIES	All N = 108		Counties N = 20*	
	2000	National Average	2005	National Average
Average in Ordinance Localities				
Latino population share	6.4	12.5	7.1	14.5
Immigrant population share	6.0	11.1	8.5	12.4
Unemployment rate	3.2	3.7	4.1	4.5
Average Increase in Ordinance Locales	1990–2000		2000–2005	
Latino population share	3.6	3.6	2.3	2.0
Immigrant population share	2.9	3.1	2.4	1.3
Unemployment rate	-0.3	-0.4	1.4	1.0

\*For Latino population shares, N = 19 locales

Source: 1990 Census; 2000 Census; 2005 American Community Survey

**Table 4. Share of Ordinance Locales Rating “Above Average” in Select Demographic Indicators, Excluding Large Cities**

SMALLER CITIES AND COUNTIES	All N = 108		Counties N = 20*	
	Percent of Locales with High Average**		2000	2005
Latino population share	13.0		10.5	
Immigrant population share	15.7		25.0	
Unemployment rate	25.0		22.2	
Percent of Locales with Above-Average Increase	1990–2000		2000–2005	
Latino population share	31.5		42.1	
Immigrant population share	29.6		55.0	
Unemployment rate	57.4		77.8	

\* For Latino population shares, N = 19 locales

\*\* High average is any average higher than the national average. See Table 3.

Source: 1990 Census; 2000 Census; 2005 American Community Survey.