



Unconstitutional and Costly

The High Price of Local Immigration Enforcement

Gebe Martinez January 2011

Introduction and summary

A handful of local communities across our nation enacted unconstitutional, discriminatory, and costly immigration controls in recent years in an effort to chase away undocumented immigrants and their families and friends, many of whom are American citizens. This growing backlash against Hispanic immigrants in particular was driven by fear, economic uncertainty, and cultural differences in these localities: small towns in New Jersey, Nebraska, Pennsylvania and Texas, and one county in Virginia.

Against the backdrop of a slowly recovering economy, high unemployment, falling state and local tax revenues due to the Great Recession, and a host of problems ranging from crime to overcrowded schools, Hispanic immigrants proved to be handy scapegoats for the white majority of citizens in these communities. Never mind that these immigrants—legal and undocumented—are neither the root cause of any of these problems nor a major factor in any of them.

Arizona, of course, drew the most attention for its law, S.B. 1070, which requires police to question the legal status of suspects when there is “reasonable suspicion” they are undocumented immigrants.¹ The law also sets “attrition through enforcement” as Arizona’s official immigration policy, which in plain English means if the laws are harsh enough, immigrants will flee in fear. The state’s immigration control measure has not been enforced, however, because a federal judge put a hold on the new law pending the outcome of a lawsuit in which the U.S. Department of Justice challenged Arizona’s attempts to usurp federal jurisdiction of immigration matters.²

Because of the notoriously bad precedent set by S.B. 1070, a boycott of the state’s tourism and convention industry delivered a significant hit as outlined in a report by the Center for American Progress. Led by national organizations, entertainment celebrities, and opinion leaders, the economic boycott immediately led to the cancelling of events and conventions in the state and will result in a loss of \$388 million in the state’s economic output and more than \$133 million in lost wages over the next two to three years.

Other states have taken notice of the costly results of Arizona's unconstitutional immigrant enforcement measures. Nativist legislators in Texas and Florida are considering Arizona-style anti-immigrant measures during their 2011 legislative sessions, but Texas Gov. Rick Perry, a Republican, has vowed to veto such a bill, while the politically influential Cuban-American community in Florida stands opposed to harsh immigration measures even though Cuban immigrants are governed by special federal immigration law that give them refuge if they reach U.S. soil.

Yet earlier anti-immigrant campaigns in the small towns and one county in our country that happened prior to Arizona's action—campaigns that began in 2006 and are the subject of this paper—highlight why such legal action is so costly precisely because of the unconstitutionality of the anti-immigrant ordinances. These small towns historically populated by non-Hispanic whites experienced dramatic demographic changes as more Hispanics and immigrants moved into their communities. In these communities, anti-immigrant and sometimes racist sentiments were fueled by right-wing politicians, extremist organizations, and conservative commentators who attacked all immigrants.

The result today is a series of costly legal battles that burn through city treasuries after local politicians enacted immigration enforcement ordinances that they now know are too costly to implement and defend in court. One town, Riverside, New Jersey, quickly spent \$82,000 and lost commercial tax revenues when businesses closed after enacting a legally indefensible immigration law, only to reverse course with hopes that immigrants would return to their town and fuel the local economy once again.

Other locales have pushed ahead, purposefully draining city coffers to make a political statement against immigrants. Farmers Branch, Texas, a small Dallas suburb, is facing \$5 million in legal fees to protect its immigration control ordinance similar to one enacted in Hazleton, Pennsylvania, which already is winding its way through the courts, at a to-date cost of \$2.8 million, with some estimates as high as \$5 million.⁴ Farmers Branch Mayor Tim O'Hare concedes theirs has been a costly, losing legal battle, but they are not ready to throw in the towel.⁵ "It's like you're in the middle of the fourth quarter, with five minutes left in the game," O'Hare said in 2010. "Why stop now when you're only down by six points? You've come this far. You've got to keep going."⁶

Alas, for the taxpayers in these communities these local ordinances were passed without leaders' adherence to basic constitutional rights. Some unlawfully and unfairly place the burden of enforcement on businesses and landlords, harm-

ing those who sustain local economies. In most instances, the immigrants, both legal and undocumented, have fled the areas, depleting the local pool of needed foreign-born workers and consumers.

The bulk of these cities' expenses have been legal bills from attorneys representing successful plaintiffs, among them business owners, landlords, residents, clerical leaders, and the American Civil Liberties Union, all of whom sued the city governments, and from the cities' own lawyers and consultants, namely Kris Kobach. An anti-immigration activist and lawyer, Kobach has traveled the country, from his base in the Midwest to the Southwest and to the Northeast, drafting harsh enforcement measures and then signing up to defend the municipalities in court.⁷

His drafts are based on the premise that if businesses and employers are punished for hiring undocumented immigrants or renting housing to them, then the immigrants will effectively be chased out of town. In the process, he has run up an estimated \$6.6 million in fees for his efforts, which are affiliated to the Immigration Reform Law Institute, a group tied to the extremist Federation for American Immigration Reform.⁸ Kobach has advised Arizona as well as Hazleton, Pennsylvania; Farmers Branch, Texas; and Fremont, Nebraska—roles that are detailed in this paper and in a separate report by the Southern Poverty Law Center. At the start of 2011, Kobach, on behalf of a group of nativist state legislators, also unveiled two proposed state measures that would take away the right to citizenship under the U.S. Constitution's 14th Amendment from U.S.-born children of undocumented parents.

In November 2010, Kobach was elected Kansas Secretary of State, the office in charge of running the state's elections.⁹ He falsely claimed during his campaign that "the illegal registration of alien voters has become pervasive" in Kansas.¹⁰ Kobach's financial gains have been at the expense of cities that bought into his toxic immigration formula, resulting in tax increases, local service cuts, ethnic divisions, and greater levels of fear even among legal residents.

This paper looks at the five communities that threw anti-immigration statutes onto their books without fully considering their impact. After facing the financial, economic, and social costs, some retreated in search of a better solution. The answer is known. Congress must enact a comprehensive immigration plan that realistically addresses illegal immigration while protecting the rights of business owners and immigrants who sustain the economy.¹¹ Until then, cities that act on their own will find a high price to pay. A look at key cases to date:

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- **Hazleton, Pennsylvania**, the leader of the court fights for local immigration enforcement, is in the tank for at least \$2.8 million with some estimates totaling \$5 million as it defends its ordinance all the way to the U.S. Supreme Court.¹²
- **Riverside, New Jersey** suffered a local economic downturn before the city rescinded its anti-immigrant ordinance and welcomed the return of immigrants.
- **Farmers Branch, Texas**, has spent nearly \$4 million in legal fees and is expected to spend at least \$5 million to defend its anti-immigration statute with no end in sight.¹³
- **Prince William County, Virginia** dramatically scaled back a tough immigration statute after realizing the original version would cost millions to enforce and defend in court.
- **Fremont, Nebraska**, increased the city's property tax to help pay the legal fees for its anti-immigration ordinance which it intends to defend.

Pedro Vargas packs up boxes at his store, Club Video Mexico, in Woodbridge, VA in April 2008 as his son looks on. Vargas, a legal resident, decided to move his business to Utah months after Prince William County passed policies cracking down on illegal immigrants. "The last few months have been very, very bad for us," said Vargas.



Such costly action has other local governments taking notice, realizing that cheap political sound bites can come at a huge expense to taxpayers, local businesses, and the towns' reputations. After assessing the financial losses in other cities, the Summerville, South Carolina Town Council decided in September, 2010, to table its own immigration ordinance and not squander taxpayers' money. "I just cannot with good conscience risk potentially spending millions in taxpayers' dollars just to make a point," said Town Councilman Mike Dawson when he made a motion to postpone the immigration measure.¹⁴

The same week, the city of Tomball, Texas, reached the same conclusion. "I don't want us to get into lawsuits," said Tomball Councilman Derek Townsend, who proposed a package of ordinances and then voted against it after opposition stacked up. Furthermore, the council set aside a proposal to make English the city's official language and it voted to continue a day labor site that opponents contended is used by undocumented immigrants.¹⁵

These more measured reactions to the arrival of new immigrants, both legal and undocumented, in other small-town communities across our nation, make obvious sense. Yet anti-immigrant nativists continue to peddle their unconstitutional legal theories. In the pages that follow, this paper will briefly examine why the initial appeal of anti-immigrant legal action took hold in Hazelton, Riverside, Fremont, Farmers Branch, and Prince William County, and then detail their losing legal arguments, the cost of such futile legal action, and the economic and social costs to these communities. As we will demonstrate, local action against undocumented immigrants is a losing proposition. Citizens in these communities and others across our nation have to tell Congress that national immigration reform simply cannot be put off any longer.

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