



Unconstitutional and Costly

The High Price of Local Immigration Enforcement

Gebe Martinez January 2011

Center for American Progress



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Contents

1 Introduction and summary

6 The rise of fear in small town America

7 Local enforcement measures

10 The state of the legal battles

14 The costs are adding up

15 The costs

16 Hazleton: \$2.8 million and then some

16 Riverside: \$82,000 and tax revenue lost as businesses close

17 Farmers Branch: Almost \$4 million and rising

18 Prince William County: \$1.3 million plus \$700,000 per year

19 Fremont: \$1 million per year for starters

20 Adding up the costs and the lessons learned

23 Endnotes

26 About the author and acknowledgement

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:

This paper looks at the five communities that threw anti-immigration statutes onto their books without fully considering their impact.

- **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.



AP PHOTO/JACQUELYN MARTIN

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.

"I just cannot with good conscience risk potentially spending millions in taxpayers' dollars just to make a point."

– Summerville,
South Carolina Town
Councilman Mike Dawson

The rise of fear in small town America

There are several common threads in the fabric of each of the towns studied in this report. They are small, tranquil, and predominantly white communities that became unsettled by rapid demographic changes despite their immigrant pasts. In these towns, it took only a little agitation to unravel the communities, leaving them frayed and discomposed.

One of the first to react strongly to this cultural entanglement was Hazleton, Pennsylvania, a town of 22,000 residents in Pennsylvania's Pocono Mountains, which has a legacy of a coal mining industry built on the backs of immigrants more than a century ago. By 2008, all Hispanics, regardless of status, made up only 4 percent of Luzerne County's population.¹⁶

A more recent entry into the immigration control movement, Fremont, Nebraska, has a population of about 26,000 that is 93 percent white, mostly of German ancestry, and with only about 4 percent of foreign-born residents.¹⁷ But a rise in the number of Hispanic residents in Fremont beginning around 2008, drawn to the town by jobs in the local meatpacking industry, created a perception that undocumented immigration was running rampant even though the legal status of the newcomers was unknown.

The same was true in Prince William County, a northern Virginia suburb of Washington, D.C., where the Latino population grew by more than 150 percent from 2000 and 2006 as the county was one of the fastest growing in the nation.¹⁸ The new immigrants hailed from El Salvador, Guatemala, Honduras, and Mexico.¹⁹ The region's growth in jobs, combined with affordable housing, made it an attractive area to settle.

A construction boom led to an influx of immigrants in Riverside, New Jersey, a working class town located across the Delaware River from Philadelphia. Riverside already had an established Portuguese-speaking community, but local leaders speculated that as many as 5,000 immigrants, mostly from Brazil, arrived between 2000 and 2005.²⁰ Riverside's population in the 2000 U.S. Census was 7,911, and the federal government's less reliable count at mid-decade did not show a significant increase.²¹

The dramatic transformations in all of these areas prompted backlashes from conservatives and longtime residents, who loudly protested that the newcomers were threatening their way of life and wrongly assumed that most of the new arrivals were undocumented. The protestors' voices drowned out those seeking constructive conversations over how to manage the changing demographics and respond to some legitimate concerns. But from one town to the next, the list of grievances was the same: Immigrants were ruining their communities by overcrowding schools, housing, hospitals, and traffic lanes and requiring English learning classes.

There also were the hyperbolic claims that played to people's fears: that immigrants are noisy, disruptive, tax cheaters, and criminals. There were social problems too, said the politically ambitious mayor in Hazleton, Lou Barletta, as he and an ally complained that immigrants had even tried to start their own Hispanic Little League and a Latino Chamber of Commerce.²²

Spurred by immigration restrictionists such as Kris Kobach and like-minded allies who opposed federal immigration reforms in favor of local controls, town councils began enacting immigration enforcement ordinances.

Local enforcement measures

All five cities took similar steps between 2005 and 2010 to corral what the majority of their citizens saw as out-of-control illegal immigration. A closer look at their tactics reveals why these steps are so costly for these cities.

Hazleton

The Hazleton City Council passed in July 2006 the Illegal Immigration Relief Act Ordinance, the Rental Registration Ordinance, and other laws which challenged the federal government's authority to establish supreme law on immigration matters over state and local jurisdictions. The town approved a \$100-per-day fine on any landlord who rented housing to an illegal immigrant.

In addition, business owners could be fined and have their commercial licenses revoked for five years for hiring an illegal immigrant or failing to undertake an onerous investigation of the immigration status of tenants. Businesses also would be coerced into checking on the employees of contractors and subcontractors.



PHOTO/DONNA MCWILLIAMS

Riverside

Following on Hazleton’s heels, the Riverside Township in July 2006 adopted an ordinance also called “Illegal Immigration Relief Act,” which also placed the onus of enforcement on landlords and employers.²³ Riverside imposed fines of \$1,000 to \$2,000, and a possible jail sentence or revocation of business licenses for landlords who rented to illegal immigrants and employers who hired them.²⁴

Furthermore, the measure would penalize any for-profit entity doing business anywhere in the United States, not just Riverside, that “aids and abets” an undocumented immigrant, such as national retailers or franchises in other cities and states.

Farmers Branch

In November, 2006, as dozens of protestors from both sides of the issue engaged in a shouting match outside of City Hall, the city council voted to require apartment owners and managers to get from each member of a family official proof of citizenship or legal status. The ordinance called for \$500-per-day fines.

The council also made English the city’s official language, and decided to join the federal government’s 287(g) program, which authorizes limited law enforcement

Julio Avellano, left and about 200 other people gather outside the office of U.S. Sen. John Cornyn, in Farmers Branch, Texas in May 2006. Cornyn said he opposed amnesty and wanted workers who come in the future to be temporary.

of federal immigration laws.²⁵ The council considered and rejected a proposal to restrict city subsidies for some youth programs that served children of undocumented immigrants, fearful that such a move would be challenged in court.²⁶

Prince William County

As the anti-immigrant sentiment escalated, the Prince William County Board of Supervisors approved its first immigration resolution in July 2007 and adopted it into law three months later. It denied county services to those unable to prove legal residency and required police to check the immigration status of everyone they detained or stopped for a traffic violation if they had “probable cause” to believe the person was in the country illegally. Police were trained before the law went into effect in March 2008.

Almost immediately, Prince William County officials realized the high costs of this action. For starters, Police Chief Charlie T. Deane estimated a \$3.2 million cost just to place cameras in all patrol cars to document law enforcement activity and guard against an expected increase in racial profiling allegations against police.²⁷ Instead of controlling crime, the chief warned of a possible increase in crimes by youths and other negative consequences.

Reluctantly, the board modified the original resolution in April of 2008 to mandate that police inquire into immigration status only of those placed under “physical custodial arrest.” The board gave police the right, to conduct pre-arrest immigration status checks at the officer’s discretion and the county signed up for the 287(g) federal immigration enforcement program.²⁸

Fremont

The Fremont City Council initially considered an immigration control ordinance in the summer of 2009 but tabled it, conceding that similar laws in other towns were being declared unconstitutional because they usurped federal authority over immigration law and policy. Immigration restrictionists petitioned for an election on the ordinance but the city refused to schedule the public vote, relying on the argument that the proposed law was not valid.

Almost immediately, Prince William County officials realized the high costs of its anti-immigrant legal action.

Yet a state court required the city to hold a referendum because the election petition was legally gathered and voters approved the immigration control ordinance in a June 2010 election.²⁹ The Fremont city council followed the will of the voters and enacted the ordinance.

The Fremont law would require those seeking rental housing to apply for a \$5 permit at City Hall, and those who said they were not citizens would receive permits, but their legal status would be checked. If found to be in the country illegally and unable to resolve their status, they would be forced to leave the property. Landlords who knowingly rented to illegal immigrants could be subject to \$100 fines. In addition, the local law required that employers now use the voluntary federal E-Verify database to determine a worker's eligibility for employment.³⁰

The state of the legal battles

Kobach's successes at lining up local governments as clients were eclipsed by the defeats in courtrooms in various states where he pushed his immigration control theories. In most cases, lawsuits challenging the legality of the enforcement measures have been filed by local residents, landlords, and business owners, with the backing of the American Civil Liberties Union and other civil rights groups. Here's a breakdown of the legal actions taken by these groups—actions that are proving so costly to these cities.

Hazleton

Hazleton's continuing legal battle, which also drew in the U.S. Chamber of Commerce on behalf of the plaintiffs, is fundamentally over the town's attempt to usurp the federal government's authority on immigration matters.³¹ The petitioners also alleged that the local ordinance violated basic civil rights and was discriminatory.³² Aside from the broad definition of "illegal aliens" in the ordinance, the ACLU suggested that businesses that sold goods, even food, to this class of people would face punishment. There have been two key court decisions:

- **July 2007**—U.S. District Judge James M. Munley struck down the Hazleton ordinances, agreeing that they pre-empted federal law and violated due process protections under the 14th Amendment to the U.S. Constitution.³³ "Our analysis applies to illegal aliens as well as to legal residents and citizens. The United

States Constitution provides due process protections to all persons,” the court ruled. Nor did the court validate the city’s claims that undocumented immigrants were causing social ills. “Hazleton, in its zeal to control the presence of a group deemed undesirable, violated the rights of such people, as well as others within the community,” Judge Munley concluded in his district court ruling.³⁴

- **September 2010**—The U.S. 3rd Circuit Court of Appeals in Philadelphia concurred, invalidating the ordinances.³⁵ “Deciding which aliens may live in the United States has always been the prerogative of the federal government,” said Chief Judge Theodore McKee of the appeals court. “If Hazleton can regulate as it has here, then so could every other state or locality.”³⁶ The appellate court commented on the discriminatory aspects of the Hazleton ordinance. “Employers might quite rationally choose to err on the side of discriminating against job applicants they perceive to be foreign,” inconsistent with federal intent to balance regulations with protections against discrimination, according

Signs in English and Spanish hang along a street in the business district of Hazleton, Pennsylvania. The arrival in just four years of an estimated 6,000 Hispanic immigrants and the efforts to accommodate them has bewildered and angered some Hazleton residents.



to the court ruling.³⁷ The housing provisions against “current” undocumented immigrants were dismissed in equal fashion. “Under federal law, an unlawful immigration status does not lead instantly, or inevitably, to removal,” the court stated.³⁸ It cited as examples a college student for whom the federal government has declined to initiate removal proceedings, or battered spouses and children who have special federal protections.

The court proceedings also discounted several of then-Mayor Lou Barletta’s claims against suspected undocumented immigrants. Barletta, for example, blamed the huge wave of immigration for creating the city’s budget deficit. Yet, the city had a \$35,000 budget surplus in 2006, said Witold Walczak, the director of the ACLU in Pennsylvania and lead attorney for plaintiffs in the case.

Regarding the assertion that undocumented immigrations were behind an increase in the crime rate, Walczak argued that between 2000 and 2006, there were a total of 8,500 crimes in Hazleton, but only 21 committed by undocumented immigrants. There were 420 violent crimes, but only three committed by undocumented residents.

Barletta also claimed that the local health care system was going bankrupt and English language programs were a financial strain because of the illegal immigrants. False, Walczak said, countering that in 2006, the Hazleton Health Care Alliance made a \$4 million profit. And the English learning programs were mostly being reimbursed by federal and state government, and not burdening the city.

Riverside

Riverside’s immigration plan backfired almost immediately. The town was hit with two lawsuits challenging its ordinance, including one filed by the Assembly of God Church in Riverside and a coalition of Latino clergy.³⁹ The small township with a population of 7,768, a land mass of only 1.5 square miles, and limited sources for increased tax or user fee revenues, immediately felt the shiver of fear over having to pay the plaintiffs’ legal fees if the ordinance was thrown out of court. A year after enacting its ordinance, in 2007, Riverside rescinded it.

Yet the anti-immigration movement remained persistent in the city. The legal affiliate of the Federation for American Immigration Reform that had pushed for the

Riverside and Hazleton, Pennsylvania, ordinances, filed a lawsuit in 2008 against a New Jersey property manager, claiming that it had violated federal organized crime laws by renting to undocumented immigrants. A federal judge tossed the case out of court.⁴⁰

Farmers Branch

The city was hit with four separate lawsuits, including one from merchants claiming that the English-only provision had hurt their businesses. The lawsuits were eventually combined. In January 2007, after a court temporarily blocked implementation of the Farmers Branch law pending the outcome of the lawsuits, the city council repealed the original rental law and replaced it with a similar one drafted by Kobach that made adjustments for families of mixed immigration or citizenship status.

That ordinance was approved by voters in a May election but was declared unconstitutional a year later by a federal court on the grounds that it violated the federal supremacy clause of the U.S. Constitution, similar to the Hazleton, Pennsylvania, case.⁴¹ Undeterred, the city council passed another Kobach-authored ordinance in January, 2008, that would require all renters of apartments and houses to pay a \$5 fee and state their legal status in their application for an occupancy license, thus removing landlords from the verification process.⁴²

The third ordinance also was declared unconstitutional by a federal court in April, 2010.⁴³ Among its findings, the court noted that the Farmers Branch ordinance applies federal immigration classifications for purposes not authorized or contemplated by federal law. “As a result, the ordinance creates an additional restriction on alien residence in the City. The direct regulation of private contract for shelter based on inapplicable federal classifications constitutes an impermissible regulation of immigration,” the court stated.⁴⁴

Farmers Branch then followed the path of Hazleton by asking an appellate court to overturn the lower court’s rejection of its immigration control ordinance. The case is now pending before the 5th Circuit Court of Appeals.

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Prince William County

An initial lawsuit on behalf of local immigrant workers was dismissed on the grounds that the plaintiffs lacked legal standing in court. But the constant threat of lawsuits, combined with high costs and stern warnings from the police chief about rising tension in the community, led the county to scale back its enforcement plans and only allow immigration status checks of those under custodial arrest, thus avoiding more lawsuits.

Fremont

The law has not been enforced in Fremont because city leaders are seeking to learn from the mistakes of other jurisdictions. Forewarned by its insurance carrier that it might not cover the city's legal expenses for lawsuits challenging the ordinance, the city is instead monitoring court rulings against similar ordinances in other cities before moving forward. Meanwhile, it has raised property taxes to help defray the costs stemming from two lawsuits already filed against the city.⁴⁵

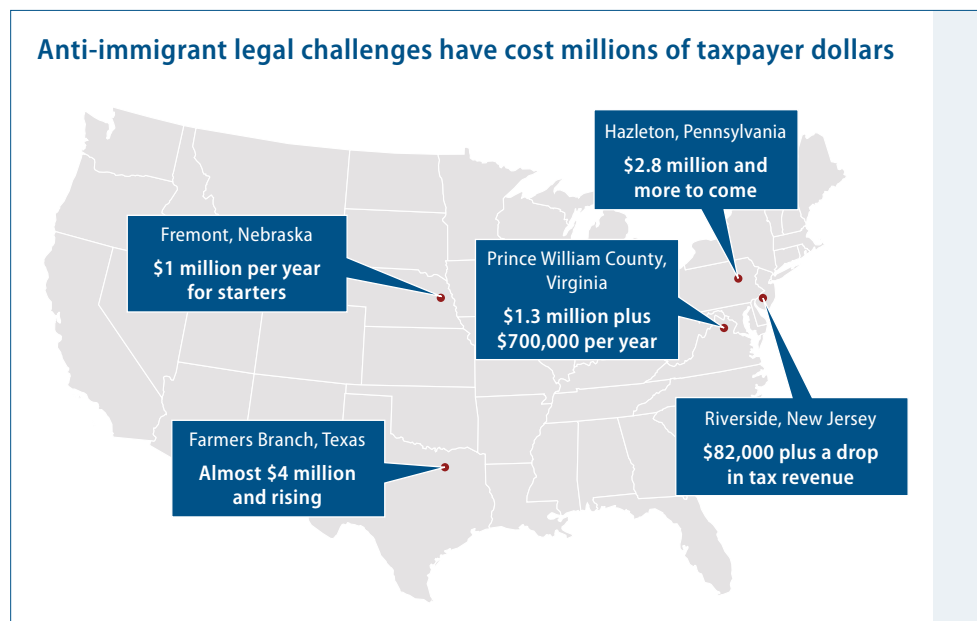
The costs are adding up

Each of these cases began with draconian ordinances that were based upon unconstitutional principles. Those that took on the legal challenges have lost millions of taxpayers' dollars in the courts, while others that scaled back nonetheless were labeled as anti-immigrant towns and have been hurt economically. The costs, in real dollars and lost prestige, are detailed next.

The costs

All of the communities profiled in the previous section of this paper continue digging deeper into this legal morass at a huge cost in taxpayers' dollars. Other cities that were considering following in their legal footsteps, among them Summerville, South Carolina and Tomball, Texas, stepped back because of the costs. But one notable exception is Farmers Branch, Texas, where the town decided to copycat Hazleton despite a warning from former City Manager Linda Groomer that the city's insurance would not cover expenses from the court fight. Groomer argued that Hazleton already had embarked on a similar legal battle "with somebody else's money," and she recommended to a council member in an email "against spending local tax dollars to join a legal battle that will continue with or without Farmers Branch dollars."⁴⁶

But she was ignored by the mayor and city council members who preferred Kobach's advice and followed Hazleton's footsteps. The alarm that was ignored in Farmers Branch and the experiences of other towns demonstrate the folly of jumping into political debate without planning for the financial, legal, or even economic and cultural consequences. Let's take a look at those consequences in each jurisdiction in turn.



Hazleton: \$2.8 million and then some

The cost of this gigantic legal fight for this small town has been staggering: \$5 million and counting.⁴⁷ A legal defense fund set up in 2006 raised an estimated \$430,000 in donations as of October 2010, but that donor haul has now dwindled down to about \$10,000. (Kobach's share from that fund was \$197,615.) But as the *Hazleton Standard Speaker* reported, "officials say the city clearly doesn't have the money to offset as much as \$2.4 million" for expenses owed to plaintiffs who have so far successfully argued against the ordinance in court.⁴⁸

What's more, the costs could be closer to \$5 million, not counting new fees being accumulated during the court appellate process.

Hazleton dove into this legal swamp without considering that it would have to pay the legal costs of the plaintiffs if the city lost its case. When the city's insurer refused to pay about \$4.5 million in legal fees, the town sued the insurer.⁴⁹ In May 2009, a federal court ruled the insurer is not obligated to reimburse the city for any award to plaintiffs against Hazleton, or for attorneys' fees accrued by the city. The Third Circuit Court of Appeals confirmed in November 2010 that Hazleton is accountable for at least \$2.4 million in fees sought by plaintiffs' attorneys, on top of \$420,000 the city had spent as of November 2010.⁵⁰

But there was one winner, newly minted Rep. Lou Barletta (R-PA), who won a seat in Congress in November 2010 on his third try. Well known for his anti-illegal immigration crusade, Barletta focused less on the issue but played into voters' fears about the sluggish economy and the much hyped argument that immigrants take jobs away from the U.S. born.

Riverside: \$82,000 and tax revenue lost as businesses close

The initial costs of the immigration control ordinances were assessed against Mayor Chuck Hilton and fellow councilmember James Ott, who lost their reelection bids in November 2006 after championing the law.⁵¹ Then, as the legal bills for the immigration case began to strain the town's already tight budget, officials were forced to delay road paving projects, the purchase of a dump truck, and repairs to town hall.⁵²

After reviewing the potential legal costs and the negative impact on the local economy and community, Riverside cut its losses and nullified its anti-immigra-

After reviewing the potential legal costs and the negative impact on the local economy and community, Riverside cut its losses and nullified its anti-immigration law just a year after it was enacted.

tion law in 2007, just a year after it was enacted. That one year of legal battle cost the city an estimated \$82,000 in legal fees, a significant amount for a small town covering 1.5 square miles.

Despite the policy reversal, the community continues to suffer enormously from the flight of immigrants and their families who had contributed to the growth of the town in earlier years. Stores closed and their windows remain boarded up. Other businesses lost revenue, and much of the town's renewed vibrancy that had been created by immigrants dried up. According to the Riverside Coalition of Business Owners and Landlords, 75 percent of the immigrants, including legal residents, abandoned the city. As a result, 45 percent of businesses in the town had to close.⁵³

Left in the wake of the ordinance was an atmosphere of intolerance and a climate of fear. As the Fiscal Policy Institute's Immigration Research Initiative wrote in *Newsday*:

The main street emptied out. Skinheads came in to celebrate the new laws, yelling "the South shall rise again!" Geraldo Rivera came to film a program about the anti-immigrant climate. Fine points about the distinction between illegal and legal immigrants were lost; anyone from somewhere else felt unwelcome and hundreds, maybe thousands, picked up and left.⁵⁴

Riverside's image was indelibly marked by the policy and political misstep.

Farmers Branch: Almost \$4 million and rising

After ignoring a city's official's recommendation to let Hazleton, Pennsylvania lead the legal fight and carry all of the costs, this town of 26,000 ran up legal fees totaling \$3.7 million as of December 2010.⁵⁵ The fees are expected to exceed \$5 million as the city appeals a lower court's ruling striking down the law. In July 2010, a federal judge ordered Farmers Branch to pay legal fees owed to the lawyers of the plaintiffs, including the Mexican American Legal Defense and Education Fund and the American Civil Liberties Union of Texas and the ACLU's Immigrant Rights Project.⁵⁶

As a result, the city is feeling the pinch of budget belt-tightening. In September 2010, the City Council adopted a 1 percent cut in city employee salaries and benefits, with the \$300,000 in savings being set aside for the immigration court fight—

an amount far short of what will be required.⁵⁷ One decision to privatize the city's local library to save on operating costs drew loud protests from citizens.⁵⁸

William A. Brewer III, whose law firm first challenged the ordinance, told the *Dallas Morning News* that the city, led by Mayor Tim O'Hare, should give up the fight. "They already owe \$3 million just to their cavalcade of lawyers, who keep getting it wrong," Brewer said. "It is clearly 'OPM' for O'Hare," he added, defining OPM as "other people's money."⁵⁹

Prince William County: \$1.3 million plus \$700,000 per year

Swept up in the immigration control movement among local governments, Prince William County, Virginia initially adopted a measure that was as much a burden on the local police force as it was on immigrants residing in the county. The board of supervisors publicly received from Police Chief Charlie T. Deane a long list of potential consequences if it carried out harsh immigration policies, including a county tax increase.

Deane, who had served as chief for almost two decades in 2007, sternly warned the tough new law could result in allegations of racism, racial profiling, and perhaps the emergence of vigilantism. Police-community relations would be harmed and there would be increased crimes by youths. The police chief also said a tax hike would be needed to cover the costs of enforcement, such as \$3.2 million for cameras in all patrol cars and another \$1.2 million for more police, foster care, and protective services for the children of deported undocumented immigrants.⁶⁰

The county cut back the budget and avoided additional lawsuits by down-scaling its ordinance, which mandates police to inquire into the immigration status only of those placed under "physical custodial arrest. Still, there were huge costs. About \$1.3 million was required to start up the police department's illegal immigration enforcement initiative, plus ongoing annual costs now ranging between \$700,000 and \$750,000," said Tom Pulaski, Prince William County's planning and budget director.⁶¹ He said these expenses include funding of the criminal alien unit, which includes six officers and one civilian, as well as training for the police force.

Following up on the chief's recommendation, the county commissioned the University of Virginia's Center for Survey Research, the Police Executive Research Forum, and a James Madison University criminologist to conduct a two-year

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evaluation of the policy's implementation and its impact on the police department and the community.⁶² An interim report released in 2009 found the law initially had high costs for the police department and occupied large amounts of county staff time.⁶³ Yet, only 2.2 percent of people arrested in Prince William in 2009 were illegal immigrants, and most of those committed misdemeanor crimes and traffic violations, the study found.

In its final report in November 2010, the researchers analyzed U.S. Census Bureau and Department of Labor statistics and found that the policy achieved its top goal of reducing the number of undocumented immigrants in the county because many moved to neighboring counties, though the sluggish economy also was a factor. The policy did not result in an overall reduction in crime or a countywide lessening of neighborhood problems.

Furthermore, the policy created “a serious ethnic gap” in how police and county government were viewed and in the perception of the county as a place to live. Opinions among Hispanics reached an unprecedented low in 2008 but began to improve by 2010 as the police department worked on better communications with the Latino community and explaining the enforcement policy. The researchers said that while Prince William is an example of how a local government can have an impact on undocumented immigration enforcement within the confines of federal law, the downturn in the economy also was a major factor.

The upshot for other cities and counties, according to the researchers, is that “The lessons of Prince William’s experience should be applied with great caution to other places in other times.”⁶⁴ Indeed, the research group concluded that the Prince William County experience cannot be easily replicated, contrary to the practices of the anti-immigrant movement to take an ordinance from one jurisdiction and apply it elsewhere. Why? Because Prince William’s actions occurred during an economic downturn and immigrants could have fled for better jobs elsewhere. Also, Prince William had a police chief who boldly outlined the threat to civility and to the county’s finances if harsher action was undertaken, and lawmakers were convinced that costly legal battles were not worthwhile.⁶⁵

Fremont: \$1 million per year for starters

Similar to Hazleton and Farmers Branch, Fremont’s received notice from its insurance and defense pool known as League Association of Risk Management that it would not reimburse legal expenses stemming from the immigration

ordinance. Yet Fremont pressed ahead and approved the ordinance, only to follow Kobach's advice to suspend its implementation pending the outcome of lawsuits in the other cities.⁶⁶

The legal challenges have proven very costly for the community of 25,000 residents. City officials originally estimated that Fremont's costs to enforce the ordinance, including \$750,000 for Kobach, plus other legal expenses, employee overtime, and improved computer software, would average \$1 million a year. To meet expenses, the city increased its tax rate in 2010, resulting in a \$116 fee increase for an owner of a \$200,000 home in Fremont.

If the bills related to the immigration law go over budget, the city will be forced to cut its workforce and services provided to the public.⁶⁷ City administrator Robert A. Hartwig Jr. and city attorney Dean Skokan agreed that the most significant potential costs would be awarded for plaintiffs' attorney fees in the event the city does not prevail in the suits. But by delaying its start date, City Council President Scott Getzschman maintained the council has been trying to act in the city's best interests and limit legal costs, even if the savings are small.⁶⁸ "We're trying to be good stewards with the city's money," said Hartwig, the city administrator. "We can't afford any surprises."⁶⁹

Adding up the costs and the lessons learned

Local government policies that target a class of people do not reflect our national values or the will of the public that wants a wise, pragmatic, and fair immigration solution. Our constitution and other laws of the land that underpin our freedom are proving this every day as the successful legal challenges to the anti-immigrant ordinances examined in this paper make clear. What's more, the zeal to pursue this course will drain city budgets and lead to tax increases, depress economies that rely on immigrants as workers and consumers, divide communities along racial and ethnic lines, and increase rather than diminish the burdens placed on law enforcement agencies.

The locales studied here erred by following Kobach's advice or copying his ordinances at great costs to the taxpayers, their towns' or county's reputations, and to adherence to constitutional principles. They plunged into the immigration control movement without seriously taking into account that related expenses could exceed the annual budgets in some of these small towns. It is like a city without

a National Football League team deciding to build a sports stadium without knowing construction costs and without having a steady revenue stream to keep it running, but promising voters that the benefits will outweigh the costs.

Hazleton and Farmers Branch, for example, played to the cheers of the immigration restrictionists without calculating costs to defend in court and then enforce the measures. Now, they are trying to avoid paying its legal bills. The attorney who successfully opposed Farmers Branch's ordinance noted the costly lesson learned from that case. "It has become clear that adopting local policies to circumvent the power of the federal government may at times be a popular choice, but it is not a lawful one," he explained.⁷⁰

Nor did the jurisdictions give proper consideration to the business community and landlords who stand to lose their livelihoods if these laws could actually be enforced, as they would bear the expenses and burden of proving through faulty databases that their renters and employees are legal residents. As the U.S. 3rd Circuit Court of Appeals stated in its ruling, "Hazleton has placed a priority on deterring employment of unauthorized aliens, but failed to concern itself with the costs its ordinance imposes on employers and on work-authorized aliens."⁷¹ Also, as noted earlier, the claims by Hazleton's mayor that crime and other social ills were at the hands of undocumented immigrants were disproven by attorneys for opponents of the new laws.

Even in Prince William County, where bad politics and policy were scaled back out of a fear of being hit with costly lawsuits, those who studied the developments stressed that had there not been a downturn in the economy, including the housing market, construction industry, and mortgage financing, the outcomes might have been more costly and disruptive to the county. "For these reasons, the lessons of Prince William's experience should be applied with great caution to other places in other times," the researchers cautioned.⁷²

Were it not for the outspoken police chief in Prince William County, who cited various problems with the board of supervisors' initial, more restrictive ordinance, the county might have found itself in the same legal swamp as Hazleton, Farmers Branch, and Fremont. Still, the county spent an extra several million dollars for police as a result of the local immigration law, but there is "no data whether the county saved money by this ordinance, which was one of its goals, through fewer services being provided to illegal immigrants," said Tom Goterbock, the director of UVA's Center for Survey Research. By law, "there are a limited number of

"It has become clear that adopting local policies to circumvent the power of the federal government may at times be a popular choice, but it is not a lawful one."

county services they could deny to illegal immigrants. Most services have to be given to everyone,” said Goterbock.⁷³

The Prince William County study—the only report detailing the effects of local immigration enforcement in these communities—said there were fewer complaints about overcrowded homes and people loitering at day labor sites, as well as fewer births in the local hospitals and fewer English-language learners in the schools. But the UVA study also found more problems related to vacant housing, a lower level of trust in government among Hispanic and African Americans, and an ethnic divide in people’s perceptions of the county, with non-Hispanic whites reporting they feel safer and Hispanics feeling a lessening of their quality of life.⁷⁴

Frank Principi, a Prince William County supervisor elected in November 2007, said that while there has been “little or no savings in government services from the ordinance,” the county’s image has been scarred. “The issue is not what it cost the government to implement, it’s the rhetoric about the issue and the negative impact it has had on the brand and reputation of Prince William County.” And the bad rap will hurt the economy. “A lot of business dried up,” as many Hispanics “took their buying power with them,”⁷⁵ Principi argued.

“The true cost is that it had the effect of basically forcing many Hispanics, both legal or otherwise, out to Fairfax, Stafford, and Loudoun counties,” Principi said, referring to neighboring jurisdictions. Many Hispanics who remained in the county now carry their passports with them, Principi added. “A lot of us argued that we were returning to the 1930s and 40s of Germany.”

The case of Fremont raises a key question about courageous political leadership: If there had been less politics and more leadership so that cultural differences could be tamped down rather than overtaken by a vocal minority, would the town even be talking to lawyers now? Would citizens be getting higher tax statements and face further tax increases and service cuts?

Battle-scarred veterans from Riverside, New Jersey have simple advice for other localities: Do not do it. Do not repeat Riverside’s profound mistakes. “When you have residents looking for better parks and better streets, and in the meantime you have these legal fees rising, you have to conclude that this is a situation that should be handled by the federal government, not local towns,” Deputy Mayor Lorraine Hatcher told *The New York Times*.⁷⁶ Riverside also has worked to revive its local

economy. “We would rather spend our money on other things,” said George Saponaro, Riverside’s attorney. “We felt that our money would be better spent focusing on redevelopment.”⁷⁷

The real solution is in the hands of Congress. As Chief Deane told the Prince William County board, “Illegal immigration is a national challenge that can best be solved with national strategies. Local police involvement with immigration enforcement should be aggressive, yet balanced and focused on the worst of the worst.” He’s right. Congress needs to listen.

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About the author

Gebe Martinez is a Senior Writer and Policy Analyst for the Center for American Progress. She is a former Washington, D.C.-based journalist and political analyst.

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