



# States and Localities

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Immigration Legislation,  
Ordinances and Resolutions



# Topic Areas

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- Overview of Trend
- Pro-Immigrant Measures
- Anti-Immigrant Measures
- Constitutional Standards
- Responding to State and Local Measures: Texas and Altoona
- What About the Illegal in “Illegal Alien” We Don’t Understand, and Other Concerns
- Resources



# State Legislation Related to Immigration and/or Immigrants

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- Bills introduced by state legislatures:
  - In 2006, 570 immigrant-related bills introduced
  - As of May 2007, nearly 1,200 bills and resolutions had been introduced
  - This trend will continue with the collapse of federal immigration reform legislation.
    - Arizona Gov. Napolitano signed into law bill requiring employers to verify status of would-be employees or face suspension/loss of business license.
  - For more information: National Conference of State Legislatures (NCSL)
    - <http://ncsl.org/programs/immig/2007StateLegislationImmigration.htm>



# Local Ordinances: Hazelton Model

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- Dozens of localities have also passed anti-immigrant measures.
- Many of these have been modeled on Hazelton ordinance passed in July 2006
- Restrict access to rental housing, employment, and government services.



# Substance of Pro-Immigrant State/Local Measures

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- Prohibit state and local police from enforcing of immigration laws.
- Fund integration programs, including citizenship services and ESL.
- Local ordinances urge state legislatures to support comprehensive immigration reform.
- Localities provide identification cards to residents.



# Substance of Anti-Immigrant State/Local Measures

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- Restrict housing – making it illegal (“harboring”) to rent to undocumented immigrants, imposing fines on landlords and suspending rental licenses.
- Require employers to use the Basic Pilot Program to ensure that the would-be employee is work authorized.
- Prohibit funding or aiding day labor sites that do not verify immigration status.
- Impose state employer sanctions for hiring/employing undocumented.
- Impose English only laws.
- Restrict access to government services/benefits.
- Give police authority to detain illegal immigrants and charge them with violating immigration law.
- Require states and counties to contract with DHS to perform federal (immigration) functions.
- Empower state law enforcement agencies to inquire into legal status and hold for deportation those deemed to be here illegally.
- Deny licenses and identification to immigrants by implementing federal REAL ID Act.
- Increase penalties for use of fraudulent documents.



# Other Anti-Immigrant Measures and Practices

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- Require state educational institutions to verify status and prohibit admission of undocumented.
- Eliminate all but emergency health services to undocumented.
- Deny in-state college tuition to in-state undocumented residents
- Make unlawful presence a state crime
- Deny bail to undocumented immigrants or (as condition of release) force them to leave jurisdiction
- Strip charities of state/local funding if they use any monies to serve undocumented
- Restrict services that social service agencies can provide to undocumented



# Legal Standards and Challenges: Supremacy Clause

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- U.S. Const. art. VI, cl. 2, “federal law is supreme Law of the Land.”
- State/local laws pre-empted if Congress intends to occupy a field or if state/local laws conflict with federal law in area of exclusive federal authority.
- Clause doesn’t just speak to substance of law, but to its manner of enforcement.
  - Many ordinances developed with these restrictions in mind and outcome in courts uncertain; for example, housing is area of traditional state/local authority.
- Courts defer more to state/local measures when Congress authorizes states/localities to act, as with drivers’ licenses, tuition, or enforcement of immigration law.



# Legal Standards: Due Process/Equal Protection

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- U.S. Constitution applies to “persons” or “people,” not just citizens.
- If measure not related to federal immigration authority – who can enter, stay, must leave – due process and equal protection arguments strong.
  - *Plyler v. Doe* line of cases.
- Courts more deferential to federal government determination of what’s immigration restriction – i.e. denial of public benefits – than a state determination.



# Examples of States/Localities Welcoming Immigrants

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- New Haven, Connecticut
  - Safe haven
  - Police have a “don’t ask” policy that bars local police from inquiring about immigration status – good public policy
  - City Hall sponsored workshops to help illegal immigrants file federal income taxes
  - In June, city’s Board of Aldermen approved the creation of a municipal ID cards that could be used by out-of-status immigrants to open bank accounts and access city services.
  - Important Note: June 6<sup>th</sup>, ICE agents arrested 29 men and 2 women in Fair Haven neighborhood of New Haven. Raid ostensibly targeted people who had previously been ordered deported by immigration judges. New Haven officials questioned its timing.



# Immigrant Friendly Resolutions in 2007

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- Lancaster (PA) City Council unanimously passed a pro-immigrant resolution that urges the rejection of federal immigration reform efforts that:
  - criminalize individuals because of their immigration status
  - view immigration policy as a border-only security issue, and
  - fail to recognize our common humanity and value of our nation
- Los Angeles, CA
  - Resolution in favor of comprehensive immigration reform.



# More Immigrant Friendly Resolutions

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- Seattle, Washington
  - Seattle police officers and city employees cannot inquire into immigration status of persons with limited exceptions.
- Boston, Massachusetts
  - Supports comprehensive immigration reform and path to citizenship for immigrants.
- El Paso, Texas
  - Seeks federal legislation that: (1) secures border; (2) is effective, responsible, humanitarian, and (3) promotes international commerce.
- San Francisco, CA
  - Urges positive human relations and supports immigrants and human rights.



# Day Labor Victories in Court

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- Mamaroneck, NY, in November 2006, a federal judge ruled that the town had waged a discriminatory campaign of ticketing and harassment to drive Latino day laborers out of town.
- In Freehold, NJ, in November 2006, a settlement was reached whereby day laborers will no longer be ticketed for soliciting work in public places, and building inspectors and police officers will stop entering homes w/o residents' consent.
- Redondo Beach, CA, May 2006, a federal judge ordered the city to stop arresting day laborers for violating a local ordinance against soliciting work in public.



# Examples of Anti-Immigrant Measures: Oklahoma

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- In May 2007, state passed the Taxpayer and Citizens Protection Act
- Restricts undocumented immigrants' access to all forms of official identification
- Bars the undocumented from receiving public assistance
- Fines employers who hire the undocumented
- Allows local officers to train with federal authorities so they can apprehend the undocumented
- Does not allow undocumented persons to post bail



# Colorado

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- Colorado bills signed in 2006:
  - Gave local law enforcement broader powers to check immigration status, and required police to report to DHS suspected undocumented persons
  - Restricted access to social services for workers w/o proper documentation (cost more than \$2 million to enforce and has saved the state nothing)
  - Penalized use of fraudulent documents
  - Enrolled all state departments in the federal Basic Pilot program, and also required contractors to verify status of employees
- State pilot program will allow inmates to harvest agricultural products. Farmers pay a fee to the state. The inmates, who volunteer for the work, will be paid 60 cents a day.



# Virginia – Proposed and Defeated

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- Legislation would have:
  - Cut off the flow of state and local funds to charities that assist undocumented immigrants
  - Made it a crime for an undocumented immigrants to be in Virginia
  - Denied in-state tuition at public colleges and universities to undocumented immigrants
  - Withheld business licenses from firms that employ immigrants
  - Expanded the power of state and local police to detain immigrants
- Advocates have been successful in defeating these measures by:
  - Educating business community which used its muscle/lobby to defeat measures.
  - During legislative sessions hired a lobbyist.



# Other Initiatives

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- Jefferson City, Missouri
  - In January, a bill was filed that would set up a new state agency to discourage businesses from hiring illegal immigrants or renting housing to them.
    - State would establish a Division of Immigration Compliance under the Secretary of the State
    - Businesses would be required to use a federal electronic system to check the immigration status of new employees
    - Landlords would be barred from renting to undocumented
    - Upon receiving a complaint, the state would check the person's immigration status and advise the employer or landlord of the results.



# Opposing Anti-Immigrant Legislation in Texas: Case Study

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- What laws would have done?
  - Over 60 anti-immigrant bills filed during 2007
  - They would have denied public services/benefits to undocumented and their USC children, taxed remittances, denied health care to undocumented, eliminated in-state tuition, and forced Texas prisoners to construct a border fence.



# Texas Continued

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- Organizing against anti-immigrant laws: what worked and what did not?
  - 59 of 60 bills defeated. One that passed was watered down to neutralize its anti-immigrant aspects.
  - What worked:
    - Testimony by Bp. Tamayo, and personal contact between bishops/priests and legislators
    - Coalition of religious leaders, business leaders, immigrant rights advocates, and ACLU
    - Press conferences with these leaders, and behind-the-scenes work with staffers
    - Committee Chairman submitted most bills to AG for opinion on their Constitutionality: If unconstitutional, not heard by Committee
    - Calls by grassroots church networks to legislature



# Texas Continued

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- Addressing opposition arguments, and opposition by Catholics:
  - Need to focus on consistent messages from church leadership on the issue and on Catholic teaching.
  - Personal testimony from immigrants and others
  - Need to address argument made by legislators that majority of Catholics oppose Church position – makes inter-faith work difficult.



# Opposing Local Measures: Altoona Case Study

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- What “pre-emptive” ordinance did?
  - Tried to restrict housing and employment to undocumented, as well as services that social service agencies provide to undocumented and other immigrants
  - Professionally drafted, with help of FAIR and with Hazelton challenges in mind.
  - Triple murder by long-time undocumented Altoona resident led to ordinance, though not many undocumented in Altoona and little intention to enforce it.



# Altoona Continued

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- Organizing against it: what worked and what did not?
  - No other faith-based groups would speak against measure
  - Majority of Catholics supported measure and did not want Church to condone law-breaking – church not successful in getting beyond this concern
  - Most City Council members were practicing Catholics and reached out to Church, but ended up still supporting measure.
  - Catholic Charities and Altoona hospital have vowed to disobey law – not ask for information on status.
- Addressing opposition arguments, and opposition by Catholics
  - Telling Catholic institutions who they can serve violates church/state wall.
  - Bishop repeatedly addressed issue from newspaper column, in bulletins, and from pulpit



# What We Don't Understand About the "Illegal" in Illegal Alien?

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- Neither the "illegal" or the "alien."
- What don't our opponents understand about God-given human rights - God, human beings, or rights?
- We care about why people come, what they contribute here, the proportionality of punishment.
- We support a system of legal, orderly entry that meets needs of U.S. families and economy.
- We support just laws whose attributes (no multi-year delays in family unity, no retroactivity, etc.) and whose goals (human rights) reflect the rule of law.



# Additional Concerns Regarding Anti-Immigrant Legislation

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- Will promote two-tiered society, comprised of citizens and non-citizens without rights, prospects or security (that's the very purpose of these laws).
- Will undermine the common good by:
  - preventing immigrants from taking their children to school, calling the police, or seeking health care; driving immigrants out of the work place; dividing families, pushing undocumented further underground.
- Anti-immigrant legislation won't work on its own terms.
- Many state proposals never pass; many that do get overturned by the courts for intruding on federal law.
- Community trust is eroded when state agencies and police officers become immigration officers.



# Resources

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- CLINIC summary of state/local measures, with resource links -- <http://www.cliniclegal.org/Advocacy/undocumented.html>
- Toolkit by the Fair Immigration Reform Movement (Anatomy of a Local Campaign)
  - Highlights successful strategies for fighting anti-immigrant ordinances and promoting pro-immigrant resolutions -- <http://fairimmigration.org>
- State and Local Anti-Immigrant Tool Kit
  - Helpful strategies and practical legal tools to fight local restrictive laws and ordinances by Mexican American Legal Defense and Education fund -- <http://maldef.org>
- State and Local Policies on Immigrant Access to Services: Promoting Integration or Isolation?
  - Policy paper by National Immigration Law Center -- <http://nilc.org>



# More Resources

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- State and Local Proposals that Punish Employers for Hiring Undocumented Workers Are Unenforceable, Unnecessary, and Bad Public Policy,
  - National Immigration Law Center (NILC) -- <http://www.nilc.org>
- TALKING POINTS: Oppose State and Local Proposals to Make Basic Pilot Mandatory
  - National Immigration Law Center (NILC) -- <http://www.nilc.org>
- Testimony on Federal English Only Laws
  - Mexican American Legal Defense (MALDEF) -- <http://www.maldef.org>
- State and Local Police Enforcement of Immigration Law– Toolkit
  - National Council of La Raza (NCLR) -- <http://www.nclr.org>



# List Serve Devoted to State and Local Initiatives

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- Service Employees International Union (SEIU) has set-up state/local policy list serve:
  - [http://communities.seiu.org/immigration\\_stepolicy](http://communities.seiu.org/immigration_stepolicy)



# CLINIC Contact Information

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- Power Point Prepared by Donald Kerwin ([CLINICDon@aol.com](mailto:CLINICDon@aol.com)) and Karen Herrling ([KHerrling@cliniclegal.org](mailto:KHerrling@cliniclegal.org))
- CLINIC's Division of Legalization and Advocacy, Mirna Torres ([MTorres@cliniclegal.org](mailto:MTorres@cliniclegal.org)) and Molly McKenna ([MMcKenna@cliniclegal.org](mailto:MMcKenna@cliniclegal.org))
- CLINIC Membership Information, Dinah Suncin ([DSuncin@cliniclegal.org](mailto:DSuncin@cliniclegal.org)).