

Case No. 10-10751

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

VILLAS AT PARKSIDE PARTNERS doing business as Villas at Parkside;
LAKEVIEW AT PARKSIDE PARTNERS, LIMITED, doing business at
Lakeview at Parkside; CHATEAU RITZ PARTNERS, doing business as
Chateau de Ville; MARY MILLER SMITH,

Plaintiffs-Appellees,

v.

THE CITY OF FARMERS BRANCH, TEXAS

Defendant-Appellant.

VALENTIN REYES; ALICIA GARCIA; GINGER EDWARDS; JOSE
GUADALUPE ARIAS; AIDE GARZA,

Plaintiffs-Appellees,

v.

THE CITY OF FARMERS BRANCH, TEXAS

Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Texas

**BRIEF OF DOMINICAN AMERICAN NATIONAL ROUNDTABLE,
HISPANIC NATIONAL BAR ASSOCIATION, LEAGUE OF UNITED
LATIN AMERICAN CITIZENS, MEXICAN-AMERICAN BAR
ASSOCIATION OF TEXAS, NATIONAL ASSOCIATION OF LATINO
ELECTED AND APPOINTED OFFICIALS, NATIONAL ASSOCIATION
OF LATINO ELECTED AND APPOINTED OFFICIALS EDUCATIONAL
FUND, & NATIONAL COUNCIL OF LA RAZA AS *AMICI CURIAE* IN
SUPPORT OF PLAINTIFFS-APPELLEES**

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 29(c), *Amici Curiae* Dominican American National Roundtable, Hispanic National Bar Association, League Of United Latin American Citizens, Mexican-American Bar Association Of Texas, National Association Of Latino Elected And Appointed Officials, National Association Of Latino Elected And Appointed Officials Educational Fund, and National Council Of La Raza hereby provide that they are not-for-profit corporations, with no parent corporation and no publicly-traded stock.

The undersigned counsel of record certifies that in addition to those persons listed in the briefs already filed in this matter, the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Dominican American National Roundtable, Hispanic National Bar Association, League Of United Latin American Citizens, Mexican-American Bar Association Of Texas, National Association Of Latino Elected And Appointed Officials, National Association Of Latino Elected And Appointed Officials Educational Fund, and National Council Of La Raza – *Amici Curiae*;

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Association Of Latino Elected And Appointed
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And Appointed Officials Educational Fund, and
National Council Of La Raza

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IDENTITY AND INTEREST OF AMICI CURIAE

Amici Curiae Dominican American National Roundtable, Hispanic National Bar Association, League of United Latin American Citizens, Mexican-American Bar Association of Texas, National Association of Latino Elected and Appointed Officials, National Association of Latino Elected and Appointed Officials Educational Fund, and National Council of La Raza (“*Amici*”) respectfully submit this Brief pursuant to Rule 29 of the Federal Rules of Appellate Procedure. The Brief should be permitted without leave of court because all parties have consented to its filing. Fed. R. App. P. 29(a). Alternatively, *Amici* request leave to file by motion. Fed. R. App. P. 29(b). Pursuant to Federal Rule of Appellate Procedure 29(c), *Amici* hereby provide the following statements:

The Dominican American National Roundtable (DANR) is a non-profit, charitable, members organization which brings together the different voices of all people of Dominican origin in the United States. DANR is a national forum for analysis, planning, and action to advance the educational, economic, legal, social, cultural, and political interests of Dominican Americans. It aims to ensure for U.S. Dominicans the full exercise of the rights and freedoms guaranteed in the Constitution of the United States of America. Its membership, with local councils in cities in eight states, include grassroots community organizations, educational, legal, health and civic organizations. DANR has evolved into a powerful research

and advocacy organization on issues affecting the immigrant community. It believes that improving access to higher education and creating equal educational opportunity for immigrant students are a means to fulfill its mission. DANR strongly opposes states/localities promulgating their own immigration regulations which would have an adverse impact upon Dominicans residing in the U.S.

The Hispanic National Bar Association (HNBA) is a nonprofit, non-partisan, national professional association that represents the interests of all attorneys, judges, law professors, legal assistants, and law students of Hispanic descent in the United States and its territories including Puerto Rico. The HNBA has 41 local affiliated bars in various states across the country, including Texas. The HNBA's continuing mission is to improve the study, practice and administration of justice for all Americans by ensuring the meaningful participation of Hispanics in the legal profession. The HNBA was founded in 1972 to promote equal justice for all Americans by advancing the participation of Hispanics in the legal profession. While it is a voluntary bar association and not a civil rights organization, the HNBA also serves as the voice of the broader Hispanic community on issues that significantly impact the interactions of Latinos and the legal system. As such, the HNBA has vested interest in the equal opportunity of Latinos to be free from unlawful discrimination and harassment.

The League of United Latin American Citizens (LULAC) is the largest and oldest civil rights organization in the United States who represents the Latino community and accomplishes its mission through political influence, education and litigation. The mission of the League of United Latin American Citizens is to advance the economic condition, educational attainment, political influence, housing, health and civil rights of the Latino population of the United States and all those who reside within its borders. LULAC has members in Farmers Branch who will be affected by the ordinance.

The Mexican-American Bar Association of Texas (MABA-TX) was founded in 1980 to provide a means for lawyers to promote the social, economic and educational advancement of the people of Texas, to encourage its members to participate in pro-bono legal services, to speak on behalf of the Latino community on legal issues affecting the community, and to work through legislation, advocacy and education to accomplish these goals, among other things. MABA-TX is concerned that Farmers Branch's Ordinance 2952 was enacted with the intent to discriminate against Hispanics, regardless of immigration status, and will subject Hispanics to racial harassment and intimidation.

The National Association of Latino Elected and Appointed Officials (NALEO) is the non-partisan leadership organization of the nation's more than 6,000 Latino elected and appointed officials. NALEO members include public

servants from all political parties, all levels of government, and diverse constituencies. NALEO's members form a network of leaders throughout the nation focused on increasing and promoting Latino political engagement. There are 46 Latino elected officials that serve in the Dallas/Fort Worth metropolitan area, including officials at the state level, municipal level, school and education board members, and judicial and law enforcement officials. NALEO believes that local government ordinances that attempt to create distinct immigration enforcement schemes result in large-scale discrimination against Latinos and other newcomers, regardless of their immigration status, and are preempted by federal immigration laws.

The National Association of Latino Elected and Appointed Officials Educational Fund (NALEO Educational Fund) is the leading national nonpartisan organization that facilitates full Latino participation in the American political process, from citizenship to public service. The NALEO Educational Fund achieves its mission through integrated strategies that include increasing the effectiveness of Latino policymakers, mobilizing the Latino community to engage in civic life, and promoting policies that advance Latino civic engagement. The organization's civic engagement efforts in the Latino community focus on three fundamental pillars: access to naturalization, nonpartisan electoral involvement and participation in the decennial Census enumeration. The NALEO Educational

Fund has conducted many components of the foregoing civic engagement efforts in the Dallas/Fort Worth metropolitan area. The NALEO Educational Fund believes that local government ordinances such as the ones at issue in Farmers Branch are grounded in discrimination against Latinos.

The National Council of La Raza (NCLR) – the largest national Hispanic civil rights and advocacy organization in the United States – works to improve opportunities for Hispanic Americans. Through its network of nearly 300 affiliated community-based organizations (CBOs), NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. NCLR works through two primary, complementary approaches: (1) Capacity-building assistance to support and strengthen Hispanic CBOs – especially those that serve low-income and disadvantaged Latinos; and (2) Applied research, policy analysis, and advocacy to encourage adoption of programs and policies that equitably serve Hispanics. NCLR believes that state laws that attempt to create distinct immigration enforcement schemes result in large-scale discrimination against Latinos regardless of their immigration status, and are preempted by federal immigration laws.

I. SUMMARY OF ARGUMENT

Amici submit this Brief in support of Plaintiffs-Appellees’ (“Appellees”) position as they are in full agreement with Appellees’ argument that the district court properly struck down Farmers Branch’s Ordinance 2952 under the preemption doctrine. By this Brief, *Amici* seek to demonstrate that Ordinance 2952 is also flawed because the City of Farmers Branch (“Farmers Branch” or “City”) enacted it with the intent of discriminating against Latinos.

In enacting Ordinance 2952 the City relied on, *inter alia*, purported cultural incompatibilities, alleged burdens on public service providers, and economic fears exacerbated by the current economic downturn, to justify its alleged goal: preventing undocumented immigrants from living in Farmers Branch. The City legislated based on these purported grounds without ever having performed any studies of the impact of undocumented immigrants on the community. Instead, the City relied on mere assumptions that were both unfounded and biased – assumptions which, moreover, recognized no distinctions between documented citizens and legal residents, and other persons.

In making statements about the necessity of Ordinance 2952 and its precursors, City officials utilized code words such as “illegal aliens” to refer to Latinos, and in other instances officials pointed to the high “minority population” and “Spanish-speaking businesses” as problems the City purportedly needed to

mitigate. Contrary to its contentions that the Ordinance was designed to address actual socio-economic problems, the City, in reality, enacted Ordinance 2952 with the intent to ensure that Latinos – regardless of their immigration status – resided somewhere other than Farmers Branch. That, of course, is a legally impermissible purpose. And in doing so the City elected to create its own immigration regulation scheme to effectuate its underlying goal of driving Latinos out of the community. As Appellees show in their Briefs, that scheme offends the Supremacy Clause.

In this Brief, in addition to showing the discriminatory purpose of the Farmers Branch Ordinance, *Amici* also recount the overt racial hostility surrounding the passage in 2006 of two similar anti-immigrant housing ordinances in Hazelton, Pennsylvania as experienced by Dr. Agapito Lopez, a longtime resident and leader of the opposition to those ordinances. Because of his efforts, Dr. Lopez was subjected to racial harassment and intimidation which caused him to fear for his life. Dr. Lopez’s story dramatically illustrates the anti-Latino sentiment that has taken hold in many communities and led to the passage of Ordinance 2952 and others like it. The Hazelton record is especially relevant here because both communities’ anti-immigrant ordinances were spawned by the same coordinated anti-immigrant movement and its sponsors. Consequently, *Amici* urge this Court to uphold the district court’s decision.

II. ARGUMENT

A. Underlying Farmers Branch’s Ordinance 2952 Is a Strong Intent to Discriminate Against Latinos, Regardless of Their Immigration Status, Through the Enactment and Enforcement of the City’s Own Local Immigration Regulation Scheme.

1. Historical Backdrop of Discriminatory Anti-Immigrant Ordinances

Anti-immigrant sentiment has existed in the United States since the nation’s founding.¹ Although modern immigration laws present a more racially neutral appearance in limiting immigration than those overtly racially exclusionary laws enacted earlier in this country’s history, many of these current laws proceed from

¹ See, e.g., Jason Englund, *Small Town Defenders or Constitutional Foes: Does the Hazleton, PA Anti-Illegal-Immigration Ordinance Encroach on Federal Power?*, 87 B.U. L. Rev. 883, 886 (2007) (discussing how, in the 1700s, Benjamin Franklin claimed that German immigrants corrupted the American language and government because they could not assimilate); Michael R. Curran, *Flickering Lamp Beside the Golden Door: Immigration, the Constitution, and Undocumented Aliens in the 1990s*, 30 Case W. Res. J. Int’l L. 57, 84 & n.66 (1998) (noting that Irish Catholic immigrants were targeted for discrimination after arriving in the United States in historic numbers in the mid-1800s); Darren Seiji Teshima, *A “Hardy Handshake Sort of Guy”: The Model Minority and Implicit Bias About Asian Americans in Chin v. Runnels*, 11 Asian Pac. Am. L.J. 122, 127 (2006) (observing that, in the late 1800s, legislators sought to end Chinese immigration, raising concerns about the “yellow peril” of this “inferior” race “incapable of progress or intellectual development beyond a certain point”); Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California’s Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 Wash. L. Rev. 629, 650 (1995) (stating that, in the early twentieth century, Japanese immigrants were “depicted as degenerate mongrels” who “endangered the economic and social health of the community” and imperiled “California – the White Man’s Paradise”); Curran, *supra*, at 93 (discussing how Jews, Italians, and other foreigners arriving during the first quarter of the twentieth century were described as “beaten men from beaten races, representing the worst failures in the struggle for existence”).

similarly discriminatory impulses,² particularly when enacted at the state or local level. The contemporary iteration of discriminatory immigration laws targets Latinos, a minority of whom constitute the majority of today's immigrants.³ Farmers Branch's Ordinance 2952 is a notable example of this regrettable but recurrent pattern.

In recent years, anti-immigrant sentiment has been on the rise in the United States. State and local government lawmakers have sought to protest the flow of immigrants – legal and illegal – into the United States through often blunt, even crude, and usually indirect measures like mandating that landlords check the legal status of their tenants and establishing “English-only” policies.⁴ Whether such laws reflect frustration with a perceived failure of the federal government to regulate immigration effectively, political grandstanding, or racial bias, is a subject of political debate. What is certain, however, is that the number of state and local

² See generally Kevin R. Johnson, *The Intersection of Race and Class in U.S. Immigration Law and Enforcement*, 72 *Law & Contemp. Probs.* 1, 17 (2009).

³ Although most undocumented immigrants are Latinos, most Latinos are not immigrants. Jill Esbenshade, *Special Report: Division and Dislocation: Regulating Immigration through Local Housing Ordinances*, American Immigration Law Foundation, 3 (2007), <http://www.immigrationpolicy.org/special-reports/division-and-dislocation-regulating-immigration-through-local-housing-ordinances>.

⁴ See Gebe Martinez, *Beyond Arizona: Without Comprehensive Immigration Reform, Intolerance Will Rise Across Our Country*, Center for American Progress, 2 (May 14, 2010), http://www.americanprogress.org/issues/2010/05/pdf/beyond_arizona.pdf.

laws addressing immigration issues has increased dramatically across the United States:

- 2005: 300 bills were introduced, 39 laws were enacted, and 6 were vetoed.
- 2006: 570 bills were introduced, 72 were enacted, 6 were vetoed, and 12 resolutions were adopted, for a total of 84.
- 2007: 1,562 bills were introduced, 178 were enacted, 12 were vetoed, and 50 resolutions were adopted, for a total of 228.
- 2008: 1,305 bills were introduced, 139 laws were enacted, 3 were vetoed, and 64 resolutions were adopted, for a total of 203.
- 2009: more than 1,500 bills were introduced, 202 laws were enacted, 20 were vetoed, and 131 resolutions were adopted, for a total of 333.
- 2010: more than 1,400 bills were introduced, 208 laws were enacted, 10 were vetoed, and 138 resolutions were adopted, for a total of 346.⁵

Many observers contend that this growing backlash against immigrants, particularly those of Latino descent, has been driven by fear, cultural differences, and economic uncertainty.⁶ From one town to the next, the list of grievances asserted against immigrants has been identical: overcrowded schools, housing,

⁵ Gillian Johnston & Ann Morse, *2010 Immigration-Related Laws and Resolutions in the States*, National Conference of State Legislatures (Jan. 5, 2011), <http://www.ncsl.org/default.aspx?tabid=21857>.

⁶ See, e.g., Gebe Martinez, *Unconstitutional and Costly: The High Price of Local Immigration Enforcement*, Center for American Progress, 2 (Jan. 2011), http://www.americanprogress.org/issues/2011/01/pdf/cost_of_enforcement.pdf.; Caroline B. Brettell & Faith G. Nibbs, *Immigrant Suburban Settlement and the "Threat" to Middle Class Status and Identity: The Case of Farmers Branch, Texas*, 49 Int'l Migration 1, 3, 12-15 (2011).

hospitals, and traffic lanes; purported cultural incompatibilities; alleged burdens on public service providers; and economic fears exacerbated by the current economic downturn.⁷ Most of the localities enacting these immigration enforcement measures are small, predominantly (or previously predominantly) white communities that have become unsettled by rapid demographic changes.⁸

2. Discriminatory Anti-Immigrant Precursors to Ordinance 2952 Enacted by the Farmers Branch City Council

These patterns illuminate and help to explain the actions of Farmers Branch, Texas.⁹ In passing Ordinances 2892 and 2903, the immediate precursors to Ordinance 2952, in 2006 and 2007, respectively, the Farmers Branch City Council concluded that a necessity existed “to adopt citizenship and immigration certification requirements for apartment complexes to safeguard the public” and “to promote the public health, safety, and general welfare [of the citizens of the City of Farmers Branch].”¹⁰ The City performed no studies of the impact of

⁷ See Unconstitutional and Costly, *supra* note 6, at 1, 7.

⁸ *Id.* at 6.

⁹ In 2000, Latinos comprised 37.2% of the population in Farmers Branch, a city with a total population of 27,508. R. at 5318-19 (Census 2000). By 2005-2007, the total population had increased by a few hundred to 27,750, while the Latino population had increased to 46.7%. R. at 5320-21 (2005-2007 American Community Survey 3-Year Estimates).

¹⁰ R. at 5358 (Ordinance 2892 at 2); R. at 5375-76 (Ordinance 2903 at 2-3); *see also* R. at 5429 (Ordinance 2952 at 2) (“[T]he purposes of [Ordinance 2952] are to promote the public health, safety, and general welfare.”)

undocumented immigrants on public safety;¹¹ public welfare;¹² school quality;¹³ property values;¹⁴ or the quality of health care in the community;¹⁵ instead, City leaders in Farmers Branch relied on negative stereotypes about Latinos to support their claim that Ordinances 2892 and 2903 were necessary to exclude “illegals”¹⁶ and their associated problems.¹⁷ Both ordinances have since then been enjoined.¹⁸

¹¹ See R. at 6925-29 (Fuller Dep. 24:9-16, 27:3-10, 33:2-9, 28:11-14, 33:10-16); R. at 6298-99 (Koch Dep. 91:20-25, 97:2-8); R. at 7040 (Greer Dep. 72:7-22); R. at 5785, 5790-91 (O’Hare Dep. 243:8-12, 253:24-254:9).

¹² See R. at 6154 (City of Farmers Branch Fed. R. Civ. P. 30(b)(6) Representative Greer Dep. 142:10-16).

¹³ See R. at 6307-09, 6312-13 (Koch Dep. 125:12-127:1, 133:15-134:15); R. at 5785 (O’Hare Dep. 243:13-24); R. at 6627-28 (Scott Dep. 129:24-130:12); R. at 6152-54, 6173 (City of Farmers Branch Fed. R. Civ. P. 30(b)(6) Representative Greer Dep. 140:24-141:16, 142:21-24, 244:16-20).

¹⁴ See R. at 6550 (Stevenson Dep. 32:1-5); R. at 6153-54, 6173 (City of Farmers Branch Fed. R. Civ. P. 30(b)(6) Representative Greer Dep. 141:17-142:2, 142:17-19, 244:13-15); R. at 5616-17 (Robinson Dep. 165:23-166:2); R. at 5784-85 (O’Hare Dep. 242:25-243:7); R. at 6366 (Phelps Dep. 77:8-25).

¹⁵ See R. at 6317-18 (Koch Dep. 143:19-144:13); R. at 5785-86 (O’Hare Dep. 243:25-244:4); R. at 6156 (City of Farmers Branch Fed. R. Civ. P. 30(b)(6) Representative Greer Dep. 144:14-20).

¹⁶ See R. at 5755-58, 5762, 5819-20, 5861 (O’Hare Dep. 207:17-208:12, 209:14-210:18, 305:6-306:15, 214:14-19; Exh. 46).

¹⁷ See, e.g., *infra* note 20.

¹⁸ On January 9, 2007, a state court issued an order enjoining implementation of Ordinance 2892. See *Villas at Parkside Partners v. City of Farmers Branch, Tex.*, 701 F. Supp. 2d. 835, 840 (N.D. Tex. 2010). On January 22, 2007, the Farmers Branch City Council adopted Ordinance 2903, which repealed Ordinance 2892 but proposed similar requirements for residential rental in the City, and called for an election to allow the voters of Farmers Branch to weigh in on the new ordinance.

Mirroring many of the same grievances alleged by numerous towns throughout the country,¹⁹ City leaders in Farmers Branch claimed that Latino immigrants were the source of declining quality of education, poor delivery of health care, and deteriorating neighborhoods.²⁰ The City's Revitalization Report identified Farmers Branch "demographics" as a "barrier[] . . . to redevelopment" and noted that "[t]he City's Hispanic population increased from about 5 percent to 37 percent between 1970 and 2000 and continues to grow at a rate exceeding all other ethnic and racial populations in the City."²¹ Additionally, meeting notes of the Farmers Branch Development Committee included, under "FB negatives – to mitigate," a bullet point stating the City has a "[m]ostly lower income, minority population."²²

(continued ...)

See id. On May 12, 2007, Farmers Branch voters approved Ordinance 2903. *See id.* On May 21, 2007, the U.S. District Court for the Northern District of Texas preliminarily enjoined Ordinance 2903. *See id.* On May 28, 2008, the district court permanently enjoined the enforcement of Ordinance 2903. *See id.*

¹⁹ *See supra* note 7.

²⁰ *See* R. at 7035-36 (Greer Dep. 63:24-64:15); R. at 6587-89 (Stevenson Dep. 96:11- 98:8); R. at 5623-25 (Robinson Dep. 178:17-180:15); R. at 5666-67, 5682-83, 5737, 5758 (O'Hare Dep. 33:24-34:8, 72:8-73:14, 177:7-21, 210:1-18).

²¹ R. at 5894-95 (Revitalization Task Force Final Report & Recommendations at 8-9).

²² R. at 5326 (Notes, Farmers Branch Development Committee, Aug. 31, 2006).

City officials themselves made numerous statements illustrating that, by “undocumented immigrants” or “illegal aliens,” they meant Latinos.²³ The day after the City Council adopted Ordinance 2903, Mayor O’Hare forwarded to later-Councilmember David Koch an e-mail, the subject of which was “The Law of the Land that every Hispanic violates daily in this country” with the accompanying message written by Mr. O’Hare “MUST READ FOR TODAY’S SHOW.”²⁴ The original e-mail purported to identify “two specific laws that make EVERY [H]ispanic in this country a defacto [sic] felon.”²⁵ In another email, Mayor O’Hare exchanged messages from the public in support of the City’s immigration regulation efforts with Councilmember Tim Scott, and described an email complaining of “crazy color palettes” such as “turquoise, purple, and orange” showing up on homes and “Spanish-speaking kids clamoring all over each other” at the library as “even better” than an email reminiscing about a time when “the

²³ Supporters of local immigration control laws often rely on code words such as “undocumented immigrants” or “illegal aliens” to refer to Latinos. *See* Esbenshade, *supra* note 3, at 3 (“[T]here is a tendency among supporters of [local anti-immigrant] ordinances to conflate categories such as “Latino,” “Mexican,” “immigrant,” and “illegal.”); *see generally* Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (2004) (tracing the origins of the “illegal alien” in American history). Despite the stereotype, a majority of Latinos are not foreign-born, let alone undocumented. *See* Esbenshade, *supra* note 3, at 3.

²⁴ R. at 5806, 5853-54 (O’Hare Dep. 275:6-8; Exh. 35).

²⁵ *Id.* (citing 8 U.S.C. §§ 1324a(a)(1)(A), 1324(a)(1)(A)(iv), which prohibit the unlawful employment and harboring of certain aliens).

face of the city was not covered with empty flower pots and so many people living in one household that it looked like a motel.”²⁶ In speaking about the City’s commercial center, Mayor O’Hare observed that it “just kept filling up with Spanish-speaking businesses and restaurants. . . . You don’t need seven or eight Mexican restaurants in one center. . . . If you have 10 restaurants three blocks from your house, do you want all of them to be Italian?”²⁷

Not all such statements emanated from Mayor O’Hare. Councilman Ben Robinson made clear that his support of Ordinance 2903 related to his concerns about immigrants from Latin America, regardless of their immigration status, when he wrote to a local newspaper that “[o]ur culture,” namely “the American culture” and English-speaking culture, “and way of life are at risk.”²⁸ According to him, unlike previous immigrants who “assimilated into our culture[,] . . . we have a problem today with that [sic] assimilation not occurring as it has occurred in the past.”²⁹ He opined that “[i]f you open up and don’t enforce your border security, at some point you’re just – you’re overloaded and you become . . . a third-world

²⁶ R. at 5806-09, 5855-59 (O’Hare Dep. 275:19-278:6; Exh. 36).

²⁷ R. at 5735, 5847 (O’Hare Dep. 173:2-14; Exh. 32).

²⁸ R. at 5602-03, 5606-07 (Robinson Dep. 146:14-147:21, 151:20-152:2).

²⁹ R. at 5604 (Robinson Dep. 148:6-11).

country is what it amounts to.”³⁰ After pointing to immigrants from Mexico and “other countries in South America” as his cause for concern, Councilman Robinson identified the influx of illegal immigrants as the problem.³¹

Farmers Branch leaders often tied the need to reduce the City’s population of “illegal” immigrants to the City’s population of Spanish-speakers, “Spanish-speaking businesses” that “cater” to Latinos, and teaching in Spanish in local schools.³² Mayor O’Hare himself stated – apparently under the assumption that English language learner students are necessarily “illegals” – that, by reducing the number of children who receive a bilingual education, “there would be more money to spend on education for children who had a right to be here.”³³

As part of the package of ordinances addressing problems purportedly caused by undocumented immigration,³⁴ the City enacted the English Language

³⁰ R. at 5643 (Robinson Dep. 248:19-25).

³¹ R. at 5595, 5644 (Robinson Dep. 128:12-19, 249:1-11).

³² See R. at 5545-6, 5606-7 (Robinson Dep. 151:24-152:2, 42:24-43:19); R. at 6294-95 (Koch Dep. 77:13-78:7); R. at 3130 (Groomer Dep. 207:10-23); R. at 6073-74, 6078-82, 6090-91 (Barber Dep. 25:2-21, 26:14-21, 32:22-33:6, 34:18-35:10, 35:25-36:1, 52:2-14, 53:2-9); R. at 6552 (Stevenson Dep. 34:17-23); R. at 5725-35, 5738-39, 5844-45, 5851-52 (O’Hare Dep. 161:23-163:7, 164:1-4, 166:22-168:12, 168:20-169:12, 170:5-11, 172:19-173:22, 179:18-180:21; Exhs. 28, 29, 33).

³³ R. at 5799-800 (O’Hare Dep. 265:10-266:8).

³⁴ See R. at 6547-48, 6577 (Stevenson Dep. 28:20-29:5, 61:11-17); R. at 6333 (Koch 175:1-5); R. at 6110-12 (City of Farmers Branch Fed. R. Civ. P. 30(b)(6))

Resolution to declare English the official language of Farmers Branch.³⁵ Mayor O'Hare stated, "Fair, unfair, right, wrong, when you've got groups of people that are different – speaking different languages in the same proximity, it often leads to conflict."³⁶ He also admitted in his deposition that the English Language Resolution affected those who only spoke Spanish, regardless of their immigration status.³⁷ Along with enacting the English Language Resolution, the City also ceased showing Spanish language television at the local recreation center.³⁸ Although never discussed by the City Council, one councilmember questioned whether it would be possible to remove all foreign language materials from the

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Representative Greer Dep. 79:21-80:23); R. at 5636-37 (Robinson Dep. 226:5-227:10); R. at 5716-19, 5776-77, 5793, 5796, 5831-41 (O'Hare Dep. 146:21-149:14, 230:10-13, 231:4-25, 258:2-6, 261:5-9; Exhs. 22, 23); R. at 6357, 6370 (Phelps Dep. 54:5-14, 88:14-18).

³⁵ See R. at 5362-65 (Resolution No. 2006-130); R. at 5776-77 (O'Hare Dep. 230:10-13, 231:4-25).

³⁶ R. at 5777 (O'Hare Dep. 231:4-25).

³⁷ R. at 5778-79 (O'Hare Dep. 234:1-10, 234:21-235:14). Although the English Language Resolution states that it is intended "to protect and preserve the rights of those who speak only the English language," Mayor O'Hare could not explain the ways in which Farmers Branch must protect those who speak only English. See R. at 5780 (O'Hare Dep. 236:5-8); R. at 5362-65 (Resolution No. 2006-130).

³⁸ See R. at 6579-81 (Stevenson Dep. 64:6-66:3).

City library³⁹ because he was concerned such materials “discourage learning English . . . for persons who live here and are to [sic] lazy to learn English.”⁴⁰

3. The Discriminatory Basis of Ordinance 2952

Ordinance 2952 was little more than a third try, based on the same unfounded and biased assumptions, to escape judicial condemnation.⁴¹ In its haste to legislate against Latinos, the City failed to assess the impact of the “problem” that Ordinance 2952 purported to address, on the Farmers Branch community as a whole.⁴² While the City presumed that Ordinance 2952 would ameliorate the problems identified as necessitating its enactment, recent studies have shown that, in fact, as the immigration population of the City has risen in recent years, property values have gone up, crimes have decreased, and the educational system in

³⁹ See R. at 5331 (Email from Councilman Robinson to City Manager Groomer, copied to Mayor and Council, Aug. 10, 2006, at #13); R. at 3104-05 (Groomer Dep. 84:19-85:7).

⁴⁰ See R. at 5333-34 (Email from Councilman Robinson to City Manager Groomer re: Library Proposal, Aug. 15, 2006).

⁴¹ See generally *Villas*, 701 F. Supp. 2d. at 839 (“Ordinance 2952 is the third enactment by the City touching on rental property and illegal immigration, and it follows previous efforts by the City Council to discourage illegal immigration and mitigate its perceived costs.”).

⁴² See R. at 5798 (O’Hare Dep. 263:18-22); R. at 6025-26 (Greer Dep. 180:25-181:13); R. at 6158, 6172-73 (City of Farmers Branch Fed. R. Civ. P. 30(b)(6) Representative Greer Dep. 146:5-25, 243:25-244:20); R. at 6989, 6996, 6990 (Smith Dep. 46:8-11, 75:5-13, 57:14-19).

Farmers Branch has improved.⁴³ An equally or more logical conclusion regarding the effect of driving Latinos out of Farmers Branch would be that those beneficial trends would be reversed; however, the City gave no consideration to that possibility and merely assumed the opposite. As Mayor O’Hare admitted, Ordinances 2892, 2903, and 2952 shared the same legislative purpose.⁴⁴ The shared legislative history of these ordinances, as discussed in the previous section, reveals that discriminatory intent against Latino immigrants underlay all three ordinances.⁴⁵

4. The Creation of an Immigration Regulation Scheme to Drive Out Latinos

To drive Latinos out of Farmers Branch, City leaders elected to create their own immigration regulation scheme. Prior to the enactment of Ordinance 2952 and its precursors, the City Council adopted Resolution 2006-099 “imploring and urging” the federal government to “strongly enforce” immigration laws, citing, in part, the “estimated” existence of “hundreds of illegal aliens” in Farmers Branch

⁴³ See R. at 5441-43 (Patrick McGee, *Public Opinion Doesn’t Follow the Numbers*, Fort Worth Star-Telegram, Feb. 5, 2007); see also R. at 5836 (O’Hare Dep. Exh. 23 at 4).

⁴⁴ R. at 5793, 5796 (O’Hare Dep. at 258:2-22, 261:5-9).

⁴⁵ See *supra* notes 19-40; see also Rose Cuison Villazor, *Rediscovering Oyama v. California: At the Intersection of Property, Race, and Citizenship*, 87 Wash. U. L. Rev. 979, 1030-32 (2010) (discussing how Ordinance 2903 and Ordinance 2952’s common legislative history demonstrates racial bias).

and the negative impact of these aliens on property values, public schools, national security, crime rates, illicit drug trade, welfare costs, and “other potential major problems.”⁴⁶ Because the City perceived a failure on the federal government’s part to take “positive and meaningful steps to enforce the immigration law” and “to approve meaningful legislation,”⁴⁷ it opted to enact Ordinance 2952 and its precursors,⁴⁸ all of which shared the same goal: to prevent undocumented immigrants from living in Farmers Branch.⁴⁹ As Appellees’ Briefs show, this goal,

⁴⁶ R. at 5339-56 (Minutes, Farmers Branch City Council Meeting, Sept. 5, 2006).

⁴⁷ *See id.*

⁴⁸ *See, e.g.*, R. at 5796-97 (O’Hare Dep. 261:10-262: 24) (expressing frustration at the federal government’s failure to enforce immigration laws and admitting that the City enacted the ordinances to address the federal government’s inadequacies); *see also* R. at 6660 (Email, Farmers Branch News to David Koch, May 15, 2007) (Mayor O’Hare proclaiming that Ordinance 2903 “will help to further ignite a fire that will spread across this nation – a fire that will embolden *cities, counties and states* to stand up for their towns and our country” against illegal immigration) (emphasis added); R. at 5794-95 (O’Hare Dep. 259:18-260:22).

⁴⁹ *See* R. at 5793, 5796 (O’Hare Dep. at 258:2-22, 261:5-9); *see also* R. at 7038-39 (Greer Dep. 69:23-70:23) (admitting that the goal of Ordinance 2952 was “to regulate housing and see to it that illegal aliens didn’t live in Farmers Branch”); R. at 5613 (Robinson Dep. 161:19-24) (goal of Ordinance 2952 was to “sort of pick up where 2903 left off” and “prevent undocumented immigrants from living in Farmers Branch”); R. at 6276-77 (Koch Dep. 40:23-41:1) (agreeing that the purpose of Ordinance 2952 was “to prevent illegal aliens from living in the City of Farmers Branch”); R. at 6386-87 (Phelps Dep. 162:17-163:3) (O’Hare stated in public meetings that the goal of Ordinance 2952 and its predecessors was to “get rid of the illegal immigrants in our city.”); R. at 6995 (Smith Dep. 74:6-9) (noting that Ordinance 2952 was “intended to make it difficult for illegal immigrants to reside in the City”); R. at 5596 (Robinson Dep. 132:2-6) (Ordinance 2903 “was directed at” the effort to regulate immigration in Farmers Branch); *see generally*

in and of itself, is problematic, and the ordinance is preempted by federal law.⁵⁰

But *Amici* have demonstrated that, in actuality, Ordinance 2952 was intended to ensure that Latinos – regardless of their immigration status – reside somewhere other than Farmers Branch.⁵¹ That, of course, is a legally impermissible purpose.

Repeatedly in American history, immigrants are made scapegoats for the country’s woes in times of social and economic stress.⁵² So it is in this case as

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Villas, 701 F. Supp. 2d. at 855 (“Local regulation that conditions the ability to enter private contract for shelter on federal immigration status is of a fundamentally different nature than the sorts of restrictions on employment or public benefits that have been found not to be preempted regulations of immigration. Restrictions on residence directly impact immigration in a way that restrictions on employment or public benefits do not.”).

⁵⁰ Appellees *Villas* Br. at Part V.C-E; Appellees *Reyes* Br. at Parts I-II; *see also* *Lozano v. City of Hazleton*, 620 F.3d 170, 224 (3d Cir. 2010) (“It is this power to effectively prohibit residence based on immigration status that is so clearly within the exclusive domain of the federal government.”); *Villas*, 701 F. Supp. 2d. at 859 (Farmers Branch “may not . . . independently enforce its own immigration rules.”).

⁵¹ *See supra* notes 19-40 and accompanying text.

⁵² *See* Armen H. Merjian, *A Guinean Refugee’s Odyssey: In Re Jarno, The Biggest Asylum Case in U.S. History and What It Tells Us About Our Broken System*, 23 *Geo. Immigr. L.J.* 649, 650 (2009) (“In boom times, when extra hands have been essential, immigrants have been welcomed, even encouraged. In times of crisis or economic difficulty, however, immigrants have been treated as scapegoats and subjected to cries for severe restrictions and even confinement.”); Pratheepan Gulasekaram, *Sub-National Immigration Regulation and the Pursuit of Cultural Cohesion*, 77 *U. Cin. L. Rev.* 1441, 1445 (2009) (“Throughout the nation’s history, when the U.S. economy has turned downward towards recession, and financial distress has affected millions of Americans, immigrants have been convenient scapegoats for the nation’s ills.”).

shown in the record before the Court. The evidence clearly demonstrates the pretextual nature of the City’s contention that Ordinance 2952 was necessary to improve the living conditions in Farmers Branch by keeping out “illegals.” To accomplish this allegedly necessary goal, Farmers Branch elected to create its own immigration regulation scheme, a domain exclusive to the federal government. In reality, Farmers Branch’s Ordinance 2952 is an example of contemporary “illegal alien” laws that inflict on all Latinos – not just Latino immigrants – the same types of discrimination as those previously experienced by earlier immigrant communities in the United States.⁵³

B. Like Ordinance 2952, The Nation’s First Anti-Immigrant Housing Ordinances in Hazleton, PA Were Grounded in Discrimination Against Latinos: The Story of Dr. Agapito Lopez.

In response to the same recent wave of anti-Latino sentiment which motivated Farmers Branch, the nation’s first anti-immigrant housing ordinances were passed in Hazleton, Pennsylvania, a former mining town in northeastern Pennsylvania, in 2006, less than three months before Farmers Branch enacted its first ordinance. The Hazleton ordinances prohibited the housing of unauthorized

⁵³ See *supra* note 1. This includes earlier generations of both legal and “illegal” Mexican immigrants, many of whose children and grandchildren are now native-born U.S. citizens and an integral part of our American social fabric. For example, during the Great Depression, more than a million persons of Mexican ancestry, including American citizens, were “repatriated” to Mexico to reduce competition for jobs and welfare benefits. See generally Francisco E. Balderrama & Raymond Rodriguez, *Decade of Betrayal: Mexican Repatriation in the 1930s* (rev. ed. 2006).

aliens and required anyone seeking to rent an apartment to obtain an occupancy permit that the town would issue upon proof of legal citizenship and/or residency.⁵⁴ In trying to justify the ordinances, the list of grievances against Latino immigrants by town leaders was similar to those in Farmers Branch: growing school budgets, rising hospital costs, and increased crime.⁵⁵ Like Farmers Branch, these charges were not well grounded in objective studies,⁵⁶ but were made in reaction to a rapidly growing Latino community in the midst of what had been a predominantly white town.⁵⁷ Like Farmers Branch, the atmosphere under which the Hazleton ordinances were debated and passed was marked by racial tension and hostile town

⁵⁴ See *Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 529 (M.D. Pa. 2007).

⁵⁵ *Id.* at 542.

⁵⁶ *Id.* at 542 n.68 (“Testimony at trial indicated that funding for hospitals and schools in Hazleton did not come from the budget of the City of Hazleton. This evidence indicates that Hazleton has overstated the direct cost to the city of the presence of undocumented aliens in town.”); *id.* at n.69 (“The plaintiffs disputed the connection between illegal immigration and crime in Hazleton, arguing that the crime rate had actually decreased during the years when increasing numbers of immigrants moved to the City.”).

⁵⁷ In 1990, 249 residents identified themselves as Latino; in 2000, 1,143 residents did; in 2010, 9,454 residents did. Mary Katchur, *Latino Influx Spurs First Population Increase in Hazleton in 70 Years*, Standard Speaker (Mar. 10, 2011), <http://standardspeaker.com/news/latino-influx-spurs-first-population-increase-in-hazleton-in-70-years-1.1116591>.

meetings.⁵⁸ Like Farmers Branch, the Hazleton ordinance was spawned by the same coordinated anti-immigrant movement and its sponsors.⁵⁹ The injury created by the entire process was deep and long-lasting.⁶⁰ Only because the trial court enjoined the implementation of the ordinances, an order affirmed by the Third Circuit,⁶¹ did Latinos escape the devastating impact that would have otherwise ensued.

The story of longtime Hazleton resident Dr. Agapito Lopez, as credited by the trial court,⁶² vividly documents the above from a personal perspective.

⁵⁸ See *Lozano*, 496 F. Supp. 2d at 510 (a “climate of fear and hostility surround[ed] the debate over the ordinances”); *id.* at 510 n.31 (the debate had “the effect of increasing racial tension”).

⁵⁹ See *Unconstitutional and Costly*, *supra* note 6, at 3 (noting the intimate connection between the anti-immigrant ordinances and the Immigration Reform Law Institute, which has ties to the Federation for American Immigration Reform); Leah Nelson, et al., *When Mr. Kobach Comes to Town: Nativist Laws and the Communities They Damage*, Southern Poverty Law Center, 5, 9, 18 (Jan. 2011), http://www.splcenter.org/sites/default/files/downloads/publication/Kobach_Comes_to_Town.pdf. (same).

⁶⁰ See *Lozano*, 496 F. Supp. 2d. at 510 (“Public expressions of support for Hazleton’s ordinances have continued to lead to controversy and confrontations.”).

⁶¹ See *Lozano*, 620 F.3d at 224.

⁶² Except for background information, the narrative about Dr. Lopez, who was not a plaintiff, comes from the trial court decision, *Lozano*, 496 F. Supp. 2d at 508-10. The court closely examined Dr. Lopez’s testimony in its discussion of whether to grant the request of the four Doe Plaintiffs, all unauthorized aliens, to proceed under a pseudonym because of their fear of being harassed or otherwise harmed if their identities were public. The court granted their request based primarily on Dr. Lopez’s testimony, reasoning that if Dr. Lopez felt afraid of what the

Dr. Lopez – a retired eye surgeon, father of five, and former U.S. Army officer from the Vietnam era – helped organize the opposition to the ordinances, as he and his wife had long been active in community and business affairs in Hazleton. Along with a few other local Latino leaders, he first met with several regional and state leaders to try to stop the ordinances from coming to fruition. When that effort failed, he and other leaders then organized a candlelight prayer vigil to be led by local religious leaders the night before the ordinances were to be given their second reading.

The day before the vigil, Dr. Lopez received the first piece of “hate mail” he was to receive, placed by hand underneath his office door. The letter purported to describe the effects of illegal immigration, contending “European Americans are being dispossessed of their own nation. We are under invasion by millions of unskilled Mexicans who threaten to bankrupt us.” The letter further warned that “coloreds” would eventually take control of state governments, Congress and the presidency, and that “[w]hites will quickly be stripped of their rights with our

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supporters of the Hazleton ordinances might do to him, a U.S. citizen and respected community member, the Doe plaintiffs would have even more reason to be afraid. *See id.* at 510. Amicus counsel LatinoJustice PRLDEF was one of plaintiffs’ counsel in that litigation and describes Dr. Lopez’s background information based upon information it obtained in that capacity.

wealth confiscated for redistribution to non-whites as is taking place in South Africa.”⁶³

Given the generally hostile atmosphere in the town as reflected in that letter, attendees at the vigil itself were very afraid of the consequences of simply participating in it. Their fears were then greatly heightened by the presence at the prayer vigil of “another group that was intimidating us at that time by showing their presence, shouting slogans, and [creating] a lot of tension in the area.”⁶⁴

At the second reading, the supporters of the ordinances were “very, very tense with stares at the small group of Latinos that were there.”⁶⁵ During the meeting, a fight broke out in the street between opponents and supporters of the ordinances. Dr. Lopez was called out to the scene in front of the City Council building and found “[f]ederal justice agents, department of justice agents and policemen in the street dividing two groups,”⁶⁶ with the supporters of the ordinances on one side and a small crowd of mostly Latinos opposing them on the other. Prior to the meeting, Dr. Lopez had contacted those same agencies to ask

⁶³ *Lozano*, 496 F. Supp. 2d at 509.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

them to come to and monitor the crowds because of fears that the hostility towards Latinos might give way to violence against them.

After that meeting, Dr. Lopez received two other pieces of “hate mail,” letters that made him feel both fearful and offended as he thought they indicated hate against him. After describing how immigrant residents had caused so much waste and crime in Hazleton, the author of the second letter declared that “[w]e think you ... had better think twice before you speak.”⁶⁷ Dr. Lopez believed the writer of this letter, like many other supporters of the ordinances, assumed all Latinos were undocumented immigrants and were responsible for the problems facing Hazleton. In fact, as noted by the district court, the Latino community in Hazleton included United States citizens and lawful permanent residents, not just undocumented immigrants.⁶⁸

The third, and most offensive, letter Dr. Lopez received contained a newspaper clipping describing the effects of illegal immigration and a picture of a “warrior” wearing “a huge Mexican hat.” Scrawled near this picture were the phrases, “[s]ubhuman spic scum” and “[i]f it is brown, flush it down.”⁶⁹ Dr. Lopez interpreted this mail as an attempt to silence and intimidate him. He “felt afraid”

⁶⁷ *Id.*

⁶⁸ *Id.* at 484.

⁶⁹ *Id.* at 510.

after receiving letters both at his office and at home; the mail let him know that “they know where I live and where I used to work and where my wife works.”⁷⁰

This pattern of harassment and intimidation did not disappear after the passage of the ordinance. “Public expressions of support for Hazleton’s ordinances have continued to lead to controversy and confrontations, as well as anger at those who challenge the City’s position.”⁷¹ In June 2007, almost a year after the ordinances had passed, several hundred supporters of the ordinances held a rally in Hazleton to express their support for the city’s attempts to control illegal immigration. Amilcar Arroyo, publisher of a Hazleton-based Spanish-language newspaper, attempted to cover the event for his publication. Although Arroyo was not a plaintiff in or otherwise involved in the lawsuit, several members of the crowd at the rally began to shout at Arroyo after a rumor circulated that he was a plaintiff. Confronting Arroyo, a few rally participants shouted at him to “get out of the country” while others chanted “traitor.”⁷² Police escorted Arroyo from the rally for his own protection.

The district court ultimately concluded, based upon the evidence submitted at trial, that this “intense public interest” in the ordinances led to “harassment and

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

intimidation,” in large part citing the actions taken against Dr. Lopez.⁷³ The district court described the record as demonstrating “hostility to the plaintiffs in the lawsuit” and a “climate of fear and hostility surrounding the debate over the ordinances,” so as to justify the Doe plaintiffs’ fear about having their identities revealed.⁷⁴ Finally, the district court found that the ordinances appeared to have had “the effect of increasing racial tension.”⁷⁵

In sum, the experience of Dr. Lopez during this time vividly and painfully demonstrates that the Hazleton ordinances, like the Farmers Branch ordinance, were firmly grounded in discrimination against Latinos. In each city, the community based its support of the anti-immigrant measures on animus towards Latinos. Regrettably, the Hazleton ordinances may have been the first of their kind, but they certainly were not the last.

III. CONCLUSION

For the foregoing reasons, *Amici* respectfully request that the Court affirm the district court’s decision granting Plaintiffs-Appellees’ motion for partial summary judgment.

⁷³ *Id.* at 508.

⁷⁴ *Id.* at 510.

⁷⁵ *Id.* at 510 n.31.

Dated: March 31, 2011

Respectfully submitted,

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**CERTIFICATION OF COMPLIANCE WITH FEDERAL RULES
OF APPELLATE PROCEDURE AND FIFTH CIRCUIT
LOCAL APPELLATE RULES**

Pursuant to Rule 32 of the Federal Rules of Appellate Procedure and Fifth Circuit Local Appellate Rule 32.3, I certify that the attached Brief of *Amici Curiae* is proportionately spaced, has a typeface of 14 points or more and contains 6070 words. Pursuant to Fifth Circuit Local Appellate Rules, I also certify that (1) all privacy redactions have been made (5th Cir. R. 25.2.13); (2) the text of electronic document is identical to the text in the paper copies (5th Cir. R.25.2.1.); (3) that the electronic brief has been checked for viruses using the most recent version of Symantec Endpoint Protection, and that no virus was detected (5th Cir. R.25.2.1).

Dated: March 31, 2011

/s/
Morris J. Baller

CERTIFICATE OF SERVICE

The undersigned counsel certifies that an electronic copy of the foregoing Brief of *Amici Curiae* was electronically filed and served on counsel for Plaintiffs-Appellees and Defendant-Appellant on March 31, 2011, via the Court's case management/electronic case filing (ECF) systems.

/s/

Morris J. Baller