



State and Local Anti-Immigrant Legislation Litigation Update*

As anti-immigrant ordinances and legislation are increasingly enacted across the country, immigrant and business advocates have challenged these laws in state and federal courts. This paper provides an overview of current litigation on these issues.

Housing-related Laws

More than 10 cities have enacted ordinances that prohibit landlords from renting premises to undocumented immigrants. Proponents of the laws assert that allowing undocumented immigrants to reside in rental property constitutes “harboring.” Several ordinances require potential tenants to provide a municipal office with proof of lawful residence in order to receive a permit to lease an apartment. Other laws require landlords to verify tenants’ immigration status.

Federal judges have struck down each anti-immigrant housing ordinance that has been challenged in court. Judges have found that these types of ordinances are unconstitutional because (1) they violate due process and (2) they are preempted. In terms of due process, housing ordinances tend to use vague language to describe who is ineligible for housing; landlords, therefore, would have difficulty determining whether or not they were violating the law. In terms of preemption, due to the complexity of immigration law, city ordinances’ definition of “lawful immigrant” often does not track the federal definition. The local law is therefore preempted because it conflicts with federal immigration law.

Although municipalities continue to introduce housing prohibitions, there is clear precedent that federal judges will overturn this type of anti-immigrant ordinance.

Status of Litigation involving Housing-related Laws

- Assembly of God Church Riverside v. Township of Riverside, N.J., No. 1:06-cv-03842-RMB-AMD (D.N.J.) and Riverside Coalition of Business Persons and Landlords v. Township of Riverside, N.J., No. 1:06-cv-05521-RMB-JS (D.N.J.). After these lawsuits were filed, Riverside voluntarily repealed its housing ordinance,

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due to the economic burden cause by litigation expenses and the ordinance's negative impact on the local economy.¹

- Garrett v. City of Escondido, Ca., No. 06-CV-2434 (S.D. Cal. dismissed December 15, 2006). At the request of both parties, Judge John A. Houston issued a permanent injunction against the ordinance. The city agreed to the injunction due to the high cost of litigation.² Escondido continues to draft ordinances to discourage undocumented immigrants from living in the community, such as prohibiting employers from picking up day laborers and imposing strict restrictions on multiple families sharing one home.³
- Lozano v. Hazleton, Pa., 496 F. Supp. 2d 477 (M.D. Pa. July 26, 2007). Judge James M. Munley blocked enforcement of the ordinance, finding that it did not provide due process to landlords or immigrants and that it constituted a regulation of immigration and was therefore preempted by federal law.⁴ Judge Munley's decision is on appeal to the Third Circuit (Docket No. 07-3531). Oral arguments were heard on October 30, 2008.
- Reynolds v. City of Valley Park, Mo., No. 06-3802 (Cir. Ct. St. Louis, Mo. March 12, 2007). Judge Barbara W. Wallace issued a permanent restraining order, finding that the city's housing ordinance conflicted with state landlord/tenant laws.⁵ Thereafter, Valley Park rescinded its housing ordinance due to the escalating cost of litigation.⁶
- Villas at Parkside Partners v. City of Farmers Branch, Tx., No. 3:06-CV-2371L (N.D. Tx. May 28, 2008). Judge Sam A. Lindsey blocked enforcement of the housing ordinance, finding that it did not provide due process and that, as it attempted to regulate immigration, it was preempted by federal law.⁷ However, Farmers Branch enacted a new housing ordinance. Two lawsuits were then filed against the new ordinance: Reyes v. City of Farmers Branch, Tx., No. 3:2008-cv-01615 (N.D. Tx. filed September 12, 2008) and Villas at Parkside Partners v. City of Farmers Branch, Tx., No. No. 3:08-CV-1551-B (N.D. Tx. filed September 3, 2008). These two cases have been consolidated under the latter case number. Both parties agreed to entry of a preliminary injunction while the court hearings proceed. The case is being heard by Judge Jane Boyle and a merits hearing will likely be held before the end of the year.

¹ The New York Times, September 26, 2008, Towns Rethink Laws Against Illegal Immigrants, available at <http://www.nytimes.com/2007/09/26/nyregion/26riverside.html>.

² Los Angeles Times, Escondido tries to rid itself of undocumented immigrants, July 13, 2008, available at www.latimes.com/news/local/immigration/la-me-escondido13-2008jul13.0,3914035.print.story.

³ Ibid.

⁴ Available at www.aclu.org/pdfs/immigrants/hazleton_decision.pdf.

⁵ Available at http://www.aclu.org/pdfs/immigrants/valleypark_opinion.pdf.

⁶ Suburban Journals, Valley Park board rescinds immigration law, March 24, 2007, available at http://suburbanjournals.stltoday.com/articles/2007/03/24/news/sj2tn20070321-0321prj_vplawsuit.ii1.txt.

⁷ Available at <http://www.aclutx.org/article.php?aid=577>.

- Stewart v. Cherokee County, Ga., No. 07-0015 (N.D. Ga. *filed* January 4, 2007). Judge Timothy C. Batten Sr. has blocked enforcement of the law and stayed proceedings in the case until the Lozano and Valley Park cases are resolved.⁸

Employment-related Laws

More than 10 states have enacted laws that regulate immigrant employment. Some states require all employers to enroll in E-Verify, the federal employment authorization database; others require only public employers or state contractors to enroll. Several states impose sanctions on employers that hire undocumented workers.

Currently there is not a consensus among federal judges about whether the states can implement their own immigrant employment regulations. Although immigrant advocates have been successful in several cases at the district court level, those cases are now on appeal.

Status of Litigation involving Employment-related Laws

- Lozano v. Hazleton, Pa., 496 F. Supp. 2d 477 (M.D. Pa. July 26, 2007). Judge James M. Munley blocked enforcement of the ordinance, finding that it did not provide due process and that it constituted a regulation of immigration and was therefore preempted by federal law.⁹ His decision is on appeal to the Third Circuit (Docket No. 07-3531). Oral arguments were heard on October 30, 2008.
- Gray v. City of Valley Park, Mo., No. 07-00881 (E.D. Mo. Jan. 31, 2008). In addition to its housing ordinance (discussed above), Valley Park enacted an employment-related ordinance. Judge E. Richard Webber found that the ordinance does not conflict with federal law, finding that the Immigration Control and Reform Act¹⁰ explicitly permits states and municipalities to revoke the business license of employers who hire undocumented workers.¹¹ Plaintiffs have appealed Judge Webber's decision to the Eighth Circuit (Docket No. 08-1681).
- Chicanos Por La Causa v. Napolitano, consolidated appeals to the Ninth Circuit, Docket Nos. 07-17272, 07-17274 (September 17, 2008). The Ninth Circuit heard this consolidated case, which involved four lawsuits that challenged the Legal Arizona Workers Act. The Ninth Circuit upheld the Arizona law, finding that it did not on its face violate the U.S. Constitution.¹² However, the court noted that when the law is actually enforced, the manner in which it is enforced could face a constitutional challenge.

⁸ Available at http://www.aclu.org/pdfs/immigrants/cherokeecounty_tro.pdf.

⁹ Available at www.aclu.org/pdfs/immigrants/hazleton_decision.pdf.

¹⁰ See 8 USC § 1324a(h)(2)

¹¹ Available at http://lawprofessors.typepad.com/immigration/files/gray_13108.pdf.

¹² Available at <http://www.aclu.org/pdfs/immigrants/cplcvnapolitanoopinion.pdf>.

- U.S. Chamber of Commerce v. Edmondson, No. 5:08-cv-00109-C (W.D. Okla. June 4, 2008). This lawsuit challenged only the employment provisions of Oklahoma's omnibus anti-immigrant legislation, the Taxpayer and Citizen Protection Act of 2007. On June 4, 2008, Judge Robin J. Cauthron denied defendants' motion to dismiss the case.¹³ Judge Cauthron also granted plaintiffs' motion for a preliminary injunction, finding that the plaintiffs were substantially likely to win on the merits. Defendants have appealed Judge Cauthron's rulings to the Tenth Circuit Court of Appeals (Docket No. 08-6128).
- Thomas v. Henry, No. CJ-2008-46 (Dist. Ct. Tulsa Co. *filed* Jan. 8, 2008). A resident of Oklahoma challenged the Oklahoma law, alleging that it violated the Oklahoma state constitution.¹⁴ This case is currently in front of Judge Jefferson D. Sellers.

Omnibus Legislation

A number of states have enacted anti-immigrant legislation that touches on a number of different areas, including local law enforcement of immigration, prohibitions against harboring and transporting, strict rules regarding the issuance of ID cards, and restrictions on immigrant employment. To date, only Oklahoma's omnibus law has been challenged in federal court.

Status of Litigation involving Omnibus Legislation

- National Coalition for Latino Clergy v. Henry, No. 07-594 (N.D. Okla. dismissed Oct. 22, 2007) and National Coalition for Latino Clergy v. Henry, No. 07-613 (N.D. Okla. dismissed Dec. 12, 2007). Judge James H. Payne found that the plaintiffs in these cases could not demonstrate that the law would cause them imminent injury.¹⁵ Therefore, Judge Payne held that the plaintiffs did not have standing to bring the lawsuits and he dismissed the cases.

Conclusion

Case law on the issue of state and local anti-immigrant legislation is still developing. Many of the decisions have been made at the district court level and therefore those rulings are not binding on any other court. In addition, after losing in federal court, many states and municipalities are now drafting more sophisticated anti-immigrant legislation that they believe will pass constitutional muster. There may not be a clear resolution of these issues unless the Supreme Court agrees to accept a case and makes a determination on the constitutionality of these laws.

¹³ Judge Cauthron's decision is not available on-line. Please contact Helen Harnett (hharnett@cliniclegal.org) if you would like a copy of the decision.

¹⁴ Complaint available at <http://www.aifl.org/lac/chdocs/thomas-cmpl.pdf>.

¹⁵ Judge Payne's opinions can be found at <http://www.aifl.org/lac/chdocs/Oklahomadismissed.pdf> and <http://www.aifl.org/lac/chdocs/Oklahoma2dismissed.pdf>.