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TWO THUMBS DOWN:

IN THE ABSENCE OF COMPREHENSIVE IMMIGRATION REFORM, ILL-CONCEIVED BILLS FLOOD THE VIRGINIA GENERAL ASSEMBLY

*Leigh A. Sellers**

On July 26, 2007, a federal court ruled it unconstitutional for city officials in Hazleton, Pennsylvania, to implement a local anti-immigrant ordinance that punished employers and landlords for doing business with undocumented immigrants.¹ Despite this well-grounded landmark decision, local governments throughout the nation continue to develop patchwork solutions to a broken federal immigration system, endangering the health and well-being of communities and people alike.

Virginia has positioned itself at the forefront of America's immigration debate. Leading up to the 2008 General Assembly session, localities throughout the state developed public statements on immigration,² reaffirmed English as the official language,³ and considered an array of anti-immigrant policies.⁴ During the 2008 Virginia General Assembly session,

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1. *Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 554 (M.D. Pa. 2007).

2. Ed Farrell, *Council Opposes Residency Resolution: Immigration Laws Do Little More Than Act as Policy Statements, It Says*, THE WINCHESTER STAR (Va.), Aug. 15, 2007, available at http://www.winchesterstar.com/article_details.php?ArticleID=390.

3. Liz Mitchell, *Supervisors Make English Official Tongue*, CULPEPER STAR-EXPONENT (Va.), Aug. 8, 2007, available at http://www.starexponent.com/servlet/Satellite?pagename=CSE%2FMSGArticle%2FCSE_MGArticle&c=MGArticle&cid=1173352301570.

4. See, e.g., Deirdre Fernandes, *Beach Council Talks of Requiring Immigration Status Proof*, THE VIRGINIAN-PILOT, Nov. 5, 2007, at B1, available at <http://home.hamptonroads.com/stories/print/cfm?story=136239&ran=114222>; Dan Genz, *Immigration Training to Begin in January in Prince William*, THE EXAMINER (Va.), Nov. 10, 2007, available at

legislators introduced an unprecedented number of bills to deal with diverse social and economic ills that they believed were related to our so-called immigration problem, including bills bearing a striking resemblance to the Hazleton ordinance.⁵

Of the more than 130 pieces of legislation introduced this year with significance for Virginia's immigrants, all but a handful would have had a negative impact on immigrant communities—both documented and undocumented. A few bills would have had negative consequences for *all* Virginians.⁶ Topics of interest to legislators this year included undocumented students' eligibility for admission to public institutions of higher education,⁷ eligibility for in-state tuition rates,⁸ housing restrictions,⁹ law enforcement practices and availability of bail,¹⁰ increased penalties for businesses that knowingly employ undocumented immigrants,¹¹ and English-only language laws.¹²

The gaps between myth and reality pertaining to undocumented immi-

[http://www.examiner.com/a-1040444-](http://www.examiner.com/a-1040444-Immigration_training_to_begin_in_January_in_Prince_William.html)

[Immigration_training_to_begin_in_January_in_Prince_William.html](http://www.examiner.com/a-1040444-Immigration_training_to_begin_in_January_in_Prince_William.html); Tom Jackman, *Fairfax Will Check for Illegal Immigrants: Those Found Will Face Deportation*, WASH. POST, Oct. 11, 2007, at B1; Ian Urbina & Maria Newman, *Virginia County Votes to Deny Services to Illegal Immigrants*, N.Y. TIMES, Oct. 17, 2007, at B14.

5. See, e.g., H.B. 90, Va. Gen. Assembly (Reg. Sess. 2008) (requiring businesses to verify the legal presence of employees and businesses in violation of this provision shall be unable to contract with public bodies for one year); H.B. 926, Va. Gen. Assembly (Reg. Sess. 2008) (stipulating that regulatory boards may penalize businesses that employ undocumented workers by suspending, revoking, or failing to renew professional and occupational certifications or licenses); H.B. 1047, Va. Gen. Assembly (Reg. Sess. 2008) (penalizing businesses for employing undocumented workers); H.B. 1298, Va. Gen. Assembly (Reg. Sess. 2008) (declaring that any person registered, licensed, or certified by a regulatory board shall be subject to the suspension of the registration, license, or certification for employing undocumented workers); S.B. 90, Va. Gen. Assembly (Reg. Sess. 2008) (requiring employers to verify workers' eligibility for employment and classifying violations of the provision as a class one misdemeanor).

6. See, e.g., H.B. 45, Va. Gen. Assembly (Reg. Sess. 2008) (establishing penalties that help undocumented immigrants obtain any benefit, service, status, or privilege to which he or she is not lawfully entitled); H.B. 186, Va. Gen. Assembly (Reg. Sess. 2008) (requiring that applicants for a driver's license present proof of U.S. citizenship in order to obtain or renew a driver's license); H.B. 439, Va. Gen. Assembly (Reg. Sess. 2008) (denying state and local funds to organizations that assist individuals not legally present in the United States); H.B. 729, Va. Gen. Assembly (Reg. Sess. 2008) (requiring that marriage licenses include the social security number of each party to the marriage); H.B. 1026, Va. Gen. Assembly (Reg. Sess. 2008) (terminating funds appropriated to localities when a local agency has granted public benefits to an individual without first determining whether or not the applicant is a U.S. citizen or lawfully present in the United States).

7. H.B. 14, Va. Gen. Assembly (Reg. Sess. 2008); see also H.B. 123, Va. Gen. Assembly (Reg. Sess. 2008).

8. H.B. 1010, Va. Gen. Assembly (Reg. Sess. 2008).

9. H.B. 350, Va. Gen. Assembly (Reg. Sess. 2008); H.B. 430, Va. Gen. Assembly (Reg. Sess. 2008); S.B. 428, Va. Gen. Assembly (Reg. Sess. 2008).

10. H.B. 440, Va. Gen. Assembly (Reg. Sess. 2008); S.B. 623, Va. Gen. Assembly (Reg. Sess. 2008).

11. H.B. 926, Va. Gen. Assembly (Reg. Sess. 2008); S.B. 782, Va. Gen. Assembly (Reg. Sess. 2008).

12. H.J. 124, Va. Gen. Assembly (Reg. Sess. 2008); H.B. 55, Va. Gen. Assembly (Reg. Sess. 2008).

grants and their perceived relationship to local economic and social problems are mind-boggling. Time and again, patrons of anti-immigrant bills argue that undocumented immigrants are to blame for any number of community ills, from the overcrowding of hospitals, schools, houses, and jails to loitering and increasing crime rates.¹³ How, one might ask, can such a small group of people—the most recent estimate for Virginia’s undocumented population is between 250,000 and 300,000¹⁴—be responsible for problems of such great magnitude? The popular assumption is that undocumented immigrants are to communities as parasites are to hosts. While many Virginians and Americans embrace this idea, in general, researchers studying the impact of immigrants on communities and resources consistently find that immigrants contribute more to public coffers than they take away in the form of public benefits¹⁵ and that they commit fewer crimes.¹⁶

Knee-jerk responses to Virginia’s economic woes, limited resources, and an increasing foreign-born population do not encourage the development of sensible strategies for sustainable practices or sound policy decision-making.¹⁷ Virginia state lawmakers must begin to question the ultimate purpose and the long-term consequences of anti-immigrant proposals. Thankfully, the most egregious bills were defeated early on in the 2008 ses-

13. See Federation for American Immigration Reform, *Estimated Costs of Illegal Immigration*, http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecentersf134 (last visited Apr. 22, 2008).

14. PEW HISPANIC CENTER, *ESTIMATES OF THE UNAUTHORIZED MIGRANT POPULATION FOR STATES BASED ON THE MARCH 2005 CPS (2006)*, <http://pewhispanic.org/factsheets/17.pdf>.

15. See MICHAEL CASSIDY & SARA OKOS, *FISCAL FACTS: TAX CONTRIBUTIONS OF VIRGINIA’S UNDOCUMENTED IMMIGRANTS 4-5 (2008)*, <http://www.thecommonwealthinstitute.org/pages/immntaxcontribution.pdf>; see also RANDY CAPPS, EVERETT HENDERSON, JEFFREY S. PASSEL & MICHAEL FIX, *CIVIC CONTRIBUTIONS: TAXES PAID BY IMMIGRANTS IN THE WASHINGTON, DC, METROPOLITAN AREA 28 (2006)*, http://www.urban.org/UploadedPDF/411338_civic_contributions.pdf; EMILY EISENHAEUER, YUE ZHANG, CYNTHIA HERNANDEZ & ALEX ANGEE, *IMMIGRANTS IN FLORIDA: CHARACTERISTICS AND CONTRIBUTIONS 30-35 (2007)*, http://www.risep-fiu.org/reports/immigrants_spring_2007.pdf; JUDITH GANZ, *IMMIGRANTS IN ARIZONA: FISCAL AND ECONOMIC IMPACTS 57-58 (2007)*, http://udallcenter.arizona.edu/programs/immigration/publications/impact_judy.pdf; Francine J. Lipman, *The Taxation of Undocumented Immigrants: Separate, Unequal, and Without Representation*, 9 HARV. LATINO L. REV. 1, 1-2 (2006).

16. See IMMIGRATION POLICY CENTER, *IMMIGRANTS AND CRIME: SETTING THE RECORD STRAIGHT (2008)*, <http://www.immigrationpolicy.org/images/File/factcheck/ImmigrantsandCrime03-08.pdf> and RUBÉN G. RUMBAUT & WALTER A. EWING, *AMERICAN IMMIGRATION LAW FOUNDATION, THE MYTH OF IMMIGRANT CRIMINALITY AND THE PARADOX OF ASSIMILATION: INCARCERATION RATES AMONG NATIVE AND FOREIGN-BORN MEN (2007)*, http://www.aifl.org/ipc/special_report/sr_022107.pdf.

17. More than 10% of Virginia’s population is foreign-born. See U.S. CENSUS BUREAU, *2006 AMERICAN COMMUNITY SURVEY: DATA PROFILE HIGHLIGHTS (2007)*, <http://factfinder.census.gov>. For 2006, Virginia ranks eleventh in the nation with 773,785 foreign-born residents; JEANNE BATALOVA, *MIGRATION POLICY INST., STATES RANKED BY NUMBER OF FOREIGN BORN: 1990, 2000 & 2006 (2007)*, <http://www.migrationinformation.org/datahub/acscensus.cfm>.

sion.¹⁸

While the vast majority of this year's anti-immigrant legislation failed to pass the House and the Senate, we cannot assume that these bills are dead and gone forever. Certain issues have become staples of recent General Assembly sessions, including undocumented students' ability to access higher education and the extent to which charities and nonprofits receiving state funds should have the ability to serve undocumented people in need.¹⁹ And, despite these bills' failure to make it to the Governor's desk for approval, localities continue to test homegrown solutions to problems that they perceive to be the fault of immigrants.²⁰ So, where does this put us in terms of progress? Are we back at square one? Yes. This is an unfortunate outcome given that local policies on immigration-related matters tend to be short-sighted in scope and further fan the flames of anti-immigrant sentiment among residents, endangering local economies that depend upon immigrants for growth and stability and jeopardizing the safety of all commu-

18. *See, e.g.*, H.B. 928, Va. Gen. Assembly (Reg. Sess. 2008).

19. *See, e.g.*, H.B. 1618, Va. Gen. Assembly (Reg. Sess. 2007) (establishing that the responsibility of the Governor or other eligible authority to enter into an agreement with federal Immigration and Customs Enforcement thereby enabling state police to enforce civil immigration laws); H.B. 1961, Va. Gen. Assembly (Reg. Sess. 2007) (denying undocumented students eligibility for enrollment at public institutions of higher education); H.B. 2262, Va. Gen. Assembly (Reg. Sess. 2007) (increasing penalties for violations of housing occupancy ordinances); H.B. 2605, Va. Gen. Assembly (Reg. Sess. 2007) (imposing a civil penalty on employers who hire undocumented workers); H.B. 2622, Va. Gen. Assembly (Reg. Sess. 2007) (making it a crime for a business to harbor, transport, or shelter a person known to be not lawfully present); H.B. 2623, Va. Gen. Assembly (Reg. Sess. 2007) (denying in-state tuition to undocumented students); H.B. 2937, Va. Gen. Assembly (Reg. Sess. 2007) (restricting the operation of charities and nonprofits that assist people regardless of legal status); H.B. 262, Va. Gen. Assembly (Reg. Sess. 2006) (prohibiting admission of undocumented students to public institutions of higher education); H.B. 287, Va. Gen. Assembly (Reg. Sess. 2006) (requiring all driver's license examinations to be conducted exclusively in the English language); H.B. 487, Va. Gen. Assembly (Reg. Sess. 2006) (requiring state police to enter into an agreement with federal Immigrations and Customs Enforcement thereby enabling police to enforce civil immigration laws); H.B. 1048, Va. Gen. Assembly (Reg. Sess. 2006) (requiring document verification for illegal immigrants and establishing penalties for violations of this provision); H.B. 1050, Va. Gen. Assembly (Reg. Sess. 2006) (denying post-secondary benefits to undocumented students including eligibility for in-state tuition rates); H.B. 1067, Va. Gen. Assembly (Reg. Sess. 2006) (imposing a civil penalty on employers who hire undocumented workers); S.B. 677, Va. Gen. Assembly (Reg. Sess. 2006) (stating that undocumented students are ineligible for in-state tuition); H.B. 1625, Va. Gen. Assembly (Reg. Sess. 2005) (prohibiting the issuance of driver's licenses and learner's permits to persons incapable of communicating in the English language); H.B. 1798, Va. Gen. Assembly (Reg. Sess. 2005) (establishing legal presence requirements for access to state and local benefits); H.B. 2910, Va. Gen. Assembly (Reg. Sess. 2005) (denying undocumented students eligibility for admission to public institutions of higher education); H.B. 156, Va. Gen. Assembly (Reg. Sess. 2004) (prohibiting public institutions of higher education from "knowingly accepting" students); H.B. 157, Va. Gen. Assembly (Reg. Sess. 2004) (establishing the Secure Identification Act and requiring all recipients of state or local services or provide verifiable documentation recognized by the state or federal government).

20. *See supra* notes 2-4 and accompanying text.

nity members.

The potential adverse consequences of attempts to regulate international migration at the state level, in the absence of comprehensive federal reform, ought to be of paramount concern, as past and present-day examples demonstrate that such attempts often fail to produce meaningful results that resolve underlying structural problems. State-based initiatives to ban the domestic slave trade in the antebellum South, for example, did little to prevent slave trading, as buyers and sellers simply crossed state lines to conduct business as usual in neighboring territories that allowed the trade to thrive.²¹ In recent times, Prince William County has established itself with pride as the leader of Virginia's crackdown on illegal immigrants. The social and economic costs of such xenophobic practices have nearly drained the county's financial reserves dry²² and have contributed to an unprecedented mid-year decline of 819 students in public school enrollment.²³ It also helped Prince William County achieve a foreclosure rate higher than that of any other major metropolitan area in America in the final quarter of 2007, surpassing even the foreclosure rate for Detroit.²⁴

Prince William County should serve as a warning to other localities; its current circumstance clearly illustrates the dangers of adopting policies that further institutionalize racism and make communities undesirable places in which to live. Though increasing local law enforcement and securing geographic borders may seem like a good idea to some, each of us should ask what we hope to gain by engaging in activities such as rounding up undocumented immigrants for deportation. In a time of global economic decline, Virginia cannot afford to squander its limited state and local resources on a crackdown on illegal immigration. Undocumented immigrants do not come to America—or Virginia, for that matter—because the trek is easy or cheap.²⁵ The risks and costs associated with crossing international borders illegally are high to immigrants, particularly those with families and de-

21. See Steven Deyle, *The Irony of Liberty: Origins of the Domestic Slave Trade*, 12 J. OF THE EARLY REPUBLIC 37, 51-52 (1992).

22. Editorial, *Twisted Priorities: In Prince William County, Bashing Illegal Immigrants Skews Public Spending*, WASH. POST, Mar. 12, 2008, at A18.

23. Dan Genz, *Enrollment Updates Prompt Schools to Trim Budget*, THE EXAMINER (Va.), Mar. 27, 2008, available at http://www.examiner.com/a-1304411~Enrollment_updates_prompt_schools_to_trim_budget.html.

24. Nick Miroff, *N. Va. Foreclosures Form 'Ring of Fire': Chain of Housing Crisis Hot Spots Indicates Disparity in Market Downturn*, WASH. POST, Mar. 23, 2008, at C6.

25. See generally MOISES NAÍM, *ILLCIT: HOW SMUGGLERS, TRAFFICKERS, AND COPYCATS ARE HIJACKING THE GLOBAL ECONOMY* (2006) (describing the underground global trade of goods and people across national borders).

pendent children to support.²⁶

Legislating immigration policy at the state level is not a new phenomenon, despite the popular belief that an open borders policy prevailed prior to the Immigration Act of 1924.²⁷ Indeed, state-based legislation concerning the enforcement of federal immigration law can be traced back to the colonial period, the era in which our country was founded.²⁸ This historical fact has practical significance today because the assumed novelty of undocumented migration has been used to develop arguments challenging the constitutional status of undocumented immigrants, questioning the right of American-born children of undocumented parents to claim U.S. citizenship, and defining the authority and scope of federal power in developing immigration laws.²⁹

Our frenzied obsession with catching and deporting “illegals” does little to remedy the problems that our nation and state currently face. What will it take for the hatred and discrimination to stop? At what point will we begin to see the interdependence of nations, states, counties, towns, local communities, and individuals? When will we acknowledge that the “immigration problem” is not due to the presence of a single person or a group of people, but rather the outcome of a circumstance far more complex and connected to the global landscape in which America is a rich nation in an impoverished world?

Virginia’s legislators cannot stave off the hunger, poverty, or strife that people face in countries abroad, but they can develop practical solutions to shared problems in our state, at the very least. No one wants to live in a crime-infested community. Yet, legislators this year struck down a harmless cost-effective measure that would have improved community policing efforts and reduced crime simply by preventing officers from asking victims and witnesses of crime about their legal status.³⁰ What kind of a message does this send? For one, it says that our state legislators in 2008 valued anti-immigrant rhetoric over the safety of our communities. We can only

26. See RANDY CAPPS, ROSA MARIA CASTAÑEDA, AJAY CHAUDRY & ROBERT SANTOS, PAYING THE PRICE: THE IMPACT OF IMMIGRATION RAIDS ON AMERICA’S CHILDREN 1-6 (2007), http://www.urban.org/publications/411566_immigration_raids.pdf.

27. See Richard P. Cole & Gabriel J. Chin, *Emerging from the Margins of Historical Consciousness: Chinese Immigrants and the History of American Law*, 17 L. AND HIS. REV. 325, 329 (1999).

28. Gerald L. Neuman, *The Lost Century of American Immigration Law (1776-1875)*, 93 COLUM. L. REV. 1833, 1841-46 (1993).

29. *Id.* at 1838-39.

30. See S.B. 411, Va. Gen. Assembly (Reg. Sess. 2008) (prohibiting law enforcement officers from inquiring about the legal status of victims and witnesses).

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hope for a dramatic change at the federal level, one that could yield comprehensive immigration reform suitable for the time in which we live that promotes the humanitarian democratic ideals on which our nation was founded.