

IMMIGRANT JUSTICE PROJECT

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Mayor Thomas A. Macklin and Members of the City Council
1100 E. Main Street
Avon Park, Florida 338255

Sent via telefax and first-class mail

Dear Mayor Macklin and Avon Park City Councilors:

I have read with great concern the proposal to adopt Ordinance 08-06, which would make it illegal to aid and abet “illegal aliens” in Avon Park. Not only is this ordinance bad policy, it would in all likelihood subject the town to protracted and expensive litigation that it would ultimately lose. It also will likely lead to discrimination by local employers, landlords and other businesspeople that will subject them to costly litigation. In short, this ordinance is a disaster.

The Southern Poverty Law Center is a nationally recognized leader in the area of civil rights litigation. Founded in 1971, the Southern Poverty Law Center has litigated numerous civil rights cases on behalf of immigrants, women, people of color, and other victims of discrimination. Innovative strategies to shut down white supremacist organizations and combat injustice are part of the Center’s ongoing legacy. Notorious hate groups, such as the Aryan Nations and Ranch Rescue, have been toppled by remarkable monetary damages won by the Center. The Center created the Immigrant Justice Project in 2004 to handle high-impact civil rights and employment cases on behalf of immigrants in the South.

The Southern Poverty Law Center strongly urges the Council to reject this mean-spirited and legally troubled proposal. Although the legal problems with this ordinance are many, I have highlighted some of our most pressing concerns below.

1. Provisions of the Ordinance are Pre-empted by Federal Law and Thus Exceed the Authority of the City

Avon Park’s ordinance would punish individuals who “aid and abet” “illegal aliens” by, among other things, hiring or attempting to hire “illegal aliens.” The federal Immigration Reform and Control Act, which already regulates how employers must verify immigration status, provides an express pre-emption of the kind of local action Avon Park proposes: “The provisions of this section preempt any State or local law imposing civil or criminal sanctions . . . upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.” 8 U.S.C.A. §1324a(h)(2). The legislative history of the IRCA explains that: “[t]he penalties contained in this legislation are intended to specifically preempt any state or local laws providing civil fines and/or criminal sanctions on the hiring, recruitment or referral of undocumented aliens. . . .” H.R. REP. NO. 99-682(I), at 58 (1986) *reprinted in* 1986 U.S.C.C.A.N. 5649, 5662.

Avon Park simply cannot create its own immigration scheme to impose separate liability on employers. In LULAC v. Wilson, 908 F. Supp. 755 (C.D. Cal. 1995) the Court found that the verification, notification

and reporting provisions of California's Proposition 187 were preempted by federal law. The proposed ordinance here seeks to accomplish many of the same goals as those provisions of Proposition 187; we would fully expect another court to enjoin this ordinance if passed.

2. The Law Raises Serious Fair Housing Act Concerns

The federal Fair Housing Act ("FHA") prohibits discrimination in renting based on race, color, religion, sex, familial status, or national origin. 42 U.S.C. § 3604(a). The Florida Fair Housing Act makes it unlawful, "to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion." Fla. Stat. § 760.23 (2006).

One may sue a city under the FHA if its law, zoning decision, or other actions violate the FHA. 42 U.S.C. § 3615; United States v. Parma, 661 F. 2d 562, 572 (6th Cir. 1981).

The proposed ordinance would subject both the city itself and local landlords to liability under the Fair Housing Act. The U.S. Circuit Court of Appeals for the Eleventh Circuit has concluded that discriminatory intent is not necessary to establish a FHA violation if one can prove that the city's action has discriminatory effects. Hallmark Developers, Inc. v. Fulton County, 386 F. Supp. 2d 1369, 1381-1382 (N.D. Ga. 2005) (citing Jackson v. Okaloosa County, 21 F.3d 1531, 1543 (11th Cir. 1994)).

The Ordinance will likely have a discriminatory effect. Landlords cannot accurately distinguish between documented and undocumented persons because they are not experts in immigration law. As a result, they may refuse to rent to all immigrants or Latinos fearing they might violate the Ordinance. –

3. The Ordinance Will Also Violate Federal Civil Rights Law

A key federal civil rights law provides that, "[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, ... and to the full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens. ..." 42 U.S.C. § 1981. The Supreme Court has held that "all persons" in this statute prohibits discrimination not only based on national origin, but also based on alienage. Graham v. Richardson, 403 U.S. 365, 377 (1971); Takahashi v. Fish and Game Comm'n, 334 U.S. 410, 419 (1948), (concluding that § 1981 prohibits official discrimination against aliens). The Ordinance will have a discriminatory effect upon—and appears to be intended to discriminate against—the ability of Latinos, immigrants and other people of color to make housing and other contracts. The law will no doubt significantly affect the contractual rights of documented immigrants, since employers, landlords and other businesspeople will be unable to reasonably discern who is an "illegal alien."

4. The English-Only Requirement is Legally Problematic

The provision of the ordinance requiring that all official communications shall take place in English only raise serious constitutional issues. This section bars government officials and employees from communicating with thousands of Limited English Proficient (LEP) persons in terms that they can understand. In addition, the provision infringes upon the fundamental right of residents to petition government and to express their views. While the provision purports to permit some communications in

other languages when required by law, it bans voluntary communications in languages other than English.

Courts have enjoined similar provisions from taking effect, and we believe that this provision of the Ordinance would meet a similar fate. See e.g. Yniguez v. Mofford 730 F. Supp. 309 (D. Az. 1990); Montero v. Meyer 696 F. Supp. 540 (D. Colo. 1988). In addition, the apparent prohibition on serving LEP individuals in their own language would clearly and intentionally violate Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and may also be pre-empted by LEP Provisions issued by various federal agencies under Title VI.

This provision is also impermissibly vague, since it fails to give fair notice of what is prohibited and chills the exercise of constitutionally protected activity. The exemption for communications in languages other than English when “explicitly mandated by the federal government, the State of Florida, or the City of Avon Park” fails to provide the necessary degree of precision mandated by the Constitution. See Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1972) (“We insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.”)

5. The Ordinance Imposes Unreasonable Requirements Upon Local Landlords and Businesspeople

The ordinance repeatedly uses the term “illegal alien” but nowhere defines that term. The term “illegal alien” is not a legal term generally used in the U.S. code. There are a myriad of possible immigration statuses; the law fails to make clear which would qualify under this provision. The immigration code is enormously complex; determining someone’s precise status at any moment often requires consultation with the immigration statutes, enacting regulations and Executive Orders. Immigrants can hold any of the following statuses: legal permanent residence (green card holder); dozens of visa categories; asylees, temporary residents, or temporary protected status, among many others. At times, people’s status may be extended as a matter of law, even though it would appear looking at someone’s documents that their status has expired. For example, an individual may have a card showing he has been granted temporary protected status good through November 1, 2006. By Executive Order that status might be extended as a matter of law until May 1, 2007. A review of his card would reveal the individual to be an “illegal alien”; in fact that individual would be entitled to be in the U.S. and to work in the U.S.

Aside from making the law subject to a challenge for vagueness, it is unfairly burdensome to ask local employers, landlords and businesspeople to take on the additional responsibility of acting as immigration agents. Immigration law is immensely complex; asking untrained private individuals to enforce that law is unreasonable and would surely lead to wildly inconsistent results.

6. The Factual Premises Underlying the Ordinance are Simply Wrong

The initial “whereas” clauses of the ordinances report as though established fact what is simply anti-immigrant propaganda. There is simply no basis in fact for those statements. (“illegal immigration. . . destroys our neighborhoods and diminishes our overall quality of life”) Immigrants are being scapegoated for problems for which they are not responsible. In fact, substantial research shows that the role played by immigrants—regardless of their status—in our economy is positive.

Millions of immigrants, documented and undocumented, are in the U.S. workforce and contributing

to the economy. Nearly all undocumented men (96%) in the U.S. are in the workforce, which is a dramatically higher rate than that of U.S. citizens. These workers disproportionately work in low-paying and dangerous occupations. The evidence also shows that these workers pay far more in taxes than they receive in benefits. Immigrants routinely have Social Security taxes withheld from their paycheck and do not receive credit for those taxes. Indeed, the Social Security Administration has a fund of more than \$420 billion dollars of earnings paid by employees who never claim benefits. Much of that money comes from immigrant workers. Contrary to stereotypes, there is little evidence that immigrants come to this country to receive welfare. Immigrants actually use welfare at lower rates than do native-born Americans.

In a comprehensive study, the National Research Council of the National Academy of Sciences (NRC) found that immigrants raise the incomes of U.S.-born workers by at least \$10 billion each year. This estimate is actually quite conservative because it does not include the impact of immigrant-owned businesses. Still, the NRC estimates that the typical immigrant and his or her children pay an estimated \$80,000 more in taxes than they will receive in local, state, and federal benefits over their lifetimes.

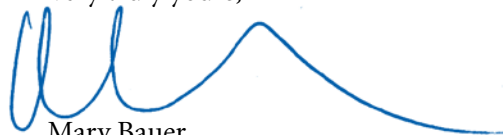
Most studies looking at the issue conclude that immigrants actually lead to an increase in the number of jobs available. Immigrants produce jobs in several ways: by raising the productivity of already established businesses, by investing capital and by spending money on consumer goods. Scholarly studies have reached a consensus that immigrants do not have a negative effect on the earnings and the employment opportunities of native-born Americans.

7. Conclusion

We strongly urge Avon Park to reject this legally troubled and mean-spirited proposal.

We would be happy to discuss this issue further with members of the Council or other Avon Park citizens.

Very truly yours,



Mary Bauer
Director, Immigrant Justice Project
Southern Poverty Law Center