



When Mr. Kobach Comes to Town

Nativist Laws & the Communities They Damage

*A Special Report from the Southern Poverty Law Center
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THE SOUTHERN POVERTY LAW CENTER is a nonprofit organization that combats hate, intolerance and discrimination through education and litigation. Its Intelligence Project, which prepared this report and also produces the quarterly investigative magazine *Intelligence Report*, tracks the activities of hate groups and the nativist movement and monitors militia and other extremist antigovernment activity. Its Teaching Tolerance project helps foster respect and understanding in the classroom. Its litigation arm files lawsuits against hate groups for the violent acts of their members.

MEDIA AND GENERAL INQUIRIES

Mark Potok or Heidi Beirich

Southern Poverty Law Center
400 Washington Ave., Montgomery, Ala.
(334) 956-8200

www.splcenter.org

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About the Report

This report was prepared by the staff of the Southern Poverty Law Center.

The principal writer was Leah Nelson, with contributions from Evelyn Schlatter and Research Director Heidi Beirich.

The report was edited by Intelligence Project Director Mark Potok, with assistance from Booth Gunter. It was designed by Russell Estes.

On the Cover

Nativist lawyer Kris Kobach has long been associated with the political right.
(from kriskobach.org)

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EXECUTIVE SUMMARY

Trail of Tears

In the last decade, high levels of non-white immigration have sparked a backlash against the changing racial makeup of the United States. Hate crimes against Latinos, who make up the bulk of the immigrants, have spiked. The number of racist hate groups has expanded by more than half. Frustration with what is seen as federal inaction has fueled the growth of vigilante-type groups patrolling the border and the proliferation of anti-immigrant ordinances and state laws.

The municipal response began with a proposed 2006 law aimed at punishing undocumented immigrants in San Bernardino, Calif., and quickly metastasized into scores of similar proposals, many in communities with just a handful of immigrants, that would sanction employers, landlords and the immigrants themselves. Finally, early last year, the state of Arizona adopted the harshest nativist law yet seen.

The San Bernardino ordinance was eventually voted down, but many other towns — Hazleton, Pa., Valley Park, Mo., Farmers Branch, Texas, and Fremont, Neb., among others — adopted their own versions of the California proposal. What’s more, in the aftermath of Arizona’s adoption of the highly controversial S.B. 1070 anti-immigrant statute, legislators in at least six other states and uncounted numbers of cities and towns are considering proposals for similar laws.

They may want to think twice. The towns that passed nativist laws in Pennsylvania, Missouri, Texas and Nebraska, along with the state of Arizona, have spent millions of dollars to defend them in court, and almost every judicial decision so far has gone against them. One community, faced with skyrocketing legal costs, had to raise property taxes, and another was forced to cut personnel and special events and even outsource its library. Only one had even a small part of its ordinance upheld in the courts.

That was just the beginning. The four towns and one state examined in this report all saw a crisis in race relations as conflicts between Latino immigrants and mostly white natives escalated. Latinos reported being threatened, shot at, subjected to racial taunts and more. Police are having trouble getting cooperation from any in their Latino communities. Pro-immigrant activists have been threatened with notes that promise to “shed blood” to “take back” communities. The mayor of one town had his house

vandalized after opposing a proposed law and was warned by federal agents to be careful; he ended up retiring after four terms in office. Angry protests and counter-protests, along with dangerously rising tensions, have rocked one town after another. In some communities, business districts have largely collapsed.

Behind all of this stands one man: Kris Kobach, a former Kansas City law professor who was just elected Kansas secretary of state. For the better part of the last six years, Kobach has been chief legal counsel to the Immigration Reform Law Institute, which is the legal arm of the Federation for American Immigration Reform (FAIR). He helped to write and defend in court the laws in Hazleton, Valley Park, Farmers Branch, Fremont and Arizona, and he is seeking to do even more.

Kobach’s affiliation with FAIR is important. For most of the last three decades, FAIR has been working, as its founder John Tanton once wrote, to preserve “a European-American majority, and a clear one at that.” Although the organization is typically less than candid about its motives, its president, Dan Stein, has sounded similar notes. In a heretofore unknown oral history housed in a university library, Stein expressed his anger at the Immigration and Nationality Act of 1965, which sought to end a longstanding and racist system of quotas. President Lyndon B. Johnson, in signing the act, had celebrated the demise of the old racist system, saying that “it will never again shadow the gate to the American nation with ... prejudice.” Stein didn’t see it that way. The act, he said, was a “key mistake” in American policy forced by people who sought “to retaliate against Anglo-Saxon dominance” and create “chaos.”

Even if the motives of Kobach are otherwise, the experience of those towns that have collaborated with him should serve as a stark warning. After the

city of Albertville, Ala., decided against working with Kobach based on his track record, the publisher of the local *Sand Mountain Reporter* summed it up like this: “I fear Mr. Kobach targets towns like ours, and towns like Hazleton, Pa., Valley Park, Mo., and Farmers Branch, Texas, as financial windfalls. I think he preys on the legitimate concerns, the irrational fears and even some bigoted attitudes to convince cities to hire him to represent their interests in lawsuits that may not be winnable.”

The American immigration system is surely bro-

ken, and comprehensive immigration reform seems like the only real solution — a solution that has largely been staved off by nativist groups including FAIR. In the absence of national action, states and local communities have attempted to fill the gap, passing and defending ill-advised laws that seek to preempt federal power over immigration. But as this report makes clear, that path has proven a treacherous one — a trail of tears.

Mark Potok, Editor

THE COMMUNITIES

The Cost of Nativist Legislation

On the evening of July 29, 2008, nearly 1,000 people crowded into a high school auditorium in Fremont, Neb., to join a contentious debate over an ordinance that would bar undocumented immigrants from living or working in the town of 25,000. For three hours, one person after another, more than 70 in all, strode to the microphone to speak out, often violently, about the proposed law.

If the City Council didn't adopt the proposal, exclaimed one speaker in the historically white town whose population went from 4% Latino in 2000 to nearly 8% in 2008, "we will be forced to defend ourselves by any means necessary."

If it did, retorted another, it would be an attack on the very notion of America as a land of opportunity and "only promote racism and discrimination."

It was past 11 that night when Mayor Donald "Skip" Edwards finally broke the council's stalemate with a tie-breaking "no" vote. "Control of illegal immigration is a federal issue," said Edwards, reflecting the dominant view among legal scholars. "I'm bound by the law, too. All of us want something done to correct the situation. We can best help by pressuring the U.S. government to take action."

Fremont's brush with the nativist movement now sweeping towns and states in the absence of federal immigration reform might have ended there. But City Councilman Bob Warner, who proposed the Fremont ordinance, had already made it clear that he intended to go the distance. "Come hell or high water," he'd said at a council meeting a month earlier, "I will not back off this ordinance."

Two years later, after a bruising campaign that finally led to the ordinance's approval in a special election last June, Fremont is struggling — and not only with the \$750,000 in anticipated legal defense expenses that forced it to raise property taxes late last year. Like other towns around the country that have passed laws target-



In town after town, lawyer Kris Kobach has helped to write and then defend harsh anti-immigrant laws. The cost to these communities, in terms of both dollars and race relations, has been immense.

ing undocumented immigrants, this once peaceful community dominated by small industry and a meatpacking plant is undergoing a kind of social crisis.

A local advocacy group last summer collected 65 reports in Fremont of racial harassment of Latinos — none of whom, given the racial tension, would give their names. They told of threats to set their businesses on fire, BB guns being fired at them and their children, and being subjected to racial taunts. Latinos "won't talk" to local police any more, Deputy Chief Jeff Elliott adds, "because of the immigration thing." Former City Council President Gary Bolton, an oppo-

nent of the law, got threatening E-mails and phone calls — and says the former mayor did, too. The threats that anti-ordinance activist Kristin Ostrom received included one that read, "We shed blood to build this country and we will shed blood again to take it back." At around the same time, someone hurled a large rock through her window.

For all of this and more, Fremont can largely thank one man — Kris Kobach, former advisor on immigration law to Bush Attorney General John Ashcroft, former constitutional law professor, and newly elected Kansas secretary of state. Kobach, who until recently was the paid senior counsel of the nativist Immigration Reform Law Institute, was the main architect of the Fremont ordinance and similar laws in towns in Missouri, Pennsylvania and Texas, and he largely wrote Arizona's anti-immigrant S.B. 1070 law, now stalled in the federal courts. In the next few

months, legislators in at least six states plan to introduce similar, Arizona-style statutes.

And as expenses mount and racial strife grows in the communities that he already has touched, Kobach has drawn increasing anger from those who see him as a Harold Hill, the protagonist of the film “The Music Man.” Like Hill, they say, Kobach comes to town with big ideas and a can-do attitude but leaves behind a trail of tears — huge legal bills and unworkable laws coupled with social turmoil.

“Shame on you,” said Phoenix Mayor Phil Gordon, an opponent of Arizona’s S.B. 1070, when asked what he’d like to say to Kobach, who declined comment for this story. “What good has this divisive law accomplished? I’ve seen firsthand the way it’s torn apart our state, the way it’s hurt us economically and hurt us in terms of security by diverting valuable resources away from catching real criminals. The only people better off for Kobach’s efforts are people like him — political opportunists who want to use stereotypes and distortions to make a name for themselves.”

Enter Stage Right

Kris Kobach has been a creature of the political right for as long as a public record exists. As an undergraduate at Harvard, he was a leader of the College Republicans and an acolyte of the late professor Samuel Huntington, who fretted about immigration-fueled changes in America’s ethnic makeup. Kobach opposed the student-led divestiture movement, which sought to end investment in apartheid-era South Africa, saying investors could instead serve as agents of change.

After a successful further academic career — he went to Oxford as a Marshall scholar and earned a doctorate in political science there before going on to Yale Law School — Kobach found work as a constitutional law professor at the University of Missouri-Kansas City. Three years later, in 1999, he went into politics, winning a City Council seat in a Kansas City suburb and, the next year, running unsuccessfully for a state senate seat. But it was in 2001, just 10 days before the 9/11 attacks, that he really hit his stride, landing a prestigious White House fellowship.

Assigned to work with John Ashcroft, Kobach quickly became the attorney general’s chief advisor on immigration and border security, although he was not a specialist in that area. When his fellowship expired, Ashcroft asked Kobach to stay on and he did, helping to create a program that required tens of thousands of Muslim and Middle Eastern visa holders and visitors



AP IMAGES/MATT YORK

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by diverting valuable resources away from catching real criminals. The only people better off for Kobach’s efforts are people like him — political opportunists who want to use stereotypes and distortions to make a name for themselves.” — Phoenix Mayor Phil Gordon

to register with the government and be fingerprinted. The program was extremely controversial, drawing opposition from the Bush State Department as well as an array of human rights groups.

Kobach left his mark on the Department of Justice (DOJ) in other ways. A highly controversial memo that Kobach wrote for Ashcroft in 2002 literally laid the groundwork for Arizona’s S.B. 1070, concluding that local and state police have the power to arrest undocumented immigrants for civil violations of immigration law — a position at odds with most legal scholars, not to mention 1989 and 1996 opinions issued by the same DOJ Office of Legal Counsel that published Kobach’s memo.

White House officials at the time told *The New York Times* that they felt “blindsided” by the memo, which they feared could lead to racial profiling, estrange Latinos from the GOP, and harm relations with Latin American nations.

Kobach also takes credit for leading the DOJ’s much-criticized 2002 reform of the immigration court system, which cut the number of Board of Immigration Appeals (BIA) judges from 19 to 11— a change described as a “streamlining” of the system by some but criticized by others as a “purge” of pro-immigrant judges that compromised the system’s ability to find facts. Within four years, the DOJ, seeing that the BIA reform was clogging the courts and resulting in poor decisions, effectively reversed Kobach’s moves, partly by boosting the number of judges.

Kobach was gone by that time, having returned in 2003 to his Kansas City professorship. In 2004, he signed on with the Immigration Reform Law Institute (IRLI), the legal arm of the nativist Federation for American Immigration Reform (FAIR). (The Southern Poverty Law Center lists FAIR as a hate group because of its promotion of white nationalism and its ties to white supremacy; FAIR founder John Tanton has written that a clear “European-American majority” is needed to protect American culture.) As IRLI’s paid senior counsel (today, he is listed merely as “of counsel” to IRLI), Kobach worked with IRLI Director Michael Hethmon to file his first anti-immigration lawsuit, this one against Kansas. The suit, which sought to kill a law granting in-state tuition rates to some children of undocumented immigrants, was dismissed in 2006. (A similar lawsuit, filed by Kobach years later, ended last November, when the California Supreme Court roundly rejected his claims.)

Kobach also ran for Congress in 2004, helped along by a \$10,000 from U.S. Immigration PAC, which is run by Tanton’s wife, Mary Lou. Kobach lost after his Democratic opponent, Dennis Moore, called him a racist and criticized his close association with FAIR — attacks that infuriated Kobach. (Kobach has never publicly addressed the controversial aspects of FAIR.)

In the coming years, Kobach would begin his work with municipalities and states drafting laws aimed at so punishing immigrants that they would “self-deport,” in the words of FAIR President Dan Stein. Like others around the country, he also would use the publicity associated with his anti-immigrant activism to boost himself politically, winning election just last November as Kansas secretary of state. During that campaign, Kobach suggested President Obama prove he is a citizen and accused conservative bugbear ACORN of “promot[ing] voter fraud.” At the



In 2006, Mayor Lou Barletta of Hazleton, Pa., wrote the first anti-immigrant ordinance to be adopted in recent years. His community paid a steep price, but Barletta went on to win a seat in Congress.

same time, without any evidence and very much against the probabilities, Kobach claimed that “in Kansas, the illegal registration of alien voters has become pervasive.”

Taking it to the Streets

In the acclaimed 2009 documentary “9500 Liberty,” which documents how Prince William County, Va., first adopted and then quickly repealed an Arizona-style anti-immigrant law, IRLI’s Michael Hethmon makes a revealing statement about his organization’s aims in towns like Fremont. Each of these local laws, he says, are simply “field tests” — experiments aimed at testing the legality of various approaches to immigration. Though Hethmon elsewhere likened his and Kobach’s work to that of pioneering civil rights lawyers,

many residents of the towns where they operated today feel more like survivors of crude medical experiments.

Hazleton, Pa., whose Latino population skyrocketed from just under 5% in 2000 to an estimated 24% average in the 2005-09 period, was the first.

In 2006, Kobach and Hethmon got involved in the town that hard-line Mayor Lou Barletta had promised to make “the toughest place on illegal immigrants in America.” Barletta’s proposed ordinance, passed that July, allowed the city to deny business permits to employers who hired illegal immigrants, mandated fines of up to \$1,000 for leasing to them, and made English the official language.

Civil rights groups sued the town the next month. In court, the city claimed that undocumented immigrants had brought crime and other ills, but its own data did not reflect that. There reportedly were 8,575 felonies in Hazleton between 2000 and 2007; only 20, or about one fifth of 1%, were linked to undocumented immigrants. Faced with evidence that there was no immigrant-linked crime wave or overcrowded schools and hospitals, Barletta said, “The people in my city don’t need numbers.” Apparently, that kind



of reasoning wasn't good enough for the court system. In July 2007, after Hethmon and Kobach had retooled the law to try to withstand the legal challenge, a federal judge found the law unconstitutional. Last September, a unanimous three-judge panel of a U.S. Court of Appeals upheld the core of the lower court decision. Nevertheless, Hazleton plans an appeal to the Supreme Court.

By that time, the city was looking at \$2.8 million in legal costs, according to the local *Standard Speaker* newspaper — almost \$400,000 already paid to its own lawyers, including Kobach, and another \$2.4 million it was ordered to pay plaintiffs' lawyers. But that wasn't all. Almost immediately after the ordinance passed in 2006, Latinos began leaving. Within four months, *The Los Angeles Times* said, merchants in the Latino business district had reported drops in business of 20%-50%. "We have a war against us," embattled store owner Elvis Soto lamented.

According to testimony cited by the appeals court in its decision, one Latino landlord plaintiff reported receiving frightening hate mail on three occasions. One of the mailings included the phrases "If it's brown, flush it down" and "Subhuman spic scum" and



VOIGD AP IMAGES/THE CITIZEN'S VOICE KRISTEN MULLEN (PROTESTER) AP IMAGES/STEVE KLAVER

Like most communities that adopted severe anti-immigrant laws, Hazleton, Pa., was roiled by demonstrations for and against its ordinances.

also a link to the website of the neo-Nazi National Socialist Movement. In addition, the appeals court cited the case of the publisher of a Spanish-language newspaper in Hazleton who, while covering a pro-ordinance rally, was surrounded by an angry mob who yelled, "Get out of the country!" and "Traitor!"

Barletta, however, did just fine. In 2008, after getting national publicity for his ordinance, he was named "Mayor of the Year" by the Pennsylvania State Mayors' Association. Then, last November, he beat 13-term congressman Paul Kanjorski — the same man he had lost to in races for the same seat in 2002 and 2008.

The St. Louis suburb of Valley Park, Mo., suffered through a similar experience. In July 2006, the same month that Hazleton officials approved their ordinance, Valley Park's Board of Aldermen unanimously passed a Hazleton law clone. Employing language similar to that of Hazleton officials, the Valley Park ordinance declared that "illegal immigration leads to higher crime rates, contributes to overcrowded classrooms and failing schools, and destroys our neighborhoods" — although there was no evidence at all of either rising crime or overcrowding.

According to St. Louis' *Riverfront Times*, anonymous calls almost immediately began to come in to the county police, asking them to investigate places where undocumented workers supposedly lived. The paper said officers responded with late-night visits in which



(O'HARE) AP IMAGES/TONY GUTIERREZ; (GIRL WITH FLAG) AP IMAGES/LM. OTERO

they asked Latinos for proof of legal residency. Dozens of Latino residents fled as a result just as reporters from two major television networks were showing up “to chronicle the discord,” the paper added.

And, of course, there were the inevitable lawsuits, featuring Kobach as chief defense attorney. At one point, the town decided that it could not defend the part of the law punishing landlords who rented to the undocumented, and repealed it. At the same time, it substantially narrowed the part of the law governing businesses so that only those businesses that failed to use the federal E-Verify system to check on their workers' immigration status could lose their business licenses. In the end, the judge upheld what little was left of Valley Park's anti-immigrant legal package — but that was only after the town was facing some \$270,000 in legal costs.

Turmoil in Texas

The Dallas suburb of Farmers Branch, Texas, started out 2006 with a scandal, suspending its top law enforcement officer for telling a hiring panel that as long as he was chief, “We won't have any gooks in this department.” It was a comment that portended a long, uneasy season of racial strife involving non-white immigrants.

Then, in May, an 18-month-old toddler was killed in a drive-by shooting carried out by two undocumented immigrants — a crime that seemed to set off a wave of nativist anger. “We need to address illegal immigration in our city and we need to do it now,” City Councilman Tim O'Hare wrote to fellow council members. “Drive around our city. Bob [Moses, another city councilman] said he doesn't want our city to become a ghetto. Half of our city already is.

Farmers Branch, Texas, Councilman Tim O'Hare (above left), concerned that his city was turning into a “ghetto,” worked with nativist lawyer Kris Kobach to pass harsh anti-immigration ordinances. Latino residents including (from left) Natalie and Elizabeth Villafranca protest the laws.

More of it will be if we don't do something quickly. ... I do not like to use a little girl's death to support a point, but the truth is more people will die if we don't take action.”

That August, as Hazleton and Valley Park struggled through the tumultuous aftermath of their own anti-immigrant ordinances, City Councilman Ben Robinson sent an E-mail to colleagues adding his suggestion that “all foreign language books, CD's and periodicals” be removed from the Farmers Branch library. “We should encourage use of the English language not discourage it,” he wrote.

While it's unclear what the first contact between IRLI and Farmers Branch was, E-mails show that a local lawyer named David Koch was an intermediary. On Sept. 1, O'Hare received a copy of Kobach and Hethmon's model ordinance from FAIR's then-Western field director, Rick Oltman. He transmitted it to the entire City Council, which requested a letter from Hethmon attesting to its legality.

Hethmon's response was equivocal at best. “I am not aware of any city in the country which has successfully implemented a local enforcement measure,” he conceded. He described the latest retooled version of the model ordinance as the best effort to date drawn up by him, Kobach and “some other lawyers,”

but warned that “no one can advise that any of this is ‘legal’ until a court confirms it is so.”

Nevertheless, the town went ahead. On Nov. 13, 2006, it approved the ordinance, which required renters to provide proof of legal residency or citizenship and fined landlords who rented to the undocumented. Opponents of the law then gathered enough signatures to trigger a 2007 referendum, assuming that it would be rejected by voters. Four days before the referendum, Mayor Bob Phelps, along with a former mayor and a former city manager, issued an unexpected letter opposing the law. “We believe this is the worst ordinance ever considered by a Farmers Branch City Council,” they wrote. “Continuing this course of action will create a financial and social crisis in our community that will take years to recover from.” But to the surprise of its opponents, the law — or rather, a retooled version of the law that Kobach had thought more likely to hold up in court — was approved.

Once again, rights organizations sued. In all, Kobach wrote a total of three versions of the law, but none of them withstood challenge. The final law was permanently enjoined in March 2010, though the town plans an appeal. According to the *Dallas Morning News*, it owed \$3.7 million in legal fees as of this January.

To begin to meet that expense — and the very real possibility that it will have to spend millions more on appeal — Farmers Branch last September cut \$350,000 in personnel funding and another \$150,000 from its special events budget.

(Like in the other towns where he’s operated, it’s difficult to disentangle how much money was paid to Kobach personally, versus other lawyers or for expenses. But Yahoo!News reported last year that Kobach has said that he normally charges about \$50,000 a year to defend his ordinances against legal challenges. He described that rate as under market and said he wants to ensure “the cities can afford it.”)

There have been other costs, as well. After criticizing the law in run-up to the referendum, for instance, Mayor Phelps had his home vandalized twice and was warned by federal agents sent to investigate the second attack that he should not spend Election Night at City Hall, as he had in the past. He later told a *Dallas Morning News* columnist that he’d received piles of hate mail calling him “a traitor” and “a pathetic excuse for a leader,” among other things. “People turned on him so fast,” his wife said of the once-popular politician who had run unopposed in three of his prior four terms. In 2008, after 12 years as mayor, Bob Phelps

retired. City Manager Linda Groomer also quit in the aftermath of the law’s passage.

At the same time, race relations have gone from bad to worse.

Ross Ramirez, a U.S. citizen, told the Southern Poverty Law Center that he was pulled over by police three times in a month and now avoids Farmers Branch entirely. Elizabeth Villafranca said her downtown restaurant has lost much of its Latino clientele. “Even if the ordinances will never be enforced, they still manage to get the result they want,” she said. “We have workers who are documented who don’t want to work here because they don’t want to be hassled by the police.”

Danita Barker, the town librarian since 2003, said the atmosphere in Farmers Branch has changed “drastically” since the law’s passage and recounted seeing white library patrons demand to see Latino patrons’ immigration papers. She said she was even told by a city official recently that the library was “too welcoming” to Latinos. In November, the town voted to outsource the library and Barker lost her job.

The only people who seem to have benefited from the controversy are lawyer David Koch, who won a council seat, and former Councilman Tim O’Hare, who replaced Mayor Phelps in the 2008 election and has since appeared on almost every TV news network and even spoken to the extreme-right John Birch Society.

Arizona and Beyond

The culmination of Kobach’s work to date came on April 23, 2010, when Arizona Gov. Jan Brewer signed what is certainly the harshest anti-illegal immigration measure in memory. The S.B. 1070 law, largely drafted by Kobach, makes it a crime for an immigrant to be in Arizona without carrying immigration documents. It also authorizes police to check the status of anyone detained for other reasons if they have a “reasonable suspicion” that he or she is not in the country legally. The law’s stated purpose is “attrition through enforcement.”

Kobach, who worked with state Sen. Russell Pearce to write the bill, wasn’t very diplomatic in the run-up to its adoption, claiming that its opponents wanted undocumented immigrants to “sign up for Obamacare” and “vote Democratic.” He was even less so in private. In an E-mail obtained by the ThinkProgress.org blog, Kobach suggested statutory language authorizing police to use even trivial local regulations as an excuse to demand immigration

papers. Specifically, he said, police could “use violations of property codes (i.e. cars on blocks in the yard) or rental codes (too many occupants of a rental accommodation) to initiate queries.”

Although polls have shown consistent support for the law by Arizona majorities (except among registered Latino voters in the state, more than 80% of whom oppose it), its adoption set off a firestorm. Critics charged that it essentially legalized the racial profiling of Latinos. It was denounced by the National Council of Churches, the U.S. Conference of Catholic Bishops and other religious groups. Mexico warned its citizens not to visit Arizona, where they might be “harassed and questioned without further cause at any time.” The National Association of Latino Elected and Appointed Officials called it “unconstitutional and costly.”

On May 1, just over a week after Brewer’s signature, tens of thousands of people demonstrated against the law in more than 70 cities, including a Los Angeles rally that drew as many as 60,000 protesters. President Obama called it “misguided,” saying it would “undermine basic notions of fairness” and Latino cooperation with police. A large number of lawsuits against the law were filed, including one from the U.S. Department of Justice asking for a preliminary injunction barring enforcement. Last July 28, the day before the law was to go into effect, a federal judge did enjoin the part of the law that authorizes police to question those they suspect of being undocumented immigrants. The state has hired Kobach as a consultant to its defense counsel in the case, which by October had cost it more than \$1 million.

Sports and entertainment celebrities harshly criticized the state, and a coalition of pop musicians called Sound Strike is refusing to play in Arizona. But perhaps most damaging of all were boycotts, among them measures in more than half a dozen cities, including Los Angeles, San Francisco, and St. Paul, Minn. The



Arizona Gov. Jan Brewer supported and ultimately signed the state’s draconian S.B. 1070 law. At the same time, Brewer became known for groundless and provocative statements like one suggesting that Arizonans were being beheaded by immigrants.

Center for American Progress, a progressive think tank, said in November that losses from canceled conventions had already cost the state \$141 million in direct spending.

Early this year, Kobach moved on to yet another controversial and legally dubious strategy. Working with State Legislators for Legal Immigration — a nativist group that describes itself as a FAIR “partner” seeking to implement that group’s ideas — he drafted two measures aimed at stripping U.S. citizenship from babies born to undocumented immigrants in this country. Seeking to undo the dominant interpretation of the 14th Amendment, they would redefine a “citizen of a state” as a person who has at least one parent living in the country

legally and also urge Congress to redefine citizenship identically. At a Jan. 5 press conference, the group said it intended to introduce the measures in at least five states this year.

The plan was immediately denounced by a coalition of civil rights groups, including the Southern Poverty Law Center, that pointed out that the constitutional amendment had long been interpreted as conferring citizenship upon all who are born here. “It was one of the greatest civil rights achievements of American history to adopt an amendment to the Constitution that sets a fixed, simple and objective rule for citizenship,” said Walter Dellinger, a former acting solicitor general and current visiting Harvard Law School professor. “The Supreme Court in 1898 made it absolutely clear that birth in the United States constitutes a sufficient and complete right to citizenship and the Supreme Court has never looked back on it.”

Smelling the Coffee

The record of Kris Kobach and his colleagues at IRLI and FAIR has not been a stellar one. Kobach was the principal architect of anti-immigrant ordinances in four towns. Even after repeatedly modifying their laws to withstand legal challenges and spending small fortunes to do so, only one had even a part of its ordinance upheld.

Kobach's Arizona law, meanwhile, is also stuck in the courts, where many scholars predict it will ultimately be struck down. And his latest effort, attacking the 14th Amendment, is very likely doomed to failure as well.

Some communities have begun to wake up to the perils of following Kobach and his colleagues into their legal jihad against undocumented immigrants. Early last year, the City Council of Albertville, Ala., took up the idea of hiring Kobach to draft an ordinance but backed off after consulting with others who had worked with him. "The advice I have gotten from towns which passed similar resolutions said they would not do it again," councilman Randy Amos said then. Afterward, the publisher of the local *Sand Mountain Reporter* wrote a stinging editorial. "I fear Mr. Kobach targets towns like ours, and towns like Hazleton, Pa., Valley Park, Mo., and Farmers Branch, Texas, as financial windfalls," Ben Shurett wrote. "I think he preys on the legitimate concerns, the irrational fears and even some bigoted attitudes to convince cities to hire him to represent their interests in lawsuits that may not be winnable."

Last October, the same issue came up in the small Houston suburb of Tomball, Texas, with the same result. "Neither I, nor any of your City Councilmen support illegal immigration," Mayor Gretchen Fagan wrote in an op-ed that cited the costs to other cities. But, she added, "As your local elected officials, our



Kris Kobach has crisscrossed the country in his drive to get communities and states to pass nativist laws. In 2008, he collaborated with Kansas state Sen. Peggy Palmer.

job is to protect the taxpayers of Tomball, not address issues beyond our control."

For Phil Gordon, the Phoenix mayor who opposes his state's law, Kobach's crusade to launch state and local attacks on undocumented immigration is ruining the only real chance to deal with immigration problems. "The worst part," he said, "is all the heat, light and hatred surrounding S.B. 1070 has left us deadlocked on the bigger, more important task in front of us — actually passing true comprehensive immigration reform. We're so busy talking about Kris Kobach's train wreck of a law, we have no time to treat the injured lying on both sides of the track."

THE MAN

A Biography of Kris Kobach

While campaigning for Kansas secretary of state last year, Kris Kobach decided to have some fun at a Republican barbecue in Leavenworth. Lifting a joke from Rush Limbaugh, he asked his fellow conservatives what President Obama and God had in common. The punch line: neither has a birth certificate. Later, he told another rally that the questions about Obama's birthplace were fair as long as the president failed to produce a so-called "long form" birth certificate.

It's no great surprise that this hard-core conservative activist would express views from the far-right "birther" movement. Over the years, he's echoed many of the far right's themes. But in the past decade, the 44-year-old lawyer has found a lucrative legal career — and now a measure of political prominence — by specializing in one particular corner of conservative politics: anti-immigrant fervor.

The former Bush Administration official boasts a political pedigree that seems well suited to his mission.

Kris William Kobach was born March 26, 1966, in Madison, Wis. The family — Kris, his two younger sisters, and his parents — moved in 1974 to Topeka, Kan., where his father bought the local Buick dealership.

An ambitious student, Kobach was involved in more activities than most — honor society, debate team, forensics, student council, spirit club and intramurals. He went on to Harvard, where, as a lifelong conservative, he stood out on the liberal campus. He served as president of the Harvard Republican Club and found a mentor in the late Samuel Huntington, an influential political science professor who came to see Latino immigrants as a scourge on American culture.

With Huntington as his advisor, Kobach earned the Harvard prize for the best student thesis in 1989. He analyzed how the South African business community functioned within apartheid and took the unpopular position that investors should not divest their holdings in that country but rather remain as agents of change. A year later, he published the thesis as a book.



AP IMAGES/JOHN HANNA

Kobach graduated in 1988 at the top of his class in Harvard's department of government, according to his website. With a Marshall Scholarship from the British government, he attended Oxford and completed a Ph.D. in political science in 1992. He then was accepted at Yale Law School, where he taught political science to undergraduates and won a Prize Teaching Fellowship in 1994. He also served as an editor at the *Yale Law Journal* and published his second book, *The Referendum: Direct Democracy in Switzerland*.

In 1995, Kobach was admitted to the Kansas bar. He served as a law clerk to Judge Deanell Reece Tacha of the 10th U.S. Circuit Court of Appeals until 1996, when he was hired as a constitutional law professor at the University of Missouri-Kansas City.

He first tasted electoral success in 1999, when he won a City Council seat in Overland Park, Kan., a Kansas City suburb. Even on a council dominated by Republicans, he was viewed as an outsider. Neil Sader, who served on the council with him, said Kobach wasn't a "typical" Overland Park moderate Republican. The fact that he didn't rely on the local political structure for campaign contributions, "coupled with the energy he brought to the council," unsettled some members of the city's Republican establishment, Sader said.

"People viewed him, either rightly or wrongly, as someone who intended to try to move up the ladder very quickly, and that doesn't always go over real well," Sader told the *Kansas City Star*.

Kobach angered his fellow Republicans on the

council when he unsuccessfully fought efforts to allow a stroke rehabilitation center to operate in a northern neighborhood. He said neighborhood residents were concerned about parking and traffic problems. When the city attorney claimed that not allowing the facility would expose Overland Park to lawsuits under the Americans with Disabilities Act, Kobach called that a misreading of the act and said the city didn't have "to give a disabled citizen more than what other citizens have."

Less than a year after he was elected to the council, Kobach ran for the state senate. Out of four Republicans, he placed third. But his political career was about to get a major boost from the incoming Bush Administration and from the terrorist attacks that would soon rock the country.

In 2001, Kobach was awarded a prestigious White House fellowship. He reported for duty at the Department of Justice (DOJ) on Sept. 1. Ten days later, the United States suffered the worst-ever terrorist attack on American soil. Though he was not a specialist in immigration law or policy, Kobach became Attorney General John Ashcroft's chief advisor on immigration and border security.

He stayed on with Ashcroft after his one-year fellowship expired and helped create the controversial National Security Entry-Exit Registration System, which required tens of thousands of Muslim and Middle Eastern visa holders to register with the government and be fingerprinted. Outraged, civil liberties and Arab-American groups argued the policy amounted to racial and ethnic profiling.

Kobach also helped lay the legal groundwork for S.B. 1070, Arizona's recently passed anti-immigrant law. In 2002, the DOJ's Office of Legal Counsel released an opinion stating that local and state police have the power to arrest undocumented immigrants for civil violations of immigration law. The opinion directly contradicted opinions issued by the same office in 1989 and 1996, which stated that only federal agents have that power. The new opinion was so divisive that *The New York Times* warned that it "could jeopardize Mr. Bush's trust in his attorney general." Kobach was "intimately involved" in drafting it, DOJ officials said at the time.

Although the opinion — entitled "Non-preemption of the authority of state and local law enforcement officials to arrest aliens for immigration violations" — never became official policy, it continues to be cited to justify the involvement of local law enforcement in immigration matters. In a May 18, 2010, article, *The*

Washington Post wrote that "the author of the Arizona law [Kobach] ... has cited the authority granted in the 2002 memo [that he helped draft] as a basis for the legislation."

Kobach takes credit, too, for leading the DOJ's much-criticized reforms of the immigration court system, which reshaped the Board of Immigration Appeals (BIA) in 2002 and reduced the number of judges from 19 to 11. To keep up with the increasing caseload, judges began issuing one-line opinions in response to complex legal decisions. The changes ended up clogging the federal courts with appeals from immigrants who claimed they had not been fairly heard.

By 2005, so much criticism had been leveled at the DOJ's purported streamlining and at what appeared to be "a pattern of biased and incoherent decisions" that DOJ started proposing to boost the number of judges and to mandate full opinions instead of one-line decisions, effectively reversing Kobach's reforms.

By then, Kobach had left the administration. In 2003, he returned to his teaching position in Kansas. In addition to constitutional law, he began teaching immigration law. A syllabus for one course included his former professor Huntington's anti-immigrant book *Who Are We?*, as well as material from the anti-immigrant Center for Immigration Studies, a group that was founded as part of the Federation for American Immigration Reform (FAIR).

In 2004, Kobach became senior counsel to the Immigration Reform Law Institute (IRLI), the legal arm of FAIR. In concert with IRLI Director Michael Hethmon, Kobach filed suit against Kansas, which had passed a law that year to grant in-state tuition to the children of illegal immigrants who had attended a state high school for at least three years and graduated. The Kansas challenge was thrown out in 2006. A similar case, filed by Kobach in California, ended last November, when the state Supreme Court rejected his claims.

Kobach had his hands full in 2004. Not only was he fighting the legal battle in Kansas, he was running for Congress against a Democrat who painted his opponent as an extremist because of his views on immigration and criticized his ties to FAIR. In addition to his work for IRLI, Kobach had accepted a \$10,000 donation from U.S. Immigration PAC, which is run by the wife of FAIR's founder. Kobach lost the race by 36,000 votes and still bristles at what he calls "deceptive allegations" raised by his opponent.

By 2005, as IRLI's attorney, Kobach would

find himself deeply enmeshed in promoting — and defending — the use of local and state ordinances to punish undocumented immigrants.

In Arizona, he worked with state Senator Russell Pearce to draft S.B. 1070, and he was also retained by Maricopa County in 2006 to defend a law that made immigrant-smuggling a state crime. That measure was spearheaded by Sheriff Joe Arpaio, whose heavy-handed tactics against prisoners and immigrants have been the target of numerous lawsuits and a DOJ investigation. Kobach successfully defended the measure in court, then went on to train Arpaio’s deputies in federal immigration enforcement. In June 2010, Kobach’s consulting contract with Maricopa was cancelled when County Attorney Andrew Thomas, a nativist ally, left his position to run for state attorney general.

In 2010, Kobach was elected secretary of state in Kansas after campaigning on an anti-immigrant platform that included unsubstantiated claims that undocumented immigrants were committing rampant voter fraud.

Prior to the election, the Kansas Democratic Party lodged an ethics complaint alleging he had accepted campaign donations that exceeded limits in Kansas law. It wasn’t the first time Kobach has come under fire for allegedly questionable financial dealings.

A Federal Election Commission audit revealed that when he was chair of the Kansas GOP from 2007 to 2009, rent went unpaid for four months, bank statements were unopened, invoices and receipts were missing, state monies paid for things that federal money should have, taxes were unpaid and corporate contributions weren’t accounted for correctly. When he left the post, there was less than \$5,000 in the party’s accounts but more than \$100,000 in what the incoming chairwoman called “operational debt.”

Kobach and party Executive Director Christian Morgan blamed each other for the problems. Morgan said that financial oversight suffered after Kobach



As a candidate for Kansas secretary of state last year, Kris Kobach associated himself with many conservative ideas. Here, he enthuses about the 10th Amendment, which delineates states’ rights.

fired office manager Margie Canfield and finance director Chad Lawton. Morgan claimed that Canfield was dismissed because Kobach thought she was too politically moderate. He wasn’t sure why Kobach got rid of Lawton. “I disagreed with both firings,” Morgan told the *Topeka Capital-Journal*. “I recommended to Kobach that we needed to hire more staff, and he refused.”

During his tenure as Kansas GOP chair, Kobach also created a “loyalty committee,” with himself as chair. In November 2008, he stripped several GOP officers of voting rights in party organization races because they had given campaign contributions to Democrats. One of the state’s most senior Republican officeholders, U.S. Senator Pat Roberts, expressed misgivings about the committee, worrying that it would be perceived negatively by voters as an effort to create a “loyalty test.”

When the state GOP approached Kobach for help raising money to pay tax liabilities, he refused to cooperate and instead claimed he had tried to generate contributions to the state party after resigning as chairman.

Now he serves as that state’s secretary of state. As a result, he was forced to step aside from his law professor position, but his work with IRLI continues, if not as a full-time job.

THE ORGANIZATION

FAIR's Nativist History

Over the years, nativist lawyer Kris Kobach has drawn a great deal of criticism for his association with the Federation for American Immigration Reform (FAIR) — from his political opponents, human rights advocates and the Southern Poverty Law Center (SPLC), which has listed FAIR as a hate group since 2007. Kobach joined the Immigration Reform Law Institute (IRLI), FAIR's legal arm, as senior legal counsel in 2004 and remains “of counsel” to the group today.

In the most general terms, SPLC lists FAIR because the organization has probably done more to inject fear and bigotry into the national immigration debate than any other. FAIR's demonizing propaganda, aimed primarily at Latinos and often Catholics; its ties to other hate groups and hiring of their members; and its push for laws promoting racial discord around the country have been instrumental in creating the anti-immigrant backlash America is currently suffering through.

For his part, Kobach has never addressed the substance of the criticisms of FAIR, the organization for whose legal arm he has worked for the better part of six years now. Here is a summary of why SPLC lists FAIR as a hate group:

- **Views of FAIR's president.** Dan Stein, today FAIR's president and before that its executive director, has repeatedly attacked the Immigration and Nationality Act of 1965, which was aimed at reforming a racist quota system that basically restricted immigration to Northern Europeans. (President Johnson, in signing the act, said that “for over four decades the immigration policy of the United States has been twisted and has been distorted by the harsh injustice of the national origins quota system,” which was “un-American in the highest sense.”) Using an argument common in white nationalist circles, Stein has characterized the act as a disaster for Western civilization and Anglo-Saxon dominance. In a 1994 oral history housed at George Washington University's Gelman Library, Stein told his interviewer that those who supported the 1965 reform wanted to “retaliate against Anglo-Saxon dominance” and that this “revenge” against whites had created a policy that is causing “chaos and will continue to create chaos.” In an earlier, 1991 memo entitled “The Defenders of American Culture Rise to the Call to Arms,” Stein said he hoped



When President Lyndon B. Johnson signed the Immigration Act of 1965, he celebrated the demise of the old racist quota system, calling it “un-American.” FAIR official Dan Stein (inset), however, said the 1965 law was an unwarranted attack on “Anglo-Saxon dominance.”

that mounting criticism of multiculturalism would eventually lead to attacks on the 1965 Act, which he called “a key mistake in national policy” and a “source of error.”

Stein also takes a dim view of today's immigrants. He has warned that immigrants are engaged in "competitive breeding" aimed at diminishing white power and that "[m]any of them hate America, hate everything the United States stands for." Stein led FAIR's efforts to win funding from the racist Pioneer Fund, saying in 1993 that his "job [was] to get every dime of Pioneer's money." Stein also served as editorial adviser to *The Social Contract*, a nativist hate journal published by FAIR founder John Tanton, when it ran a particularly virulent special issue that was entitled, "Europhobia: The Hostility Toward European-Descended Americans." The lead article of the issue argued that multiculturalism was replacing "successful Euro-American culture" with "dysfunctional Third World cultures."

- **Taking money from racists.** FAIR solicited and accepted a total of \$1.2 million from the Pioneer Fund, a notorious organization set up by Nazi sympathizers in 1937 and run to this day by white nationalists to fund studies of eugenics (selective breeding of humans to produce a "better" race) and race and intelligence. Saying it didn't know about the fund's background, FAIR stopped publicly seeking Pioneer money in 1994 after a barrage of embarrassing publicity. But that didn't stop three FAIR board members from meeting privately three years later with the Pioneer Fund's then-chairman, Harry Weyher, to discuss fundraising. Nor did it stop FAIR from taking money from members of Pioneer's board for several years thereafter. Today, FAIR has lost its reticence about the fund, devoting two pages of its website to defending the foundation. When Stein was asked in 1997 about the late FAIR board member Garrett Hardin's belief that only "intelligent people" should breed, he responded, "Yeah, so what? What is your problem with that?"

- **The racism of FAIR's founder.** John Tanton, who founded FAIR in 1979 and remains a central player on its board today, has a decades-long history of making racist statements and enthusing about eugenics (he once asked Michigan officials if forced sterilization was illegal, citing the case of "a local pair of sisters who have nine illegitimate children between them"). Tanton has said that unless U.S. borders are sealed, America will be overrun by people "defecating and creating garbage and looking for jobs." He has warned of a "Latin onslaught," complained of Latinos' allegedly low "educability," and said they "bring with



FROM CAMPAIGNFORUNITEDAMERICA.ORG/PHOTOGRAPHERUNKNOWN

John Tanton, who founded FAIR and most of the country's other major nativist organizations, has written that American culture requires "a European-American majority, and a clear one at that."

them the tradition of the mordida [bribe].” He has a lengthy record of friendly correspondence with Holocaust deniers, a former Klan lawyer and leading white nationalist thinkers, including Jared Taylor (who wrote in 2005, “When blacks are left entirely to their own devices, Western civilization — any kind of civilization — disappears”).

Tanton even proposed to his colleagues at FAIR and to several well-known white nationalists, including Jared Taylor and the late Sam Francis, that they create together a group called the League for European-American Defense, Education and Research (LEADER). The idea was to defend “ourselves and our tradition against attacks,” counter “the denigration of Western culture” that Tanton said was “under siege,” and stop the “reduction of the European-American demographic and cultural majority to minority status.” On another occasion, he wrote a major FAIR funder to suggest she read the work of a radical anti-Semitic professor — to “give you a new understanding of the Jewish outlook on life” — and suggested that the entire FAIR board discuss the man’s theories about the Jews. At one point, Tanton wrote that “for European-American society and culture to persist requires a European-American majority, and a clear one at that.” In a letter to FAIR board member Donald Collins, Tanton enthused over the work of John Trevor Sr. — a key architect of the bluntly racist Immigration Act of 1924 and a man who distributed pro-Nazi propaganda and warned shrilly of “diabolical Jewish control” of America — and said it should serve FAIR as “a guidepost to what we must follow again this time.” Despite this track

record, Stein has shrunk from any criticism of FAIR's founder; on the contrary, Stein in 2009 characterized John Tanton as a "Renaissance man."

▪ **Leading FAIR officials' participation in racist groups.**

Rick Oltman, FAIR's long-time western regional coordinator, spoke as part of a 1997 immigration panel put on by the Council of Conservative Citizens, a hate group that has described black people as a "retrograde species of humanity." Council publications at the time listed Oltman as a member. The FAIR official who followed Oltman in his position, Joseph Turner, who earlier ran an anti-immigrant hate group, was on record before joining FAIR as saying that being a white separatist did not imply a person was racist. Jim Staudenraus, FAIR's eastern regional coordinator, participated in an anti-immigration conference in 2002 with Jared Taylor. In 2007, a senior FAIR official met with leaders of Vlaams Belang, a Belgian political party that officials in that country outlawed in a previous incarnation (Vlaams Blok) as a "criminal organization" because of its racist anti-immigrant views.

▪ **Bigotry on the board.** FAIR board member Donald Collins writes frequently for the VDARE.com, a nationalist website named after Virginia Dare, said to have been the first English child born in the New World. (VDARE is dedicated to bashing immigrants and has published the work of many white nationalists and anti-Semites.) Collins' articles have focused on attacking the Catholic Church for its liberal stance on immigration. One accused Los Angeles Archbishop Roger Mahony of selling out his country "in exchange for more temporal power and glory." Another claimed bishops were "infiltrating and manipulating the American political process" to dismantle the separation of church and state — the classic calumny directed at American Catholics for decades by the Klan and others. Another person linked to VDARE is Joe Guzzardi, a member of FAIR's board of advisors who works as an editor of the site. Other members of FAIR's board of directors have offered similar sen-

timents. Former Colorado Gov. Richard Lamm once said that "new cultures" in America were "diluting what we are and who we are." The late Garrett Hardin said the developing world was full of "breeders" who needed to be stopped.

▪ **FAIR programming.** FAIR long produced television programming under the title "Borderline" that featured interviews with prominent white nationalists, including the late Sam Francis, who later became the top editor of the white supremacist Council of Conservative Citizens; and Jared Taylor, who edits *American Renaissance*, a newsletter that claims blacks and Latinos are intellectually inferior to whites. The program, which opened with footage of immigrants crossing the border or arriving in the U.S. in broken-down flotillas, often demonized immigrants.

In 1996, for instance, Francis called immigration an act of "political warfare" and an attempt by Mexico to create a "political bludgeon against the United States." At other times, "Borderline" advanced ideas popular in white nationalist circles. One that was particularly popular was the warning that immigrants are ruining U.S. culture or displacing Western civilization with degenerate, Third World ways. In 1996, white nationalist Lawrence Auster argued on the show that because of the immigrant "invasion," "America is in the process of dissolving as a nation" and faces the prospect of losing "the historic European Anglo American culture." Host Dan Stein certainly seemed to agree with his guest's worries. "How can we preserve America if it becomes 50% Latin American?" he asked Auster.

On its website, FAIR has pushed racist conspiracy theories about Mexico's purported secret designs on the American Southwest and also an alternative theory alleging secret plans by national elites to merge the United States, Mexico and Canada. It has also run extremely controversial political advertisements, including one in 2000 in Iowa that was rejected by a TV station as "borderline racist." That same year, Sen. Alan Simpson resigned from FAIR over ads it ran comparing then-Senate candidate Spencer Abraham, an Arab American, to Osama bin Laden.

THE CASES

A Timeline of Key Events

The legal history of recent anti-immigrant laws in Arizona and four small cities around the country is complicated and can be difficult to understand. What follows is a timeline of key events in each community, along with a synopsis of the law in question and whatever changes may have been made during litigation. Kris Kobach of the Immigration Reform Law Institute helped write and defend all these laws.

HAZLETON, PA.

July 13, 2006 The Hazleton City Council passes two ordinances proposed by Mayor Lou Barletta that would deny business licenses to those who employ undocumented workers and fine landlords who rent to them.

Aug. 15, 2006 The American Civil Liberties Union (ACLU), Latino Justice PRLDEF, the Community Justice Project of Harrisburg, Pa., and several unaffiliated lawyers file suit against the ordinances. They represent several landlords, business owners and undocumented immigrants who live in Hazleton.

Sept. 3, 2006 Hundreds of opponents rally in Hazleton against the law. Rumors that Klan and racist skinhead groups are coming to counter-protest result in a heavy police presence, but the groups do not show up.

Oct. 31, 2006 The judge grants a temporary restraining order barring enforcement of the ordinances. Both parties agree to extend the order until the case is resolved.

July 26, 2007 After 9-day bench trial, the judge strikes down both ordinances, writing, “Hazleton, in its zeal to control the presence of a



Supporters of Hazleton Mayor Lou Barletta and his anti-immigrant legislation gathered before City Hall in June 2007.

group deemed undesirable, violated the rights of such people, as well as others within the community.”

May 1, 2008 Voice of the People USA, listed as a “nativist extremist” group by the Southern Poverty Law Center, stages a “Loyalty Day Immigration Enforcement Rally” in Hazleton.

Sept. 9, 2010 The 3rd U.S. Circuit Court of Appeals affirms the district court decision.

Dec. 8, 2010 Hazleton asks the U.S. Supreme Court to hear an appeal.

THE ORDINANCES The Rental Registration ordinance would require tenants to have proof of legal residence and get occupancy licenses in order rent. The Illegal Immigration Relief ordinance would fine landlords \$1,000 for each undocumented immigrant tenant, with continuing \$100-a-day fines for each day the tenant remained after a citation; and fine employers and revoke their business licenses if they hired undocumented workers. Several changes were made in the laws in a series of so-far unsuccessful attempts to withstand legal challenges.

LEGAL FEES \$2.8 million as of last October, according to *The Standard Speaker*, a Hazleton newspaper (Oct. 10, 2010). Of that, almost \$400,000 already had been paid to defense lawyers including Kobach. A court ordered Hazleton to pay another \$2.4 million to plaintiffs' lawyers, but the city has appealed that.

VALLEY PARK, MO.

July 17, 2006 Valley Park's Board of Aldermen enacts an ordinance similar to that of Hazleton, sanctioning businesses that employ undocumented immigrants and landlords who rent to them.

Sept. 22, 2006 The ACLU and the Mexican American Legal Defense and Educational Fund (MALDEF), representing a group of landlords and the Metropolitan St. Louis Equal Housing Opportunity Council, sue Valley Park in state court over the ordinance.

Sept. 26, 2006 A judge issues a temporary restraining order barring implementation of the ordinance.

Feb. 14, 2007 Valley Park splits the ordinance into two and redrafts the pair in a bid to withstand legal challenges, while leaving the original ordinance on the books.

March 12, 2007 The judge issues a permanent injunction against the original ordinance, effectively killing it.

March 14, 2007 The plaintiffs file a new suit in state court against the two newer ordinances.

April 5, 2007 The judge in that case grants a temporary restraining order barring enforcement of

both new ordinances. Both sides in the case agree the laws will not be enforced pending a final resolution of the case.

May 1, 2007 The case is transferred to federal court.

July 16, 2007 Fearing that it will lose on this issue in court, Valley Park repeals the ordinance providing for sanctions against landlords. Soon after, it narrows the employer-related ordinance so that only employers failing to use E-Verify can be sanctioned.

Jan. 31, 2008 A federal judge in St. Louis rules in favor of Valley Park, allowing the city to enforce what little is left of its law on employers.

June 5, 2009 A federal appeals court unanimously affirms the St. Louis ruling.

THE ORDINANCE The town's original ordinance was similar to the law in Hazleton and included language blaming undocumented immigrants for "higher crime rates" and "overcrowded classrooms and failing schools." But officials rescinded the part relating to sanctions against landlords and narrowed the employer-related part to excuse those who had used E-Verify to check employees' status.

LEGAL FEES \$270,000, according to *The New York Times* (July 21, 2009).

FARMERS BRANCH, TEXAS

Nov. 13, 2006 The Farmers Branch City Council unanimously adopts an ordinance requiring renters to provide proof of citizenship or legal residency and fining landlords who rent to undocumented immigrants.



Protestor at Farmers Branch City Hall in August 2006

AP IMAGES/L.M. OTERO

Dec. 13, 2006 Opponents of the ordinance, assuming it would be voted down if subjected to a community-wide vote, turn in enough petition signatures to force the city to either repeal the ordinance or schedule a referendum on it. The city decides to go ahead with a referendum.

Dec. 22, 2006 The Bickel & Brewer law firm files a federal lawsuit against the ordinance on behalf of the owners of three apartment complexes. Four days later, the ACLU and MALDEF also sue, representing Latinos who are legal residents.

Jan. 22, 2007 Uncertain that it will withstand legal challenges even if voters approve it, the City Council

repeals the first version of the law and adopts a second version, to be put before voters in a May 12 referendum.

May 8, 2007 Mayor Bob Phelps, together with a former mayor and a former city manager, release a letter opposing the ordinance: “We believe this is the worst ordinance ever considered by a Farmers Branch City Council. Continuing this course of action will create a financial and social crisis in our community that will take years to recover from.”

May 12, 2007 With nearly 6,000 people voting — the largest turnout in the history of Farmers Branch local elections — the ordinance is approved by 67% of voters.

May 21, 2007 The judge issues a temporary restraining order against the ordinance, writing that the city’s “frustration [with federal inaction], no matter how great, cannot serve as a basis to pass an ordinance that conflicts with federal law.”

Jan. 22, 2008 In another attempt to fend off legal challenges, the City Council passes a third and final version of the ordinance, which is put on hold pending resolution of the case.

May 28, 2008 The judge issues a permanent injunction against the second version of the ordinance. He calls the third version “yet another attempt to circumvent the court’s prior rulings and further an agenda that runs afoul of the United States Constitution,” and refuses the city’s request that he rule on its constitutionality in advance of implementation.

Aug. 29, 2008 Farmers Branch officials announce they will begin to enforce the third version in 15 days.

Sept. 3, 2008 Bickel & Brewer files a new lawsuit against the latest ordinance. Nine days later, MALDEF and the ACLU also sue.

Sept. 12, 2008 The judge in the new lawsuit issues a temporary restraining order barring implementation of the ordinance.

March 24, 2010 The judge issues a permanent injunction against the law.

Jan. 3, 2011 Farmers Branch appeals to the 5th U.S. Circuit Court of Appeals.

THE ORDINANCE Like Hazleton’s, the original Farmers Branch ordinance would require renters to provide proof of citizenship or legal residency. Landlords would be fined up to \$500 a day per offense. There was no provision affecting business owners. The ordinance has been revised twice.

LEGAL FEES \$3.7 million, according to the *Dallas Morning News* (Jan. 5, 2011). The cost of further appeals may run into the millions.

FREMONT, NEB.

July 29, 2008 After a heated public hearing, a sharply divided City Council votes against enacting a proposed ordinance that would sanction employers of undocumented immigrants and landlords who rent to them. Shortly after that, a coalition of Fremont citizens who support the proposed law begins to circulate a petition to force a special referendum on it.

Feb. 23, 2009 Residents turn in enough signatures to trigger a referendum.

June 21, 2010 Fremont’s voters approve the ordinance.



AP IMAGES/NATHANRIK

Fremont Mayor Donald “Skip” Edwards cast the tie-breaking “no” vote that killed a proposed anti-immigrant law. But the town’s voters forced a referendum and passed the law anyway.

July 21, 2010 The ACLU and MALDEF file a federal lawsuit against the law on behalf of Latino residents and a landlord.

July 27, 2010 The City Council votes to suspend implementation of the ordinance pending the outcome of litigation.

Sept. 8, 2010 The U.S. Commission on Civil Rights hears testimony from five panelists about Fremont’s ordinance. Four, including Police Chief Tim Mullen, oppose the law. Anti-ordinance activist Kristin Ostrom presents a report on 65 incidents of threats and harassment directed at Latinos in the town.

Sept. 15, 2010 The City Council raises property taxes to pay for anticipated costs associated with the litigation.

THE ORDINANCE The Fremont ordinance is similar to the original laws in Hazleton and Farmers Branch, covering both landlords and employers.

LEGAL FEES Litigation over the ordinance is ongoing, but Fremont officials in August 2010 said they expected to have to pay at least \$750,000 in legal fees and expenses, even though Kobach has said his own work is being done pro bono. Further hearings in the case are already scheduled for early this year.

ARIZONA

Jan. 13, 2010 Arizona state Sen. Russell Pearce, a man who once forwarded a neo-Nazi tract to colleagues via E-mail, introduces the Support Our Law Enforcement and Safe Neighborhoods Act (Senate Bill 1070).

March 27, 2010 Arizona resident Robert Krentz is found shot to death on his ranch near the Mexican border hours after calling his brother to say he was helping a person he believed to be an undocumented immigrant. Suspicions that Krentz's killer was a Mexican drug smuggler fuel support for the bill.

April 13, 2010 The Arizona House of Representatives passes the bill. "There are some things that states can do and some things states can't do," Kobach says, "but this law threads the needle perfectly."

April 19, 2010 The Arizona Senate passes the bill.

April 23, 2010 Gov. Jan Brewer signs the new law. Thousands gather at the state Capitol, some supporting and some protesting the law. Police intervene to prevent violence.

May 1, 2010 Tens of thousands of people protest the law in more than 70 cities around the country, including a Los Angeles rally that draws as many as 60,000.

May 12, 2010 The Los Angeles City Council approves a boycott barring the city from doing business with Arizona unless the law is repealed. It is the largest of many boycotts by launched by cities and various groups.

May 17, 2010 Civil rights groups including the ACLU, MALDEF and the National Immigration Law Center file a federal class-action suit against the law on behalf of community service organizations, labor unions, business associations and others.

June 22, 2010 Mexico files a friend of the court brief asserting that "S.B. 1070 adversely impacts U.S.-Mexico bilateral relations, Mexican citizens and other people of Latin-American descent present in Arizona."

July 6, 2010 The U.S. Department of Justice (DOJ) files its own federal suit against Arizona, arguing that most clauses of S.B. 1070 are preempted by federal law.

July 28, 2010 The day before the law is to go into effect, the federal judge in the DOJ case issues a preliminary injunction barring implementation of the law's most controversial provisions. Those include requiring that officials try to determine the immigration sta-

tus of anyone detained if they have "reasonable suspicion" that the person is in the country unlawfully; mandating that non-citizens carry immigration papers at all times; barring undocumented immigrants from seeking work; and allowing law enforcement officials to arrest non-citizens where there is reason to believe they have committed an offense that makes them "removable" from the United States.

July 29, 2010 Arizona appeals the judge's ruling.

Nov. 1, 2010 Judges of the 9th U.S. Circuit Court of Appeals in San Francisco hear arguments over the lower court judge's preliminary injunction.

THE STATUTE S.B. 1070 requires local and state officials to try to ascertain the immigration status of anyone they come into "legitimate contact" with if they have a "reasonable suspicion" that the person is not a legal resident. It makes it a crime for undocumented workers to seek work or trespass on private or public lands, and also criminalizes hiring workers from a stopped car. The law makes transporting or harboring undocumented immigrants a misdemeanor punishable by a fine of at least \$1,000; if the offense involves 10 or more immigrants, it becomes a felony.

LEGAL FEES More than \$1 million as of the end of July 2010, according to the governor's office. Arizona has not released later figures.

THE DECISIONS

Excerpts from Key Orders

The anti-immigrant laws largely devised and defended by Kris Kobach and the Immigration Reform Law Institute repeatedly have been enjoined or struck down by federal judges, although some, including Arizona’s S.B. 1070, are still being adjudicated in the courts. Here are excerpts from three recent court decisions:

ARIZONA

U.S. District Court, Phoenix
Judge Susan Bolton (Bill Clinton appointee)
July 28, 2010

“[T]here is a substantial likelihood that officers will wrongfully arrest legal resident aliens under the new [law]. By enforcing this statute, Arizona would impose a ‘distinct, unusual and extraordinary’ burden on legal resident aliens that only the federal government has the authority to impose.”

HAZLETON, PA.

3rd U.S. Circuit Court of Appeals, Philadelphia
Judge Theodore A. McKee (Clinton appointee)
Sept. 9, 2010

“A patchwork of state and local systems each independently monitoring, investigating, and ultimately deciding — all concurrently with the federal government — whether employers have hired unauthorized aliens could not possibly be in greater conflict with Congress’s intent for its carefully crafted prosecution and adjudication system to minimize the burden imposed on employers.”

“By imposing additional sanctions on employers who hire unauthorized aliens, while not penalizing those who discriminate, Hazleton has elected to place all of its weight on one side of the regulatory scale. This creates the exact situation that Congress feared: a system under which employers might quite rationally choose to err on the side of discriminating against job applicants they perceive to be foreign.”

“Hazleton has ... chosen to disregard Congress’s other objectives — protecting lawful immigrants and others from employment discrimination, and minimizing the burden imposed on employers. Regulatory ‘cherry picking’ is not concurrent enforcement, and it is not constitutionally permitted.”

“Hazleton ... contends that the Doe Plaintiffs lack standing because their claimed injuries would be caused by third-party landlords, and not the ordinances. This verges on the ridiculous. Just as Hazleton’s ordinances compel tenants not to rent from Plaintiff landlords, they compel landlords not to rent to Plaintiff tenants.”

FARMERS BRANCH, TEXAS

U.S. District Court, Dallas
Judge Jane Boyle (George W. Bush appointee)
Sept. 12, 2010

“An act by the City to remove such persons would be an act of deportation where the federal government for any reason or no reason has chosen not to act. And that is exactly precisely the conflictive situation that the preemptive doctrine was developed to prevent. Indeed, we can imagine the slippery slope, if you will, if every local and state government enacted laws purporting to determine that even though the federal government was permitting the person to reside in the country generally, the person could not stay in their bounds. If every city and state enacted and enforced such laws and then began deporting people to other cities and states, the federal government’s control over decisions relating to immigration would be effectively eviscerated because the people it was allowing to stay in the United States would eventually have nowhere to live.”

“[T]he substitution of a local government employees — in this case, the building inspector, under the ordinance — with no legal training or understanding of immigration law and without the hearing to which the alleged alien is entitled under the INA could not be, in this Court’s view at this point, a clearer attempt to regulate immigration by substituting a local process for the federal one.”



MEDIA AND GENERAL INQUIRIES

Mark Potok or Heidi Beirich

Southern Poverty Law Center

400 Washington Ave., Montgomery, Ala.

(334) 956-8200

www.splcenter.org

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