

Nos. 12-1702, 12-1705, 12-1708
IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

FRED H. KELLER, JR. ET AL.,
Plaintiffs-Appellants

v.

CITY OF FREMONT, ET AL.,
Defendants-Appellees

MARIO MARTINEZ, JR. ET AL.,
Plaintiffs-Appellants

v.

CITY OF FREMONT, ET AL.,
Defendants – Appellees

Caption continued on inside cover

On Appeal from the United States District Court
For the District of Nebraska

**BRIEF OF *AMICI CURIAE*¹ IN SUPPORT OF PLAINTIFFS-APPELLANTS
FRED H. KELLER, JR. ET AL.’S PETITION FOR REHEARING *EN BANC*
AND REVERSAL, IN PART, OF THE DISTRICT COURT’S ORDER
GRANTING SUMMARY JUDGMENT FOR DEFENDANTS-APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 29(c), *Amici* state that they are not-for-profit corporations, with no parent corporation and no publicly-traded stock. The undersigned counsel of record certifies that in addition to those persons listed in the briefs already filed in this matter, the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. The Dominican American National Roundtable, Farmworker Justice, The Hispanic Association of Colleges and Universities, Hispanic National Bar Association, Labor Council for Latin American Advancement, The League of United Latin American Citizens, The National Association of Latino Elected and Appointed Officials Educational Fund, The National Council of La Raza, Nebraska Appleseed Center for Law in the Public Interest, The United States Hispanic Chamber of Commerce, and the United States Hispanic Leadership Institute – *Amici Curiae*;

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STATEMENT PURSUANT TO RULE 29(c)(5)

Pursuant to Fed. R. App. P. 29(c)(5), counsel for *Amici* state that no counsel for a party authored this brief in whole or in part, and that no person – other than *Amici*, their members, or their counsel – made a monetary contribution to the preparation or submission of this brief.

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 9,168 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici are all national Latino organizations dedicated to the equal protection of Latinos in America, with the exception of Nebraska Appleseed Center for Law in the Public Interest, which is a non-profit, non-partisan law and policy organization that works for justice and opportunity for all Nebraskans. The organizational interests of *Amici* in this case are set forth below.

The Dominican American National Roundtable (“DANR”) is a non-profit, charitable, members organization which brings together the different voices of all people of Dominican origin in the United States. DANR is a national forum for analysis, planning, and action to advance the educational, economic, legal, social, cultural, and political interests of Dominican Americans. It aims to ensure for U.S. Dominicans the full exercise of the rights and freedoms guaranteed in the Constitution of the United States of America. Its membership, with local councils in cities in eight states, includes grassroots community organizations, educational, legal, health and civic organizations. DANR has evolved into a powerful research and advocacy organization on issues affecting the immigrant community. DANR strongly opposes states/localities promulgating their own immigration regulations which would have an adverse impact upon Dominicans residing in the U.S.

Farmworker Justice is a non-profit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice. Farmworker Justice seeks to accomplish these aims through policy advocacy, litigation, training and technical assistance, coalition-building, public education and support for union organization. The vast majority of America's farmworkers are immigrants or descendants of immigrants. While our nation reaps the benefits of their labor, farmworkers earn low incomes for physically grueling and hazardous work without many of the labor protections that other workers enjoy.

Hispanic Association of Colleges & Universities ("HACU") has championed the higher education success of the nation's youngest and largest ethnic population. The formal mission of HACU is to promote the development of member colleges and universities; to improve access to and the quality of postsecondary educational opportunities for Hispanic students; and to meet the needs of business, industry and government through the development and sharing of resources, information, and expertise.

The Hispanic National Bar Association ("HNBA") is a nonprofit, nonpartisan, national professional association that represents the interests of all attorneys, judges, law professors, legal assistants, and law students of Hispanic descent in the United States and its territories including Puerto Rico. The HNBA

has 41 local affiliated bars in various states across the country, including Nebraska. The HNBA's continuing mission is to improve the study, practice and administration of justice for all Americans by ensuring the meaningful participation of Hispanics in the legal profession. The HNBA was founded in 1972 to promote equal justice for all Americans by advancing the participation of Hispanics in the legal profession. The HNBA also serves as the voice of the broader Hispanic community on issues that significantly impact the interactions of Latinos and the legal system. As such, the HNBA has vested interest in the equal opportunity of Latinos to be free from unlawful discrimination and harassment.

The Labor Council for Latin American Advancement ("LCLAA") is a national organization representing the interests of approximately 2.2 million Latino trade unionists in the United States and Puerto Rico. Founded in 1973, LCLAA builds coalitions between the Latino community and unions in order to advance the civil, economic and human rights of all Latinos.

The League of United Latin American Citizens ("LULAC") is the largest and oldest civil rights organization in the United States who represents the Latino community and accomplishes its mission through political influence, education and litigation. The mission of the League of United Latin American Citizens is to advance the economic condition, educational attainment, political influence,

housing, health and civil rights of the Latino population of the United States and all those who reside within its borders.

The National Association of Latino Elected and Appointed Officials Educational Fund (“NALEO Educational Fund”) is the leading national nonpartisan organization that facilitates full Latino participation in the American political process, from citizenship to public service. The NALEO Educational Fund achieves its mission through integrated strategies that include increasing the effectiveness of Latino policymakers, mobilizing the Latino community to engage in civic life, and promoting policies that advance Latino civic engagement. We believe that it is particularly crucial that Latinos become visible and contributing members of their communities in parts of the country where, as in Nebraska, Latino populations have not been large in the past but are now growing rapidly. The NALEO Educational Fund’s experience indicates that Latinos are less able and likely to achieve their full potential as engaged, productive members of their communities when laws like Fremont’s Ordinance 5165 are enacted that single out immigrants for negative treatment, and accelerate the alienation of all Latinos regardless of their citizenship or immigration status.

The National Council of La Raza (“NCLR”) – the largest national Hispanic civil rights and advocacy organization in the United States – works to improve opportunities for Hispanic Americans. Through its network of nearly 300 affiliated

community-based organizations (CBO's), NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. NCLR works through two primary, complementary approaches: (1) Capacity-building assistance to support and strengthen Hispanic CBO's – especially those that serve low-income and disadvantaged Latinos; and (2) Applied research, policy analysis, and advocacy to encourage adoption of programs and policies that equitably serve Hispanics. NCLR believes that state and local laws that attempt to create distinct immigration enforcement schemes result in large-scale discrimination against Latinos regardless of their immigration status, and are preempted by federal immigration laws.

Nebraska Appleseed Center for Law in the Public Interest is a non-profit, non-partisan law and policy organization that works for justice and opportunity for all Nebraskans. One of Nebraska Appleseed's core program areas is our Immigrants and Communities Program, which seeks to promote strong, vibrant, engaged, and integrated communities. Nebraska Appleseed works toward this goal by focusing on improving immigration and integration policy and practices on a federal, state, and local level. We also conduct leadership development and community education with immigrant and U.S.-born community members, which brings us in contact with thousands of immigrant and Latino Nebraskans every year.

The United States Hispanic Chamber of Commerce – Founded in 1979, the United States Hispanic Chamber of Commerce ("USHCC") actively promotes the economic growth and development of Hispanic entrepreneurs and represents the interests more than 3 million Hispanic-owned businesses in the United States that contribute \$465 billion to the American economy each year. It also serves as the umbrella organization for more than 200 local Hispanic chambers in the United States and Puerto Rico. The USHCC understands the frustration over a broken immigration system, but fears that the Fremont ordinance at issue will jeopardize community safety and the speedy recovery of our economy. The USHCC is particularly concerned about the added burdens that our merchants and entrepreneurs will face in the course of doing business when forced to defend their right to contribute to our society.

United States Hispanic Leadership Institute (USHLI) is a national, nonprofit organization that promotes education, civic participation, and leadership development for Latinos and other similarly disenfranchised groups. USHLI was honored at the White House by then-President Bill Clinton for “the performance of exemplary deeds of service for the nation in promoting leadership and civic participation.” USHLI’s mission is to fulfill the promises and principles of democracy by empowering minorities and similarly disenfranchised groups and by maximizing civic awareness and participation in the electoral process.

I. INTRODUCTION

Leading up to the passage of Ordinance 5165 (the “Ordinance”), the City of Fremont, Nebraska, had neither a crime nor employment problem stemming from immigration.¹ Nor was there a demonstrable strain on the public fisc that credibly could be attributed to undocumented immigrants.² What Fremont had – in the eyes of the Ordinance’s chief and most vocal proponents – was a Hispanic problem.³ Since 1990, the Latino population had grown from 165 to 3,149.⁴ Latino businesses were opening on Main Street, and Latinos were speaking Spanish to their children at WalMart.⁵ The culture of Fremont, it was said, was changing.⁶ And so a law was devised.

¹ See Joint Appendix (“JA”) 249 (deposition testimony of former police chief Timothy Mullen, stating that Mullen had no information that persons unlawfully present committed crimes at disproportionate rates); see also Trial Court Docket (“Dkt.”) No. 163-2 at 167 (2010 statements by City representative that there are “no strong indicators that illegal immigration is having a negative impact” in Fremont and that Fremont “does not have the same issues faced by some of the other communities” passing similar legislation ordinances); Arianna Martinez, *The Politics of Latino Belonging: Law, Scale, & Identity in Municipal Anti-Immigrant Ordinances in the United States*, 168 (October 2011) (unpublished Ph.D. dissertation, Rutgers University) (on file with the University of Rutgers Library) (noting, *inter alia*, that “Nebraska did not have challenges caused by new immigrants in 2008 and to this day they do not,” and that there was “no day laborer controversy, housing overcrowding, [or] increase in crime”).

² See Dkt. No. 163-2 at 167, *supra* n.1; see also Mayor’s Task Force on Immigration Final Recommendations, Fremont, Nebraska (undated), *available at* <http://ne-fremont.civicplus.com/DocumentCenter/Home/View/478> (“Mayor’s Task Force”) (2008 statement by Fremont Area Medical Center representative that there was “no information that would show how much of the [hospital’s unreimbursed expenses] is related to undocumented aliens”); Martinez, *The Politics of Latino Belonging*, *supra* n.1, 168-69.

³ See JA 338, Dkt. No. 163-2 at 18-19, 27-29 (deposition testimony of former Fremont City Councilman Bob Warner that the problem that Warner was trying to work on when he proposed an early version of the Ordinance was “the Hispanic influx into Fremont” and the growing number of Latinos in Fremont); JA 462 (advertisement published in FREMONT TRIBUNE, June 17, 2010, noting amount of Charity Care and Bad Debt incurred by local hospital attributable to Hispanic patients); see also JA 450-52 (Cindy Gonzalez, *Immigration Frustration Stokes Fury in Fremont*, OMAHA WORLD-HERALD, July 20, 2008 (noting that residents of Fremont “could not pinpoint the trigger that sparked its City Council to join the list of U.S. municipalities crafting laws aimed at driving illegal immigrants from their town,” and that “escalating frustration” over immigration had been exacerbated by “the influx of workers with different customs, language, and skin tone”).

⁴ JA 440 (U.S. CENSUS BUREAU, data for Fremont, Nebraska (2010)); Dkt. No. 163-2 at 126-127 (U.S. CENSUS BUREAU, data for Fremont, Nebraska (1990)).

⁵ Martinez, *The Politics of Latino Belonging*, *supra* n.1, 133, 168-69, 185.

Ordinance 5165 is facially neutral. By its terms, it does not target Latino immigrants or U.S. citizens of Hispanic/Latino origin. But what is clear from the public record, and the record in this case, is that the Ordinance was intended to target Latinos – the largest minority group in Fremont – and it fanned the flames of ethnic bias and prejudice against Latinos in and around the City. During the debates over the Ordinance and afterwards, Latinos in Fremont experienced harassment, intimidation, vandalism and other forms of discrimination based on their race and ethnicity. Latinos, including U.S. citizen Latinos and legal immigrants, experienced attacks on their persons, property, and dignity.

While Amici agree with Plaintiff-Appellants that the key legal issue in this case is whether the City of Fremont may intrude on the federal power to regulate immigration (and we agree with Plaintiff-Appellants that it cannot), we submit this brief to inform the Court of the motives behind the Ordinance and to highlight the harms that have already been visited upon Fremont’s Latino population and will continue to afflict Latinos if the Ordinance is implemented. Upholding the Ordinance will result in further degradation and harassment of Latinos in Fremont and damage the community at large. Moreover, it would put this Circuit at odds with other federal appeals courts that have reviewed and rejected similar anti-

⁶ See Don Bowen, *City Council Split on Special Task Force Report*, FREMONT TRIBUNE, Nov. 14, 2008; JA 1243-45 (Leslie Reed, *City Torn by Immigration Proposal*, OMAHA WORLD HERALD, June 10, 2010); see also JA 966-68 (Monica Davey, *Nebraska Town Votes to Banish Illegal Immigrants*, NEW YORK TIMES, June 21, 2010 (“Still, some in Fremont point, with worry, to other Nebraska towns – places like Schuyler and Lexington – as communities that no longer look or feel the way they once did.”)).

immigrant municipal ordinances subsequent to the Supreme Court’s decision in *Arizona v. United States*, 132 S. Ct. 2492 (2012). For these reasons, and for the reasons stated in Plaintiff-Appellants’ briefs, Amici urge the Court to grant Plaintiff-Appellants’ petition for rehearing *en banc* and, ultimately, invalidate the Ordinance.

II. BACKGROUND

A. Anti-Latino Animus Motivated the Passage of the Ordinance

The general and procedural background to Ordinance 5165 is, by now, well-known.⁷ What is lesser known, and what Amici wish to call to this Court’s attention, is the widespread animus against Latinos – not only “illegal aliens” – that prompted calls for such an ordinance in the first place and that animated the debates surrounding it. As in Hazleton, Pennsylvania and Farmers Branch, Texas, Latinos in Fremont, regardless of their immigrant status, have been subjected to an unrelenting campaign of harassment predicated on the idea that they do not belong. The same tools, language, and tactics deployed in Hazleton and Farmers Branch, and in other municipalities across the country, have been used in Fremont, with the same results: Latinos, including U.S. citizens and legal immigrants, have been

⁷ See *Keller v. City of Fremont (Keller II)*, 719 F.3d 931, 937-39 (8th Cir. 2013); *Keller v. City of Fremont (Keller I)*, 853 F. Supp. 2d 959, 964-66 (D. Neb. 2012).

turned into public enemies and have become targets for anti-immigrant and anti-Latino zealots.⁸

By numerous accounts, the anti-immigrant movement in Fremont began in earnest in 2007 when an “unofficial local citizens grassroots organization” held its first meeting in Fremont.⁹ The leaders of that group stated that they were motivated to organize the “Nebraska Advisory Group” after watching “illegal aliens and their supporters” march for immigrants’ rights across the country the year before.¹⁰ At the time, they did not cite crime, or jobs, or the strain on the public fisc as motivating factors. Rather, their stated purpose was to take back “[their] country” and they were supported at their first meeting by members of the Minutemen Civil Defense Corps, one of whom had just returned from three days patrolling the Arizona border for “illegal aliens.”¹¹

⁸ Fremont’s Ordinance is part of a larger wave of anti-immigrant and anti-Latino ordinances passed in recent years in response to changing demographics. See Gebe Martinez, *Unconstitutional and Costly: The High Price of Local Immigration Enforcement*, CENTER FOR AMERICAN PROGRESS 1-14 (Jan. 24, 2011), available at http://www.americanprogress.org/wp-content/uploads/issues/2011/01/pdf/cost_of_enforcement.pdf. The Ordinance was drafted by the same organizations and individuals behind anti-immigrant legislation in Hazleton, Pennsylvania, Farmers Branch, Texas, Valley Park, Missouri, and the State of Arizona. See Leah Nelson, et al., *When Mr. Kobach Comes to Town: Nativist Laws and the Communities They Damage*, SOUTHERN POVERTY LAW CENTER, 5, 9, 18 (Jan. 2011), <http://www.splcenter.org/get-informed/publications/when-mr-kobach-comes-to-town>. Notably, all of these laws have been struck down in part or in whole, or withdrawn, because they have been deemed unconstitutional. See, e.g., *Lozano v. City of Hazleton*, No. 07-3531, 2013 WL 3855549 (3rd Cir. July 26, 2013); *Villas at Parkside Partners v. City of Farmers Branch, Tex.*, No. 10-10751, 2013 WL 3791664 (5th Cir. July 22, 2013). Fremont’s Ordinance should also be invalidated, not only because it intrudes on powers unquestionably reserved for the U.S. Congress, but for the additional reason that the Ordinance inflicts the same harms on Latinos in Fremont as have been inflicted on Latinos across the country whenever similar bills are proposed or passed. See III.B *infra*.

⁹ See Don Bowen, *Fremont Group Forms to Protest Illegal Immigration*, FREMONT TRIBUNE, March 21, 2007; Martinez, *The Politics of Latino Belonging*, *supra* n.1, at 139.

¹⁰ Bowen, *Fremont Group Forms to Protest Illegal Immigration*, *supra*.

¹¹ *Id.*

As the year progressed, leaders of the Nebraska Advisory Group and others agitated for action against immigration in Fremont. From the outset, their target was clear: Latinos, whom they classified as “Mexicans” without regard to their citizenship or national origin.¹² One of the group’s leaders, Andy Schnatz, wrote in the *Fremont Tribune* that this country had become “the United States of Mexico.”¹³ Schnatz complained that then-President Bush – whom he referred to as “El Presidente Jorge W. Boosh” – was being dictated to by the president of Mexico.¹⁴ Schnatz would go on to become a key proponent of Ordinance 5165 and, as discussed below, he and others would continue to invoke the specter of a Mexican takeover of Fremont to marshal support for the bill.

By 2008, other Fremont residents began advocating for a city ordinance to deal with the “large number of illegal immigrants that continue to amass in Fremont.”¹⁵ Jerry Hart, who later championed the citizens’ referendum that led to passage in 2010 of Ordinance 5165, called for city ordinances that would make it illegal to hire undocumented persons, sell homes or rent to them, allow their membership in organizations, allow them to use “any organization[’s]” facilities,

¹² Supporters of local immigration control laws often rely on code words such as “undocumented immigrants” or “illegal aliens” to refer to Latinos. See Jill Esbenshade, *Special Report: Division and Dislocation: Regulating Immigration through Local Housing Ordinances*, AMERICAN IMMIGRATION LAW FOUNDATION, 3 (2007), <http://www.immigrationpolicy.org/special-reports/division-and-dislocation-regulating-immigration-through-localhousing-ordinances> (“[T]here is a tendency among supporters of [local anti-immigrant] ordinances to conflate categories such as ‘Latino,’ ‘Mexican,’ ‘immigrant,’ and ‘illegal.’”). Despite the stereotype, a majority of Latinos in the United States are not foreign-born, let alone undocumented. *Id.*

¹³ Andy Schnatz, *Letter: Bush has sold out country to Mexico*, FREMONT TRIBUNE, Oct. 17, 2007.

¹⁴ *Id.*

¹⁵ Jerry Hart, *Letter: Let’s act to stop illegal immigration*, FREMONT TRIBUNE, May 6, 2008.

or allow them to send money anywhere by check or money order.¹⁶ For good measure, Hart also proposed barring “illegals” from driving in the city.¹⁷ He noted that “vigilance would have to be used to enforce” these laws, “with harsh penalties being imposed on those who violate them.”¹⁸

Soon enough, Fremont City Councilmember Bob Warner proposed an ordinance banning any resident or business from “harboring, hiring or transporting illegal immigrants.”¹⁹ Warner expressly stated that he was “suspicious of the number of adults in Fremont who seem to have no knowledge of English” and that he introduced the proposal, in part, to respond to citizen complaints about “growing numbers of Spanish-speaking students enrolled in Fremont schools.”²⁰ Warner’s proposal opened the floodgates to an anti-immigrant and anti-Latino backlash that ultimately revealed the true purpose and impetus for the bill. What is more, the proponents’ conduct during the debates, and after,²¹ provided a window

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Don Bowen, *Warner Introduces Illegal Immigration Proposal*, FREMONT TRIBUNE, May 14, 2008.

²⁰ JA 1244 (Reed, *City Torn by Immigration Proposal*, *supra*). Like Bob Warner, former City Councilman Charlie Janssen supported and voted for Ordinance 5165 in 2008. Martinez, *The Politics of Latino Belonging*, *supra* n.1, at 167. Although not as vocal as Warner about his support for the Ordinance, he provided local organizers with registered voter information and has since become an anti-immigrant proponent at the state level. *Id.* As a State Senator, Janssen championed the repeal of the Nebraska state Dream Act along with other anti-immigrant and anti-Latino causes, including de-funding the Latino-American and Native American Commissions, an Arizona-SB1070-style state law for Nebraska titled LB48, and the repeal of the 14th Amendment. *Id.* at 168.

²¹ Ordinance 5165 was passed in a voter referendum in June 2010, after the Fremont City Council voted down a similar bill in July 2008. For nearly two years, the immigration issue was hotly debated in Fremont, with Latinos being the focal point of those debates. See *Keller II*, 719 F.3d at 937-39; *Keller I*, 853 F. Supp. 2d at 964-66; Martinez, *The Politics of Latino Belonging*, *supra* n.1, at 139-161.

into the kind of “enforcement” that would reign if Ordinance 5165 is allowed to stand.

As demonstrated by the public record, and the record in this case, the Ordinance stoked not only an anti-immigrant but an anti-Latino fervor in Fremont. Prior to its passage, and subsequently, Latino residents were subjected to discrimination, verbal and physical harassment, threats of violence and actual violence. For example:

- At a public meeting regarding Councilmember Warner’s proposed ordinance in July 2008, several ordinance supporters began pointing around the room at Hispanics, yelling: “There’s an illegal . . . There’s an illegal . . . There’s an illegal . . .”²² Reporters described the atmosphere as “tense” and police officers, who were concerned about Hispanic residents’ safety following that meeting, insisted on escorting them to their vehicles for their protection.²³
- At a later city council meeting, Andy Schnatz, the Nebraska Advisory Group leader, referred to Hispanic members of the Fremont community as “brown people” and audibly counted each Hispanic individual as he or she entered the room.²⁴
- During that same meeting, a white member of the audience added the words “white people” to the end of the Pledge of Allegiance, so that the last line of the Pledge was “with liberty and justice for all white people.”²⁵

²² Ted Genoways, *This Land is Not Your Land: Deciding Who Belongs In America*, HARPER’S MAGAZINE 36, February 2013.

²³ *Id.* The atmosphere was so tense at the July 29, 2008 City Council meeting that that law enforcement for the meeting included forty officers from the Fremont and Omaha Police Departments, the Nebraska State Patrol and the Dodge County Sheriff’s Office. *Id.*; Martinez, *The Politics of Latino Belonging*, *supra* n.1, at 145.

²⁴ JA 351, Dkt. No. 165-9 (Decl. of Michelle Knapp in Supp. of Martinez Pls.’ Mot. for Summ. J. at ¶ 13).

²⁵ *Id.* at ¶¶ 16-21.

- A Latino shopkeeper, whose Mexican foods store was called Tienda Mexicana Guerrero, reported that his front window had been shot out.²⁶
- At a hearing, one resident openly called for a ten-year moratorium on “anything coming in from south of the border.”²⁷ Another resident told a local newspaper that she was “sick of . . . the Mexicans coming up here and wanting everything for free.”²⁸
- In a 2009 letter to the editor, Ordinance proponent and co-petitioner John Wiegert compared one opponent’s Swedish immigrant ancestors with Fremont’s (Latino) immigrant population by stating: “It was mentioned that your ancestors immigrated from Sweden. I guarantee they did it the legal way through Ellis Island. They also probably learned our language, paid their taxes, took pride in their new country, and were not part of a Swedish gang.”²⁹
- In two editorials in the *Fremont Tribune*, Wiegert noted that the amount of a local hospital’s “Charity Care and Bad Debt Expense” attributable to *Hispanic* patients, not undocumented immigrants, was between \$300,000-500,000.³⁰ Wiegert asserted that 47% of this expense was incurred by “illegal Hispanics.”³¹
- In a letter to the editor, Jerry Hart, another a co-petitioner of the Ordinance, called undocumented citizens “invad[ers]” who were destroying America.³² He labeled them “enemies of the United States” and encouraged them to be “treated accordingly.”³³

²⁶ Lauren Etter, *Border Fight Creeps North*, WALL STREET JOURNAL, June 18, 2010.

²⁷ Don Bowen, *Residents Sound Off About Illegal Immigration*, FREMONT TRIBUNE, July 9, 2008.

²⁸ JA 450-52 (Gonzalez, *Immigration Frustration Stokes Fury in Fremont*, *supra*).

²⁹ John Wiegert, *Letter: Petition Leader Offended By Comments*, FREMONT TRIBUNE, July 1, 2009.

³⁰ JA 241-42 (John Wiegert, *Illegal Immigrants Already Are Costing Us*, FREMONT TRIBUNE (May 18, 2010); John Wiegert, *Another Side of the Debate*, FREMONT TRIBUNE (May 25, 2010)).

³¹ JA 242 (John Wiegert, *Another Side of the Debate*, *supra*).

³² See Jerry Hart, *Letter: We Are A Country of Laws*, FREMONT TRIBUNE, July 3, 2009.

³³ *Id.* Amici note that during the debates over the Ordinance, and over a similar bill previously debated in the city council, some residents frequently characterized “illegal aliens” as threats to the community and likewise responded threateningly. See Don Bowen, *Fremonters, Outsiders Voice Opinions on Proposed Ordinance*, FREMONT TRIBUNE, July 30, 2008 (quoting one attendee as saying, “If the city council does not pass this ordinance, we will be forced to defend ourselves by any means necessary.”); see also Andy Schnatz, *Letter: Government should be protecting us*, FREMONT TRIBUNE, Aug. 7, 2008 (“If [elected officials] neglect their duties, then it is up to the citizens to do the job our elected officials won’t do and this will breed violence and I pray that does not happen.”).

- Leading up to the 2010 referendum, Latino residents reported numerous accounts of spontaneous intimidation and a Habitat for Humanity sign was vandalized to read HABITAT FOR MEXICANS.³⁴
- Following passage of Ordinance 5165, Hispanic residents complained that they were yelled at and harassed in public places, and even at work. A U.S. citizen Latino stated that the day after the Ordinance was passed, a white employee at the Hormel plant told him that he “had to leave for Mexico now; no more Mexicans here.”³⁵
- Similarly, a Hispanic father reported that he was told to go back to Mexico and that his home was being fired at with BB guns, and stated that he was fearful for his family’s safety.³⁶
- A plaintiff in this case, when she asked a store employee if her minor child could use a bathroom, was told that there were “no restrooms for Mexicans.”³⁷
- And on the day that Ordinance 5165 was passed, a Hispanic woman was told by an older white male that “[t]he firing line is about to begin. I want to be first in line.”³⁸

These are just some of the incidents of harassment, intimidation, and discrimination against Latinos that surfaced during debates over the Ordinance and that persist today. There are numerous others that are cited in the record.³⁹ What is clear from these examples is that the Ordinance, even as yet unimplemented, has emboldened certain individuals to challenge all Latinos’ rights to live and work in Fremont, and to participate in the City’s public life. Indeed, U.S. citizen Latinos

³⁴ Genoways, *This Land is Not Your Land: Deciding Who Belongs In America*, *supra*, at 38.

³⁵ Bertha Valenzuela, Leslie Velez, Kristin Ostrom, One Fremont One Future, Fremont’s First Costs, Statement at Public Briefing before the Nebraska Advisory Committee, U.S. Civil Rights Commission, 4 (Sept. 8, 2010), *available at* <http://neappleseed.com/wp-content/uploads/downloads/2013/08/One-Fremont-One-Future-US-Civil-Rights-NE-Sept-2010.pdf>.

³⁶ *Id.* at 3.

³⁷ JA 674 (Decl. of Jane Doe at ¶17).

³⁸ Valenzuela, et al., *supra*, at 4.

³⁹ *See, e.g.*, JA 674 (Decl. of Jane Doe at ¶¶16-18); JA 678 (Decl. of Maria Roe at ¶15); JA 348 (citing Mullen Dep. 57:9-58:16).

and legal immigrants have repeatedly stated that they have been told to get out of Fremont and go back to Mexico.⁴⁰ They are accused of being “illegal”⁴¹ and of “harboring illegal immigrants.”⁴² They are intimidated out of public spaces like City Hall, shopping centers, and even their front yards.⁴³

By and through their statements, proponents of Ordinance 5165 have linked, if not melded, the concept of “illegal alien” with “Mexicans” or Latinos.⁴⁴ In essence, all Latinos have become “illegal” and, thus, worthy of the kind of “harsh penalties” called for by Jerry Hart. If Ordinance 5165 is upheld, the pervasive and unlawful discrimination against Latinos demonstrated above will continue unabated in Fremont and likely will extend beyond the City’s borders.⁴⁵

⁴⁰ JA 674 (Decl. of Jane Doe at ¶17); JA 678 (Decl. of Maria Roe at ¶15); JA 317-18 (citing Decl. of Mario Martinez); *see also* Timberly Ross, *Nebraska Town Faces Vote on Illegal Immigration*, THE SEATTLE TIMES, June 21, 2010 (discussing verbal and physical attacks on “legal Hispanic residents,” including residents being told to return to Mexico); Valenzuela, et al., *supra*, at 3 (quoting Hispanic resident as stating: “Because of the Ordinance, it seems that we are all illegal and Mexican.”).

⁴¹ *See, e.g.*, Valenzuela, et al., *supra*, at 3-4.

⁴² *See, e.g.*, JA 1243-45 (Reed, *City Torn by Immigration Proposal, supra*).

⁴³ *See* Genoways, *This Land is Not Your Land, supra* at 35-36 (discussing harassment of Latinos at city council meetings); *see also* Statement of One Fremont (discussing same); Art Hovey, *Fremont Braces For Employment Measure to Take Effect*, LINCOLN JOURNAL STAR, March 3, 2012 (quoting Hispanic resident as stating that he did not attend a City Council meeting because “if I go there, everybody starts looking at me bad.”).

⁴⁴ JA 348-50 (listing numerous anti-immigrant references invoking “Mexicans” or “Mexico”).

⁴⁵ *See* Leslie Reed and Cindy Gonzalez, *Fremont OKs Immigrant Ordinance*, OMAHA WORLD-HERALD, June 22, 2010 (“While Monday’s election results . . . directly affect only activity within Fremont’s borders, observers said the outcome could set a legal precedent and motivate more towns across the nation to enact similar laws.”); Art Hovey, *Immigration Crackdown Leader Ready For More*, LINCOLN JOURNAL STAR, Feb. 22, 2012 (After the district court upheld the majority of the Ordinance in 2012, John Wiegert, a chief proponent of the Ordinance declared that “What we’ve done in Fremont is a kind of foothold,” and “Now what we’ll do, hopefully, is take it to Dodge County [the county in which Fremont is located] and have them implement it.”).

III. ARGUMENT

A. **Implementation of the Ordinance Will Amplify Existing Discrimination Against Latinos in Housing.**

If implemented, the housing provisions of Ordinance 5165 likely will increase discrimination against Latinos seeking to live in Fremont. As written, the provisions prohibit any person or business entity that owns a dwelling unit in the City from renting to or permitting the occupancy of (i.e. “harboring”) “an illegal alien”⁴⁶ The provisions require that the City verify all renters’ immigration status with the federal government and explicitly state that the City shall “not conclude that an individual is an illegal alien unless and until an authorized representative of the City” has so verified.⁴⁷ Nevertheless, the Ordinance predictably will lead to discrimination against Latinos, who comprise Fremont’s largest minority group.⁴⁸

First, landlords seeking to avoid the burden and costs associated with the housing provisions of Ordinance 5165, including criminal fines, may seek to avoid renting to Latinos altogether.⁴⁹ As others have noted, “a rational landlord” operating under a Fremont-style housing ordinance, “may well refuse to deal with

⁴⁶ JA 133-140 (Proposed Ordinance No. 5165).

⁴⁷ *Id.*

⁴⁸ According to the U.S. Census Bureau, Fremont’s Hispanic population in 2010 was 3,149 (or 11.9% of the population), while the non-Hispanic white population was 22,524 (or 85.3%). *See* JA 440 (U.S. CENSUS BUREAU, Data for Fremont, Nebraska (2010)).

⁴⁹ In the dissent, Judge Bright noted that the Ordinance “creates problems for all landlords and potential tenants by complicating the process of obtaining rental housing. If the Ordinance goes into effect, landlords may try to limit their risk of liability for harboring by finding reasons not to rent to any person they suspect to be undocumented.” *Keller II*, 719 F.3d at 954 n.16 (Bright, J., dissenting).

any person who looks, sounds, or seems foreign.”⁵⁰ Because the Ordinance prohibits even the “suffer[ing] or permit[ing] of occupancy of [a] dwelling by an illegal alien,”⁵¹ landlords may deem the risks of renting to Latino households to be too high.⁵² Such concerns are not merely baseless predictions. Indeed, in September 2010, after Ordinance 5165 was passed, a representative of the Fair Housing Center of Nebraska and Iowa told the Nebraska Advisory Committee to the U.S. Commission on Civil Rights (“Nebraska Advisory Committee”) that, although the Ordinance had not yet been implemented, the center had received reports that landlords had begun refusing to rent to Hispanics.⁵³

Second, even if landlords agree to rent to lawfully present Latinos, the Ordinance would bar families of mixed immigrant status from living together in a dwelling.⁵⁴ For example, plaintiff Juan Doe, a legal resident who currently resides in Fremont, attested that if the Ordinance goes into effect, “my wife and I will not have the option of moving to a different rental unit in Fremont because of her

⁵⁰ Rigel C. Oliveri, *Between a Rock and a Hard Place: Landlords, Latinos, Anti-Illegal Immigrant Ordinances, and Housing Discrimination*, 62 VAND. L. REV. 55, 87 (2009); see also Tammy Real-McKeighan, *Residents Are Split on Decision to Kill Ordinance*, FREMONT TRIBUNE, July 31, 2008 (quoting homeowner as stating, “If the person I rent to is white, I’m not going to worry about asking for a license.”)

⁵¹ See JA 135 (Proposed Ordinance No. 5165).

⁵² See Oliveri, *Between a Rock and a Hard Place*, *supra*, at 92 (noting that, in the face of bureaucratic hurdles and possible sanctions, landlords may “treat tenants and applicants differently based on ethnic markers”); *id.* at 91 (noting that “people are more likely to believe mistakenly that Latinos are in the country illegally”).

⁵³ JoAnne Young, *Fremont Immigration Ordinance Among Topics Before Civil Rights Committee*, FREMONT TRIBUNE, Sept. 9, 2010.

⁵⁴ See JA 135 (Proposed Ordinance 5165 provision prohibiting “harboring” of “illegal aliens”); see also Jeffrey Passel and Paul Taylor, *Unauthorized Immigrants and Their U.S.-Born Children*, PEW RESEARCH HISPANIC CENTER 4 (Aug. 11, 2010), <http://www.pewhispanic.org/2010/08/11/unauthorized-immigrants-and-their-us-born-children/> (noting that “a substantial share of the undocumented population of this country lives in a so-called mixed-status family – that is, a family with at least one unauthorized immigrant parent and at least one U.S. citizen child”).

immigration status. This would force me to make a very difficult decision when we are looking for a new apartment – either stay in Fremont, alone and away from my wife, but with a job to provide for my family; or move out of Fremont with my wife.”⁵⁵ Similarly, Fremont resident Maria Roe attested in an affidavit that although she is a U.S. citizen, her husband is not present in this country legally.⁵⁶ Roe explained that if the Ordinance goes into effect, she and her husband would be “unable to move to a new rental in Fremont because my husband’s immigration status would mean that even if he could get an occupancy license, it would be revoked.”⁵⁷ “Such a result unfairly harms the family members who are in the United States legally”⁵⁸ – the Juan Does and Maria Roes of Fremont.⁵⁹ But it is not just Latino husbands and wives who are harmed; U.S. citizen children with non-citizen parents will also be denied of opportunities for housing in Fremont.⁶⁰

Finally, sustaining the Ordinance’s housing provision could lead to harassment and intimidation of Latino renters by others who merely suspect them of being undocumented. Researchers have found that jurisdictions with housing measures like Fremont’s “tend to be centers of mass community sentiment against

⁵⁵ JA 1237-38 (Decl. of Juan Doe, ¶¶ 1, 5-6).

⁵⁶ JA 675-76 (Decl. of Maria Roe at ¶ 1, 4).

⁵⁷ JA 676 (Decl. of Maria Roe at ¶ 7).

⁵⁸ See Oliveri, *Between a Rock and a Hard Place*, *supra*, at 98.

⁵⁹ JA 1237-38 (Decl. of Juan Doe, ¶¶ 1, 5-6); JA 675-76 (Decl. of Maria Roe at ¶ 1, 4, 7); see also Valenzuela, et al., *supra*, at 4 (“Some owners of apartments are removing renters who don’t have papers even if their partner does.”).

⁶⁰ Oliveri, *Between a Rock and a Hard Place*, *supra*, at 98 (“One important way in which housing differs from many of the other subjects targeted by [anti-illegal immigrant] ordinances is that when people are presented from obtaining housing, the rights and interests of children, families, and communities also suffer.”).

the very presence of Latinos and other groups, regardless of actual legal status. In short, they are harassed simply for being within the city limits and looking like they are not from the United States.”⁶¹ There is already ample evidence that Latinos in Fremont have been accused of being present in the United States unlawfully; enforcing the Ordinance likely will lead to further incidents of immigrant-baiting. The Ordinance may turn neighbor against neighbor, as certain residents seek to “vigilantly” enforce the Ordinance and determine, for themselves, who is “illegal.”⁶² Such actions interfere with the rights of lawfully present Latinos to live peacefully in Fremont and in a dwelling of their choice.⁶³

B. Implementation of the Ordinance Will Increase the Harassment of Latinos.

As discussed above, “the passage of the ordinance has emboldened those who harbor resentment or anger toward Hispanic residents to express that anger in threatening ways.”⁶⁴ Based on the evidence, and on experience elsewhere, Amici submit that implementation of the Ordinance would lead to increased incidents of discrimination and harassment against Latinos and opportunities for abuse by anti-

⁶¹ *Id.* at 109.

⁶² *Id.* at 91 (“Latinos are particularly likely to be targeted, both because of the anti-Latino animus that surrounds most [anti-illegal immigrant] ordinances and because people are more likely to believe mistakenly that Latinos are in the country illegally.”).

⁶³ See Kevin R. Johnson, *A Case Study of Color-Blindness: The Racially Disparate Impacts of Arizona’s S.B. 1070 and the Failure of Comprehensive Immigration Reform*, 2 U.C. IRVINE L. REV. 313, 331 (2012) (“Despite claims of racial neutrality, a focus on immigration status in virtually any law often generates fears among Latina/os, who are frequently stereotyped as ‘foreigners,’ that enforcement in fact will be based on race as a proxy for immigration status.”).

⁶⁴ *Residents Speak Out About Fremont’s Immigration Law*, KLKNTV, <http://www.klkntv.com/Global/story.asp?s=13122853&clienttype=printable>.

immigrant and anti-Latino vigilantes.⁶⁵ Moreover, implementation of the Ordinance – by public and private actors – would further alienate Latinos, who are already viewed as foreigners, not neighbors,⁶⁶ and who have had difficulties accessing the protections of government.⁶⁷

First, implementation of the Ordinance likely will lead to further verbal attacks and acts of intimidation against Latinos in Fremont. In the wake of the Ordinance’s passage, “[h]ate speech and harassment are serious problems in the city and there is concern that these incidences will escalate and that racial profiling is being conducted in spite of the ordinance being tabled.”⁶⁸

At a September 2010 hearing before the Nebraska Advisory Committee, members of a community group called One Fremont One Future testified that the organization had collected sixty-five reports of harassment and violence against

⁶⁵ See Sylvia R. Lazos Vargas, *Judicial Review of Initiatives and Referendums in Which Majorities Vote on Minorities’ Democratic Citizenship*, 60 OHIO ST. L.J. 399, 454 (1999) (“Measures that focus on illegal immigrants may stir anti-foreign resentment that can spill over to harm Latino and Asian-American citizens who. . . are racialized in the popular imagination as part of an un-American foreign element.”).

⁶⁶ Such alienation is not uncommon in jurisdictions where anti-immigrant ordinances like Ordinance 5165 have been passed. In *Lozano v. City of Hazleton*, the district court noted that a Latino legal resident in Hazleton, Pennsylvania observed that after the passage of that city’s ordinance, “the racial hatred and the racism has awoken. We notice and see that people no longer look at us – they look at us like their enemies now, not our friends.” 496 F. Supp. 2d at 510 n.31 (M.D. Pa. 2007).

⁶⁷ In a June 17, 2008 statement to the Mayor and City Council members, the Chief of Police of Fremont explained that if anti-immigrant legislation like the Ordinance is adopted, “it would be a concern to me that the police would lose communication with the Hispanic community. Many in this community, both legal and illegal in immigration status, are suspicious of the police because of experiences in their native countries. [Legislation like the Ordinance] would make it even more difficult to communicate with and serve this segment of our population.” Mayor’s Task Force, *supra* n.2, Statement of Chief of Police at 6.

⁶⁸ *Residents Speak Out About Fremont’s Immigration Law*, KLKNTV, <http://www.klknv.com/Global/story.asp?s=13122853&clienttype=printable>. Similarly, Hazleton’s ordinances “had the effect of increasing racial tension in the City.” *Lozano*, 496 F. Supp. 2d at 510 n.31.

members of Fremont’s Latino community.⁶⁹ The group’s representatives explained that these incidents demonstrated a pattern of “intimidation and hostility that has grown in Fremont as a direct result of the past two years.”⁷⁰ The incidents included reports of persons shouting offensive words at Latinos, firing at Latinos’ property with BB guns, engaging in physical violence against Latinos, and threatening to set a Latino-owned business on fire.⁷¹

These incidents are consistent with accounts collected by other local organizations. In 2010 and 2011, amicus Nebraska Appleseed, in collaboration with others, collected personal accounts from Fremont residents attesting to the town’s environment in the wake of the Ordinance vote.⁷² The personal stories collected by Nebraska Appleseed demonstrate that the Ordinance has led to specific acts of verbal and physical violence against Latinos living and working in Fremont. A legal permanent resident explained that “[s]omebody told us ‘go back to Mexico’ but we are from El Salvador. . . . [N]ow with the ordinance we are planning to move to another state.”⁷³ Another Fremont resident recalled that on “June 26, [2010] my neighbors shouted ‘Go back to Mexico.’ Three days ago, while looking out the window I discovered that we were being fired at with BB

⁶⁹ See Valenzuela, et al., *supra*, at 3.

⁷⁰ Martinez, *The Politics of Latino Belonging*, *supra* n.1, at 172.

⁷¹ Valenzuela, et al., *supra*, at 3; *see also* Martinez, *The Politics of Latino Belonging*, *supra*, at 172.

⁷² *Voices From Fremont*, NEBRASKA APPLESEED, (July 30, 2010) (“Voices Week 1”), <http://neappleseed.org/blog/1991>; *Voices From Fremont – Week Two*, (Aug. 6, 2010) (“Voices Week 2”), NEBRASKA APPLESEED, <http://neappleseed.org/blog/2075>; *Voices From Fremont – Week Three*, NEBRASKA APPLESEED, (Aug. 13, 2010), <http://neappleseed.org/blog/2173> (Voices Week 3”).

⁷³ *Voices Week 1*, *supra*.

guns. I am not afraid for myself but I am afraid for my children.”⁷⁴ According to a third individual:

I feel sad now I can’t go out on the street comfortably. I always think that they are going to give me bad looks or that a white person in another car will yell at me. They yell at me that I am not from here and that I should return to my country. This is why I feel frustrated despite the fact that I have lived and worked in Fremont for 9 years.⁷⁵

These incidents demonstrate that the passage of the Ordinance has led to increased harassment and discrimination.

Moreover, if the Ordinance is actually implemented, Latino residents of Fremont likely will suffer further verbal and physical abuse and intimidation.⁷⁶ Studies demonstrate that hate crimes against Latinos tend to rise sharply when anti-immigrant laws are enacted. After passage of California’s Proposition 187,⁷⁷ for example, “civil rights violations against Latinos went on the upswing, with most of the cases involving United States citizens or permanent legal residents.”⁷⁸ In addition, in other jurisdictions where anti-immigrant housing ordinances have been passed, including Hazelton, Pennsylvania and Riverside, New Jersey, Latinos

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Oliveri, *Between a Rock and a Hard Place*, *supra*, at 109 (“Increased hostility against, and harassment of, national origin minority group members will likely result from [anti-immigrant] ordinances generally and [anti-immigrant] housing measures in particular.”).

⁷⁷ California’s Proposition 187 was a 1994 ballot initiative designed to create a state-run citizen screening system in order to prohibit undocumented immigrants from accessing health care, public education, and other social services in California. The law was later struck down. *See LULAC v. Wilson*, 997 F. Supp. 1244 (C.D. Cal. 1997).

⁷⁸ LEADERSHIP CONFERENCE ON CIVIL RIGHTS, CAUSE FOR CONCERN: HATE CRIMES IN AMERICA (1997), *available at* http://www.civilrights.org/publications/reports/cause_for_concern/ (citing LOS ANGELES COUNTY COMMISSION ON HUMAN RELATIONS, HATE CRIME IN LOS ANGELES COUNTY (1995)). The report notes, by way of example, that a Latina in the San Fernando Valley of Los Angeles was attacked by eight young males who called her a “wetback” and threw rocks at her head and back. *Id.* The youths shouted that now that Proposition 187 had passed, the woman should go back to Mexico. *Id.*

reported “being constantly and indiscriminately harassed.”⁷⁹ Residents in those towns complained that a “vigilante-type attitude” had taken root, and that “everyone lives in fear.”⁸⁰

Increased discrimination is particularly likely to occur in connection with anti-illegal immigrant housing laws because, as one scholar has explained:

[T]he goal of [such] housing measures is . . . to remove a specific group of people from the community. When this is combined with the difficulty of determining immigration status; the public's confusion over legal status, alienage, and national origin; and the perception that people of manifest ethnicity are “aliens” – not to mention the irresponsible statements of political leaders – the result is a cloud of suspicion over all national origin minorities.⁸¹

Unfortunately, the trend of increased discrimination against and harassment of Latinos is likely to continue in Fremont if the Ordinance is given effect.

Second, if implemented, the Ordinance may be used as a tool to harass Latino residents. The Ordinance could transform routine enforcement of local ordinances into a pretext for targeted immigration raids.⁸² For example, a simple complaint to the police, regardless of its legitimacy, that a tenant in a rental unit has violated local ordinances regarding excessive noise or parking restrictions could trigger an investigation into that individual’s immigration status.⁸³ In addition, a report to local police that someone is harboring illegal aliens in

⁷⁹ Oliveri, *Between a Rock and a Hard Place*, *supra*, at 109.

⁸⁰ *Id.* at n.228 (citing Press Release, ACLU, *Businesses Sue Riverside Over Vague, Discriminatory Anti-Immigrant Ordinance* (Oct. 18, 2006), <http://www.aclu.org/immigrants/discrim/27107prs20061018.html>).

⁸¹ *Id.* at 109.

⁸² See Marjorie Cohn, *Racial Profiling Legalized in Arizona*, 1 COLUM. J. RACE & L. 168, 176 (2012).

⁸³ See *id.*

violation of the Ordinance could subject that person's entire household to an evasive immigration investigation. If implemented, the Ordinance will arm anti-immigrant vigilantes and anyone with animus towards Latinos with a powerful weapon for intimidation and harassment, allowing them to report neighbors and co-workers, or anyone of Latino descent they happen to dislike, to the police.⁸⁴

Although the Ordinance has not gone into effect, there is some evidence that it is already being used as a vehicle for harassment. At the 2010 hearing before the Nebraska Advisory Committee, Bertha Valenzuela, an American citizen who had lived in Fremont for 10 years, stated that on the day the Ordinance passed, two police officers arrived at her home and told her 17-year-old son that a neighbor had reported loud music playing.⁸⁵ The police officers then asked to see Valenzuela's son's "papers."⁸⁶ After Valenzuela confronted the officers and accused them of harassment, they left.⁸⁷ In addition, a local Latino business owner reported receiving "an anonymous letter falsely accusing him of harboring illegal immigrants,"⁸⁸ which the Ordinance prohibits. If the Ordinance is implemented, anti-immigration vigilantes will be able to invoke the Ordinance as an invidious tool for harassment.

⁸⁴ See *id.*; Oliveri, *Between a Rock and a Hard Place*, *supra*, at 109.

⁸⁵ Young, *Fremont Immigration Ordinance Among Topics Before Civil Rights Committee*, *supra*.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ JA 1243-45 (Reed, *City Torn by Immigration Proposal*, *supra*).

Third, the atmosphere in Fremont has alienated Latinos, including those who are lawful citizens and legal immigrants. The Ordinance’s proponents have associated all persons of Latino descent with “illegal immigrants,” such that Fremonters have begun to view their Latinos neighbors with suspicion and question whether those neighbors belong in Fremont or whether they should be driven out of town.⁸⁹ As an opponent of the Ordinance explained, the law “is about fear and lack of trust – we don’t trust that the people who look different than us are here legally.”⁹⁰ Tellingly, after the passage of the Ordinance, the atmosphere in Fremont was so politically and racially charged that elected officials in Fremont were unwilling to meet with representatives from Fremont’s Latino community and remained silent in the face of reports of discrimination and violence directed at Latinos.⁹¹ This atmosphere of suspicion and mistrust not only harms Latinos’ tangible legal rights, but also their sense of belonging.⁹²

⁸⁹ See Valenzuela, et al., *supra*, at 1 (stating that the Ordinance has caused “[i]ncreased community conflict and suspicion as many Fremont citizens now *assume* Hispanic = ‘illegal’”); Etter, *Border Fight Creeps North*, *supra* (quoting resident Michelle Knap as saying, “The mentality and the atmosphere has changed . . . It’s fear.”).

⁹⁰ Tammy Real-McKeighan, *Fears Have Residents on Both Sides of Issue Worried*, FREMONT TRIBUNE (June 12, 2010).

⁹¹ After the Ordinance was passed, One Fremont One Future “raised concerns about community tensions focused on Hispanics shortly after the special election. [The organization] suggested then and later requested that a city official (Mayor, Council President, or Council) offer a ‘public word of welcome to Hispanics’ to clarify the vote. Hispanic citizens again requested a meeting with the Mayor; he refused as he has since November 2009 without giving a rationale. As reports of specific incidents were received, city leaders were informed formally and informally. No specific response was provided.” Valenzuela, et al., *supra*, at 4.

⁹² See Kevin R. Johnson, *The Case Against Race Profiling in Immigration Enforcement*, 78 WASH. UNIV. L. Q., 675, 711-12 (2000) (examining the dignitary harms caused by race profiling in immigration enforcement and observing that these practices “affect the sense of belonging to U.S. society of Latino citizens and immigrants” and that “immigration enforcement regularly imposes indignities on citizens and lawful immigrants of Mexican ancestry that are not imposed on Anglos”).

The toll that the Ordinance has taken on the Latino community in Fremont is evident. One Fremont resident stated, “The truth is I don’t know how to explain to my daughter when she asks, ‘Why do those people shout at you F—— Mexican go back to your country’ but I was born here.”⁹³ After the Ordinance passed, Latinos in Fremont felt “humiliated and estranged” as a result of “racism and discrimination” by non-Latino Fremonters.⁹⁴ “No one in Fremont or Nebraska knows how many illegals are here. . . . But people are already being profiled by the mere fact they speak Spanish and the color of their skin. They are good people and need to be respected like any members of the community,” commented another resident.⁹⁵ In addition, Latinos in Fremont experienced public scrutiny, as another resident relayed: “I know what they’re thinking when they look at me: ‘Am I legal? Am I illegal?’ I can feel it.”⁹⁶ Implementation of the Ordinance is likely to inflict additional damage on the dignity of Latinos who reside in Fremont.

⁹³ Voices Week 1, *supra*.

⁹⁴ Voices Week 3, *supra*.

⁹⁵ *Id.*

⁹⁶ Monica Davey, *City in Nebraska Torn As Immigration Vote Nears*, NEW YORK TIMES, June 17, 2010, http://www.nytimes.com/2010/06/18/us/18nebraska.html?pagewanted=all&_r=0; *see also* Ross, *Nebraska Town Faces Vote on Illegal Immigration*, *supra* (quoting Fremont resident and store owner as stating, “I have to admit, when I see them come into the store . . . I can’t help wondering if I’m profiling someone who’s completely honest.”).

C. Implementation of the Ordinance Will Harm Fremont’s Latino Businesses.

To add insult to injury, the Ordinance, if given effect, would place a heavy economic burden on Latino businesses in Fremont, and on the Fremont economy generally.

Due to the increased discrimination and harassment, Latinos may decide to avoid public places or leave the City entirely.⁹⁷ As a result, Latino businesses in Fremont would suffer. Personal accounts of Latino residents in Fremont suggest that the passage of the Ordinance is already having such an effect. Since the Ordinance was passed, Latino residents of Fremont have expressed reluctance to “go grocery shopping,” and “go out in the street or go to the store” due to perceived discrimination.⁹⁸ “A common visit to the store to do the weekly shopping has become very uncomfortable,” one individual explained.⁹⁹ According to another Latino resident, “Now I don’t go out in the streets or go shopping in the

⁹⁷ For example, after Arizona passed anti-immigrant law S.B. 1070, Latino businesses in that state suffered significant economic harm. *See, e.g.*, Tim Gaynor, *Arizona Immigration Law Hits Latino Businesses*, REUTERS, May 11, 2010, <http://www.reuters.com/article/2010/05/11/us-usa-immigration-arizona-business-idUSTRE64A4EY20100-511> (noting that business at one Latino restaurant fell 40 percent after Arizona’s S.B. 1070 was signed and that a car dealer is worried that he will go out of business because Latinos are reluctant to drive cars out of fear they will be pulled over and interrogated about their immigration status); Dan Zeiger, *Is SB 1070 Causing Latinos to Leave Arizona?*, E. VALLEY TRIBUNE, July 24, 2010, http://www.eastvalleytribune.com/arizona/immigration/-article_c5b6e470-96b6-11df-9fd9-001cc4c03286.html (noting several Latino businesses that experienced a sharp decline in business after Arizona’s S.B. 1070 was signed into law).

⁹⁸ Voices Week 3, *supra*.

⁹⁹ Voices Week 2, *supra*.

store because I'm afraid when I go driving, I will be stopped by the police and they will arrest me and my family.”¹⁰⁰

There is also some evidence that Latino businesses are being negatively impacted already. The owner of a local Latino grocery store in Fremont “dropped plans to start another business because he fears his customers might be driven away”¹⁰¹ and observed that Fremont “is going to be a ghost town if [the City] keeps pushing this ordinance.”¹⁰²

The economic consequences of the Ordinance are not limited to business that are owned by or cater to Latinos in Fremont. Rather, the Ordinance will harm Fremont's wider economy. The experience of other jurisdictions reveals that there are numerous costs associated with the anti-immigration laws. For one, jurisdictions suffer financial damage stemming from their being perceived as hostile, including “individuals choosing to live elsewhere rather than remain in an unwelcoming environment.”¹⁰³ In addition, local governments expend significant resources implementing anti-immigrant laws which turn local police into immigration officers, to the detriment of their regular law enforcement duties.¹⁰⁴

Laws like the Ordinance also “force small businesses into costly immigration

¹⁰⁰ Voices Week 3, *supra*.

¹⁰¹ JA 1244 (Reed, *City Torn by Immigration Proposal*, *supra*).

¹⁰² Margery A. Beck and Josh Funk, *Nebraska City's Illegal Immigration Law to Be Nuisance*, ASSOCIATED PRESS, February 21, 2012.

¹⁰³ See Phillip E. Wolgin and Angela Maria Kelley, *Your State Can't Afford It: The Fiscal Impact of States' Anti-Immigrant Legislation*, CENTER FOR AMERICAN PROGRESS, 1 (2011), available at http://www.americanprogress.org/wp-content/uploads/issues/2011/07/pdf/state_immigration.pdf.

¹⁰⁴ *Id.*

enforcement” through the mandatory use of E-Verify.¹⁰⁵ Further, local governments must bear the expense of the legal fees associated with defending anti-immigrant legislation in court.¹⁰⁶ Finally, empirical studies have shown that anti-immigrant laws negatively impact local economies, resulting in reduced employment rates and salaries for documented and undocumented workers alike.¹⁰⁷ Thus, it is clear that implementation of the Ordinance would impose significant economic costs on Fremont’s Latino businesses and the City’s wider economy.

IV. CONCLUSION

Proponents of Ordinance 5165 set out to fix a problem they deemed to be out of control: an influx of “illegal aliens.” But the events leading up to the passage of the Ordinance revealed the true “problem,” namely that the number of Latinos in Fremont (be they U.S. citizens, legal immigrants, or otherwise) was growing too rapidly. As a result of the campaign for and the passage of Ordinance 5165, Latinos in Fremont have been subjected to pervasive and unlawful discrimination based on their perceived racial and national identities. If the Ordinance is permitted to go into effect, it will heighten discrimination against Latinos in housing; lead to increased assaults on the persons, property, and dignity of Latinos; and place great burdens on Latino businesses. For these reasons, and

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 2.

¹⁰⁷ Huyen Pham, et al., *Economic Impact of Local Immigration Regulation: An Empirical Analysis*, 31 IMMIGR. & NAT'LITY L. REV. 485, 485 (2010) (finding that anti-immigration laws had a negative economic effect, resulting in “a 1 to 2% drop in employment, or 337 to 675 lost jobs for the average county, with payroll dropping between 0.8 and 1.9%”).

for the reasons stated in Plaintiff-Appellants' briefs, Amici urge the Court to grant Plaintiff-Appellants' petition for rehearing *en banc* and, ultimately, invalidate the Ordinance.

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Respectfully submitted,

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CERTIFICATE OF BAR MEMBERSHIP

I hereby certify that I am a member of the bar of this Court.

/s/ Matthew S. Hellman
Matthew S. Hellman

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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