
Policy *for* Local Progress



**CASE STUDIES & BEST PRACTICES FROM
AROUND THE COUNTRY**



ABOUT THE AUTHORS

LOCAL PROGRESS is a national municipal policy network made up of hundreds of local elected officials from around the country and key allied organizations who are united by a shared commitment to a strong middle and working class, equal justice under law, sustainable and livable cities, and good government that serves the public interest effectively. Local Progress seeks to build progressive infrastructure that will yield political and policy dividends for decades to come.



We work by sharing best practices from city to city in order to replicate effective policies; building deep relationships among elected officials and between officials and community-based organizations and progressive labor unions; and advancing legislation in multiple cities at once in order to elevate key issues into the national dialogue.

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TABLE OF CONTENTS

ECONOMIC JUSTICE

PAID SICK LEAVE	2
COMMUNITY BENEFITS AGREEMENTS	4
CREATING GREEN JOBS	6
LIVING WAGE ORDINANCES	8

STRENGTHENING NEIGHBORHOODS

LIVABLE CITIES	10
ADDRESSING THE FORECLOSURE CRISIS	12
STRENGTHENING PUBLIC SCHOOLS	14
BANNING HOUSING DISCRIMINATION	16
ENDING DRUG-RELATED EVICTIONS	18

CIVIL AND IMMIGRANT RIGHTS

POLICING AND CIVIL RIGHTS	20
DETAINER DISCRETION	22
LANGUAGE ACCESS	24
IMMIGRANT CONFIDENTIALITY POLICIES	26
LGBT CIVIL RIGHTS	28
EXPANDING VOTING RIGHTS	30

Paid Sick Leave

THE PROBLEM

More than 40 million American workers get no paid sick leave.³ Most of these workers are in service industries like restaurants, health care, and retail – so the problem is particularly acute in cities, where these jobs cluster. When they are sick, these employees either have to show up for work – which threatens their health,⁴ the health of their co-workers, and of the customers they serve – or stay home and lose valuable pay and risk termination. Because many working parents cannot stay home to take care of their sick children, those children are sent to school, which harms them and other kids. The United States is one of the only countries in the world without a national paid sick leave law.⁵

THE SOLUTION

While the best solution would be federal law, efforts in Congress to pass the Healthy Families Act – which would guarantee up to seven paid sick days a year for workers at companies with at least 15 employees – have so far been unsuccessful.⁶

Without federal action, cities are taking the lead on the issue. Paid sick leave laws have been enacted in **San Francisco** (2006),⁷ **Washington D.C.** (2008), **Seattle** (2011), **Portland** (2013), **New York City** (2013), and **Jersey City** (2013). Voters passed a law in **Milwaukee** (2008), but Governor Scott Walker and the legislature later outlawed local paid sick leave laws. In 2011, **Connecticut** became the first state to pass a paid sick days law.

Broad-based campaigns – supported by unions and advocacy organizations committed to the wellbeing of women, children, immigrants, and workers – are active in dozens of cities and states around the country.⁸ Paid sick leave is attractive for city-level reform because many cities are permitted to exercise “police power” and pass legislation protecting the “health, safety, morals, and general welfare of the public.” Furthermore, in most cases there are no preemption issues.⁹



“My boss told me that I no longer had my job at the restaurant. I was in shock. Getting fired was devastating.”

— **Elose Arestil**, dishwasher in Miami, after being injured on the job.¹



“I had to prioritize my family over work, and I lost my job.”

— **Ai Elo**, waitress in New York City, after being fired because she stayed home to take care of her ill brother.²

POLICY ISSUES

The following topics will likely come up when designing your city’s paid sick leave legislation. Legislators can tailor their proposals to the political realities in their city.

COVERAGE: The scope of coverage is a central question in all campaigns. Advocates have sought to broaden coverage to include as many workers as possible; opponents have sought to carve out small businesses or particular industries. **San Francisco’s** law is broadest, covering any worker – part or full time – who works within the city for an employer. In order to win passage, advocates in **Washington, D.C.** had to accept an exclusion of restaurant workers, which is particularly problematic given the public health consequences of such employees working while ill. In **Connecticut**, advocates had to agree to a carve-out for businesses with fewer than 50 employees, manufacturers, some non-profits, and firms that employ temporary workers. In **New York City**, manufacturing businesses and those with fewer than 15 workers are exempted, although it is likely that those exemptions will be eliminated or narrowed.

NUMBER OF DAYS: Many paid sick bills start by requiring 10 days of paid sick leave for all workers, falling

back to fewer days as a compromise to win passage. A number of bills provide two tiers – 9 days for most employees, 5 days for employees of small businesses – to address opponents’ claims that small businesses cannot afford to provide such benefits. The rate at which the leave accrues (typically 1 hour leave for every 30 or 40 hours worked), the date on which it begins to accrue (at start of employment or later), and the length of a probation period (immediate use of benefit or waiting period to use), are all likely to be points of contention. Data from a San Francisco survey is useful to allay employer concerns over the cost of paid sick leave: “despite the availability of either five or nine sick days under the [Paid Sick Leave Ordinance], the typical worker with access used only three paid sick days during the previous year, and one-quarter of employees with access used zero paid sick days.”¹⁰

USAGE: Most laws and proposals permit workers to take time off to care for themselves or for a sick family member or to seek assistance related to domestic violence. There are slight variations in the definition of a “family member” across the proposals, but most define it expansively to include domestic partners and people related through blood or marriage. Most proposals permit time off to get routine/preventive medical care.

ENFORCEMENT: It is important to ensure that any paid sick law includes enforcement provisions so that workers are actually able to use their leave. Legislation should include: requirements that employers notify their employees of their rights and keep records of the leave accrued and taken by employees; a private right of action so that employees can sue (in court and/or through an agency) if their rights are violated; penalties for non-compliance by employers; and the establishment of investigation and enforcement tools within a city agency. If a city does not have a labor bureau, enforcement can sometimes be vested in a department of health, consumer affairs, business development/licensing, or workforce development.



“I chose to sponsor this bill, not only because it was the right thing to do, but because I believed that this was a coalition that would get the job done. A robust coalition of workers, employers, health care professionals, moms, and social justice activists is a coalition that just can’t be beat!”

– Seattle City Councilmember **Nick Licata**, after Seattle enacted paid sick leave in Sept, 2011.

campaign for a national paid sick leave law and provides support on local campaigns. The **Institute for Women’s Policy Research** has extensive research on the costs and benefits of paid sick leave policies. The **Center for Popular Democracy**, the **Leadership Center for the Common Good**, and the **Working Families Party** provide legal, strategy, and organizing support to local campaigns. **A Better Balance** advocates for a range of policies that advance the rights of working families and provides legal support on campaigns.

Notes

1. Sick and Fired: Why We Need Earned Sick Days to Boost the Economy, available at <http://familyvaluesatwork.org/wp-content/uploads/2011/10/FVAW-SickAndFired-Online.pdf>
2. *Seattle Mayor Mike McGinn Signs Landmark Paid Sick Days Legislation*, Washington Policy Watch (Sept. 23, 2011).
3. US Congress Joint Economic Committee, *Expanding Access to Paid Sick Leave: The Impact of the Healthy Families Act on America’s Workers* (2010).
4. *Paid Sick Leave and Nonfatal Occupational Injuries*, American Journal of Public Health.
5. See www.motherjones.com/mojo/2012/08/paid-sick-leave-new-york-christine-quinn.
6. The legislation has 118 cosponsors in the House and 18 in the Senate. See <http://www.govtrack.us/congress/bills/112/hr1876>.
7. For a detailed evaluation of the impact of the ordinance in San Francisco, see Robert Drago and Vicky Lovell, *San Francisco’s Paid Sick Leave Ordinance: Outcomes for Employers and Employees*.
8. For a list of active campaigns, see <http://familyvaluesatwork.org/in-your-state>.
9. The federal Family Medical Leave Act guarantees unpaid leave to some employees at firms that have 50 or more workers. However, it does not preempt local paid leave law. Wisconsin and Louisiana have both prohibited cities from mandating the provision of paid sick leave.
10. Drago and Lovell at 1.

LANDSCAPE AND RESOURCES

Family Values at Work is a consortium of 17 state and local coalitions pushing for paid sick leave. The **National Partnership for Women and Families** is leading the

Economic Development with Real Community Benefit

Land Development in the Public Interest

THE PROBLEM

Too often, major development projects do not deliver tangible benefits to local residents, and instead lead to corporate profits at the community's expense through gentrification, displacement, traffic, pollution, and other impacts.

THE SOLUTION

A community benefits approach to economic development aims to ensure that new development serves the needs of local residents, not just the needs of developers. "Community benefits" are assets available through economic development that meet real community needs, including the following:

- *good wages and benefits for workers involved in the project, including service workers;*
- *affordable housing as part of any residential development;*
- *funding for local infrastructure such as community centers, supermarkets, or schools;*
- *hiring of local residents or members of vulnerable populations; and*
- *creating environmental benefits and mitigating environmental impacts.*

WHAT ROLE DO LEGISLATORS PLAY? City and county elected officials have powerful tools at their disposal to realize equitable economic development. They can:

- Fight to include meaningful community benefits in every project. For every development project, there is room for a city to negotiate community benefits. Community benefits can be included in government agreements with developers and in conditions for project approval, subject to some legal constraints.
- Encourage the negotiation of private community benefits agreements. Private community benefits agreements (CBAs) are negotiated between developers and coalitions of community stakeholders. Public officials can make clear to developers that they will take



“There is a movement growing across the country of local elected and appointed officials who recognize that economic development with community benefits can transform local economies and create shared prosperity.”

—The Partnership for Working Families

community views about a project seriously, although they should avoid directly involving themselves with the negotiation of private CBAs, which can lead to political and legal complications. Public officials can also convene stakeholders to establish consensus around community benefits principles, paving the way for project-specific measures.

- Adopt baseline community benefits laws or policies. On key issues, cities and counties can set standards, such as minimum wage or inclusionary housing requirements, applying to a range of future projects. They can also adopt policy requiring reports on the impact of proposed projects on the community. Finally, they can help create land use plans that support community benefits.

These strategies complement one another and should be used in the same city. In advancing these strategies, local officials should keep the following principles in mind:

- Building community power is important. Public officials with a community benefits vision need community stakeholders with high capacity and strong voices to develop, adopt, and implement that vision. Public officials may have to step back at times to let community lead, but better outcomes will result.

- The benefits have to be real. The details of policies, agreements, and programs matter. The community benefits approach is for people who are serious about delivering jobs and other benefits, rather than just making feel-good statements. Issues like monitoring, reporting, and enforcement all deserve your attention as much as the core benefits provisions.
- Lead by communicating clearly and with details. In order to succeed, the community benefits approach relies on community and city staff having the information it needs about development projects and about what they would mean to effectively implement community benefits.

EXAMPLES OF SUCCESSFUL CBAS

OAKLAND: Jobs Policies adopted in 2012 for a major warehousing and goods movement project on the site of the former Oakland Army Base established requirements for local hire, disadvantaged hire, living wages, limitations on use of temp workers, and community oversight and enforcement. The Jobs Policies resulted from extensive work between City staff, City Councilmembers, and a broad range of community stakeholders. The Policies were included in an agreement between Oakland and the project developer. Community groups made a formal agreement to support the project in exchange for the City's commitment to community benefits.

NEW YORK: In April 2013, a coalition of community organizations entered into a comprehensive CBA for the redevelopment of the Kingsbridge Armory in the Bronx. The project, an ice sports center, will include nine hockey rinks, a 5,000-seat arena and a 50,000-square-foot community space. Under the CBA, the developer agreed to: living wages for all workers; targeted and local hire for construction and operations jobs; more than \$8 million for a community fund; a grant program for local businesses; local contracting and procurement, M/WBE utilization, extensive green building measures, and community consultation on environmental issues; priority community access to the project's athletic facilities; and formal structures for community-based oversight and enforcement. The City Council helped make the agreement possible by rejecting a prior developer's project after that developer refused to agree to community benefits demands.

LOS ANGELES: In January 2012, the Los Angeles County Metropolitan Transit Agency adopted a Construction Careers Policy and master Project Labor Agreement with targeted hiring measures. The Policy and PLA will apply to

projects in a 30-year, multi-billion dollar transit build out, generating over 23,400 construction jobs in the first 5 years. The Policy and PLA set aside 40% of these jobs for residents of high-poverty communities and low-income individuals with multiple barriers to employment, while ensuring high quality training and decent working conditions and wages for all workers on the projects.

PORTLAND: Emerald Cities Portland led a process involving key stakeholders and city officials to create a template "Community Benefits Agreement" that addresses job quality, job access, and contracting with disadvantaged businesses on construction projects in the city. The template agreement was adopted by city council resolution that encouraged its use on city projects and other projects. Versions of the agreement have been used on two city public works projects, and stakeholders are working to put it in place for other projects, including private projects.

LANDSCAPE

Land use policy and community benefits measures are both highly local and complex, and legislators should consult with lawyers and advocates early in the development process. Developers are repeat players who can profit enormously from favorable treatment by municipalities and they often exert enormous pressure to get what they want. For this reason, it is crucial for progressive elected officials to collaborate with local community allies and experts from around the country.

The leading organization working on CBAs is the **Partnership for Working Families** and its Community Benefits Law Center. Its website, www.communitybenefits.org, has extensive resources. The Partnership can work with you to design a strategy that helps deliver community benefits in your city or county.

The organization **Good Jobs First**, which advocates for making economic development subsidies more effective and accountable, has created a valuable set of materials to introduce readers to the development process. www.goodjobsfirst.org/accountable-development.

The Center for Popular Democracy, with long experience using community organizing to win local legislative victories, can help you build a strong coalition in favor of development that works for your entire city.



PARTNERSHIP
for
Working Families

Creating Green Jobs

THE PROBLEM

The year 2012 proved that climate change is upon us: widespread wildfires, a massive nation-wide drought, and now Hurricane Sandy. Cities are crucial to limiting future climate change because shifting from suburban sprawl to urbanization reduces greenhouse gas emissions. And cities will also bear primary responsibility for protecting their residents from the consequences of climate change. With the end of federal stimulus funds, which provided \$27 billion for energy efficiency programs and renewable energy research in 2009 and 2010, and in the face of state budget cuts, cities must take the lead on designing innovative programs and funding sources to restart the green jobs movement.

THE SOLUTION

In 2008, over 1,100 mayors signed the Green Jobs Pledge, committing their cities to policies that drive investment in an inclusive and sustainable economy.¹ The goal of the green jobs movement is to: (1) shift America's economy away from its dependency on fossil fuels and (2) create millions of sustainable, middle class jobs available to workers with a range of educational backgrounds.

There are many policy options cities may pursue, and the examples below are merely illustrative. The most successful cities have offices that design local solutions, coordinate implementation, and take full advantage of available state programs. Cities can create and encourage green jobs in: energy efficiency; renewable energy; green manufacturing, construction, and product design; organic agriculture, sustainable forestry, and conservation; and waste control and recycling.²

But it is essential to ensure that green jobs are also *good* jobs that pay a living wage, are safe, and create upward mobility. The track record on this front is mixed.³ Like with all government programs, transparency and accountability are key to ensuring that tax dollars and regulation are serving their purpose. Living wage requirements, community benefit agreements, and clawback provisions

should be used whenever possible.

ENERGY EFFICIENCY UPGRADE PROGRAMS

The quickest way to directly create new green jobs is through energy efficiency upgrades to buildings. The immediate and on-going cost savings created by these upgrades funds the upfront costs and, ideally, makes the projects sustainable. Forty percent of America's energy is used in buildings, so improvements have significant environmental benefits.

- *Government buildings:* City governments occupy office and school buildings for decades, so there is strong financial incentive to make energy efficiency upgrades. With interest rates at historic lows, cities can immediately save money by issuing bonds to pay for the upgrades or partnering with utility companies and responsible banks to develop other financing.
- *Residential buildings:* Many energy efficiency programs offer homeowners free or cheap upgrades while lenders recover the savings over time. The biggest challenge is often outreach: in a **South Bronx** pilot project, although 100 families received free audits from NY State, only 5 completed the retrofits. **Portland** has been far more successful – and has prioritized the creation of good jobs – through collaboration with community organizations.⁴
- *Commercial buildings:* Economies of scale make these projects attractive and over 25 states permit municipalities to issue bonds to fund them.⁵ However, because tenants generally pay energy costs, landlords often do not have an incentive to invest in upgrades. Mortgage terms also complicate matters. The **New York City Energy Efficiency Corporation** is using an innovative financial arrangement to resolve these problems.⁶

ENCOURAGING EFFICIENCY: ZONING, CODES, & TAXES

Cities can stimulate significant economic growth by requiring building owners to measure and improve their energy usage. **New York City** passed a package of local

laws requiring that large buildings annually benchmark their energy performance, conduct an energy audit and retro-commissioning every 10 years, upgrade lighting to meet code, and provide large commercial tenants with sub-meters.⁷ This package was part of the broader PlaNYC that includes over 120 greening initiatives.⁸ Cities have used a number of other policies to encourage efficiencies:

- *Many cities have energy codes that exceed state minimums;*
- *BERKELEY and AUSTIN require upgrades at the time of sale or other trigger points;*
- *WASHINGTON, D.C. requires that large commercial buildings disclose their energy use to the public;*
- *Cities can offer non-financial incentives, such as expedited permitting or prioritization in access to public services, in exchange for efficiency.*

INVESTING IN CLEAN ENERGY

Many cities have prioritized the use of clean energy. In 2001, **San Francisco** voters authorized \$100 million in bonds to purchase enough renewable energy to supply about 25 percent of the government's needs. As a result, the city has become a hub for the solar industry, fostering economic and job growth. In **Toronto**, a pilot project provided funding for residents and small businesses to install solar-powered water heaters on their rooftops.⁹

States around the country mandate that electrical utilities buy a portion of their energy from renewable sources and have established tradable energy credits to encourage energy production by businesses and homeowners. **Gainesville, FL** has sought to speed up production by setting the rates that utilities must pay for solar energy.¹⁰ As a result of these and other programs, employment in the solar industry grew by 13 percent in 2012.¹¹

COORDINATING OTHER GREEN POLICIES

In **Pittsburgh**, a coalition of entities is creating good green jobs by (1) diverting excess usable building materials from landfills into construction; (2) rebuilding the county's drain system to divert rainwater away from sewers and into gardens, farms, and green spaces that revitalize abandoned lots and business areas; (3) turning used commercial and residential cooking oil into biofuel; and (4) establishing a six-week job training program for underemployed and unemployed people that connects workers to green jobs.¹²

Around the country, progressive cities are also investing in smarter land use and transportation policies that reduce

greenhouse gas emissions, build smart infrastructure, and create good jobs.

LANDSCAPE AND RESOURCES

Through its Solar America Cities program, the Department of Energy provided funding and support to **twenty-five cities** to promote solar energy markets. See the comprehensive *Solar Powering Your Community: A Guide for Local Governments* (2011). **Vote Solar** is leading campaigns at the local, state, and federal to help solar markets grow. **C40** is a group of major cities around the globe taking action to avert climate change.¹³

Leading the fight for a green economy are **Green for All**, the **Blue-Green Alliance**, **Good Jobs First**, and **The Labor Network for Sustainability**.

NOTES

1. www.usmayors.org/resolutions/76th_conference/jew_05.asp.
2. See OECD, *Cities and Climate Change at 149* (2010), available at http://www.keepeek.com/Digital-Asset-Management/oecd/governance/cities-and-climate-change_9789264091375-en and Economic Policy Institute, *Counting Up to Green* (Oct. 12, 2012) at <http://www.epi.org/publication/bp349-assessing-the-green-economy/>.
3. See *Good Jobs First, High Road or Low Road? Job Quality in the New Green Economy* (2009), at <http://www.goodjobsfirst.org/sites/default/files/docs/pdf/gjfgreenjobsrpt.pdf>.
4. For case studies and conclusions about best practices, see *The Role of Local Governments and Community Organizations As Energy Efficiency Implementation Partners: Case Studies and a Review of Trends* (2012), www.aceee.org/files/pdf/white-paper/Local-EE-Implementation.pdf.
5. See www.pacenow.org.
6. Information about the Energy Services Agreement is available at <http://www.nyceec.com/case> and www.rockefellerfoundation.org/uploads/files/791d15ac-90e1-4998-8932-5379bcd654c9-building.pdf.
7. *New York City Local Law 84 Benchmarking Report*, August 2012, available at http://www.nyc.gov/html/gbee/downloads/pdf/nyc_1184_benchmarking_report_2012.pdf.
8. See <http://www.nyc.gov/html/planyc2030/html/home/home.shtml>.
9. See *Solar Neighbourhoods Pilot Project Findings* (2010), available at http://www.solarneighbourhoods.ca/wrap_report.pdf.
10. See Stephen Lacey, *ClimateProgress*, "Which Are Cheaper? Tradeable Credits or Feed-in Tariffs?" (Oct. 26, 2011).
11. Katie Valente, *ClimateProgress*, "U.S. Solar Jobs Grow By 13 Percent In 2012, Far Outpacing The Broader Economy" (Nov. 5, 2012).
12. See <http://gtechstrategies.org> and <http://youtu.be/ZRiguDgFB3Q>.
13. www.c40cities.org/home

Living Wage Ordinances

THE PROBLEM

Forty-six million Americans lived in poverty in 2011, largely because too many workers were paid very low wages.² Federal and state minimum wages are too low to lift working families out of poverty, much less into the middle class. Many cities do not have the legal authority to set higher minimum wages.

THE SOLUTION

Over the past twenty years, more than 140 cities around the country have passed living wage laws, which help ensure that public expenditures create good jobs.³ The laws set minimum standards for the wages of private sector workers – such as janitors, bus drivers, gardeners, and cafeteria workers – who are employed by businesses that contract with the city or receive public subsidies. Living wages are a second-best alternative to higher minimum wages for all workers. But, unlike minimum wages, most cities have the authority to implement them.

Although opponents claim that the laws will cost cities significant money, rigorous academic surveys of living wages across the country show that “actual costs tended to be less than one-tenth of 1% of the overall budget.”⁴ In addition, living wage laws often improve the competitiveness of bidding for city contracts because they give high-road, high-quality contractors confidence that they will not be under-bid by low-road, low-quality contractors.⁵ In addition, living wage laws increase worker productivity and decrease turnover – and help create upward pressure on wage rates more broadly.

Most laws set the wage between \$9 and \$16 per hour. But they can also encourage the provision of health insurance, guarantee paid sick leave and vacation time, and facilitate the hiring of local residents or disadvantaged populations. If your city already has a living wage law, you should consider amending it to include best practices from around the country.



“The 1995 Baltimore living wage campaign ‘was about the force of particular moral propositions: first, that work should be rewarded, and second, that no one who works full time should have to live in poverty.’”

– Jon Gertner, *The New York Times Magazine*¹
(Pictured: **Manuela Soto**, hotel housekeeper in Baltimore)

POLICY ISSUES

The following topics will likely come up when designing or revising your City’s living wage legislation. Legislators can tailor their proposals to the political and economic realities in their city by adjusting the scope of coverage and the wages and benefits provided.

APPROPRIATE WAGE: Economic analysis can help cities set a living wage rate that will in fact support working families adequately, in accordance with that city’s cost of living. Further, there are a variety of ways to set the living wage in law so that it is not frozen over time. Some cities (such as **Lincoln, NE** and **Cincinnati**) set their living wage at a particular percentage (usually 110 or 130) of the federal poverty guideline for a family of four. This helps remind the public that the law is merely providing workers with enough income to stay out of poverty. Other cities, including **Sacramento** and **Tucson**, set their wage rate to rise with inflation. **Philadelphia** has set the living wage at 150 percent of the federal minimum wage and **Washington, D.C.** at \$1 more than the federal minimum wage.⁶

HEALTH INSURANCE: Under federal law, cities are prohibited from mandating that employers provide health insurance to their workers. To work around this problem, many living wage ordinances set two wage rates: one for employees who are provided with health insurance and a

higher rate for those who are not. The best statutes also ensure that the insurance is adequate and affordable.

PAID SICK LEAVE & VACATION: Ideally, living wage laws should guarantee covered employees 5 to 10 days of paid sick leave per year and a similar amount of paid vacation. In 2011, Philadelphia amended its living wage law to provide paid sick leave.⁷

CONTRACTORS COVERED: Many living wage laws exempt contracts under a certain size (e.g., \$25,000 or \$100,000) based on the argument that such small contracts do not affect many workers. More controversially, some laws exempt small and non-profit contractors or contractors in particular industries. Such exemptions should be avoided when possible. Coverage should also extend to sub-contractors.

COVERAGE OF ECONOMIC DEVELOPMENT ASSISTANCE: The best living wage laws cover recipients of the city's economic development assistance, which consists of grants, low-interest loans, and tax reductions and is given to businesses that agree to relocate or remain in the city and to land developers. Los Angeles leads the way in ensuring that subsidized development projects pay a living wage, not only to the construction workers who build the sites but also to the service employees who will staff the stores in the development. "Los Angeles' economic development agency has found that these standards have not prevented developers from balancing project budgets, getting financing, and finding anchor tenants."⁸ Such policies are crucial – particularly in larger cities that offer significant development assistance.

TARGETED HIRING & JOB TRAINING: Cities can also use their living wage laws as tools for providing jobs to particular populations that face barriers to employment, including the long-term unemployed, people with disabilities, people transitioning back into society from prison, and people who attended local public schools or local job training programs.

ENFORCEMENT: Studies have found that many living wage ordinances have not been enforced properly. Both public pressure and smart legislative design are crucial to ensuring compliance.⁹ Laws should include: requirements that employers notify employees of their rights and keep wage records; a private right of action for employees who are not paid properly; penalties for non-compliance, including the loss of contracts; and the establishment of robust enforcement tools within a city agency. Ideally, the agency

responsible for contracting should be tasked with its enforcement because contractors want good relationships with that office. However, if the agency is resistant to the law, enforcement can be vested in a comptroller or a department of labor, consumer affairs, or workforce development.

LANDSCAPE

The National Employment Law Project and the Partnership for Working Families have provided expert support for many living wage campaigns over the past two decades.

NOTES

1. What is a Living Wage?, The New York Times Magazine (Jan. 15, 2006).
2. United States Census Bureau, Income, Poverty, and Health Insurance Coverage in the United States: 2011.
3. The Partnership for Working Families, <http://communitybenefits.org/section.php?id=154>.
4. Jeff Chapman and Jeff Thompson, The Economic Impact of Local Living Wage Laws, Economic Policy Institute (2006) at www.epi.org/publication/bp170/.
5. Id.
6. See Local Living Wage Laws and Coverage, www.nelp.org/page/-/Justice/2011/LocalLWLawsCoverageFINAL.pdf?nocdn=1
7. See <http://legislation.phila.gov/attachments/12002.pdf>.
8. Paul Sonn, Experience Shows Living Wage Policies Work, Gotham Gazette (Dec. 2010) at http://nelp.3cdn.net/do85afbb3c5e773119_yn-m6ib7pw.pdf.
9. Chapman and Thompson.

Livable Cities

In the past twenty-five years, the New Urbanism movement has envisioned a revitalization of cities through design and planning that emphasizes:

- *Livable streets arranged in compact, walkable blocks;*
- *A range of housing choices to serve people of diverse ages and income levels;*
- *Schools, stores, and other nearby destinations reachable by walking, bicycling, or transit;*
- *An affirming, human-scaled city with lively streets and public spaces.¹*

Here are some of the many ways that legislators can help revitalize their communities.

INVEST IN PUBLIC TRANSIT

Los Angeles – long the mecca of automobile America – has embarked on an incredible investment in subways, rapid bus, bike lanes, and denser mixed-use neighborhoods.² But transit is not just for the country’s biggest cities. The number of public transportation systems in the United States increased from 1,044 in 1980 to 7,700 in 2009. **Missoula, MT** has built an excellent bus system that ferries people to every part of the city. **Denver** offers a free shuttle bus through its bustling downtown. Cities like **Eugene, Las Vegas, Boston, and Kansas City** have invested in bus rapid transit with dedicated bus lanes or signal priority and other features that can make it preferable to driving for thousands of residents.

Alongside better transit should come “transit-oriented development”: relatively high density, mixed-use residential and commercial space that facilitates efficient and full use of the transit options by pedestrians who live and work nearby. **Arlington, VA** has permitted development surrounding two of its metro stations, leading to significant economic growth.

Here are five strong public policy reasons to invest in transit and transit-oriented development:

- *It creates good jobs and a reliable return on investment: with good transit, families save money, businesses gain customers, and the unemployed are put to work;*



“[Every Sunday in Bogotá] over 70 miles of city streets are closed to traffic where residents come out to walk, bike, run, skate, recreate, picnic, and talk with family, neighbors & strangers... [Recently I visited and it was] simply one of the most moving experiences I have had in my entire life.”

— Clarence Eckerson, Jr., StreetFilms

- *It dramatically improves life for senior citizens, poor people, and youth, who depend on public transit to get to work, buy food, and live a full life;*
- *It reduces our reliance on fossil fuels, which is crucial to combating climate change;*
- *It reduces traffic and cleans our cities’ air;*
- *It facilitates and encourages walking and biking, which makes us healthier.³*

Among the many victories in the 2012 elections was strong voter support for this vision: pro-transit campaigns had an 80 percent victory rate in a year that saw a record number of ballot measures.⁴ For example, **Arlington County, VA** voters approved a bond measure to fund Metro subway projects, street repair, bike/pedestrian infrastructure, and traffic calming. And **Orange County, NC** voters approved a half-cent sales tax that will fund new busses and bus service, an Amtrak station, and a light rail connection from the University of North Carolina to downtown Durham.

CREATING SAFE AND “COMPLETE” STREETS

Although over 32,000 people were killed in traffic accidents in 2011, there is essentially no national dialogue on this issue.⁵ We need not accept these tragedies as the cost of

modern society. Cities can take the following approaches to keeping their residents safe:

- **Designing Complete Streets:** Seattle’s City Council has required the use of this guiding principle: “to design, operate and maintain Seattle’s streets to promote safe and convenient access and travel for all users – pedestrians, bicyclists, transit riders, and people of all abilities, as well as freight and motor vehicle drivers.” Cities as diverse as El Paso, TX; Newark, NJ; North Little Rock, AR; Onalaska, WI; and Scottsdale, AZ, have recently adopted similar policies. Cities can make engineering modifications to calm traffic and make streets dramatically more pedestrian and bike friendly: wider sidewalks, fewer and narrower lanes, speed bumps, raised pedestrian crosswalks, and protected bike lanes.⁶
- **Investigating Crashes and Punishing Dangerous Drivers:** Street safety should be prioritized by police departments.⁸
- **Properly Pricing Space:** Urban space is valuable and scarce. Rather than subsidize the inefficient and dangerous reliance on cars, cities like Los Angeles, Santa Monica, New York, and Seattle have begun to use smart parking systems that adjust the price of parking depending on demand to reduce traffic, raise revenue, make it easier to find parking, and encourage other forms of travel. In London and Milan, cars entering the congested city center must pay a fee.

REBUILD OUR PUBLIC SPACES

Around the country, cities are creating new public spaces where parents, children, friends, retirees, and workers can congregate together. In 2008, Houston opened Discovery Green, a twelve acre park adjacent to its convention center and two sports stadiums and walking distance from its commercial downtown. Over a million people use it every year and it is revitalizing the city center.⁹

At 30th Street train station in Philadelphia, lanes of parking spaces were transformed into The Porch – a plaza with games, movable chairs and tables, farmers’ markets, and concerts. Just outside of a major subway stop in the heavily immigrant neighborhood of Corona, New York City has turned an underused street and group of parking spaces into a vibrant pedestrian plaza, teeming with life.¹⁰

LANDSCAPE AND RESOURCES

The National Complete Streets Coalition is helping to

coordinate campaigns for safe streets around the country, at the city, state, and federal levels. They offer tremendous resources and can give cities and advocates technical assistance in developing a Complete Streets policy.

The Equity Caucus at Transportation for America — “formed by the nation’s leading civil rights, community development, racial justice, economic justice, faith-based, health, housing, labor, environmental justice, tribal, public interest, women’s groups and transportation organizations — drives transportation policies that advance economic and social equity in America.”

Since its founding in 1975, the **Project for Public Spaces** has collaborated with 2,500 communities and cities to help them build successful public spaces and create healthy, sustainable, and economically viable cities of the future.

The **StreetsBlog** network of websites provides an excellent entry point for news, policy, and advocacy surrounding the livable streets movement.

NOTES

1. The Congress for the New Urbanism, http://www.cnu.org/who_we_are.
2. Matthew Yglesias, *LA’s Transit Revolution*, Slate (Sept. 17, 2012).
3. Smart Growth America, at <http://www.smartgrowthamerica.org/issues/transportation/>.
4. Center for Transportation Excellence Press Release (Nov. 7, 2012).
5. Dangerous By Design, Transportation for America.
6. Complete Streets Improve Safety for Everyone, www.smartgrowthamerica.org/documents/cs/factsheets/cs-safety.pdf.
7. For a helpful collection of images of these improvements, see <http://www.sandiego.gov/planning/community/profiles/uptown/pdf/best-practicesmobility.pdf>.
8. *The NYPD’s Crash Investigation Problem*, Reclaim (Winter, 2012).
9. Project for Public Spaces, Benchmark: Discovery Green, at http://www.pps.org/wp-content/uploads/2011/08/discovery-green-benchmark_aug-2011.pdf.
10. Videos of these and many other vibrant public spaces are at www.streetfilms.org/category/public-space.

Addressing the Foreclosure Crisis

THE PROBLEM

Communities around the country have been devastated since the housing bubble burst: families cut back on spending when their life savings disappeared; the economy was thrust into recession; government tax revenue plummeted; crucial services were cut. Four years later, the economic crisis caused by irresponsible banking practices continues: over 22 million Americans are either unemployed or underemployed. And the nation's housing market remains in disrepair: more than 3.5 million homes have been lost to foreclosure and over 10 million homeowners are "underwater," meaning they owe more on their mortgage than their house is worth. Although the major settlement announced by the federal government in early 2012 is benefiting some homeowners, too many people still face huge delays and improper denials of mortgage modifications and there have been very few principal reductions.¹

THE SOLUTION

The federal government has the power to ameliorate the crisis and states can rewrite their foreclosure laws. But what can cities do? Increasingly, local communities and elected officials are thinking creatively about how to protect homeowners, recover losses, and hold banks accountable for the crisis they created. Some emerging strategies are laid out below.

STEP 1. DEMAND TRANSPARENCY AND RECOVER THE COSTS OF FORECLOSURES: After banks take homes into foreclosure and evict the residents, the properties often sit vacant for months or years. Not only is this a waste of valuable housing, but empty property also becomes a neighborhood blight, dramatically reduces the value of neighborhood homes, reduces city tax revenue, and forces government to spend money on upkeep, code enforcement, and police services.²

To combat these costs, **Los Angeles** adopted a foreclosure registry program in 2010. It mandates that the owner of any foreclosed property: (1) immediately register the



"We're just trying to stay in our home as long as we possibly can."

— Cathy Busby, CO



"Not one political campaign, not one ad, addresses this issue."

— Mark Roarty, OH

property with the city and pay a small fee; (2) conduct regular inspections of the property and ensure it is properly maintained; and (3) pay utilities on time and collect the rent if the property is occupied. If the property remains vacant for more than 30 days and is not being renovated or actively offered for rent or sale, the ordinance permits the city to impose a fee of up to \$1000 per day, not to exceed \$100,000. The results have been mixed: although over 18,000 foreclosed properties had been listed in the Los Angeles registry, many of which were blighted, the City had not recovered even one dollar in fines through the summer of 2012.³

In contrast, **Riverside, CA** passed legislation closing a key loophole in the L.A. law and investing heavily in enforcement. Riverside collected \$7 million in fines during 2009 and 2010.⁴ Los Angeles recently amended the law to improve enforcement, including by giving local youth summer jobs in a "blight brigade" that inspects bank properties.

Cities as small as **Murrieta, CA** and as big as **Atlanta, Las Vegas, and San Diego** have also adopted foreclosure registry ordinances. **Springfield, MA** has taken the most aggressive approach by mandating that lenders who foreclose on a property post a \$10,000 bond with the city to ensure compliance with the law. A federal judge recently rejected

the banks' challenges to the law.⁵

STEP 2. MOVE OUR MONEY: Cities are major depositors with the very banks who have caused so much pain. Modeled after Cleveland's 1991 law and the federal Community Reinvestment Act, at least seven cities – Seattle, Pittsburgh, Portland, Kansas City, Los Angeles, New York, and San Diego – have each recently passed a Responsible Banking Act to demand more transparency and accountability from banks.⁶ The specifics of each law vary, but they generally require that any bank wishing to do business with the city disclose detailed data on its lending, foreclosure, and community redevelopment activities. In Los Angeles, banks that fail to comply are not eligible for city contracts; in New York, however, such failure is only one factor to be considered by the City in selecting banking partners. Buffalo has been bolder: in May, it moved all of its deposits out of Chase Bank and into First Niagara.⁷ Binghamton and other upstate New York towns have also closed their accounts to protest Chase's failure to renegotiate mortgages.

STEP 3. INNOVATE: In 2013, the city of Richmond, CA has moved forward with a plan to use its power of eminent domain to write down the principal of underwater mortgages so that families can stay in their homes and lower their monthly bills. Under its plan, entitled Richmond CARES, the city will help purchase underwater mortgages, held by Wall Street banks and investors, reduce the principal and re-sell them at the lower price in order to keep homeowners in their homes and avoid foreclosure. Although Wall Street banks are attempting to stop the City's plan, it is currently moving forward.⁸

Another approach is for legislators to instruct city attorneys to **open investigations**, backed by subpoenas, into the LIBOR interest rate manipulation that likely deprived municipalities of billions of dollars. Interest rate swaps still in effect on municipal bonds should be renegotiated on better terms.

Finally, cities should demand **transparent accounting** of the high fees that banks are charging for (1) debit cards issued by government benefit programs like SNAP, TANF, and unemployment benefits; (2) the letters of credit that cities need in order to issue bonds; and (3) the underwriting agreements for Build America Bonds. Once the high costs are exposed, legislators can **seek renegotiation** or threaten to terminate city banking contracts.⁹

LANDSCAPE AND RESOURCES: A host of organizations are pushing on these issues. Among them are the New

Bottom Line, the Home Defenders League, National People's Action, Right to the City, the Leadership Center for the Common Good, the Alliance for a Just Society, and the Center for Popular Democracy.

NOTES

1. Peter Goodman, *Foreclosure Settlement Fails to Force Mortgage Companies to Improve*, The Huffington Post. (Aug. 7, 2012).
2. Center for Policy Initiatives, *Foreclosure: The Cost Communities Pay* (2011).
3. Dana Bartholomew, *Banks letting blight take over L.A. foreclosures -- and they're getting away with it*, LA Daily News (Aug. 22, 2012).
4. How We Can Fix LA's Foreclosure Registry Program to Make Banks Pay for the Harm They Cause Our Communities, <http://banksmakebadneighbors.files.wordpress.com/2012/06/how-to-fix-blight-enforcement.pdf>.
5. Jim Kenney, *Springfield anti-foreclosure ordinances may stand*, U.S. District Court judge Michael Ponsor rules, The Republican (July 3, 2012).
6. Kate Berry, *Ninth U.S. City Adopts a Responsible Banking Law*, American Banker (Nov. 1, 2012).
7. John Washington, *Occupy Buffalo Chasing Chase Out of Buffalo*, Fire-DogLake (May 31, 2012).
8. David Reiss, *Eminently reasonable: Using the power of eminent domain to restructure underwater mortgages is constitutional, beneficial and administratively feasible*, National Law Journal (Sept. 24, 2012).
9. The Home Defenders League deserves credit for designing the proposals in this section.

Strengthening Public Schools

THE PROBLEM

Great public schools that prepare young people for long-term success and active citizenship are at the heart of our democracy. But historical underinvestment, attacks on teaching professionals, high-stakes testing, and a movement towards privatization all threaten the ability of schools to achieve these goals. As a result, we are missing valuable opportunities to prepare the next generation of Americans—particularly low-income students and students of color—for adulthood.

This situation is unjust and untenable. The U.S. Census Bureau estimates that by 2042 the majority of Americans will be people of color. The future of our democracy and the health of our economy both depend on our ability to provide a high-quality education for all the nation's children.

In recent years, state and local policies facilitating charter schools, virtual education, tax credit scholarships, and so-called “parent trigger” initiatives have been enacted in numerous states. These policies shift a critically important function—the education of our children—from the public to the private sphere, often pitting equity against profits in the process. Such measures also contribute to diminished transparency and accountability, limiting the ability of parents to actively engage in their children's education. By facilitating the privatization of public education, these policies also threaten to undermine hard-won victories in the areas of civil rights, workers' rights, and good government.

SOLUTION

There is a need for policies that give parents, teachers, and members of the broader community real power to improve struggling schools. There is also need for laws that require schools, districts, and states to provide meaningful information about how well we are preparing children to participate in our economy and – more importantly – our democracy.

The best way to do this is to create structures for



“The evidence is clear: individualized reform plans that address school and community needs and are implemented by teachers, parents and school districts together turn around schools. These strategies are not quick [or easy], but they are more successful than those implemented under duress.”

— **Melissa J. Erickson**, Parent and Principal in Fund Education Now

ongoing parent and community involvement in school improvement efforts. Such policies are already emerging. In **Arkansas**, the state legislature has enacted a law allowing school districts to partner with teachers, support staff, administrators, parents, and community members in school improvement efforts. In **Connecticut**, the state legislature enacted reforms establishing School Governance Councils – composed of parents, community members, teachers, and administrators – in the state's lowest-performing schools.¹ And in **Chicago**, elected Local School Councils are empowered to approve the allocation of funding, implementation of school improvement plans, and the hiring and evaluation of principals.²

POLICY ISSUES

The following are important issues to consider in designing local policies to improve education through meaningful parent involvement and transparency and accountability measures. Legislators can tailor their proposals to the political realities of their communities.

LOCAL LEGISLATIVE AUTHORITY: While policies

vary from state to state, in most places both state and local law place some limitations on local legislative efforts at school reform. Analysis of your locality's charter, state constitution, and home rule law will help to clarify local legislative authority.

SCHOOL ELIGIBILITY: One key question concerns the universe of schools that will be eligible for the parent-driven reform program. While there are strong arguments for focusing limited resources on the lowest-performing of schools, there may also be reasons to expand eligibility to schools that are performing at higher levels as well as to institutions other than traditional public schools.

PUBLIC NOTIFICATION AND ENGAGEMENT MECHANISMS: Policies on parent-driven reform must include public notification and engagement requirements that allow parents to be fully informed about the reform process and options. These notification and engagement systems should be accessible for parents with limited English proficiency and parents with disabilities, among others.

PARENT & COMMUNITY DRIVEN ASSESSMENT OF SCHOOL INPUTS AND OUTCOMES: School improvement plans should be driven by a thoughtful analysis of the resources available to the school to provide high-quality education, the manner in which such resources have been deployed and could be redeployed, and the needs of students. Parents, teachers and other community members who engage in these processes should receive funding, training, and professional development to help them conduct such analyses.

PLAN DEVELOPMENT: Based on this analysis, parents and community members must be empowered to develop plans for school improvement that include proven reform strategies. They should also be empowered to identify new options that are responsive to the particular needs of their school communities.

ONGOING EVALUATION & REPORTING: Parent-driven reform policies should include provisions for multiyear independent evaluation of policy implementation.

TRANSPARENCY & ACCOUNTABILITY MEASURES: In addition to supporting community-driven school improvement initiatives, local leaders must also challenge broader efforts to limit public monitoring and input. Where authority exists, local leaders may leverage funding or oversight powers for this purpose. Local elected officials may also use their offices as platforms for elevating these issues.

LANDSCAPE AND RESOURCES

The **Annenberg Institute for School Reform** at Brown University is a national policy research and reform support organization that promotes quality education for all children, especially in urban communities. Its website includes a wide range of resources on progressive education reforms. In addition, the **American Federation of Teachers**, the **National Education Association**, the **Leadership Center for the Common Good**, and the **Alliance for Quality Education** are leading the fight for better public schools.

NOTES

1. See Conn. Gen. Stat. Ann. § 10-223(3) (2012).
2. See 105 Ill. Comp. Stat. Ann. 5/34-2.3 (2010).

Banning Housing Discrimination

Based on Source of Income

THE PROBLEM

A chronic shortage of decent, affordable housing exists in many cities. As a result, families across the country struggle to find affordable rental housing in safe, stable neighborhoods. Due to discrimination against them, finding affordable housing is particularly hard for people who pay part or all of their rent with income derived from sources other than employment – such as housing assistance, welfare, Social Security, child support, and alimony.

The extent of housing discrimination based on source of income is difficult to measure.¹ A study in **Chicago** found “discrimination against Section 8 holders appears to be disturbingly common,”² and nearly all study participants reported at least one encounter with a landlord “who refused to even consider accepting Section 8.”³ A report into the advertising practices of real estate brokers in New York City revealed a “proliferation of **New York City** rental advertisements . . . that indicate a limitation or discrimination based on source of income.”⁴ In addition to the difficulty in quantifying incidents of housing discrimination based on source of income, discrimination often goes unreported.⁵

Source of income discrimination has a disproportionate effect on the most vulnerable members of society. Where a person lives defines her access to schools, employment and community. Living in less desirable neighborhoods means fewer opportunities and, without real housing alternatives, individuals and families cannot move on to lead better lives.

THE SOLUTION

In 12 states and the **District of Columbia**, discrimination based on source of income is prohibited.⁶ It is prohibited in counties and cities in 11 other states, including **Ann Arbor**, **Philadelphia**, and **Seattle**.⁷ It is important for municipalities to take leadership on this issue if their states have failed to enact prohibitions. In addition to protecting their residents, action by municipalities will encourage further reform.

Protection against discrimination based on source of



“Source of income discrimination has a disproportionate effect on the most vulnerable and disadvantaged members of society.

Where a person lives defines her access to schools, employment, and community.”

income gives local policymakers the ability to eliminate other forms of discrimination and foster inclusive communities. In many cases, source of income discrimination is proxy for illegal discrimination based on race and disability. By removing this proxy, municipalities can be more effective in protecting everyone against all forms of discrimination.

Discrimination based on source of income also frustrates housing assistance programs. A study by the U.S. Department of Housing and Urban Development revealed that local bans on source of income discrimination increase the rate at which voucher holders are able to find suitable housing.⁸ Adoption of local source of income protection has a measurable, positive impact on implementation of housing policies and on meeting the needs of voucher holders.

Municipalities take different approaches to defining “source of income,” the scope of prohibited practices, and the availability of defenses and enforcement.

DEFINING SOURCE OF INCOME: In **New York City**, source of income discrimination is forbidden by human rights law and expressly includes “Section 8 vouchers.”⁹ **Washington, D.C.** explicitly states that vouchers are an example of source of income.¹⁰ In states and cities where Section 8 vouchers are not specified within the definition of “source of income,” claimants must rely on judicial interpretation to expand the scope of the definition.¹¹ Still, other jurisdictions do not define “source of income” and allow landlords to refuse to accept Section 8 vouchers from tenants.¹² Given the

experience of some cities and municipalities, cities should define “source of income” to specifically include Section 8 vouchers.

PROHIBITED PRACTICES: Generally, local and state laws prohibit landlords from refusing to rent on the basis of source of income.¹³ Other prohibited conduct may include discrimination in the terms, conditions, and privileges of housing transactions and discrimination in the advertisement of rental properties.¹⁴ In **New Jersey**, the prohibition against discrimination based on source of income goes beyond the housing context to include those seeking employment.¹⁵ There are obvious advantages to proposed local laws that adopt a broad scope of prohibited practices.

AVAILABILITY OF DEFENSES: Under some local laws, certain owners are exempt from the prohibition against discrimination based on source of income. For example, in **New York City**, owners of buildings containing fewer than six units are exempt. In other places, landlords have successfully claimed “administrative burden” or “legitimate reasons” defenses. However, courts generally reject such claims and only permit narrow and directly relevant creditworthiness considerations.¹⁶ As far as possible, the availability of defenses and exceptions should be limited.

ENFORCEMENT: Studies and investigations across the country demonstrate high levels of discrimination even in states or cities with legislative protection against housing discrimination based on source of income.¹⁷ In many jurisdictions, the burden of enforcement falls on victims to bring complaints to the administrative agency, many of which are under-resourced. This inhibits an agency’s ability to launch affirmative investigations into discriminatory practices and forces them to respond solely to isolated incidents. In other cities and states, the statutes permit both administrative and court enforcement.¹⁸ In jurisdictions with court enforcement, the approach also varies: some require an agency to enforce in court on behalf of a complainant and some permit a complainant to file suit directly.¹⁹ In **Montgomery County**, MD, the Human Rights Commission successfully enforced a local fair housing law prohibition against discrimination based on source of income following independent testing and obtained favorable holdings rejecting the existence of an “administrative burden” defense for landlords. Accordingly, proposed enforcement regimes should be bolstered by pro-active measures like testing, investigations, and reporting by administrative agencies and non-profit organizations, and

should provide complainants with the option to pursue civil action in courts.

LANDSCAPE AND RESOURCES

The **Fair Housing Justice Center**, **The Leadership Conference**, **The Urban Institute** and the **Poverty & Race Research Action Council** all have valuable resources on this issue.

NOTES

1. Manny Hernandez, *Bias Is Seen as Landlords Bar Vouchers* (NY Times, Oct. 30, 2007).
 2. Popkin & Cunningham at 23.
 3. *Id.* at 25.
 4. A snapshot of the postings on July 29, 2008 found no fewer than 1,543 advertisements for rental units that indicated a limitation or discrimination based on source of income.
 5. Renters have no way of knowing whether they have been discriminated against if they are “screened out” at initial stages by landlords or brokers before they even have an opportunity to get the address of a prospective rental property.
 6. California, Connecticut, District of Columbia, Maine, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont and Wisconsin.
 7. Local laws and ordinances in Illinois, Iowa, Maryland, Michigan, Missouri, New York, Ohio, Pennsylvania, Tennessee, Missouri and Washington.
 8. U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Study on Section 8 Voucher Success Rates (2001)* at 3-17.
 9. N.Y.C. Admin. Code § 8-102(25) includes “income derived from social security, or any form of federal, state or local public assistance or housing assistance including section 8 vouchers”.
 10. D.C. Code § 2-1402.21(e).
 11. Courts have held that Section 8 aid does not qualify as a source of income. *Sabi v. Sterling*, 183 Cal. App. 4th 916 (Cal. Ct. App. 2010); *Knapp v. Eagle Property Management Corp.*, 54 F.3d 1272 (Wis. 1995). Courts have held otherwise in *Comm’n on Human Rights & Opportunities v. Sullivan Associates*, 250 Conn. 763, 739 A. 2d. 238 (1999).
 12. Cook County Code of Ordinances § 42-31, 42-38; Wheeling Human Rights Ordinance Ch. 6.14 (Illinois).
 13. D.C. Code Ann § 42-2851.06(c); Mass. Gen. Laws. Ann. ch. 151B § 4; N.Y.C. Admin. Code § 8-107(5)(a)(1).
 14. Utah Code Ann. § 57-21-5; N.Y.C. Admin. Code § 8-107.
 15. N.J. Stat. Ann. § 10:5-4.
 16. National Housing Law Project, *Housing Law Bulletin* (Nov/Dec 2008).
 17. Fred Freiberg & Diane L. Houk, *Fair Housing Justice Center, No License to Discriminate: Real Estate Advertising, Source of Income Discrimination, and Homelessness in New York City* (2008); Tamica H. Daniel, Note, *Bringing Real Choice to the Housing Choice Voucher Program: Addressing Voucher Discrimination Under the Federal Fair Housing Act*, 98 Geo. L.J. 769 (2010).
 18. Including California, Connecticut, North Dakota, Oregon
 19. Cal. Gov’t Code § 12980(h); Conn. Gen. Stat. Ann. § 46a-64c; N.D. CENT.
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Ending Drug-Related Evictions in Public Housing

THE PROBLEM

Municipalities spend precious resources throwing families out of public housing and onto the streets. Public housing authorities (PHAs) initiate drug-related evictions (DREs) against unrepresented tenants in forums where the standard of proof is so low that families are evicted even after the underlying criminal charge is dismissed. Despite criminal drug policy reforms, there has been little effort to dismantle the web of devastating civil consequences associated with drug addiction—such as DREs. DREs disproportionately punish and destabilize already vulnerable low-income communities of color and cost the government millions.²

While local PHAs exercise significant discretion in determining eviction and eligibility policies, Federal pressure to increase DREs began with the 1988 Anti-Drug Abuse Act.³ DREs proliferated under President Clinton’s “one-strike” policy, which incentivized the adoption of harsh eviction and eligibility regulations.⁴ The volume of DREs increased after the 2002 Supreme Court decision, *Department of Housing and Urban Development v. Rucker*, under which PHAs have the discretion to evict entire households, even when the leaseholder does not know about or participate in the illegal activity. In **Chicago**, 87 percent of DREs between 2005-2012 did not involve allegations against the leaseholder.⁵ Many families are evicted because of the mistakes and misdeeds of children—one study suggests that more than 25 percent all DREs stem from juvenile arrests.⁶

Although The Department of Housing and Urban Development (HUD) now advocates for “second chances,”⁷ most jurisdictions enforce draconian eviction and eligibility policies.⁸ Many jurisdictions apply strict liability DREs to Federal Section 8 voucher programs. Others have incorrectly interpreted Federal law as mandating a three-year ban on public housing eligibility once a family is evicted.⁹ Still others, such as **Massachusetts** and **Washington, DC**, bar families from emergency shelter if they are evicted from



“[Drug-related evictions] target the poor for a punishment that rarely befalls more affluent persons with drug-involved family members and acquaintances”

— Emma D. Sapong¹

public housing due to alleged criminal activity.¹⁰ Together these policies deny the most vulnerable families the basic necessity of a home.

Some jurisdictions, like **New York City**, have adopted procedures for first time offenses that require the leaseholder to permanently exclude the “offending family member.”¹¹ These “stipulations” often force mothers and grandmothers to choose between barring their loved ones from the family home or being evicted themselves. Eviction proceedings have been initiated after “excluded” household members who returned to care for an elderly grandmother, to mourn the death of a beloved sibling, and to visit an immobile parent.

Drug related evictions, meant to target “dangerous drug predators,”¹² have resulted in the eviction of tens of thousands of innocent families for offenses as minor as a teenager possessing marijuana.¹³ While there is no evidence that these draconian policies have reduced crime in public housing,¹⁴ they cost federal, state, and local governments millions of dollars. Annually, it costs approximately \$35,000 more to keep one person homeless than to provide subsidized housing for that same individual. Additionally, housing stability results in lower hospitalization and arrest rates.¹⁵ Similar to mass incarceration for low-level drug offenses, DREs are inhumane, ineffective, expensive, and discriminatory.

THE SOLUTION

Because of the extensive discretion allowed to local PHAs,

municipalities can stop the expensive and inhumane practice of evicting entire families for minor non-violent drug offenses.

Under current Federal law the only offenses that mandate eviction or limit eligibility for public housing are: 1) the manufacturing of methamphetamines on federal property and 2) crimes that result in the accused being put on the Sex Offender Registry for life.¹⁶ Although Federal law mandates a three year ban in the case of a prior eviction from public housing for a drug-related offense, the ban may be overcome if the household member completes a drug rehabilitation program.

POLICY ISSUES

PHAs should mandate the consideration of mitigating circumstances. PHAs may take into account all relevant circumstances prior to eviction. Advocates and city officials can work with local PHAs to develop policies that allow for individualized decisions. The **Legal Action Center** has created model legislation suggesting that PHAs take the following factors into consideration before eviction: 1) whether the offense bears a relationship to the safety and security of other residents; 2) whether an eviction is likely to result in homelessness; 3) whether the individual has undertaken efforts at rehabilitation; and 4) the effect on the entire household.

PHAs should re-valuate evidentiary standards. Most jurisdictions rely extensively on unproven allegations, sealed court records, and arrests not resulting in convictions to evict families from public housing. Additionally, PHAs need only prove allegations by a “preponderance of the evidence”—simply requiring that it is more probable than not the act occurred. Particularly in the absence of counsel, families facing eviction should be protected against capricious state action by carefully crafted rules with enforced evidentiary standards. Towards these ends, in **Chicago**, a court held that an arrest alone does not constitute “criminal activity” for the purposes of PHA exclusion or eviction.

Local officials should demand transparency about rules governing eviction and eligibility. The lack of transparency about standards for eviction and eligibility, along with the lack of data documenting enforcement, makes it impossible for those affected by DREs to advocate on their own behalf or for policy change. Local PHAs should make rules governing evictions and

eligibility easily available. Furthermore, PHAs should report data pertaining to enforcement of DREs.

PHAs should offer time-limited stipulations rather than demanding permanent exclusion as the only alternative to eviction.

PHAs should take HUD’s advice and only evict as a last resort. The current use of strict liability standards and vicarious liability should be replaced with regulations that prioritize safety and support struggling families instead of banishing them.

LANDSCAPE AND RESOURCES

In **New Orleans**, **Stand with Dignity**, the **New Orleans Workers’ Center for Racial Justice**, and **Voice of the Ex-Offender** are working to enact less punitive public housing policy.

In **New York City**, the **Center for Popular Democracy** is working with public defender’s offices and grassroots tenant and housing organizations to change laws governing drug-related evictions.

NOTES

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2. Marnie Smith, *Collateral Consequences of Criminal Convictions in American Courts: The View from the State Bench*, 29 JUST. SYS. J. 145, 146 (2008).
3. 42 U.S. §1437(1)(6).
4. State of the Union, President Clinton (1996); Pub. L. No. 104-120, 110 Stat. 834 (1996).
5. Angela Caputo, *One and Done*, The Chicago Reporter (Sept. 4, 2011).
6. Wendy Kaplin & David Rossman, *Called out at Home: The One Strike Eviction Policy and Juvenile Court*, Duke Forum for Law & Social Change, Vol. 3, No. 109 (2011).
7. Secretary Donovan, Open Letter to PHA Executive Directors (2011).
8. Bruce Reilly, Formerly Incarcerated & Convicted People’s Movement, Communities, Evictions and Criminal Convictions (2013).
9. Pub. L. No. 104-120, 110 Stat. 834 (1996).
10. 106 Mass. Code Regs. 309.040 (B)(4)(2010); D.C. Mun. Regs. 29-2502.1(e) (2010).
11. Open Letter to Chairman Rhea of the New York Housing Authority, The New York City Bar (2011).
12. State of the Union, President Clinton (1996).
13. Angela Caputo, *One and Done*, The Chicago Reporter (2011).
14. Edgar Sandoval, *Violence Rises in NYC Housing Developments* (2011).
15. Los Angeles Homes Service Authority and Economic Roundtable, *Where We Sleep* (2013).
16. Pub. L. No. 105-276, 112 Stat. 1643 (1998).

Policing and Civil Rights

THE PROBLEM

In too many communities across the country, local law enforcement officers who are responsible for serving and protecting residents instead target them for harassment and abuse. Each day, individuals are profiled on the basis of their race, ethnicity, immigration status, religion, sexual orientation, gender identity or expression, or other characteristics. And every day, residents of entire neighborhoods are subjected to policing practices that violate constitutional protections and erode trust between police and residents.

THE SOLUTION

Eliminating discriminatory policing requires innovative policies that reinforce constitutional principles. The most promising approaches not only outlaw profiling on the basis of demographic characteristics, they also provide guidance on how law enforcement agencies can protect the rights of residents while also ensuring public safety. In 2013, federal legislation including these elements, known as the End Racial Profiling Act (ERPA), was reintroduced in the House³ and the Senate.⁴ The legislation, however, remains in committee.

Despite the lack of federal action, local leaders are partnering with community, labor, and advocacy organizations to hold law enforcement agencies accountable to the communities they serve. Cities including **Detroit**,⁵ **Cincinnati**,⁶ **Columbus**⁷ and **Jackson**⁸ have enacted local laws barring—at a minimum—police profiling on the basis of race or ethnicity. And local legislators in **Portland, Oregon**⁹ and **San Francisco**,¹⁰ responding to concerns about surveillance of Middle Eastern and Muslim communities, have enacted policies that subject collaborations between local law enforcement and the FBI to City oversight.

The Community Safety Act (CSA), passed by the **New York City Council** over mayoral veto in August 2013, represents the vanguard in anti-discriminatory policing policy. The Act expands the City's prohibition on bias-



“With independent oversight and an enforceable ban on

police profiling, New Yorkers can finally be confident that the NYPD officers will be empowered to ‘serve and protect’ all our neighbors”

— **Jumaane Williams & Brad Lander**, New York City Council Members¹

based profiling and provides a private right of action for those who are unlawfully targeted. It also establishes independent oversight of NYPD policies and practices.

POLICY ISSUES

The following are important issues to consider in designing local policy to address discriminatory policing. Legislators can tailor their proposals to the political realities of their communities.

POLICE PROFILING: Many legislative efforts to address discriminatory policing bar profiling on the basis of race, ethnicity, religion or national origin, but individuals are often targeted on other bases as well. It is important to work with community members to get a full sense of whether they have been targeted on other grounds, such as sexual orientation, gender identity or expression, age, housing status, immigration or citizenship status, language, disability, housing status, occupation, or socioeconomic status. The most effective measures will be those that bar reliance on these characteristics to any degree.

POLICE IDENTIFICATION: Measures that require police officers to identify themselves, explain the reasons for a stop or other police activity, and share information on

complaint procedures can help to promote transparency and accountability and promote trust. Similar measures have been enacted at the state level in **Minnesota, Arkansas, and Colorado.**

CONSENSUAL SEARCHES: In many cases, residents are unaware of their constitutional right to decline to consent to a search for which there is no other legal basis. Provisions that require that consent be informed and documented can safeguard residents' rights and protect law enforcement agencies from false claims of wrongful behavior. **West Virginia, Colorado, and Oregon** have all enacted measures related to consensual searches.

OFFICER TRAINING: High-quality training and other forms of professional development can help law enforcement officers better understand how to promote public safety while respecting the rights of all residents. Training should relate to the nature of profiling, how to avoid profiling and the implementation of data collection requirements.

DATA COLLECTION & REPORTING: The collection, analysis and reporting of data on law enforcement activity is a critical element of legislation to address discriminatory policing. Processes must allow for the disaggregation of data on the demographic characteristics of individuals who are the targets of law enforcement activity, including the rates at which drugs, weapons, or other items are found during stops and searches. Regular, public reporting of this data must be required.

OVERSIGHT & ACCOUNTABILITY: Strong provisions for ongoing oversight will incentivize compliance and allow for the identification of successful efforts. One means of accomplishing this is through establishment of an independent office or body with a specific mandate to monitor compliance. For example, the **Los Angeles** Police Department is subject to oversight by an Inspector General with investigative authority.¹¹

LANDSCAPE AND RESOURCES

The **Rights Working Group (RWG)** is a coalition of more than 340 local, state and national organizations with a website features extensive resources on racial profiling. **Communities United for Police Reform** makes a range of resources on New York reform efforts available on their website. The **Racial**



“The NYPD wants to create public safety but is instead instilling fear among immigrant communities. While officers believe that they are creating safety by stopping innocent New Yorkers, they are really creating enemies who will be less likely to report crime when it does happen.”

— **Daniel**, Queens Resident²

Profiling Data Collection Resource Center at Northeastern University has a valuable compilation of policy and litigation materials related to the topic. The **Center for Popular Democracy** provides legal, strategic, and organizing support to local campaigns.

NOTES

1. Council Members Williams and Lander's Statement on the Landmark Passage of the Community Safety Act (2013).
2. NYCLU, Stop-and-Frisk 2011: NYCLU Briefing 3 (2012).
3. H.R. 3618, 112th Cong. (2011).
4. S. 1670, 112th Cong. (2011).
5. Detroit, MI, Detroit City Code § 27-9-3 (2007).
6. Cincinnati, OH, Administrative Code §4-A (2001).
7. Columbus Ohio, Code §§ 2331.01(A)(13), 2331.07 (2004).
8. Jackson, MS, Code of Ordinances § 86-193.
9. Portland, Or., BCP-PSF-7.01 (2011).
10. San Francisco, CA, Administrative Code § 2A.74 (2012).
11. Los Angeles Police Department, "Office of the Inspector General," available at http://www.lapdonline.org/police_commission/content_bas-view/1076 (last visited November 11, 2012).

Detainer Discretion

Limiting Local Cooperation with Federal Immigration Authorities

THE PROBLEM

Municipalities around the country are unnecessarily spending precious resources to hold individuals in custody in their local jails subject to “immigration detainers.” A detainer, or “ICE hold,” is a request from federal Immigration and Customs Enforcement (ICE) asking local law enforcement agents to detain an individual for 48 hours beyond the point at which the criminal justice system has any other reason or authority to hold the person. Often these individuals have committed no crime (the case is dismissed) or they have committed a very low-level or status-based crime (driving without a license). The criminal justice system – which is itself fraught with abuse and unfairness – thereby becomes a pipeline to deportation for thousands, a process that has been exacerbated by the rollout of the federal Secure Communities program (S-Comm), which enables fingerprint and information sharing between the FBI and ICE.³

The impact on communities is immense. Collaboration between local law enforcement and immigration authorities erodes trust between immigrant communities and the police, meaning families are less likely to report crime or cooperate in police investigations. Cities, strapped for revenue, spend millions of dollars holding immigrants for ICE after the resolution of criminal charges.

THE SOLUTION

Municipalities around the country have responded to the human and economic impact of immigration detainers by enacting innovative “detainer discretion” policies, which direct local law enforcement to refuse to honor detainers under certain circumstances. Although immigration detainers are by their nature “requests” and local officials are not required to honor them, municipal detainer policies help to ensure that local criminal justice resources are conserved for their intended purpose and that communities are protected from the harsh consequences of an unjust and error-ridden immigration system.”⁴



“[One] severe consequence of the city’s cooperation with federal immigration officials is the lack of trust in law enforcement that it creates among the public. A spouse, for example, may be reluctant to report abuse if she fears that the consequence will be the deportation of the father of her children.”

— Robert Morgenthau, former District Attorney, New York City¹

POLICY ISSUES: Cities and counties have used a range of approaches in developing their detainer discretion policies. **New York City; Washington, DC; Cook County, IL; San Francisco, CA; Berkeley, CA; and Santa Clara, CA** have all passed ordinances; **Newark, NJ and Taos, NM** have internal police department policies; and **Connecticut and California** have both enacted state level legislation. Several key issues arise in the context of developing detainer policies:

COVERAGE: The gold standard for detainer policies is to draw a bright line between the criminal justice process and the civil immigration process and not honor any detainers. **Newark** and **Berkeley** both have policies of this type. Although bright line policies are not always politically possible, the current trend in detainer discretion legislation – as exemplified by **San Francisco’s** Due Process for All ordinance – is to limit exclusions for past criminal convictions to only the most serious offenses. Increasingly, communities recognize that detention and deportation is an unjust, double punishment when an individual has already served his or her sentence for an offense. One way to expand the scope of coverage for detainer policies when a bright

line is not possible is to honor requests only when a conviction is recent. For example, in **Washington, DC**, detainees are honored for convictions for “dangerous crimes” and “crimes of violence” (as defined in the DC Code) within 10 years of the detainer request. In **San Francisco** the limit is 7 years, and an individual must also have current pending criminal charges for one of a narrow category of serious crimes.

A final issue with respect to coverage is which agencies or entities within the city are covered. In cities where the municipality has jurisdiction over corrections facilities, policies can and should cover the Department of Corrections. Following the implementation of Secure Communities, the speed with which federal ICE officials are able to communicate with local authorities and “drop” detainees has increased significantly and it has become important to consider policies that cover local police departments as well.

REIMBURSEMENT: The policies in **Washington, DC**, **Cook County, IL** and **Santa Clara, CA** condition the honoring of detainees wholly or in part on a written agreement with the federal government to reimburse the county fully for the costs associated with holding individuals on immigration detainees. In effect, such policies result in very few detainees being honored because full reimbursement is unlikely.

YOUTH: The policies in **DC** and **Santa Clara** both refuse to honor detainees for individuals below 18 years of age, and in **New York City** detainees are not honored for individuals adjudicated as youthful offenders.

DATA: The **New York City** ordinance includes extensive reporting requirements related to the number of individuals held pursuant to immigration detainees, the types and numbers of convictions those individuals had, and the amount of federal financial assistance received for the purposes of holding immigrants on detainees, among other things. Such reporting requirements are useful to include to overcome the significant information gaps regarding the impact and costs of ICE holds on local municipalities and immigrant communities.

LIMITS ON LENGTH OF CUSTODY: Under federal law, an individual may not be held pursuant to an immigration detainer for more than 48 hours, not including weekends and holidays. Local detainer policies can shorten the length of time beyond which an individual may not be held, increasing



“My first encounter with the police was in 2007. I was driving my car and I was asked to stop because my license plate was expired. My record was clean so I was expecting a warning but after many questions about my personal information I was told that I was under arrest because of my migratory status. I was taken to Fairfax county jail and then to Hampton Roads detention where I was detained for 4 months before being deported to my country.”

– Elizabeth, from Virginia.²

the likelihood that ICE agents will not arrive in time to collect the individual and he or she may be released. **Washington, DC**’s policy, for example, only allows for individuals to be held for 24 hours.

LANDSCAPE AND RESOURCES

The **National Day Laborer Organizing Network (NDLON)** has been active in a number of local and state campaigns related to ICE holds and has a website with useful resources focused on community organizations: <http://altopolimigra.com/detainers/>.

The **Center for Popular Democracy** has been supporting local and state detainer campaigns in partnership with NDLON, SEIU Local 32BJ, and other organizations and can provide assistance on policy development, bill drafting, and campaign strategy.

NOTES

1. Robert Morgenthau, *The Police and Immigration: New York’s Experience*, Wall Street Journal (May 19, 2010).
2. Turning the Tide, “The Real Impact of Police-ICE Collaboration.”
3. http://www.ice.gov/secure_communities/
4. 8 C.F.R. 287.7 (2011) (stating that “[t]he detainer is a request that the [local law enforcement] agency advise the Department [of Homeland Security], prior to release of the alien, in order for the Department to arrange to assume custody”). See also *Buquer v. City of Indianapolis*, 797 F.Supp.2d 905 (2011).

Language Access

THE PROBLEM

Over 25 million people in the United States are limited English proficient (LEP), which means that they are unable to read, write, or speak English well. Although federal civil rights laws require that most public and many private institutions provide interpretation and translation services to LEP individuals, often they do not. As a result, it is difficult and sometimes impossible for millions of people to get and hold jobs, feed their families, vote in an election, be on a jury, make doctors' appointments, take medication, use the courts, receive an education, get and keep a home—basically, participate in all of the ordinary and extraordinary features of American life—because they do not speak English. Under the 2001 Supreme Court decision of *Alexander v. Sandoval*, private litigants no longer have a right to bring the kinds of disparate impact discrimination suits that were previously the vehicle for enforcing language access claims.³

THE SOLUTION

Local governments around the country have responded to language barriers and the weakening of federal enforcement by enacting stronger local language access policies, requiring city agencies, health care entities, and other service providers to ensure that interpretation and translation services are made available free of charge to LEP residents.

One important category of local language access laws apply to city and county agencies themselves, and ensure that key public-serving local agencies are linguistically accessible. The cities of **San Francisco** (2001 and 2009);⁴ **Oakland** (2001);⁵ and **Washington, DC** (2004)⁶ all have statutes requiring city agencies to provide comprehensive language assistance services to LEP residents at no cost. **New York City** enacted a language access ordinance covering human services in 2003 and a mayoral executive order covering other city agencies in 2008.⁷ The city of **Chicago** has created an Office of New Americans, which is responsible for the creation of a centralized language access policy.⁸



“People’s lives are at risk when they can’t understand the medication that is supposed to save their lives. I wonder why pharmacies seem so hesitant to translate labels.”

— **Carlos M.**, on having to translate for his elderly mother because of the lack of language access at the pharmacy.¹

Following the release of studies documenting the gross lack of language access in chain pharmacies, as well as an Attorney General’s investigation, **New York City** passed legislation requiring chain pharmacies to provide interpretation and translation services to LEP patients.⁹

Although language access policies have traditionally been pursued in the historic immigrant-receiving cities and states, the demographics of the country are shifting rapidly, making language access relevant and important in many more parts of the country. For example, the southeast and southwest now have the highest rate of growth in the LEP population. In some states (Connecticut, Rhode Island), nearly one out of every ten residents is LEP, the majority concentrated in cities. Reflecting these demographic shifts, the county executives of **Suffolk** and **Nassau** counties in Long Island, NY, recently signed executive orders requiring interpretation and translation at their public-serving agencies – the first suburban counties in the country to take such action.

POLICY ISSUES

The following topics will likely come up when designing language access legislation for your city.

CONTENT: A basic language access policy has the following components: (1) interpretation (conversion of language during *oral* communication); (2) translation (conversion of language in *written* communication); (3)

notification to LEP individuals of their rights to free language services; (4) strong enforcement mechanisms; and (5) the creation of a language access plan/policy within the regulated entity. Both interpretation and translation services are required to ensure that LEP individuals are able to access the full range of city or health services, such as application materials, hotlines, counseling services, and consent forms. It is essential that these services be provided free of charge. Notification typically takes place through posted signs and multilingual taglines on printed materials.

COVERAGE: Language access policies for government agencies frequently focus on those agencies that provide direct service to the public – e.g. human services, police, housing, or transportation. San Francisco’s ordinance further separates agencies into “Tier 1” and “Tier 2” agencies, with the former having enhanced notification, translation and staffing requirements. Some policies, such as the ordinance in Washington, DC, also impose language access requirements on sub-contracted entities. With respect to pharmacies, New York City opted to cover only chain pharmacies (groups of four or more establishments). Additional options for coverage could include mail order pharmacies and independent pharmacies.

LANGUAGES: Most language access policies in both the government and health care sectors tend to require that interpretation services be provided to LEP persons regardless of language spoken: If an agency or health care provider does not have bilingual staff, telephone or in-person translation services are readily available.¹⁰ Translation is more complicated because of the need to balance time and cost with access. Some city policies, such as the NYC executive order, provide for translation in the top LEP languages spoken in city, whereas others set a population threshold above which translation should occur (e.g. Oakland sets a threshold of 10,000 or above).¹¹

ENFORCEMENT: Enforcement strategies for violations of language access laws include imposition of fines and the creation of private rights of action. Oversight is a critical factor in the successful implementation of language access policies for municipal agencies.



“I truly believe that the Language Access Act of 2004 is a clear demonstration of the successful efforts of the Mayor’s administration, District Council, and the LEP population working together to formulate and implement an innovative and groundbreaking plan. This plan... will ensure that all District of Columbia residents, including those who are limited English proficient, shall be able to access the services and programs that are available to them.”

– Kenneth Saunders, former Director of the DC Office of Human Rights, on the DC Language Access Act²

LANDSCAPE AND RESOURCES

Migration Policy Institute has robust data on LEP populations and trends, as well as research and reports relevant to language access. The National Health Law Program has comprehensive backgrounders and legal briefs on language access in a variety of health settings. The Center for Popular Democracy, whose staff have over a decade of experience designing language access policies, can help you design and build the case for an appropriate policy for your jurisdiction.

NOTES

1. Make the Road New York & New York Lawyers for the Public Interest, Bad Medicine (August 2008).
2. American University Washington College of Law and DC Language Access Coalition, Access Denied (2012)
3. *Alexander v. Sandoval*, 532 U.S. 275 (2001)
4. San Francisco Ordinance No. 202-09 (2009). Given the changing demographics of San Francisco, and the increasing linguistic diversity, the San Francisco ordinance was amended in 2009. The original 2001 law was the first of its kind in the country.
5. Oakland Ord. No. 12324 (2001).
6. DC Language Access Act, District of Columbia Act 15-414 (2004).
7. New York City Local Law 73, Equal Access to Human Services (2003), and New York City Executive Order 120 (2008).
8. Press Release, City of Chicago Mayor’s Office (July 19, 2011).
9. Language Access in Pharmacies Act, NYC Administrative Code Section 20-620 (2009).
10. Language Scientific is a company that provides competent translation and phone interpretation services for both government agencies and medical settings.
11. It is important to target policies based on the languages spoken by the LEP population, and not the general population, as there may be sizable populations where a language other than English is spoken at home, but community members also speak English well.

Immigrant Confidentiality Policies

THE PROBLEM

Fear of disclosing immigration status deters many immigrant families from seeking health and public services, including police protection, benefits, and economic supports. These fears are understandably amplified during periods of increased anti-immigrant sentiment. Six years ago, for example, a public hospital employee in New York City reported an undocumented immigrant to federal authorities, resulting in immigrant families “cancel[ing] doctor appointments or not seek[ing] care in clinics”; the hospital system strengthened and reaffirmed its privacy policy in response.² More recently, the creation of a list of nearly 1,200 suspected undocumented immigrants by a government employee in Utah using the state’s Department of Workforce Service database garnered national attention and provoked renewed discussion regarding the protection of immigration status.³

A patchwork of federal laws governs when federal and state agencies may collect information about immigration status, and when or if they must share it.⁴ Two such laws, specifically pertaining to state and local governments’ ability to restrict the sharing of immigration-related information, bear mention here. In 1996, the federal government enacted the Welfare Reform Act and the Illegal Immigration Reform and Immigrant Responsibility Act, both of which contained provisions relating to state and local government communication with the then-Immigration and Naturalization Service (INS).⁵ Both were explicitly enacted to “prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State and local officials and the INS.”⁶ However, cities like New York responded by enacting executive orders that cover the confidentiality of a broad range of private information—for example, sexual orientation, victim status, public benefits recipient, as well as immigration status.⁷



“If you say to people we’re not going to give you a zone of protection when you’re sick and seeking treatment in a hospital, in effect, we’re saying we’re going to put you at peril and you’ll be deported or expelled if you seek treatment.”

– former New York City Mayor **Rudolph Giuliani**, defending the city’s immigrant confidentiality policy.¹

THE SOLUTION

Numerous jurisdictions around the country, including New York, NY; San Francisco, CA; Seattle, WA; Durham, NC; New Haven, CT; Takoma Park, MD; and, most recently, Suffolk County, Long Island, NY among others, have enacted policies to protect the confidentiality of information relating to immigration status.⁸

POLICY ISSUES

In general, immigrant confidentiality policies do one or both of the following: (1) they prohibit local government employees from *collecting* information about immigration status and/or (2) they prohibit or limit local government employees from *sharing* information about immigration status with federal authorities, except where required by law (for e.g. for benefits eligibility). A variety of mechanisms have been used to implement such policies, including city ordinances, resolutions, executive orders, and administrative directives.

GROUPS PROTECTED: As discussed above, it is wise for municipalities considering immigrant confidentiality policies to cover more than immigration status within the policy, such as sexual orientation, receipt of public benefits, crime victim status, information contained

on tax returns, and status as a victim of domestic violence. Doing so can help to build a broader coalition in support of the confidentiality policy.

ADDITIONAL ELEMENTS OF THE POLICY:

Municipalities can also consider including agency staff training requirements into their confidentiality policies, to ensure that city employees understand how to implement the policy, its interactions with other federal, state, and local laws, and the importance of the policy in promoting trust and inclusion of immigrant communities, among others. One innovative approach would focus on the city attorney's office and requiring that city law departments, in proceedings where the city is a party, oppose the efforts of other parties to discover the immigration status of complainants or witnesses, unless the issue is central to the dispute.⁹

LANDSCAPE AND RESOURCES

The Center for Popular Democracy has been supporting local campaigns on immigrant confidentiality, including an ongoing effort in Aurora, CO and the recently enacted policy in Suffolk County, Long Island, and can provide assistance on policy development, bill drafting, and campaign strategy.

NOTES

1. Speech of Rudolph W. Giuliani, "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" (September 11, 1996), available at: www.nyc.gov/html/records/rwg/html/96/welfare.html.
2. Letter of Alan D. Aviles, President, New York City Health and Hospitals Corporation to All HHC Employees (May 18, 2006).
3. MSNBC, "Utah concludes state resources were used in immigrant list" (July 15, 2010), available at: http://www.msnbc.msn.com/id/38263433/ns/us_news-life/t/utah-concludes-state-resources-were-used-immigrant-list/#.UKMS1YfO2xU
4. For a helpful summary, please see: National Immigration Law Center, "Confidentiality, Verification, and Reporting: What happens to information that immigrants give to the government," in the Guide to Immigrant Eligibility for Federal Programs (4th ed. 2002).
5. 8 U.S.C. 1644.
6. H.R. Rep. No. 104-725, at 383 (1996).
7. City of N.Y. Exec. Order 34 (May 2003).
8. For a summary of these local immigrant confidentiality provisions, among other local efforts to promote immigrant inclusion, see Cristina M. Rodriguez, "The Significance of the Local in Immigration Enforcement," Michigan Law Review, vol. 106, p. 567 (2007-2008)
9. See: Model Bill: Immigrant Assistance in Crime Fighting, developed by Bernie Horn, Progressive Majority (bhorn@ourfuture.org).

LGBT Civil Rights

THE PROBLEM

Lesbian, gay, bisexual, and transgender people continue to face significant legal barriers to equality in the United States. Far too many jurisdictions allow discrimination in employment, housing, and places of public accommodation; fail to extend domestic partner benefits to same-sex couples; and lack pro-equality policies, including anti-bullying policies, in schools. Bullying affects children in tragic ways, with nearly one in four LGB teenagers and 30 percent of transgender individuals attempting suicide.¹ LGBT individuals are more likely to be victims of hate crimes than any other group and hate-crime murders against LGBT individuals reached an all-time high in 2011.² Municipalities are expanding legal protections for LGBT individuals, and there is ample room for continued leadership at the local level.

THE SOLUTION

Local governments possess a wide range of options to protect LGBT rights and further the goals of inclusion and acceptance. Among these options are: (1) adopting equal municipal employment practices, (2) prohibiting discrimination by private sector employers and businesses, (3) providing domestic-partner benefits for same-sex couples, (4) establishing anti-bullying and other inclusionary protocols in schools, and (5) fostering meaningful community engagement on LGBT issues. The authority of municipalities to pass legislation in these areas often depends on their home rule powers.³

POLICY ISSUES

MUNICIPAL EMPLOYMENT PRACTICES: One of the most effective ways that municipalities can protect LGBT rights is by treating their employees equally regardless of sexual orientation or gender identity. By local ordinance, over 100 municipalities, including **Houston** and **Memphis**, prohibit discrimination by government offices in hiring, promotion, job assignment, and other employment practices.⁴ Local



“Bullying affects children in tragic ways, with nearly one in four LGB teenagers and 30 percent of transgender individuals attempting suicide.”

— **Generva Pittman**, *Social Environment Linked to Gay Teen Suicide Risk*

governments are also enacting provisions extending domestic partner benefits to their workers. Many cities and counties, such as **San Antonio**, extend benefits like health insurance to the significant others of all their employees, regardless of sexual orientation.⁵ Other cities, like **Los Angeles** and **Minneapolis**, have mandated that all private employers contracting with the local government must similarly extend benefits to same-sex couples.⁶

PROHIBITIONS ON DISCRIMINATION IN THE PRIVATE SECTOR: Many local governments require private businesses to treat their employees and customers equally in employment and the provision of housing and public accommodation. One hundred and seventy five municipalities and counties in every region of the country have enacted ordinances, prohibiting discrimination on the basis of sexual orientation. These include **Atlanta**, **Baltimore**, **Chicago**, **Fort Worth**, **New York City**, **Salt Lake City**, and little **Susquehanna Township**, PA. Nearly all of these also prohibit discrimination on the basis of gender identity. In order to comply with the First Amendment, these laws include exemptions for religious organizations, although case law suggests that municipal anti-discrimination ordinances can be extended to cover all non-ministerial employees.⁷

YOUTH EDUCATION AND ANTI-BULLYING POLICIES: In an effort to protect children, school districts and local governments are enacting strict new anti-bullying provisions that specifically address sexual orientation and

gender identity. Often, like in **Tehachapi, CA**, these provisions are adopted after the death of a student who was a victim of bullying.⁸ Many municipalities, including **Charlotte, Dallas, Fort Worth, Johnstown, NY, and Oklahoma City**, have forbidden bullying by students or teachers based on sexual orientation or gender identity.⁹ In many districts, violation of the policy can lead to expulsion. Some districts have gone a step further and taken effort to foster an affirmative sense of inclusion. **Broward County, FL** schools recognized October as LGBT History Month;¹⁰ teachers and principals have supported the creation of Gay-Straight Alliance chapters in the high schools of **Pittsburgh** suburbs;¹¹ and many school districts are training teachers and educating students about diverse family arrangements and ways to support LGBT students.¹²

COMMUNITY ENGAGEMENT: By adopting public policy resolutions, local governments further the goal of inclusion. These resolutions serve to affirm that local governments officially condemn prejudice based on sexual orientation and intend to treat LGBT individuals as full and equal citizens.¹³ Some cities, like **Chicago**, have created advisory councils or task forces designed to educate the city council and conduct outreach into the community.¹⁴ Outreach efforts focus on education by providing workshops and presentations to schools, religious institutions, youth agencies, and community groups. Other cities, like **New York City**, task their human rights commissions not only with these duties but also with the power to investigate and punish violations of anti-discrimination law.¹⁵

LANDSCAPE AND RESOURCES

Human Rights Campaign is a national organization that tracks municipal legislation, publishes the comprehensive Municipal Equality Index, and advocates for an end to sexual orientation discrimination. The **Transgender Law and Policy Institute** maintains a list of state and local laws on gender identity and provides legal, medical, and social science resources to advocates. The **Sylvia Rivera Law Project** addresses the particular problems faced by low-income transgender individuals and transgender people of color. **Movement Advancement Project** maintains a map and data on the percentage of workers legally required to be



“By adopting public policy resolutions, local governments further the goal of inclusion. These resolutions serve to affirm that local governments officially condemn prejudice based on sexual orientation and intend to treat LGBT individuals as full and equal citizens.”

– **Susquehanna Township, Ordinance 11-17 (2011)**

treated equally regardless of sexual orientation or gender identity in the private sector.¹⁶ **Equality Florida** organizes, lobbies, and educates on behalf of the LGBT community in the Sunshine State. The **Center for Popular Democracy** provides legal, strategy, and organizing support to local campaigns on these issues.

NOTES

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2. Mark Potok, Anti-Gay Hate Crimes: Doing the Math (2010)
3. Josh Goodman, Republican Legislatures Move to Preempt Local Government (2012).
4. Transgender Law and Policy Institute, Non-discrimination laws that include gender identity and expression (2012);
5. City of San Antonio, Human Resources Department, Civilian Employees.
6. Todd A. Solomon and Brett R. Johnson, Walking Employees Through the Regulatory Maze Surrounding Same-Sex Domestic Partner Benefits (2012).
7. Human Rights Campaign, Cities and Counties with Non-Discrimination Ordinances that Include Gender Identity (2013).
8. KGET News, Tehachapi to adopt controversial anti-bullying curriculum.
9. Lisa Reyes, CMS adopts anti-bullying policy (2008); GLSEN Blog, Oklahoma City School Board Adds Sexual Orientation and Gender Identity to Anti-Bullying Policy (2009).
10. LGBTQ Nation, Broward County schools first in U.S. to recognize LGBT history month (2012).
11. Kathleen Ganster, Gay-Straight Alliance at Hampton spreads awareness, tolerance (2013).
12. Michael Chandler, In D.C. schools, early lessons in gay tolerance (2012); Diana Schemo, Lessons on Homosexuality Move Into the Classroom (2007).
13. See Susquehanna Township, Ordinance 11-17 (2011); New York City, Chapter 1: Commission on Human Rights.
14. Chicago Committee on Human Relations, Amendment of Titles 2 and 5 (2002).
15. Title 8 of the Administrative Code of the City of New York.
16. Movement Advancement Project, Local Employment Non-Discrimination Ordinances.

Expanding Voting Rights

THE PROBLEM

Civic participation in the United States remains dismal compared to other advanced democracies. Low turnout, plus the denial of voting rights to youth, non-citizens, and many ex-felons, means that only 57.5% of eligible voters voted in the 2012 presidential election, 93 million eligible voters did not, and another 96 million residents were ineligible to vote.¹ Furthermore, voter turnout is dramatically lower in non-presidential elections. Mayors are often elected with single-digit turnout and scholars estimate that local elections generate an average turnout of approximately 25-30% of the voting age population.²

The economic dimension of this problem is significant: in 2010, “only 40% of those whose family income was less than \$50,000 turned out, compared to 60% of those from households earning more than \$75,000.”³ This gap in voting is aggravated by the influence of corporate lobbying and spending on elections and has profound consequences for public policy. A recent study of Congressional votes “reported that legislators were three times more responsive to high-income constituents than middle-income constituents and were the least responsive to the needs of low-income constituents.”⁴

THE SOLUTIONS

A wide array of policies to increase voter participation should be adopted by state governments, including universal voter registration, expansion of no-fault absentee and vote by mail statutes, voter registration modernization, and same-day registration. **But cities and counties have a key – and underappreciated – role to play in this movement.** Innovative local leaders can adopt reforms that will facilitate increased civic participation, strengthen the responsiveness of local government to community needs, and provide models for state and federal reform. The following represent some examples of creative solutions that cities have adopted:

FACILITATE VOTER REGISTRATION: Cities and counties can



“Have you ever gone to a high school and stood in the background and watched these high school students run a voter registration drive? It is very encouraging and motivating . . . You not only see, but also feel, a sense of democracy at work.”

— Arizona State Official, Office of the Secretary of State

implement pro-voter laws that will make registration easier. These laws can announce the city’s official goal of reaching a specific voter registration target and establish a government agency dedicated to increasing registration and participation. The agency can partner with non-partisan groups to register more voters and can ensure that voters are given a meaningful opportunity to register at public libraries, community centers, police stations, housing departments, and all the other places where citizens interact with municipal government.

Local governments can also play a key role in ensuring that high school students register to vote when they become eligible. For example, in **Broward County, FL**, the Supervisor of Elections conducts an annual high school registration drive, which in 2012 registered approximately 12,000 students.⁵ Local elected officials can help coordinate programs between the local boards of election and school districts to ensure that all eligible students are registered to vote.

Madison, WI and **East Lansing, MI** recently adopted ordinances requiring landlords to provide their tenants with voter registration forms.⁶ These laws will help the cities’ large number of college students register and stay registered to vote. Such requirements are also valuable because renters are disproportionately lower-income and/or people of color.

EXPAND THE FRANCHISE TO NEW VOTERS: In some states, municipalities have the legal authority to set voter eligibility requirements for local elections.

Youth Voting: Fifteen states and **Washington, D.C.** permit 16- and/or 17-year olds to preregister to vote, so that they will be eligible to vote at the first election after they turn 18. Where possible, cities should move further and fully enfranchise youth, as **Takoma Park**, MD recently did. Research shows that voting is habitual and that norms related to political participation in high school have lasting impacts, so that promoting participation among 16- and 17-year-olds will increase turnout for years to come.

Noncitizen Voting: In the United States, “non-citizens voted in local, state, and even national elections in 22 states and federal territories from the nation’s founding until the 1920s.”⁹ It was only with the rise of racist anti-immigrant sentiment at the turn of the 20th century that states began to eliminate alien suffrage. It is time to return to a democratic system in which all residents have the right to participate in self-governance.

Through a referendum, **Takoma Park** enfranchised non-citizen residents in 1992. In 2010, ballot initiatives were very narrowly defeated **Portland**, ME and **San Francisco**.¹⁰ In **New York City**, a broad coalition of advocacy groups, unions, scholars, and elected officials are now advancing a proposal to enfranchise the 1.2 million lawfully-present residents. The legislation is supported by a majority of the City Council.¹¹

Restoring Voting Rights for Felons: Approximately 5.3 million Americans in 48 states are denied the right to vote because of a past felony conviction.¹² Many of these policies were adopted after the Civil War with the explicit purpose of disenfranchising ex-slaves. These laws continue to have a tremendously harmful impact: 13% of black men are disenfranchised – 7 times the national average.¹³

Takoma Park recently granted all previously incarcerated felons the right to vote once they complete the prison sentence.¹⁴ In Minnesota, ex-felons may vote after completing probation or parole and **Minneapolis** adopted a “Restore Your Voice” initiative to “inform disenfranchised ex-felons of their voting rights.”¹⁵ **Lexington’s** City Council voted unanimously to support a state law that would restore voting rights to ex-felons.¹⁶

PUBLIC FINANCING OF LOCAL ELECTIONS: The overwhelming evidence is that our system of campaigns funded by private dollars skews public policy in favor of the wealthy and forces elected officials to spend time raising money instead of focusing on governing.

Cities and states cannot ban political spending, but they can reduce the outsized influence of wealthy contributors and democratize campaign funding through public financing.

In **New York City**, candidates for mayor and city council receive \$6 in matching funds for every \$1 that they raise from a city resident (up to a limit of \$175 per resident). Candidates who participate in the program commit to a limitation on their total spending, which ensures that money will not determine the outcome of the race. The program reduces the influence of moneyed interests, permits middle-class candidates to run competitive races and win, and engages a broader segment of the population in the electoral process.¹⁷

LANDSCAPE AND RESOURCES

The **Brennan Center**, **The Pew Charitable Trusts Elections Initiative**, and **Demos** have excellent resources on voter registration modernization and campaign finance reform. **CIRCLE** has valuable information on youth participation. The **Center for Popular Democracy** and the **Leadership Center for the Common Good** work with base-building organizations around the country to advance voting rights at the city and state levels.

Notes

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2. Zoltan Hajnal and Paul Lewis, Urban Affairs Review, Municipal Institutions and Voter Turnout in Local Elections, (2003).
3. Nonprofit Vote, America Goes to the Polls: Voter Participation Gaps in the 2010 Midterm Elections.
4. FairVote, Voter Turnout, at <http://www.fairvote.org/voter-turnout#.UccRhZzXC8o>.
5. See Broward County Supervisor of Elections High School Voter Registration Drive, at <http://www.browardsoe.org/content.aspx?id=130>.
6. Wisconsin Radio Network, Madison landlords required to supply voter registration forms (July 21, 2012).
7. FairVote: Voter Preregistration, at <http://www.fairvote.org>.
8. Letter to Takoma Park Mayor Bruce Williams from The Center for Information and Research on Civic Learning and Engagement (March 25, 2013).
9. Ron Hayduk, National Civic Review, Non-Citizen Voting Rights: Extending the Franchise in the United States (2003).
10. Elise Foley, Washington Examiner Non-Citizen Voting Efforts Fail in San Francisco and Portland, Maine (Nov. 3, 2010).
11. See <http://www.ivoteny.org/>.
12. FairVote: Felon Disenfranchisement, at <http://www.fairvote.org/felon-disenfranchisement#.Ucc1fZzXC8o>.
13. ColorLines, America’s Millions of Disenfranchised, Largely Black Voters (Nov. 2, 2010).
14. Lindsay Powers, Washington Post, Takoma Park grants 16-year-olds right to vote (May 14, 2013).
15. Resolution 2008R-361, at <http://www.minneapolismn.gov>
16. Beverly Fortune, Lexington Herald-Leader, Lexington council supports restoring voting rights to ex-felons (Feb. 28, 2013).
17. Angela Migally, et al., The Brennan Center, Small Donor Matching Funds: The NYC Election Experience.

