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ARTICLES

Resistance Strategies in the Immigrant Justice Movement

Mariela Olivares1

Topics of immigration reform have created deep polarization. To some degree, these political and societal divisions regarding immigrants' place and ability to remain in the United States drove the Republican successes in the 2016 elections and carried Donald Trump to the White House. When political conservatives called for decreased migration and increased deportations of immigrants already in the United States, progressive politicians and advocates for immigrants did not present a unified and thoughtful response. I discuss this failed narrative strategy in an earlier publication, in which I decry this historic and contemporary lack of cohesive strategy. I end Narrative Reform Dilemmas by observing that the process of creating a cohesive strategy must include an understanding of what fuels contrasting viewpoints and a recognition that reform will only occur when it benefits the most politically powerful majority. Harkening to the pioneering work of Derrick A. Bell and the phenomenon of interest convergence, I discuss how immigrant advocates must consider how to create and effectuate a strategy that furthers humanitarian immigration reform while also incorporating the divergent views of other political and societal actors.

In this Article, I continue this discussion about crafting a strategic narrative. Part I begins by defining a goal for immigrant advocates. Setting a goal or purpose is a crucial first step for any group engaged in a strategic plan. Without delving deeply into the historic difficulties that constrain the struggle for equality for immigrants, which ultimately must question broad concepts of citizenship and borders (and is best left to another scholarly project), I discuss a framework for preliminary steps. At its foundation, success must embody justice for immigrants, which entails a legislative and political system that embraces fairness through membership identity. Membership would include affiliative and contractual aspects, as Hiroshi Motomura details in his writings, while also ascribing to humanitarian ideals of fairness and justice, as Joseph Carens and Martha Nussbaum espouse. But creating membership identity must not continue the ostracizing

effects of past narrative tactics that only pay heed to seemingly positive attributes, as in some of the “Dreamer” and DACA strategies, which Elizabeth Keyes describes.

Part II then explores past efforts to craft immigration narratives for pro-immigrant reform and the ways in which these strategies consistently fell short. Despite well-intentioned efforts, each strategy failed in part by not confronting the deep history of racism and discrimination against immigrants that essentially makes comprehensive change only possible when the change mechanisms also benefit the political and societal majority. With this recognition, Part III emphasizes that immigrant advocates need to shift the strategy away from a passive normative framing and capitalize on the robust resistance movement currently moving reform conversations between new collaborators. This era of political resistance and awakening has led to new and vibrant connections between constituencies. By focusing on commonality of membership and the power of collaborative action, the road to reform will be smoothed. Part III provides case studies of organizations and movements that have successfully created connectivity between non-traditional partners and exhorts immigrant advocates to consider similar processes. Finally, Part IV provides a roadmap on what the new immigrant rights narrative strategy may contain. The narrative can be crafted through different means, but to be politically successful, it must acknowledge the past incomplete efforts and realize the fervor for change that is now gripping the nation. Moreover, we must critically examine the effects of crafting a narrative, including the common consequence that oppresses a sector of the community through efforts to uplift another sector. As this Article concludes, through this process, we will create a message that unifies diverse communities, actors and groups fighting for fair and just immigration reform

Can State Constitutional Development Make a Difference in Illinois?
Hon. John Christopher Anderson48

For over a decade, Illinois has faced perilous financial and political crises. Many commentators believe that state constitutional development in the context of pensions, term limits, and legislative redistricting are a necessary key to placing Illinois on a path toward prosperity. This article considers whether state constitutional reform (by way of judicial interpretation or amendment) in these areas is possible and whether it would likely bring about the change some observers seek.

The Stringent Takings Test for Impact Fees in Illinois: Its Origins and
Implications for Home Rule Units and Legislation
Lisa Harms Hartzler92

Many Illinois municipalities impose exactions, or impact fees, on new housing developments. Appropriate impact fees offset the anticipated financial burdens on government created by a resulting increase in population, such as a need to build wider roads or add schools. The validity of these fees, however, is subject to a unique and especially stringent standard under the Illinois Constitution’s Takings Clause. Unlike the U.S. Supreme Court’s interpretation of the federal constitution and most other state court interpretations of their respective constitutions, an impact fee in Illinois must be “uniquely and specifically attributable” to the burdens it creates for a local government. This article traces the origin and the development of this stringent standard by Illinois courts and how it differs from the U.S. Supreme Court’s interpretations under the classic takings cases Nollan and Dolan. It argues that the stringent standard applies with equal force to non-home rule and home rule units, and that, in Illinois at least, municipal legislative acts must also meet the strict standard.

NOTES AND COMMENTS

What Will It Take? Examining the Use of Preliminary Hearing Testimony Where Victims are Unavailable Due to Mental Illness Stemming from Domestic Violence and Sexual Assault

Kristin L. Grossman.....140

A particular problem exists that domestic violence and sexual assault victims face when bringing their abusers to court. This is whether the use of preliminary hearing testimony can be utilized where a victim is unavailable to testify at trial due to mental illness, namely Post-traumatic Stress Disorder. This article examines the manner in which various states have combatted the issue of unavailability due to mental health and what role that unavailability has in a domestic violence or sexual assault case. By closely looking at the case State v. Anderson, 402 P.3d 1063 (Idaho 2017), this article seeks to justify the use of preliminary hearing testimony where there can be a trustworthy means for mental health determinations to establish a victim’s unavailability, and where the previous testimony has an indicia of reliability.

The Constitutional Guarantee of Freedom to Surcharge: Brandishing the First Amendment to Strike Down Surcharge Bans

Michael R. Biggott 170

In what might be described as a modern-day David and Goliath, merchants in the United States find themselves pitted against both credit card companies and state legislatures in a battle over the ability to impose surcharges on purchases made with credit cards. Rather than a sling and a few smooth stones like the noble David in the biblical account of one of the most famous underdog

stories ever told, merchants are wielding something more powerful: The First Amendment to the United States Constitution.

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