

Immigration

League members across the country must come to some sort of broad agreement on the values they hold related to immigration. The League calls this consensus. From this consensus will come a position that the national League will use for years to come to affect national policy. The LWVUS Immigration Study published its first article, "U.S. Immigration: A Historical Perspective," in the February 2007 *The National Voter*. (The article is also posted on the LWVUS website at www.lwv.org: click on "Library" and then on "National Voter." Or contact Leslie Vandivere at 703 222-4173 or lvandivere@cox.net if you need a copy of the article.) From September 2007 to January 2008, local Leagues, including LWVFA, will take consensus and, by April 2008, the LWVUS Board will adopt an immigration position.

LWVFA will begin the consensus process with this study. Our responsibility is to make ourselves as well informed as we can as we begin the discussion. In addition to the three articles which follow, please look at the background papers prepared by the LWVUS Immigration Study Committee. Click on "Immigration Study" on the entry page to the LWVUS website. Check the site often since new resources are being added. Continually educate yourself—attend meetings, read publications, and follow the issue in newspapers and news magazines.

Economic Aspects of Authorized and Unauthorized Immigration

By Dorrit Marks, LWV of Miami-Dade County, FL, LWVUS Immigration Study Committee

Over the years U.S. economic growth has accommodated an expanding labor supply that includes 1.5 million immigrants per year whose spending on homes and consumer goods has stimulated the economy and increased the demand for still more labor. Economists expect this demand to create millions of new jobs in the future at the same time that the workforce is decreasing as a result of declining fertility rates among the native-born and retiring baby boomers. Many see new immigrants as a necessary labor source to meet these increased needs.¹

Effect on American Workers and Their Wages

Do immigrants hurt the economic prospects of American workers? Do they lower wages?

The effect of immigrants on the economic prospects of American workers is an important factor in the national debate on immigration. George Borjas, a Cuban immigrant and pre-eminent scholar in immigration research at Harvard University, believes that more job seekers from abroad result in fewer opportunities and lower wages for Americans. Borjas says that poorly educated Mexicans hurt the economic prospects of poorer Americans, especially African Americans.²

Borjas's research divides workers by education and work experience, and compares immigrants to natives in each category. His research indicates that between the years 1980-2000 immigrants were the cause of about a 3 percent reduction in wages.

Furthermore, wages for high school drop-outs were reduced by about 8 percent.

David Card, immigration researcher and economist at the University of California, Berkeley, presents research results to counter Borjas' arguments. Card compares wage trends in cities with large immigrant populations to cities having few immigrants and finds very little wage difference.³

In addition, Card studied the impact of the 1980 Mariel boatlift. In that year, 125,000 Cubans came to Miami, adding to the city's already sizeable Cuban immigrant population. He compared wages in Miami with those in a "control group" of cities, Tampa, Atlanta, Houston and Los Angeles, and found that by 1985 black unemployment in Miami was lower than it had been in 1979, while unemployment in the control cities remained higher during that same period. Based on this research, Card concludes that Mariel immigrants had almost no effect on wages or on unemployment rates of less-skilled workers in Miami.⁴

The relationship between immigration and wages is not clear cut because it can't be reduced to a simple one-to-one relationship. Wages depend on the supply of capital creating new jobs as well as the supply of labor. A greater supply of immigrant workers and the resultant cheaper cost of labor increases the return to employers. They then could build new factories or open additional service

facilities, ultimately creating an increased demand for workers. An article in *The Economist* concludes that neither of these studies is decisive, but “taken together they suggest that immigration, in the long run, has had only a small negative effect on the pay of America’s least skilled and even that is arguable.”⁵

Cost and Benefits

In North Carolina, a state with a fast-growing immigrant population, immigrants contribute more to economic growth than to the cost of public services. Over the past decade, foreign workers filled one-third of new jobs in North Carolina and cost the state much less than their contribution to the economy. A comparison of the cost of supplying public services to immigrants with the income from their taxes resulted in a net cost to the state of \$61 million. This is miniscule, however, compared to the immigrants’ sizeable overall \$11 billion contribution to economic expansion in the state.

Over the past decade, immigrants filled more than half of all new jobs across the U.S., even more in some parts of the country—two-thirds in the Midwest and Southwest. On average, the additional tax burden per native household is no more than a couple of hundred dollars a year. However, the tax burden caused by immigrants can be large where the proportion of immigrants to the total population is exceptionally high. For example, in California the tax burden in the mid-1990s was \$1,178 per native-born household, the highest in the nation.⁶

The effect of authorized and unauthorized immigrants on public-sector budgets is small. Immigrant workers pay into social insurance programs, lessening strains on social assistance for the elderly. Many unauthorized workers use false ID numbers and pay Social Security taxes but are not eligible to receive benefits. Fewer than 3 percent of immigrants receive food stamps. Unauthorized workers support local school districts, indirectly as rent payers or directly as homeowners through property taxes. They are a financial burden for hospitals and jails, but this is applicable to all low income, uninsured populations as a whole—unauthorized, authorized, and native-born.⁷

Fiscal Pressure on State and Local Budgets

1996 welfare reform restricted immigrant access to many public benefits, such as, Supplementary Security Income (SSI) and federal food stamps. Immigrants (authorized or unauthorized) are not barred from public education, the largest public expenditure item. Net fiscal transfer from natives to immigrants at the national level is small, albeit higher in certain states that have both generous welfare benefits and large immigrant populations.⁸

An interesting case study measures the costs of immigrants in New York against their fiscal contributions. Tax contributions of legal immigrants in New York State differ substantially from those of unauthorized immigrants, an average of \$6,300 vs. \$2,400. Unauthorized immigrants pay a relatively smaller share of their income in taxes (15 percent) partly because their lower income places them in a lower federal tax bracket. Average annual income differs as well. Legal permanent resident aliens earn an average of \$18,700; refugees, \$8,300; and unauthorized immigrants, \$12,000. A large part of their tax payments go to the federal government; yet public education, the most expensive public service, is paid for at local and state levels.⁹

A recent report issued by the Texas State Comptroller estimates that the 1.4 million unauthorized immigrants in Texas are improving the Texas economy by \$17.7 billion a year, but this is unevenly divided between state and local communities. State costs are \$1.15 billion and contributions in the form of state taxes and revenues are \$1.58 billion, yielding the state a net profit of \$430 million. On the other hand, local costs are \$1.44 billion and contributions are only \$513 million, resulting in a considerable loss to cities and counties. The complete report is at <http://www.window.state.tx.us/>

Cited studies and reports indicate that costs and benefits are not evenly allocated. Taxes paid to the federal government and added productivity of the macro economy make immigration a net benefit to the country as a whole. But, at the local level, communities face demands for costly services from immigrants, particularly in education and health care, that are not offset by tax income.¹⁰

The Influx of Unauthorized, Less Skilled Labor

Nationwide attention focuses on immigration largely because of the growing number of unauthorized immigrants in the U.S.—an estimated 10 to 12 million persons, making up nearly one-third of the foreign-born population, with a growth rate of approximately 500,000 per year. The influx of unauthorized immigrants is primarily a response to laws of supply and demand. The number of authorized immigrants cannot meet the demand for labor. Filling workforce openings, many of which are year-round, permanent jobs has proven more powerful than immigration enforcement. To a lesser degree, unauthorized immigration is also a response to the difficulty and time delays associated with immigrating legally.¹¹

On the whole, immigrants are young, mobile, hard workers who, for a variety of reasons, are willing to work at jobs shunned by native-born workers. According to Jacoby, the addition of more low-skilled immigrant construction workers results in greater demand and higher wages for skilled construction workers such as plumbers, electricians and architects. Immigrant workers tend to raise wages rather than lower them because they tend to complement rather than compete with most native-born workers.¹²

The CEO of the National Association of Home Builders estimates 25 to 30 percent of construction workers are immigrants (authorized and unauthorized). Removing these immigrants from the workforce would produce a serious negative impact. Construction costs would rise, causing a decreased demand for new housing.¹³

Andrew Sum, director of labor studies at Northeastern University, Boston, argues that the large supply of immigrants has displaced low-skilled, native-born workers, particularly the young and poor, from jobs. He does concede that unauthorized immigrants have had a positive effect on the country's economy and have helped improve productivity of highly skilled workers. "Without the immigrants, we would have a decline in labor force of 3 to 4 percent. We couldn't have grown nearly as much as we did in the '90s if we didn't have immigrants. Still, he argues, "...we've ignored that illegal immigration has put a lot of young adults into economic jeopardy."¹⁴

Mexican Workers

During the 1990s, the U.S. workforce absorbed 2.9 million Mexican workers. At the same time, the unemployment rate fell from 6.3 percent to 3.9 percent. This influx of Mexicans gave American employers access to needed workers in a tight labor market. Owners and managers of factories, restaurants, hotels, construction firms, hospitals, orchards and innumerable other places of employment express a need for continued access to immigrant workers, mostly from Mexico. Although many Mexican immigrants lack formal education, they have skills compatible with available jobs. For instance, it is estimated that by 2010 nearly 43 percent of all job openings will require only minimal education. At the same time, native-born Americans are obtaining college degrees in record numbers and are unlikely to accept positions requiring just minimal education.¹⁵

Other researchers disagree and find that the large influx of immigrants from Mexico has adversely affected the wages of less-educated native-born workers and improved the earnings of college graduates. Low Mexican wages, in turn, helped lower prices of non-traded goods and services. Largely due to lower levels of education, the economic performance of Mexican immigrants lags considerably behind other immigrant groups and native-born workers. Non-Mexican immigrants' earnings begin to converge with that of native-born workers as they accumulate work experience, but the correlation is weaker for Mexican immigrants.¹⁶

High-Skilled Immigrants

Immigrants make a large contribution in high-skilled occupations in the U.S. There is increasing global competition for skilled professionals as well as competition to attract foreign students to graduate studies. Skilled foreign-born persons make up an ever-increasing portion of the skilled workforce in the United States—8 percent of 25-year-old or older skilled persons in the U.S. in 1990, 13 percent in 2000, and 15 percent in 2004.

The steady supply of skilled immigrants is important for the U.S. economy because these immigrants bring skills that are in short supply in this country. They raise productivity and, with their demand for goods and services, they help create additional jobs for the native-born. More than half of U.S. Nobel prize winners are foreign-born and

have made exceptional contributions in the fields of science and engineering. In California's Silicon Valley, 29 percent of technology firms were started and run by Chinese or Indians between 1995 and 1998.¹⁷

Immigrants have had a profound impact on company creation, economic innovation and market value in the United States. Over the past 15 years, immigrants have founded one of every four (25 percent) U.S. public companies that received venture capital. Forty-seven percent of current venture-backed companies in the U.S. have immigrant founders. Nearly half of immigrant entrepreneurs in the survey came to the U.S. as students and started their own businesses within 12 years of entering the country.¹⁸

Borjas finds that foreign students receiving PhDs can adversely affect the earnings of native-born students earning doctorates in the same field by 3 percent. On the other hand, Madeline Zavodny found the inflow of high-skilled professionals did

not depress wages of other technology workers. Another study by Jeanne Batalova concludes that having a larger number of immigrants in the same job results in higher earnings for skilled men and women, but notes that there is a tipping point beyond which additional immigrant workers result in a decline in earnings for all workers.¹⁹

Looking Forward

Demographers expect to see increasing numbers of authorized and unauthorized immigrants coming to the U.S. in future years. New arrivals, mostly from Latin America and Asia, will spend money in the U.S. and increase earnings for businesses such as discount retailers, apartment building owners and home builders.²⁰ In addition many experts believe that young, tax-paying immigrants will help meet increasing labor needs resulting from a growing economy and a declining native-born workforce.²¹

Productive immigration discussions must include the impact of immigrants on the country's economy—their contributions as well as the costs.

¹ Doris Meissner et al, *Immigration and America's Future: A New Chapter*, (Migration Policy Institute, 2006), p. 3.

² Roger Lowenstein, "The Immigration Equation," *The New York Times Magazine*, July, 9, 2006, p. 38.

³ "Myths and migration," *The Economist*, April 6, 2006 [Finance and Economics/ Economics Focus],

⁴ Lowenstein, "Immigration Equation," p. 41.

⁵ "Myths and migration"

⁶ Tamar Jacoby, "Immigrant Nation," *Foreign Affairs*, November/December 2006.

⁷ Lowenstein, "Immigration Equation," p. 39.

⁸ Gordon Hanson, Kenneth Scheve, Matthew Slaughter, and Antonio Spilimbergo, "Immigration and the U.S. Economy: Labor-Market Impacts, Illegal Entry, and Policy Choices," 2001 working paper, Google / SSRN publications.

⁹ Jeffrey Passel and Rebecca Clark, "Immigrants in New York: Their Legal Status," 1998, www.urban.org/publications.

¹⁰ Meissner, *Immigration and America's Future*, p.25.

¹¹ Meissner, *Immigration and America's Future*, pp. 19-22.

¹² Jacoby, "Immigrant Nation."

¹³ Chris Isidore, "Illegal Workers: good for U.S. economy," May 1, 2006, www.CNNMoney.com.

¹⁴ Isidore, CNN Money.

¹⁵ The American Immigration Law Foundation (AILF), *Immigration Policy Focus*, Vol. 1. Issue 2, "Mexican Immigrant Workers and the U.S. Economy – An Increasingly Vital Role," September 2002.

¹⁶ George Borjas, Lawrence Katz, *National Bureau of Economic Research (NBER) Working Paper 11281*, "The Evolution of the Mexican-Born Workforce in the United States," April 2005, pp. 4, 42-43.

¹⁷ Neeraj Kaushal, Michael Fix, "The Contributions of High-Skilled Immigrants," *Migration Policy Institute*, (MPI) study No. 16, July 2006, pp. 1, 4, 15.

¹⁸ "Immigrants Have Founded 1 in 4 Public Venture-Backed Companies in the U.S. since 1990, Finds First-Ever Study," *PRNewswire*, November 15, 2006, pp. 1-2.

¹⁹ Kaushal, "The Contributions of High-Skilled Immigrants," p. 13. Also see: Anderson Stuart, "The Debate Over Quotas on Highly-Skilled Legal Immigrants," *Frontlines*, November 12, 2006, p.1.

²⁰ Reshma Kapadia, "Suarez-Orozco Looks at the Economic Impact of U.S. Immigration: U.S. Immigration could spell big business," *Reuters*, January 21, 2005.

²¹ Meissner, *Immigration and America's Future*, p. 4

Immigrants in Fairfax County

By Leslie Vandivere, LWVFA

Foreign Born in Fairfax County.

In 1970, 3.5 percent of Fairfax County residents were foreign born. When the LWVFA published "Challenges Posed by Immigration to the Fairfax Area" in 1999, the most recently available statistics at the time (1990) indicated that the foreign-born

living in Virginia represented 5 percent of the state population and 14.1 percent of the population in Northern Virginia. By 2005, an estimated 10 percent of people living in Virginia were foreign-born, as were 27.2 percent of Fairfax County

residents. In contrast, only 12.4 percent of the U. S. population was foreign born.¹

These figures confirm what County officials have asserted: Fairfax County has become an immigrant gateway, a place immigrants choose as their destination on entering the United States.² According to the Brookings Institute, the Washington region ranks seventh in large metropolitan areas in numbers of immigrant residents.³ But unlike traditional gateway cities such as Chicago or New York, immigrants began arriving in the Washington region in large numbers only recently. By 2005, Fairfax County had overtaken Arlington and Alexandria in the percentage of immigrants. In the Washington region, only Montgomery County has a higher percentage of immigrants than Fairfax County.

Foreign Born in Washington Region

Area	Number	Per Cent
Montgomery County	267,954	29.2%
Fairfax County	271,491	27.2%
Alexandria	34,860	26.1%
Fairfax City	5,451	25.4%
Arlington County	47,378	24.7%
Loudoun County	49,214	19.3%
Prince William County	67,116	19.1%
Manassas Park	1,543	15.0%
Manassas	4,973	14.2%
Prince George County	110,481	13.8%
Washington, D.C.	73,561	12.9%
United States	35,689,842	12.4%
Virginia	723,667	10.0%

Source: U. S. Census Bureau, 2005 American Community Survey

Origin of Foreign Born

Between 1995 and 2000, immigrants came to Virginia from more than 100 countries. The top sending countries were Mexico, El Salvador, India, Korea, China, Canada, Vietnam, Philippines, Guatemala, and Bolivia.⁴ If 1990 and 2000 rates and trends continue through 2010, approximately 45 percent of Fairfax County’s total population may be racial and ethnic minorities.⁵

Region of Birth of Foreign Born

Area	Fairfax	Pr. William	Virginia	USA
Europe	9.3%	6.4%	13.0%	13.6%
Asia	51.8%	23.9%	40.6%	26.7%
Africa	8.7%	10.6%	8.6%	3.5%
Oceania	0.4%	0.1%	0.5%	0.5%
Latin America	28.7%	58.6%	35.4%	53.3%
N. America	1.0%	0.4%	1.9%	2.3%

Source: U. S. Census Bureau, 2005 American Community Survey

Birth Rate.

Another trend contributing to the increasing diversity of Fairfax County is the rate of births to immigrant mothers. In 1990, 28.1 percent of all babies born in Fairfax County had immigrant mothers. By 2002, 50.7 percent of 14,412 babies born in the County were born to immigrant mothers.⁶

Languages Spoken at Home

The number of residents age 5 and older who speak a language other than English at home is another indication of the size of the immigrant population. Households in which no member age 14 or older speaks English “very well” is defined by the U.S. Census Bureau as linguistically isolated. In 2000, 7.3 percent of Fairfax County residents age 5 or older lived in linguistically isolated households.

Language Spoken at Home

	Language	Total	Speak English < “very well”
Fairfax County	English	616,274	N/A
	Other than English	309,549	141,867
	Spanish	108,008	58,107
	Other Indo-European	73,283	23,358
	Asian & Pacific Islander	100,143	50,054
	Other Languages	28,115	10,348
Fairfax City	English	14,043	N/A
	Other than English	6,193	3,042
	Spanish	2,736	1,490
	Other Indo-European	1,204	444
	Asian & Pacific Islander	2,013	1,025
	Other Languages	240	83
Prince William County	English	232,468	N/A
	Other than English	83,365	42,150
	Spanish	52,354	31,634
	Other Indo-European	15,584	4,690
	Asian & Pacific Islander	10,240	3,989
	Other Languages	5,187	1,837

Source: U. S. Census Bureau, 2005 American Community Survey

The 1999 LWVFA study reported that approximately 25 percent of the Fairfax County population spoke a language other than English at home and only a third of these were proficient in English. The 2005 estimate is that over one-third of Fairfax County residents over the age of five spoke a language other than English at home and of these, nearly half spoke English less than “very well.”⁷

Citizenship of Foreign Born

The estimated foreign-born population of Virginia was 723,667 in 2005. Of the foreign born, 43 percent were U.S. citizens and 57 percent were non-citizens of the U.S.

Citizenship Status of Foreign Born

Area	Naturalized U.S. Citizen	Not U.S. Citizen
Fairfax County	125,185	146,306
Alexandria	12,634	22,226
Arlington County	17,876	29,502
Loudoun County	22,515	26,699
Prince William County	23,324	43,792
Manassas Park	442	1,121
Manassas	1,348	3,625
Virginia	309,430	414,237
United States	14,967,828	20,722,014

Source: U. S. Census Bureau, 2005 American Community Survey

Most naturalized citizens have been in the U.S. for about 10 years. Generally, they are better educated and have higher paying jobs than non-citizens, with nearly half working in management, professional, or related occupations.⁸

Unauthorized Immigrants

Fairfax County officials state that an estimated 20 percent to 29 percent of Virginia's foreign-born

population are unauthorized migrants, and, of these, an estimated 80 percent come from Mexico and other Latin American countries.⁹ This estimate is consistent with that of the Pew Hispanic Center, which says that unauthorized migrants accounted for 30 percent of the foreign-born population in 2005. Another 28 percent were legal permanent residents, and 31 percent were U.S. citizens by naturalization. Based on the March 2005 Current Population Survey, the Pew Hispanic Center estimates that Virginia had between 250,00 and 300,00 unauthorized migrants.¹⁰

Characteristics of Immigrants

Most immigrants to Virginia, nearly 70 percent, are age 18 to 44, suggesting migration to find employment opportunities. Immigrants fall into two educational categories: 25 percent have not graduated from high school and 45 percent have Bachelor's or advanced degrees. Among non-immigrant Virginians, the corresponding percentages are 26 percent and 21 percent. Even so, most immigrants earned less than \$25,000 in 1999 and few earned more than \$50,000.¹¹

¹ U.S. Census Bureau, 2005 American Community Survey

² *Anticipating the Future: A Discussion of Trends in Fairfax County*, Department of Systems Management for Human Services, Fairfax County, Virginia, March 2006

³ Alice M. Rivlin, "Addressing the Challenges of Growth in the Washington Region," Brookings Greater Washington Research Program, Metropolitan Policy Program, The Brookings Institution, February 24, 2006

⁴ Qian Cai, "Who's Moving to Virginia?" *Numbers Count: Analysis of Virginia's Population*, Weldon Cooper Center for Public Service, University of Virginia, January 2007

⁵ *Anticipating the Future*.

⁶ Steven A. Camarota, "Births to Immigrants in America: 1970 to 2002," Center for Immigration Studies, July 2005

⁷ U.S. Census Bureau, 2005 American Community Survey

⁸ "Demographic Profile of Virginia: Presented to the Council on Virginia's Future." Weldon Cooper Center for Public Service. October 20, 2006.

⁹ *Anticipating the Future*

¹⁰ Jeffrey S. Passel, "Size and Characteristics of the Unauthorized Migrant Population in the U.S.," Pew Hispanic Center, March 7, 2006

¹¹ "Who's Moving to Virginia?"

Day Laborer Issues in Fairfax County

By Joy Bryan, LWVFA

The current high volume of immigration in recent years has raised numerous issues regarding immigrants finding work in this country. Two of these issues involve the use of day laborer sites as a mechanism for organizing the supply of immigrant laborers and the use of anti-solicitation

statutes to bar laborers from soliciting work on the streets.

Herndon Day Laborer Site

In Northern Virginia, the need for a day laborer site first began during the 1990s, when the area began

to experience tremendous growth including the development of the Dulles technology corridor and new residential communities in northwestern Fairfax County.¹ This expansion increased the need for workers in the construction, landscaping, and service industries. This need caused workers and employers seeking casual labor to congregate in a parking lot in a convenience store in the downtown district of Herndon. Eventually, 70 or more people would gather at a location along Herndon's main road, intensifying concerns in the town. Issues of public safety, the impact on nearby businesses and neighbors, and conditions faced by the workers were debated. In 2001, in order to address this issue, the Town of Herndon convened a Community Relations Working Group, composed of community stakeholders, including workers, neighbors, business owners, human service professionals, and other interested parties. As a result of the group's research and discussions, management of the convenience store agreed to continue to allow the workers and employers to meet in the parking lot and the workers established a code of conduct that they would follow at the site. In addition, the group also recommended that a non-profit organization be identified to establish and operate a formalized hiring site and the Town of Herndon approached Reston Interfaith, a social services provider, for assistance.

In 2002, Reston Interfaith secured funding from Fairfax County to deliver social services to the workers at the informal site, monitor conditions there, and to develop a formal site. In October 2004, a community-based coalition, consisting of civic leaders, businesses, non-profit organizations, and residents, known as Project Hope & Harmony was formed to further address these issues. In March 2005, Project Hope & Harmony and Reston Interfaith identified a lot that the Town of Herndon owned as a potential location for a more formal hiring site for day workers. Following public hearings where supporters² and opponents voiced their opinions,³ on August 17, 2005, the Herndon Town Council approved the opening of a formalized day laborer site and a permit was granted to Reston Interfaith to begin operations.⁴ Fairfax County also agreed to provide funding to Reston Interfaith for "day laborer strategy management."

On December 14, 2005, the Herndon Official Workers Center (HOW Center), operated by

Reston Interfaith, on behalf of Project Hope & Harmony, opened. The HOW Center is located at 1481-A Sterling Road in Herndon, Virginia, a location that is leased from the Town of Herndon. On the opening day, 112 workers sought employment at the HOW Center.

The center, supported by project staff, volunteers, and workers, provides a safe location and managed process for employment transactions. According to Bill Threlkeld of Project Hope & Harmony, an average of 125 workers come to the site each day and approximately 25 percent of them receive work on any given day. Workers participate in a lottery each day to ensure a fair distribution of employment assignments. Work opportunities generally include yard work, landscaping, drywall installation, moving, carpentry, painting, fencing, digging, and odd jobs. Although Project Hope & Harmony does not track the amount of money that a day laborer earns, Mr. Threlkeld believes that workers generally receive about ten dollars per hour for the work that they do.⁵

In addition, according to a June 2004 Fairfax County Day Laborer Survey, day laborers in Fairfax County are younger Hispanic men and almost two-thirds are between 18 and 35 years of age and the majority reside in Fairfax County with family or friends.⁶ Most of the day laborers that participated in the June 2004 survey lived within a few miles of the day laborer site and two-thirds of them walked to the site.

Herndon Anti-Solicitation Ordinance

Although the Town of Herndon agreed to support a day laborer site, it has argued that the existence of the site allows the Town to bar solicitation for employment on its streets. In September 2005, the Town of Herndon enacted an ordinance prohibiting solicitation using a motor vehicle. The ordinance bars anyone in a vehicle from trying to hire someone standing on a sidewalk or street. Conversely, it prohibits anyone on the street from asking someone in a vehicle, or who has just gotten out of a vehicle for work.⁷ The ordinance is currently being challenged in Fairfax County District Court.

On September 16, 2006, Stephen A. Thomas, drove his vehicle to a 7-11 located in the Town of Herndon. Mr. Thomas parked and exited his vehicle, walked across the parking lot and approached a couple of men about the possibility

of hiring one of them to assist him with yard work. He reached an agreement with one individual and the two men returned to Mr. Thomas' vehicle and began driving to his home. Shortly thereafter, the Herndon Police stopped Mr. Thomas and charged him with vehicle solicitation.

In January 2007, Mr. Thomas filed a motion to dismiss his case on First Amendment grounds arguing that the ordinance is facially overbroad and chills a substantial amount of protected speech.⁸ In his motion, Mr. Thomas observes that in *United States v. Kokinda*,⁹ the United States Supreme Court specifically found that solicitation is a recognized form of speech protected by the First Amendment. He argues that the Herndon ordinance is flawed because it focuses only on solicitation for employment while other substantially forms of speech or solicitation, even when accompanied by identical means, are proscribed. For example, the ordinance places no restrictions on soliciting charitable contributions, a practice that frequently occurs in the middle of the street. Likewise, individuals are not prohibited from selling goods on the sidewalk or even from standing in highway medians to sale such items as flowers or newspapers directly to vehicle drivers. Furthermore, religious proselytizers are not prevented from soliciting persons in vehicles or pedestrians who have temporarily exited their vehicles.

Mr. Thomas also argues that the Herndon ordinance is invalid because it is not tailored to serve a significant government interest. The Herndon ordinance is purportedly designed to prevent the distraction of drivers from their duty to watch traffic and drive safely and to facilitate the free flow of travel. However, the ordinance is not limited to situations implicating driving safely or the free flow of traffic or even limited to vehicle solicitation. For example, the Herndon ordinance prohibits solicitation from any pedestrian who temporarily exits a vehicle. Given the broad definition of pedestrian, the ordinance encompasses every person on any highway, road, street, driveway, parking lot or alley, not at his permanent residence, who rode a bike or drove a car or other vehicle, for any purpose, whatsoever, to his temporary destination. Therefore, streets that are entirely blocked to vehicular traffic are equally affected, as are highways and parking lots, both public and private, regardless of whether they are visible from any flowing traffic. In addition, Mr. Thomas argues that the ordinance facially restricts substantially more speech than is necessary. For example, by its plain language, taxi cab services, bus services, and valet parking services are prohibited, despite the fact that all three services, if anything, alleviate the traffic problems. Although the court has not yet ruled on Mr. Thomas' case, it is anticipated that the ruling will have a significant impact on a town's ability to regulate the solicitation of work within its vicinity.

¹ A more detailed discussion of the history of the Herndon Official Workers Center is available at <http://www.projecthopeharmony.org>.

² Supporters of the day laborer site argued that day laborers are an essential component of the economy and are willing to accept jobs that other individuals will not accept.

³ Opponents of the day laborer site expressed concern about the impact of a formal workers center on their neighborhood and that many of the workers are illegal immigrants and public funds should not be used to assist them.

⁴ Although the Herndon Town Council supported the creation of a day laborer site, in May 2006, the voters in Herndon ousted the mayor and council members who supported the creation of the day laborer site.

⁵ The hourly wage that day laborers receive in Fairfax County is consistent with the hourly wage that day laborers receive in other parts of the country. See, "On the Corner: Day Labor in the United States," UCLA Center for the Study of Urban Poverty, January 2006.

⁶ See, "An Account of Day Laborers in Fairfax County," Department of Systems Management for Human Services, June 2004.

⁷ Specifically, Division 5, Vehicle Solicitation, Article III, Specific Street Regulations, Chapter 42, Motor Vehicles and Traffic, Herndon Town Code (2000), section 42-136 states: (a) It is unlawful for any person, while occupying as a pedestrian any portion of a highway, sidewalk, driveway, parking area, or alley to solicit or attempt to solicit employment, business, or contributions of money or other property from any person traveling in a vehicle on a highway, sidewalk, driveway, parking area, or alley. (b) It is unlawful for any person occupying or traveling in any vehicle, to solicit or attempt to solicit, employment, business or contributions of money or other property from a person who is pedestrian on a highway, sidewalk, driveway, parking area, or alley.

⁸ See, *Commonwealth of Virginia v. Stephen Andrew Thomas*, Case No. GT06195015-00, General District Court of Fairfax County.

⁹ *United States v. Kokinda*, 497 U.S. 720 (1990)