Explaining the Rise of State and Local Immigration Laws

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Abstract

This Article provides a systematic empirical investigation of the genesis of state and local immigration regulations, discrediting the popular notion that they are caused by uneven demographic pressures across the country. Instead, we find systematic evidence for the significance of political contexts such as the strength of political parties in states and localities. The story we tell in this paper is both political and legal: understanding immigration politics uncovers vital truths about the recent rise of subnational involvement in a policy arena courts and commentators have traditionally ascribed to the federal government. This recognition of the political dynamics of immigration law, we argue, fundamentally alters judicial, scholarly, and public evaluations of immigration federalism.
Explaining the Spread of State and Local Immigration Laws
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Introduction

Immigration policy in the United States has largely been the purview of the federal government, with rules establishing who is eligible to enter the United States, the terms of such entry, and the conditions under which immigrants may become citizens. In the past decade, however, states and localities have sought to play a bigger role in regulating immigration, particularly with respect to the rights and benefits accorded to illegal or unauthorized immigrants. Thus, various states and municipalities have passed laws and ordinances that are designed to make living and working conditions easier, or more difficult, for unauthorized immigrants. The proliferation of subfederal legislative activity on immigration has coincided with the geographic spread of immigrant destinations over the past two decades, as the foreign born have increasingly opted to go to new destinations with economic opportunities, ranging from rural Kansas and North Carolina to suburbs in Long Island and Georgia.

Indeed, many advocates and scholars have viewed these two developments—of the geographic spread of immigrants, and the geographic spread of restrictive legislation on immigration—as intimately linked. For example, Lou Bartletta, mayor of a small city in central Pennsylvania that was among the earliest to pass a restrictive ordinance, testified to Congress that “In Hazelton, illegal immigration is not some abstract debate about walls and amnesty, but it is a tangible, very real

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1 In this paper, we will mostly refer to the class of persons of unauthorized immigrants, except when referring to the statements or actions of restrictionist actors who use the terms “illegal aliens” or “illegal immigrants.” Any reference to these persons is intended to mean a group that either entered without inspection, or are otherwise out of status and unlawfully present in the United States.
problem.” According to many restrictive advocates, state and local immigration laws emerge as compelled solutions to newfound and intractable policy challenges such as economic stress, increased language isolation, wage depression, and overcrowded housing.

These demography-based explanations for state and local involvement in immigration policy can also be found in much legal scholarship on the topic. For example, Professor Cristina Rodriguez, in arguing for a functionalist understanding of local immigrant regulation, maintains that the demographic shifts caused by globalization and immigration “are felt differently in different parts of the country, and the disruption immigration causes, as well as the viability of different immigration strategies, will vary…” Thus, divergent needs in localities lead to contrasting approaches towards integrating and regulating the effects of immigrants on local economies. Professor Clare Huntington writes that “changing immigration patterns that have brought non-citizens to new parts of the country…and to suburban and rural areas. …[I]t is notable that the more punitive immigration measures often, although not always, are enacted in areas new to receiving significant populations of non-citizens.” Many media reports have also invoked this same wisdom, of immigration-induced changes leading inexorably to policy pressures and legislative action at the local level.

Importantly, elected officials and restriction advocates have paired these demographic claims with a complaint that the federal government has forsaken its constitutional and statutory responsibility to control unwanted immigration. In signing Arizona’s E-Verify law, then-Governor Janet Napolitano (now Secretary of the Department of Homeland Security) declared: “Immigration is a federal responsibility, but I signed

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2 See, e.g., Statement of Hon. Louis Barletta, Mayor, City of Hazelton, Pa., Comprehensive Immigration Reform: Examining the Need for a Guest Worker Program: Hearing Before the S.Comm. on the Judiciary, 109th Cong. 11-13 (2006)
5 Rodriguez, The Significance of the Local, 106 Mich. L. Rev. at 594 (“Communities are also jumping on the enforcement bandwagon because they seek control over their rapidly changing environments.”).
[the law] because it is now abundantly clear that Congress finds itself incapable of coping with the comprehensive immigration reforms our country needs. Unable to wait any longer for the federal government to seal the border and vigorously enforce provisions of the Immigration and Nationality Act, states and localities had to legislate to protect their residents and solve their impending demographic crisis. Using the functionalist rationale outlined by Professor Rodriguez, similar arguments can be made for the prevalence of so-called “immigrant sanctuary” cities, where law enforcement policies explicitly proscribe the collection of immigration status among witnesses, complainants, and those accused of minor offenses. According to this view, these cities—presumably places where immigrants do not pose significant policy challenges—are unable to wait for Congress to pass a legalization program, and are thus adopting permissive policies that improve the livelihoods of immigrant residents.

Undoubtedly, this conventional wisdom is appealing, and we seek to verify the importance of demographic shifts and policy problems in the rise of state and local responses in Part I of our paper. We empirically tested the rationales proffered in support such laws, to wit, increased recent immigration, economic stress, and language isolation. Surprisingly, our analysis revealed that demographic factors associated with new immigration and attendant policy challenges are neither necessary nor sufficient conditions for state and local immigration laws. That is to say, there are thousands of jurisdictions where demographic change does not lead to ordinance activity (demographic change not sufficient), and there are many jurisdictions where restrictive legislation has been passed in the absence of significant local demographic pressures (demographic change not necessary). Even adopting a probabilistic approach and running multivariate regressions on state and municipal legislative activity, we find that demographic changes and their attendant policy challenges have no predictive power. Thus, the primary justifications undergirding most scholarly, political, and judicial explanations for this recent spate of state and local immigration regulations have little empirical support.

Furthermore, after controlling for all relevant demographic factors, the evidence revealed consistent support for political factors at the state and local level: restrictive legislation is more common in areas that are Republican-heavy, while pro-immigrant measures such as sanctuary policies are more common in Democrat-heavy areas. Thus, the places that are ripe for legislation on immigration are not necessarily places where there is a surge in recent immigration or a high proportion of Spanish-

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9 8 U.S.C. §§ 1101, et. seq. (defining, inter alia, the class of persons who are unlawfully present, and the process and standards for their discovery and removal).
speaking households, but rather places that provide ripe political opportunities for action, as measured by the relative strength of Republicans and Democrats in the area. We conclude Part I by exploring the mechanisms that underlie the importance of partisanship at the local level, and discuss the actors who utilize and mobilize these political dynamics to achieve their legislative goals.

Building on this empirical analysis, Part II evaluates the impact of our findings on federalism debates. First, we explain the implications our model makes for current theories of immigration federalism. Specifically, the causality described in our model requires rethinking of the ideas and assumptions used by scholars such as Rodriguez and Peter Spiro. Our finding that partisanship, not immigration-related change, primarily motivates restrictive legislation calls into doubt immigration federalism theories, like Rodriguez’s, that assume state and local laws are functional responses to emerging public policy concerns. In addition, the specific way in which issue entrepreneurs use political party dynamics to proliferate state and local immigration laws challenges the notion, popularized by Spiro, that these subfederal enactments provide a relatively contained area for anti-immigrant sentiment, thereby relieving the pressure to push such policies at the federal level. Our theory of causation instead suggests this current spate of state and local immigration laws are proliferating as a legislative “cascade,” and are therefore building rather than dissipating legislative momentum. Finally, we show how the political factors we describe fit within existing models of political party action. Here, we use Dean Larry Kramer’s work on the federated nature of political parties to highlight how state and local immigration regulation affects political outcomes at the national legislative level.

Fundamentally, this Article calls for a revision of the conventional narrative for the rise of subnational immigration regulation, and suggests a cohesive, empirically-based alternative for the phenomenon. It uniquely contributes both legal doctrinal analysis and political science research to the field of immigration federalism, and may have broader ramifications for federalism analysis generally. Professors Daryl Levinson and Richard Pildes in a recent article argued that constitutional separation of powers analysis is bankrupt without an account of the importance of political parties in creating competition or cooperation between branches of the federal government. Also, Dean Kramer has long-maintained that

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11 Cass Sunstein and Timur Kuran, *Availability Cascades*

political parties are the connective tissue binding federal and state actors, accounting for subfederal concerns in the federal process.\textsuperscript{13} While they address different ideas and devices for diffusing national power, the underlying message of both analyses is that theorists must look beyond formal constitutional structures, and should study political realities and organizations to fully appreciate basic elements of our constitutional design.\textsuperscript{14} In this tradition, we place the focus squarely on the political and extra-legal dimension of immigration lawmaking, arguing that understanding it is indispensable to judicial, scholarly, and public evaluations of state and local involvement.

I. The Empirical Validity of the Conventional Model of State and Local Immigration Regulation

The accelerated flurry of subnational lawmaking over the past decade is notable because it occurs against a background context of presumed federal primacy in immigration matters.\textsuperscript{15} Since the late $19^{th}$-century, aside from niche areas in which subnational jurisdictions are permitted to enact legislation affecting immigrants, federal law displaced state and local enactments regulating the entry, exit, conditions of stay of immigrants, and the enforcement of such laws. More recently, however, states and localities have renewed their interest in immigration regulation. The National Council of State Legislatures reports over 7,000 state constitutional discourse about separation of powers with no conceptual resources to understand basic features of the American political system. It has also generated judicial decisions and theoretical rationalizations that float entirely free of any functional justification grounded in the actual workings of separation of powers.”

\textsuperscript{13} See Larry D. Kramer, \textit{Putting the Politics Back into the Political Safeguards of Federalism}, 100 Colum. L. Rev. 215, 219 (2000) (“Rather than the formal constitutional structures highlighted in Wechsler’s original analysis, federalism … has been safeguarded by a complex system of informal political institutions (of which political parties have historically been the most important)…”) (paranthesis in original).

\textsuperscript{14} Kramer, \textit{Putting the Politics Back}, 100 Colum. L. Rev. at 285 (arguing that several institutions and dynamics, including political parties, administrative bureaucracy, the intergovernmental lobby, and states as recruiting and training grounds, contribute to effective protection of states in the federalist system).

immigration proposals for over the last five years.\(^{16}\) States and localities are increasingly considering and passing laws that create state immigration crimes, enact state immigration enforcement schemes, regulate the renting of property to certain non-citizens, penalize businesses for hiring unauthorized workers, and discriminate in the provision of public services. In most instances, the stated aim of this restrictive legislation is to discourage entry or residence of unauthorized immigrants, or what many restrictionists have called “attrition through enforcement.”\(^{17}\)

Our purpose in this section is to explore why subnational governments have vigorously reentered the field of immigration regulation, testing widely held assumptions regarding this question. More specifically, we ask: Why do some places in the United States adopt restrictive legislation while others adopt more permissive legislation? Here, we answer the question as it involves local ordinances and state laws, and we analyze corresponding sets of legislative data: a collection of state legislation and local ordinance information from 2005-2007.\(^{18}\) In analyzing this data, our goal is to determine the relative importance and weight of several factors that have been proffered by commentators and elected representatives to explain the recent spate of subnational lawmaking. These commonly accepted explanations comprise what we term the “conventional” theory or model of subnational immigration regulation.

\textbf{A. The Conventional Model}

The conventional explanation for the recent spate of state and local laws should be familiar to anyone paying attention to immigration policy. It holds that policy stalemate at the federal level, combined with the pressure created by the public policy challenges of recent and rapid demographic changes, compel states and localities to legislate in a field they would rather avoid, but now have no choice but to enter. In this explanation, federal inaction and subfederal activity are independent phenomena, unconnected both theoretically and descriptively – federal inaction simply happens, and that pre-existing fact serves as the starting point for analysis. Accordingly, state and local lawmaking is framed as a
necessary response, occasioned by objectively understood, unique public policy challenges faced by particular jurisdictions.¹⁹ This sentiment was neatly encapsulated by Governor Jan Brewer of Arizona in her signing statement accompanying the passage of S.B. 1070, the law creating a state immigration enforcement scheme and providing state criminal penalties for immigration violations (currently awaiting Supreme Court review):

The bill I’m about to sign into law – Senate Bill 1070 – represents another tool for our state to use as we work to solve a crisis we did not create and the federal government has refused to fix…. The crisis caused by illegal immigration and Arizona’s porous border.²⁰

Notably, Governor Pete Wilson conjured this same rhetoric when framing the need for California’s Proposition 187 in 1994. Wilson promoted the so-called “Save Our State Initiative” by depicting California as the victim of federal failure, in a state overrun by immigrant-related problems.²¹

The chief virtue of the conventional model is its simplicity and intuitive appeal;²² in other words, it just seems right. In addition to the widespread acceptance that immigration policy has reached a stalemate at the national level, it also makes intuitive sense that rapid migration and demographic change are causing significant social dislocation and prompting redistribution of some public goods. First, current economic study suggests that the fiscal benefits of immigration are more likely to be concentrated at national level, while any short-term fiscal costs are more likely to be borne by specific localities, particularly with respect to the provision of public education, social services, and emergency room care.²³

Second, it is evident that immigrants in recent years have been moving to “new destinations”—areas with little or no history of immigrant settlement in the past century.²⁴ The emergence of these new destinations

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¹⁹ Rodriguez, The Significance of the Local, 106 Mich. L. Rev. at 575 (discussing the “familiar rhetoric” of federal failure as the justification of state and local involvement).
²⁰ Statement by Governor Jan Brewer on the signing of Senate Bill 1070, Apr. 23, 2010, available at http://www.azgovernor.gov/.../PR_042310_StatementByGovernorOnSB1070.pdf; see also, Press Release, State of Arizona Executive Office of Janet Napolitano Governor, Governor Signs Employer Sanctions Bill (July 2, 2007) (“Immigration is a federal responsibility, but I signed HB 2779 because it is now abundantly clear that Congress finds itself incapable of coping with the comprehensive immigration reforms our country needs.”).
²² While some may argue that the conventional understanding also includes an appreciation of the role of politics, in Part II that follows, we explore the heretofore limited theoretical and empirical development of these claims.
²⁴ Audrey Singer, Susan Wiley Hardwick & Caroline Brettell, TWENTY-FIRST CENTURY GATEWAYS: IMMIGRANT INCORPORATION IN SUBURBAN AMERICA (Brookings Institution
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helps augment the narrative of rapid, recent demographic change that many assume to cause state and local legislative reactions. As Professor Rodriguez writes, “Communities are also jumping on the enforcement bandwagon because they seek control over their rapidly changing environments.” Accordingly, these settlement patterns have brought renewed attention to issues such as day laborers, unlicensed businesses, overcrowded housing, and illegal immigration. And, judging from news coverage of conflicts and tensions in these new destination areas, the presence and growth of low-skilled (and often unauthorized) immigrant populations would seem to pose challenges for local governance. For instance, conflicts over the prevalence of day labor centers and informal pickup areas have made news headlines in suburbs and sizable cities. Similarly, news stories have devoted extensive coverage of complaints by state and local government officials over overcrowded housing, schools, and emergency rooms.

Clearly, there are several appealing aspects to this model of demographically-induced legislative action. Upon closer evidentiary analysis, however, this model does not hold.

B. Empirically Testing the Conventional Model

While there is widespread recognition that localities are playing a more significant role in regulating the lives of low-skilled immigrant residents, there is little systematic understanding of why some localities may adopt restrictionist policies, while most do not. Part of the difficulty in understanding why these ordinances are being proposed in some places but not in others is the fact that many of the places considering restrictionist ordinances are in small municipalities that rarely get coverage in state newspapers and wire stories, let alone national outlets such as the New York Times and Washington Post or more regional newspapers such as the Chicago Tribune. Thus, the dominant understanding of the factors compelling local action on immigration is shaped by heavy coverage of such places as Hazelton, PA, Carpentersville, IL, San Bernardino, CA, and Farmers Branch, TX. Based on those jurisdictions, likely demographic explanations center around the size and growth of recent immigrants, the size and growth of the Latino population, and the attendant challenges to this growth, such as overcrowded schools

Press, 2008). These so-called “new destinations” include places ranging from rural Kansas and North Carolina to suburbs in Long Island and Georgia that have had little recent history of immigration.


26 Paul Vitello, As Illegal Workers Hit Suburbs, Politicians Scramble to Respond, NEW YORK TIMES, October 6, 2005; Bob Dart, Minutemen Shadow Town’s Day Labor Site, ATLANTA JOURNAL-CONSTITUTION, April 6, 2006.

27 See Broken Borders, Lou Dobbs Tonight, CNN Transcripts, May 2, 2007; See also Alex Kotlowitz, Our Town, supra n.
and housing, growth of Spanish-language communities, erosion of wages among native-born workers, and perhaps xenophobia or racial prejudice among native-born populations.\textsuperscript{28}

While these demographic explanations are clearly important in the ways that policy analysts, local officials, community advocates, and journalists make sense of these ordinances, they have rarely been subject to systematic empirical testing. In the case of permissive, “immigrant sanctuary” legislation, we might expect these same factors to exhibit a significant relationship, albeit in the opposite direction.

1. Hypothesized Factors Necessitating State and Local Response

Using our original data set of about 25,000 municipalities,\textsuperscript{29} we tested the importance of the following factors hypothesized to contribute to the proposal or passage of subnational immigration regulation (see Appendix A, attached, for more details on our data):

- \textit{Population of New Immigrants, and Growth of Latino and Foreign-Born Populations} \textsuperscript{30}
- \textit{High Proportions of Linguistically-Isolated Households}
- \textit{Overcrowded Housing}
- \textit{Economic Stress and Relative Group Deprivation}
- \textit{Latino Share of the Citizen Population}
- \textit{Local Economic Interests}
- \textit{State-Level Policy Climate}

\textsuperscript{29} Our information on restrictive activity at the municipal level is based on lists collected by various legal defense organizations, and validated by making phone calls to jurisdictions noted as considering or passing ordinances, as well as by monitoring news stories on local ordinances. We merged information on the proposal and passage of ordinances with census data from the larger universe of over 25,000 municipalities. At the state level, two graduate student research assistants coded legislative summaries provided by the National Conference of State Legislatures based on their topic, valence, and severity. More information about our datasets can be found in Appendix A.
\textsuperscript{30} We use “recent immigrants” as a proxy measure for the likelihood of a high unauthorized migrant population. It is not possible to attain accurate data on numbers of unauthorized migrants in most municipalities, but we expect recent immigrants to be composed of a high percentage of unauthorized migrants. In addition, using this broader description accounts for “new destinations” trope in current restrictionist discourse.


- **Party Composition of the Electorate**

**Population of New Immigrants, and Growth of Latino and Foreign-Born Populations.** As we noted earlier, the most notable development in immigrant settlement patterns since the 1990s has been the movement of low-skill immigrants, predominantly from Mexico, to new parts of the country with little recent history of migration. Based on the concerns voiced by elected representatives in many of these areas, we might expect places with high proportions of recent immigrants or places that have experienced a surge in Latino and immigrant populations to face the following public policy challenges:

- **Overcrowded housing.** Past research on the politics of immigration at the local level has shown that issues of overcrowding are more common in immigrant destination cities. However, these problems are rarely addressed by municipal governments, so we may fail to see a positive association between overcrowded housing conditions and city ordinances related to immigrant tenants.

- **High proportions of households that are exclusively Spanish-speaking.** One of the most prominent concerns about recent migration to new destinations, especially of Latino immigrants, is the fear of linguistic balkanization and the visibility of Spanish in public spaces.

- **Naturalized share and Latino share of the citizen population.** There are two ways that we can measure the potential electoral strength of immigrants. The most direct way to do this is to examine the naturalized share of the local citizen population. Still, many surveys of Latinos have shown that native-born Latinos are important allies on immigration reform: even though the foreign born account for only 53 percent of the adult Latino population, and 26 percent of the adult citizen Latino population, surveys have shown consistently high levels of support among Latino voters for legalization programs, and high levels of opposition to restrictive measures at the subnational level. These surveys also show

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31 Karthick Ramakrishnan & Paul Lewis *Immigrants and Local Governance: The View from City Hall*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (2005).


that immigration is one of the highest policy priorities for Latino voters, often trumping even the economy as the “most important problem” facing Latinos.34

**Economic stress and relative group deprivation.** We expect the economic stress from wage competition from low-skilled migration to be felt most strongly among those whites and blacks living below the poverty line, where the substitutability of labor is strongest.35 Alternatively, it may be the relative rates of poverty with Latinos that matter, as Professor Claudine Gay suggests in her study of economic disparity and black attitudes towards Latinos.36

**The state-level policy climate.** State laws toward immigrants may itself bear a significant relationship to ordinance activity at the local level. For instance, a municipality may, as a form of dissent or opposition, consider a restrictive ordinance in a state where recent policies have been pro-immigrant. Similarly, those seeking to pass such policies may be less likely to do so in places where there have been restrictive measures passed at the statewide level.37 Alternatively, it is also possible that restrictive legislation at the state level may bear a positive relationship to similar measures at the local level, with either serving as a precursor or model for the other.

In addition to these demographic factors related to immigration and their attendant policy challenges such as overcrowded housing and the prevalence of Spanish speakers, we also consider the potentially important role of political factors at the local level, namely the political power of local economic interests and the political opportunities presented by partisan electorates.

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34 Manzano, op. cit. (Latino Decisions tracking poll results from April 2011).
36 Claudine Gay, *Seeing Difference: The Effect of Economic Disparity on Black Attitudes toward Latinos*, 50 AM. J. POL. SCI., No. 4, 982-997 (October 2006). (finds that African Americans who live in places “where Latinos are materially better off than blacks harbor more negative stereotypes about the group.”)
37 We are aware, of course, that state preemption of local ordinances may occur and that our hypotheses and conclusions on this factor must be constrained by that possibility. Localities may sometimes be limited in their policy-making activity by state laws that expressly preclude or require local participation. Two important recent examples in California are AB1236 (2011), which prohibits localities from mandating use that businesses use E-verify as a condition of licensing or government contracts, and AB976 (2007), which prohibits localities from passing ordinances that require landlords to verify the immigration status of their tenants. We will examine intra-state immigration dynamics in future research.
Local Economic Interests. We would expect that jurisdictions with industries that are heavily depended on low-skill immigrant labor, particularly agriculture, would be less likely to pass restrictive ordinances because of the importance of low-skilled migrants to the local economy.

Partisan Composition of the Electorate. We hypothesize that Republican-majority areas are more likely to sponsor restrictive ordinances: such contexts provide ripe opportunities for policy entrepreneurs to propose and pass policies, by framing undocumented immigration as one of the most significant problems for local governance. This is in line with research from 2005 in California, where the prevalence of integrationist policies towards immigrants was related to the proportion of Republicans and Democrats in the municipality. The evidence on restrictive activity in California since 2005 seems to bolster this point: Six cities in California (Apple Valley, Costa Mesa, Escondido, Lancaster, Santa Clarita, and Vista) have passed restrictive ordinances on matters ranging from day laborers, employers, and landlords. These various municipalities share little in the way of large-scale recent immigration or rapid changes in local unemployment, but do share one common characteristic: electorates that lean heavily Republican (with a party registration advantage ranging from 16 percentage points to 30 percentage points in these cities) in a state where registered Democrats had a 8 percentage-point advantage over Republicans.

Finally, we note that immigrant criminality or increase in crime-rate could also be added as a hypothesized demographic factor causing state and local response. However, we do not independently test that hypothesis with our data set, and thus do not include it in our list of hypothesized and tested factors. Instead, we rely on the substantial empirical work already completed in this area by social scientists. They have proven that increased immigrant criminality is a “myth,” with lower incarceration rates amongst recent immigrants than the native-born population. Further, in many jurisdictions passing restrictive ordinances, overall crime and violent crime have decreased in the past several years, in

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38 Ramakrishnan and Lewis 2005.
39 These are based on our data collection, which we describe in Appendix A.
40 State party registration data obtained from the California Secretary of State (http://www.sos.ca.gov/elections/ror/or-pages/15day-gen-06/hist-reg-stats.pdf). Local party registration data for municipalities obtained from the firm Aristotle, Inc.
the same time span that the demographic problems purportedly caused by undocumented immigrants have captured state and local attention.\footnote{Randal C. Archibold, On Border Violence, Truth Pales Compared to Ideas, THE NEW YORK TIMES, June 19, 2010. (“the rate of violent crime at the border, and indeed across Arizona, has been declining, according to the Federal Bureau of Investigation...”)}

Explaining State-Level versus Local-Level Outcomes: While the presence of absence of prior state legislation is a potentially important factor in explaining municipal ordinance activity on immigration, it is also important to explain what factors, if any, explain restrictive laws at the state level. Many of the factors that we hypothesize to predict local legislative activity are also relevant for state activity, albeit at a different scale. Thus, we are able to obtain measures of the population of new immigrants, the growth of Latino and foreign-born populations, and the unemployment rates of whites and blacks at the state level. While it is also possible to generate average measures of overcrowding at the state level, there is little theoretical justification to include this factor in explanations of state legislation since land use is generally a local, not state decision.\footnote{See, e.g., Heather Gerken, Federalism All the Way Down, 124 Harv. L. Rev. 4, 24 (2009) (“Zoning commissions and school communities...often feature robust rates of local participation and influence, the basic building blocks of our communal life.”).}

2. Data and Statistical Findings

Below, we first present some broad trends and findings, and then focus on the specific results of the regression analysis. In our dataset of over 25,000 cities across the United States, by December 2011, 125 had proposed restrictive ordinances, and 93 had proposed pro-immigrant ordinances, including measures limiting cooperation with federal authorities on deportations (table 4.1).\footnote{The restrictive ordinances in our sample include measures whereby local governments use their official capacities to enforce federal immigration laws or to address perceived negative societal consequences of illegal immigration. Illegal Immigration Relief Act (IIRA) ordinances and variants of them constitute the majority of these restrictive measures. IIRAs commonly refer to the fiscal and governance challenges arising from the presence of illegal immigrants. The pro-immigrant ordinances in our sample include resolutions and mandates that express opposition to immigration raids and restrictionist national legislation, those barring the use of public funds to enforce immigration laws, and those with explicit “sanctuary” policies whereby local officials do not inquire about legal status and do not notify immigration authorities about the status of individuals unless they are convicted of serious crimes.} On the restrictionist side, approximately 63 percent of proposals had passed, about 12 percent had been voted down or tabled, and a quarter were still pending. On the “pro” side, the vast majority of proposals had passed, with only two pending and one classified as failed or tabled.
Table 1 Proposal and Passage of Ordinances at the Municipal Level, 2005-2011

<table>
<thead>
<tr>
<th>Ordinance</th>
<th>Status</th>
<th>Number</th>
<th>As Share of Total</th>
</tr>
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<tbody>
<tr>
<td>Pro</td>
<td>Pending</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Passed</td>
<td>90</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Failed/tabled</td>
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<td></td>
<td>Subtotal</td>
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<td>0.4%</td>
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<td>Restrictionist</td>
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<td></td>
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<td>Subtotal</td>
<td>125</td>
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<td>24,944</td>
<td>98.9%</td>
</tr>
<tr>
<td>Total</td>
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<td>25,108</td>
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</tr>
</tbody>
</table>

During this same period, legislation at the state level was much more common, with 1,321 laws enacted between 2005 and 2010. Of these, we coded 317 as restrictive, with at least one such law passed in 46 states. These laws ranged in terms of their policy area (e.g., education, law enforcement, public benefits) and in their severity (e.g., ranging from revoking licenses of notaries public who have been denaturalized, to laws denying access to state public benefits to unauthorized immigrants). Taking into consideration only those restrictive laws that we classified as having a significant impact on a state’s unauthorized immigrant resident population, the number of laws during this time period drops to 155, with Arizona passing the most laws (15), followed by Virginia (10), and Georgia (9).

If demographic changes cause unwieldy public policy challenges, we might expect that several jurisdictions that experienced population changes, language isolation, and economic stress similar to Hazleton, Pennsylvania or Alabama would be inclined to at least consider similar legislation. After all, in traditional models of state and local behavior, a jurisdiction’s successful policy experimentation, should theoretically be

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45 More details about our datasets are provided in Appendix A.
47 The legislative summaries were coded on an ordinal scale of 1: “low impact” and 2: “high impact” on immigrant rights and/or access to benefits, based on the provision’s likely effects on immigrant life chances and the number of immigrants likely to be effected. More details about our state-level dataset can be found in Appendix A.
considered or copied by others facing common challenges.\textsuperscript{48} At the very least, the existence of such similarly situated, but legislatively inert, localities merits a closer inquiry into the factors purportedly compelling Hazelton and others to enact immigration legislation.

Municipalities with restrictive policies are but a small fraction of the thousands of communities in the United States that are transforming due to recent international migration. Thus, at the most basic level of analysis, it is unclear what role, if any, demographic change plays in the proposal of restrictive legislation—since the overwhelming majority of places undergoing demographic change have not made any legislative moves towards restrictive action.

How, then, does the argument for demographically-driven legislative change hold up using considerations of necessary and sufficient conditions? Here, we provide some basic bivariate results, using the assumptions of causal determinism found in evaluations of necessary and sufficient conditions, before moving to the multivariate regression model, where findings are couched in probabilistic terms.

Among municipalities that passed restrictive ordinances, new immigrants averaged about 3 percent of the total resident population, only slightly higher than the 1 percent average for municipalities across the country.\textsuperscript{49} Even taking the case of a restrictionist city with the highest proportion of recent immigrants—Herndon, Virginia, where recent immigrants accounted for 14.5 percent of the town’s residents in 2000—we find that 129 other municipalities took no action, despite having even higher proportions of recent immigrants, including 23 with recent immigrants accounting for over 25 percent of the town’s residents. Indeed, the majority of jurisdictions that can claim to share the necessary demographic factors—such as growth in immigrant populations, having a recently-arrived immigrant population, or a high proportions of Spanish-speakers among immigrants—do not propose or pass immigrant-related laws. Therefore, demographic change from recent immigration is not a sufficient condition for restrictive action.

Even if immigration-induced change within a jurisdiction is insufficient, by itself, to provoke legislative response, might such change be necessary? We find that 29 out of the 79 municipalities that have passed restrictive ordinances (or 37\% of the cases) have recent immigrant populations that are below the national average for cities. Indeed, in a fifth of the cases (16 out of 79), recent immigrants accounted for fewer than 0.5 percent of the city’s residents, and in these places the proportion of Spanish-dominant households were less than 3 percent of all households in

\textsuperscript{48} See, e.g., Rodriguez, Significance of the Local, 106 Mich L. Rev. at 571, 609.

\textsuperscript{49} These figures are means (averages). We use data from the 2000 Census, given missing data in the 2005-9 American Community Survey file. The corresponding median figures are 1.72\% for restrictive ordinance cities, and 0.16\% for cities in the nation as a whole.
the city. Thus, we draw the critical conclusion that demographic change is not only an insufficient condition; it is an unnecessary one as well.

These illustrations are even more dramatic at the state level. Of the top 25% of states where new immigrants make up a sizable portion of the overall population, only 6 of 13 states passed significant restrictive laws during this time, thereby illustrating that demographic change is not sufficient. In the multivariate regressions, we test for several variations of demographic change, including the proportion of new immigrants, the proportional change in the foreign born population, and the absolute level of immigration in the area. On the other end of the demographic spectrum, we find that 9 of 12 states at the bottom quartile on this measure passed restrictive laws. Indeed, the passage of restrictive laws is highest for this bottom quartile of states, and lowest among the top quartile. Clearly demographic disruptions caused by recent immigration are also not necessary for state-level restrictive action.

The catalytic characteristic common to most restrictive jurisdictions is not demographic upheaval; rather, they share a partisan mix highly receptive to restrictionist legislation. Importantly, 67 percent of municipalities with restrictive ordinances are in Republican-majority counties. Although we do not have finer-grain data on partisanship for all municipalities in the United States, we were able to obtain such data on places with restrictive ordinances. Here, too, we find that a high proportion of restrictive ordinances (77%) have passed in Republican-majority municipalities. At the state level, nearly two-thirds of restrictive states had a Republican majority of voters during this time period, and for those who have passed major pieces of restrictive legislation on enforcement and employer verification, the proportion of Republican-majority states is much higher (94%).

**Multivariate Regression Findings:** While bivariate results may be helpful for illustrative purposes, and to show that demographic disruptions are neither necessary nor sufficient, providing a systematic test of demographic and political factors necessitates the use of multivariate regressions. In order to assess the conditions under which cities may pass restrictive or permissive legislation, we ran a multivariate regression that can show the contribution of each factor while controlling for all other factors. In addition to our hypothesized factors, we also controlled for city size, and explore its potential relevance. Importantly, we remain attuned to issues of multicollinearity, where putting two factors that are closely related into the same explanatory model produces erratic results for those factors. Since some of these factors are highly correlated, we ran alternative model specifications instead of putting every factor in the same

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50 Local party registration data for municipalities obtained from the voter statistics firm Aristotle, Inc.
51 This compares to 57% of states with a Republican majority of voters in 2004.
regression model. We report our findings from these alternative specifications where relevant. For ease of interpretation, we include a full report our regression results in Appendix B (attached) and here provide an abridged illustration of the substantive effects of those factors that are statistically significant in Table 2, below.\textsuperscript{52}

### Table 2 Changes in the Predicted Probability of Municipal Ordinance Proposal and Passage, 2005 to 2011

<table>
<thead>
<tr>
<th>PROPOSAL</th>
<th>PASSAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restrict</td>
<td>Pro</td>
</tr>
<tr>
<td>Republican majority in county</td>
<td>2.56</td>
</tr>
<tr>
<td>Agriculture jobs (share)</td>
<td>—</td>
</tr>
<tr>
<td>% of immigrants who are recent (&lt;5 ys)</td>
<td>—</td>
</tr>
<tr>
<td>Growth in immigrant population</td>
<td>—</td>
</tr>
<tr>
<td>Overcrowded households (%)</td>
<td>—</td>
</tr>
<tr>
<td>White poverty</td>
<td>—</td>
</tr>
<tr>
<td>Black poverty</td>
<td>—</td>
</tr>
<tr>
<td>White poverty (relative to Hispanics)</td>
<td>—</td>
</tr>
<tr>
<td>Black poverty (relative to Hispanics)</td>
<td>—</td>
</tr>
<tr>
<td>Latino share of citizens</td>
<td>—</td>
</tr>
<tr>
<td>Growth in Latino population</td>
<td>1.04</td>
</tr>
<tr>
<td>Growth in Spanish households</td>
<td>1.04</td>
</tr>
<tr>
<td>Population (ln)**</td>
<td>3.91</td>
</tr>
</tbody>
</table>

*Note:* Standardized effects on statistically significant variables are changes in the probability of an outcome when the variable is moved from the 25th to 75th percentile and all other variables are kept at their means.

** We have this as a log scale, given the diminishing returns to relative city size at the highest end of the distribution.

*Findings from alternate model specifications noted in italics.*

#### Population of New Immigrants, and Growth of Latino and Foreign-Born Populations

Having an immigrant population that is composed primarily of recent arrivals (or, having experienced a recent upsurge in Latino or immigrant populations) is not associated with restrictive ordinances. Indeed, it is associated with a greater likelihood of pro-immigrant legislation. Our alternative measure, of the growth of the foreign-born population between 1990 and 2000, or between 2000 and 2007, also has no statistically significant relationship with restrictive ordinance activity, although it is associated with a lower likelihood of pro-immigrant ordinances.

\textsuperscript{52} We use CLARIFY to simulate the effects on the dependent variable of changes in each individual variable while holding other variables at their means. See Michael Tomz, Jason Wittenberg & Gary King, *CLARIFY: Software For Interpreting And Presenting Statistical Results*, 8 Journal of Statistical Software 1-30 (2003).
Finally, a fast-growing Latino population in the locality, regardless of their citizenship and immigration status, is associated with a marginally greater likelihood of restrictive ordinances being proposed, but not passed.

**Spanish-speaking Households & Overcrowded Housing.** Factors related to recent arrivals, such as the proportion of households that are exclusively Spanish-speaking and the proportion of households that are overcrowded, also bore no relationship to the proposal or passage of restrictive ordinances up until 2007. Since then, however, the growth of Spanish-speaking households has made a marginal difference in the probability of restrictive proposal and passage (increasing by 4% and 7%, respectively). These effects pale in comparison to those associated with local contexts of partisanship.

**Naturalized share and Latino share of the citizen population.** We included these measures in two separate equations given their high level of collinearity (r=0.47). These factors do not bear any significant relationship to the proposal and passage of local ordinances, whether restrictive or permissive. This further reinforces findings from other studies of local immigrant incorporation that immigrant electoral power may be less important in predicting local government policies toward immigrants today than in the past.\(^{53}\)

**Economic stress and relative deprivation.** There is no support for the contention that economic stress or relative deprivation (as measured by absolute or relative poverty rates, respectively) among white residents is related to the proposal or passage restrictive legislation. Indeed, when relative measures of poverty are used, cities with whites who are relatively better off than Latinos are more likely to propose restrictive policies. However, when it comes to the passage of policies, there is no significant relationship. Finally, black relative deprivation is indeed associated with a higher likelihood of restrictive proposals, but not policy passage. It is unlikely that blacks are driving the proposal of restrictive legislation in most of these cities, since in none of these places are blacks the majority, and they are over a third of the population in only one case (Norristown, PA).

**State-level policy climate toward immigrants.** This factor bears no significant relationship to ordinance activity at the local level. For state-local dynamics, neither the “steam valve” model (localities adversely reacting to state-level policy) nor the “demonstration effect” model (mimicking state level activity) are at play.

Local economic interests: The prevalence of industrial sectors that are heavily dependent on immigrant workers is not significantly related to local ordinances, with one important exception: the likelihood of restrictive policies being passed is much lower in places where agriculture accounts for a sizable number of jobs. It is important to note, however, that the effects are evident in the stage of ordinance passage, but not ordinance proposal. This suggests that policy entrepreneurs in agricultural areas may have overreached by pushing for restrictive policies only to find an organized opposition from local businesses to such plans.\textsuperscript{54}

Partisan composition: Among our hypothesized factors, partisanship has the strongest and most consistent effects. After controlling for all other factors, municipalities in Republican-majority areas are about 2.5 times more likely to propose restrictive ordinances. And they are about four times as likely to pass such ordinances compared to Democratic areas. By contrast, on pro-immigrant side of enforcement, municipalities in Democrat-majority counties were about four times as likely as those in Republican-majority areas to propose and pass such legislation.

Our analysis also controlled for the size of the city, which turns out to have the strongest effect among all of the variables.\textsuperscript{55} While it is tempting to tease out a theoretical explanation for the importance of this factor, we also find in our larger analysis that city size is related to more pro-immigrant legislation. Thus, we cannot rule out the possibility of a statistical finding that is spurious with respect to causal importance. Also, the relevance of city size here may be due to the fact that small cities (with populations of fewer than 50,000) are less likely to have local print and television media coverage. This, in turn, could be reflective of the strategies of policy activists who are less likely to propose legislation in places that do not stand the chance of media coverage and dissemination, or the limited revenue base of small municipalities that are reluctant or unable to afford legal counsel in the event of a court challenge.\textsuperscript{56}


\textsuperscript{55} When we break the factor of city size further, into small, medium, and large cities (with populations of up to 50,000, from 50,001 to 200,000, and greater than 200,000, respectively), we find that restrictive ordinances are most likely to be found in medium-sized cities.

\textsuperscript{56} Alternatively, it could reflect measurement error in our data, where proposed legislation is less likely to gain media coverage and the attention of advocacy groups. Given the limitations of publicly available data, we are not able to adjudicate between these differences.
Predicting State-level legislation: At the state level, we confine our analysis to restrictive legislation, which is much easier to identify during this time period that pro-immigrant legislation. Our state-level analysis reveals no support for the hypothesis that restrictive legislation is more likely in states where immigrants have arrived recently, or alternatively, states with the biggest growth in the foreign-born population. Indeed, in some variations of our model, we find less restrictive activity in states with recent immigrant populations. For most of our demographic factors (including poverty rates and growth of the immigrant population), the findings are inconsistent, perhaps due to the small number of cases being analyzed (50 states).

In the case of partisanship, however, the results are consistently significant. After controlling for various demographic factors, states with a majority of Republican voters have passed more than twice as many significant pieces of restrictive legislation (4, on average, during this period) as those states with a high proportion of Democratic voters (1.6, on average). Another way to look at the state results is to differentiate between those states with multiple pieces of significant restrictive legislation (3 or more) versus the rest. Republican-majority states are nearly 300% more likely to be in this group than Democratic-majority states.57 Finally, we also update the analysis to account for laws enacted outside of the 2005-2010 period, by analyzing all current state laws on enforcement and work verification.58 Here, too, we find that partisanship has the strongest effect on the existence of restrictive state-level policies, and that factors such as the growth of the foreign-born population or the recency of the immigrant population do not matter (see Appendix Table B-3).

C. Conclusions and Extensions of the Political Model

To sum up, our analysis shows that the restrictive responses of local governments to undocumented immigration are largely unrelated to the objectively measurable demographic pressures credited in the conventional model of subnational immigration regulation. Our evidence discounts the saliency of recent immigrant population growth, the proportion of Spanish-dominant households, and local economic and wage stress in proposal and passage of such laws. These ordinances are also

57 We report findings based on the partisanship of electorates, to provide a comparable basis of comparison to our local partisanship measures. The results on partisanship are similar when using measures of party control of the state legislature.

58 We utilize a resource available via Findlaw that summarizes current state-level policies, and code it on the same restrictive to permissive scale (low to high) as in our analysis of enacted legislation in the 2005-2007 period: http://immigration.findlaw.com/immigration-laws-and-resources/state-immigration-laws.html. Data is current as of December 31, 2011.
largely unrelated to the electoral empowerment of Latinos, given that places with large proportions of Latino residents and citizens are no more or no less likely to propose legislation, whether restrictive or pro-immigrant.

Instead, we find that political factors not commonly cited by proponents of state and local immigration laws are more important. The partisan composition of the area plays an important role, second only to city size. However, because city size is positively associated with both pro and restrictive ordinances, party composition is the only factor that displays statistically significant and theoretically consistent effects (negative on the restrictive side and positive on the pro side). Finally, partisanship has, by far, the strongest relationship at the state level.

Thus, our fundamental conclusion on partisanship and subfederal immigration regulation leads to three important questions: (1) Why is partisanship at the subnational level relevant to legislation on immigration? (2) How is partisanship utilized to enact immigration laws in places where demographic pressures are inconsequential? and (3) Who is utilizing and mobilizing the partisanship dynamic to achieve these legislative goals? Due to space constraints, we limit the discussion here of the political dynamics that help explain these statistical findings, saving a larger exploration for our book project, but we sketch some brief answers to these questions below.

First, there is ample survey evidence to indicate that Republican voters, and especially those who are active in party primaries, care intensely about immigration and hold restrictive views on the matter. When this pattern in public opinion gets harnessed through the primary process, Republican-heavy areas have enabled primary challengers to mobilize against incumbents on the immigration issue. Republican incumbents, in turn, have either been defeated by more restrictivist challengers, or they have themselves taken more conservative positions on immigration to avoid primary defeat.

Even in many municipalities where elected offices are often nonpartisan, contexts of local partisanship nevertheless continue to matter, as policy activists find it easier to promote restrictive legislation on

61 This was evident in Arizona as far back as 2004 and 2006, as long-standing Republican incumbents such as Congressman Jim Kolbe faced competitive primary elections by challengers focusing on immigration and border-control issues. See Joseph Lelyveld, The Border Dividing Arizona, NEW YORK TIMES, October 15, 2006.
immigration in Republican-heavy areas. For example, in 2010, the *Los Angeles Times* reported on the successful attempts of a local Tea party activist in getting Republican-dominant cities in Southern California such as Temecula and Murrieta to pass restrictive measures, after failing to do the same in larger, politically diverse cities such as Riverside and Ontario. Even though city councils in California are nonpartisan bodies, the proportion of Republican voters in these cities nevertheless still matters for interest representation. Thus, even for nonpartisan elections and governmental bodies, Republican party registration still signals the potential opportunities for policy entrepreneurs to promote restrictive legislation.

Second, political dynamics at the subnational level on immigration are also tied to political dynamics at the national level. This is particularly true in the case of restrictive local policies on immigration, where activist groups such as the Federation for American Immigration Reform (FAIR) and NumbersUSA have sought to stall moderate legislation at the federal level that includes some form of legalization, while at the same time fomenting restrictionist legislation at the state and local level. Rather than hoping or waiting for federal legislative efforts at bipartisan immigration reform to stall, since 2004 these organizations have pursued a dual strategy: They purposefully promote legislative gridlock at the federal level, and then cite the very national legislative inaction they helped foment to justify restrictive solutions at the local level.

Finally, since 2006, the work of proliferating legislation at the subnational level has found its strongest champion in Kris Kobach, a former law professor who has served as legal counsel for many states and localities that have passed restrictive legislation, both in an individual capacity and as an employee of the Immigration Reform Law Institute (IRLI), the legal branch of the restrictive group FAIR. Not only has Kobach provided legal counsel for cities such as Hazleton, PA and Farmers Branch, TX, he has also played a pivotal role in the crafting of

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63 Our article (Gulasekaram and Ramakrishnan, The Importance of the Political in Immigration Federalism, *__ Ariz. St. L. J. __ (forthcoming 2012)*) details the legislative involvement of FAIR and NumbersUSA. In 2004, while FAIR was striving to push back against legalization efforts in Washington D.C. following calls for comprehensive immigration reform by George W. Bush and John McCain, it also gave financial backing to Arizona’s Proposition 200 campaign, a measure modeled after Proposition 187 that sought to deny unauthorized immigrants access to many public benefits (Steven Wall, *Efforts Against Illegal Immigrants Rise*, *San Bernardino Sun*, November 9, 2004). Indeed, pro-immigrant advocacy organizations in Washington D.C. saw FAIR’s foray into Arizona as connected to its D.C.-based legislative strategy, as it sought to push back against moderate legislation being offered by Arizona’s Congressmen Jim Kolbe, Jeff Flake, and Senator John McCain (Interview with immigration advocacy organization, April 12, 2012; see also Jim Behnke *The Tres Amigos - Kolbe, Flake, McCain*, *Sierra Vista Herald Review*, January 8, 2004)
legislation in many of the same jurisdictions, including cities like Hazleton, and states such as Arizona and Alabama. Thus, while restrictive policies may have local sponsors in each jurisdiction, the evidence we have analyzed from a variety of news reporting reveals a nationally-involved group of actors (who we term “restrictive issue entrepreneurs”) who are advancing—through political rhetoric, legal justification, and the design and promotion of legislation—a proliferation of subnational policies aimed at “attrition through enforcement,” or making living and employment conditions so inhospitable to unauthorized immigrants as to encourage their departure.

While it is also possible for pro-immigration advocates to pursue a similar strategy—of promoting federal gridlock as a fruitful condition for subnational action—our review of news coverage and interviews with permissive and restrictive organizations in Washington, DC, shows that pro-immigrant organizations still push for federal solutions as optimal policy, particularly on matters pertaining to immigration enforcement. Accordingly, the integrationist strategy has focused on Congress enacting comprehensive immigration reforms that they hope will include DREAM Act provisions and other pathways to legalization. Meanwhile, pro-immigrant efforts on matters such as sanctuary city policies and in-state tuition are driven mostly by local sponsorship, with little coordination in activity. By contrast, restrictive proposals often feature local sponsors and national organizations and individual issue entrepreneurs, with model legislation that is replicated across jurisdictions.

64 George Talbot, Kris Kobach, the Kansas Lawyer Behind Alabama’s Immigration Law, PRESS-REGISTER (Mobile, AL), October 16, 2011.
65 NumbersUSA, “How Attrition Through Enforcement Works.” (noting that immigration raids would be unnecessary if federal, state, and local enforcement effectively make “living illegally … more difficult and less satisfying over time”) https://www.numbersusa.com/content/learn/issues/american-workers/how-attrition-through-enforcement-works.html (last visited April 21, 2012). See also Michael Williamson, Self-Deportation Proponents Kris Kobach, Michael Hethmon Facing Time Of Trial, WASHINGTON POST, April 24, 2012. (quotes an Oklahoma representative who notes that the Kobach and his partner at IRLI, Michael Hethmon “were the face and the muscle behind the effort that really synthesized it into a movement. Do I think it would have happened without them? Most certainly it would not have.”)
66 We note here that this could also be influenced by the different legal (federalism, preemption) analysis applicable to pro-immigrant state and local ordinances (which often do not mention citizenship status at all) in contrast to the legal analysis of enforcement-type state and local provisions (which use immigration status as a trigger).
67 Interviews with Angela Kelley, Center for American Progress (2011); Frank Sharry, America’s Voice (2012); Clarissa Martinez, NCLR (2012).
Thus, while local contexts of partisanship matter on both the restrictive and pro-immigrant sides of local legislation, the dynamics that produce them are more local in the case of permissive policies, while federated and coordinated with national organizations in the case of restrictive legislation. As we discuss in the next section, these differences may have some significant implications for considerations of federalism, including the relevance of functionalism, availability cascades, and party federation in producing this subnational variation in immigration policies.

II. Implications for Immigration Federalism

As our empirical investigation shows, in subnational immigration regulation, demography is not dispositive. By in large, subnational regulations are not organic responses to demographic change, brought on by intractable public policy challenges. Instead, our data and analysis suggests that interested policy actors present pre-made solutions to politically-receptive jurisdictions, regardless of the underlying demographic pressures in those jurisdictions. At minimum, this modus operandi generates some concerns about the utility and desirability of such laws.69

In addition, we argue that our data challenges existing theories and assumptions regarding the rise, proliferation, and utility of subnational immigration regulations. Specifically, we draw a contrast with “functionalist” theories of state and local action that assume the salience of demographic-change for policy expression, and with “steam-valve” theories which suggest that state and local restrictionist policies relieve pressure on national restrictionist efforts. Finally, we show how our analysis complements legal theories describing the importance of the decentralized nature of political parties. The significance of partisanship in state and local immigration regulation operating within federated political party structures helps explain the salience of restrictivism on the national agenda and the inability to produce federal comprehensive reform.

We also note that these implications are different for restrictionist versus integrationist state and local action. As we noted in Part I.C, a key difference between restrictionist policy activists and integrationist activists is the degree of coordination across jurisdictions and governmental levels. Restrictionist policy activists have a highly networked and coordinated structure capable of linking state and local proliferation,70 while simultaneously affecting national legislative outcomes. Integrationist policy activists, on the other hand, have been successful in specific

69 Carpenter, Legislative Epidemics, 58 BUFF. L. REV. at 56; Sunstein and Kuran, Availability Cascades, 51 STAN. L. REV. AT 736 (discussing how availability cascades create serious problems for democracy);

70 See (reference redacted).
jurisdictions, but have not yet created the networked structure and integrated subnational-national framework of restrictionist policymakers. As such, our analysis below focuses primarily on implications of our data and analysis for evaluations of restrictionist state and local immigration regulation, noting instances where the analysis might also apply to integrationist policies. A summary of our analysis is presented in Figure 1.

Figure 1: Summary of Empirical Support for Theories of Immigration Federalism

<table>
<thead>
<tr>
<th></th>
<th>Restrictive</th>
<th>Permissive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Functionalism</td>
<td>Limited or No Support</td>
<td>Limited or No Support</td>
</tr>
<tr>
<td>Steam valve</td>
<td>No Support</td>
<td>Limited Support</td>
</tr>
<tr>
<td>Legislative cascades</td>
<td>Support</td>
<td>No Support</td>
</tr>
<tr>
<td>Party federalism</td>
<td>Support</td>
<td>Limited or No Support</td>
</tr>
</tbody>
</table>

A. Challenging Functional Accounts for the Rise of State and Local Immigration Regulations

Many scholars have evaluated the potential utility of state and local immigration regulations, and/or the value of abandoning exclusive federal control over all matters immigration. In defending some constitutional leeway for nonfederal immigration-related enactments, scholars have assumed that these nonfederal policy expressions arise as functional responses to demographic shifts and variations. Our research cautions that any such claims about the utility of subnational legislation must be carefully assessed or discarded.

The fact that partisanship matters more than any other factor suggests that, above all else, subnational immigration policy expression reflects naked political preference and opportunistic use of party polarization. This conclusion contradicts the assumptions made by scholars like Professor Cristina Rodriguez, who have argued that what is “missing” from debates over the constitutionality of subfederal enactments...

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72 See, e.g., Parlow, *A Localist’s Case*, 84 Denv. U. L. Rev. at 1071 (“Indeed, different states and local governments are affected in drastically different manners – both positively and negatively – by illegal immigration. Local governments should be able to respond accordingly, especially if the federal government is not meeting those communities’ needs.”); Huntington, 61 Vand. L. Rev. at 805-07.

73 See *infra* Part I; see also, Sunstein, *Deliberative Trouble*, 110 YALE L. J. at 74-6 (showing how limited private information tends to make people follow others, and reach more extreme policy positions).
is “a functional account that explains why state and local measures have arisen over the past five to ten years, and how this reality on the ground should reshape our conceptual and doctrinal understandings of immigration regulation.”

Professor Rodriguez is correct that purely legal, constitutional debates over subfederal involvement in immigration – focusing on federalism and preemption questions – miss crucial “on the ground” factors that should influence judicial and popular evaluations of these laws. However, the missing reality is not the new demography and geography of immigration; rather it is the new politics of immigration.

The new political and partisan dynamics of immigration suggests that the various state and local policy instantiations are not the type of policy experimentation imagined by the Supreme Court and legal scholars. Our model proposes that restrictive subfederal laws are being proliferated and replicated in multiple jurisdictions, not because the legislation presents a unique method of addressing an emerging public policy concern, but rather because the political conditions are ripe for replication. Thus, the policy “experimentation” and replication currently occurring in the immigration field has little demonstrative value to other jurisdictions; it changes the terms and tenor of the national debate on immigration, but does not solve the “on the ground” problems referenced by Rodriguez.

Undoubtedly, functionalist accounts of subfederal legislation may serve the important purpose of carving out a normative space for local involvement. However, they are not borne out by the empirical evidence from the past several years. It may very well be normatively desirable, as Rodriguez argues, to locate and institute integrationist measures at the local level. Further, we agree with Professor Rodriguez’s underlying point that uniformity in immigration policy across the nation may not be necessary or normatively desirable. However, our data shows that current local participation in immigration regulation is not occurring in places that are particularly affected by immigration or the effects of immigration. Perpetuating the assumption that demographic changes explain policy responses lends credence to the claims of legal necessity proffered by states like Arizona and cities like Hazleton. In contrast, we

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74 Rodriguez, 106 Mich. L. Rev. at 571.
75 New State Ice Co. v. Liebmann, 285 U.S. 262, (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”).
76 See Parlow, A Localist’s Case, supra n. __; Huntington, Immigration Federalism, supra n. __; Rodriguez, Significance of the Local, 106 Mich. L. Rev. at 609 (“And perhaps most importantly, local experimentalism will be of tremendous value in this context.”).
77 Many of these ordinances, however, do demonstrate the social and economic pitfalls of local regulation. Several states have abandoned or reconsidered their enforcement-heavy approaches after enactment, and after experiencing the consequences of such laws.
78 Rodriguez, 106 Mich. L. Rev. at 571, 611.
have shown that states and localities that pass immigration laws experience little “need” for such regulation – at least not in the functional or instrumental sense.\textsuperscript{79}

Notably, our conclusion here about the lack of empirical support for functionalism applies equally to both restrictionist and integrationist policymaking (see Figure 1, above). In both instances, partisanship remains the most salient factor (other than city size), and motivates both types of responses regardless of underlying demographic factors.

**B. Subfederal Policy Proliferation as a Cascade, Not a Steam-Valve**

Even some theories of immigration federalism – which appear agnostic to whether subfederal enactments are functional responses to the changing demography of immigration – require reconsideration under our model of political causation. For example, it is tempting to agree with Professor Peter Spiro’s intuition that leeway for isolated, subfederal anti-immigrant regulation relieves pressure to promote the same restrictive policies as federal legislation.\textsuperscript{80} Thus, as per his “steam-valve” theory, even if subfederal restrictionist measures primarily reflect raw political preference (and not necessary responses to pressing policy problems), those measures in isolated localities could serve a normatively desirable purpose by providing a relatively contained outlet for anti-immigrant feelings.\textsuperscript{81} Specifically addressing Arizona’s SB 1070 and the constitutional challenge to the law, Professor Spiro argues that “in the long run, immigrant interests will be better helped if the Supreme Court upholds S.B. 1070….if the Court strikes it down, anti-immigrant constituencies will redouble their efforts to enact tougher laws at the federal level.”\textsuperscript{82}

The data and analysis we provide, however suggest that the causal paths described by Spiro must be reversed: Suppression of subfederal lawmaking does not promote effectuation of restrictionist measures at the

\textsuperscript{79} See Rodriguez, 106 Mich. L. Rev. at 576 (“State and local officials are reacting to our shifting demography in extraordinarily varied ways, particularly when it comes to how best to deal with the reality of unauthorized immigration) and at 580 (“One way to address the demographic pressures that have given rise to this spectrum of activity would be to call for strong federal intervention to obviate the need for state and local regulation.”).

\textsuperscript{80} Spiro, 29 Conn. L. Rev. at 1636 (“Affording the states discretion to act on their preferences diminishes the pressure on the structure as a whole; otherwise, because you don’t let off the steam, sooner or later the roof comes off.”).

\textsuperscript{81} The limitation has to be defined in terms of the quantity of subfederal jurisdictions; quality-wise, it is difficult to suggest that Alabama’s recent immigration law – which has had the effect of driving immigrant children out of school – is relatively harmless, even if it occurs only within an individual state.

\textsuperscript{82} Peter J. Spiro, Let Arizona’s Law Stand, NEW YORK TIMES, Apr. 22, 2012.
The key difference between the analysis presented herein and Spiro’s conception is that we envision the proliferation of state and local immigration laws as a “cascade” phenomenon similar to that described by Professors Sunstein and Kuran in other policy areas. The saliency of partisanship – and not demography – in subnational immigration regulation suggests that the phenomenon is a real-time illustration of Sunstein’s and Kuran’s analysis of the influence of information deficits and reputational concerns on public policy. As they note, in a policy debate, sometimes advocates for the objectively weaker or even empirically incorrect side can triumph in the legislative and political sphere by exploiting the cognitive biases of the public and elected officials. In such cascades, interested persons take advantage of limited, and often incorrect, information about an issue or apparent problem to drive public policy. Situating information-deficit manipulation on a particular subject or in a specific moment within the larger context of policy proliferation across several jurisdictions, Professor Catherine Carpenter argues that rapid legislative momentum develops when (a) few, intensely interested actors, (b) armed with a sticky message, (c) operate in a receptive context.

Foremost amongst the informational deficits exploited by restrictionist issue entrepreneurs are the generally-held beliefs that undergird the conventional model of subnational regulation – that, in any particular jurisdiction, immigrants are causing uniquely insurmountable public policy programs that requires restrictionist legal responses; in other words, the same propositions undermined by our empirical inquiry. These informational claims are particularly sticky in the immigration context, persisting despite the experience of jurisdictions passing immigration legislation - from Riverside, New Jersey, and the states of Oklahoma and Alabama – which have all suffered greater economic distress after the

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83 Id; Spiro, 29 CONN. L. REV. at 1630 (“One must look to the consequence of such suppression and the possibility that frustrated state preferences may actually prompt the effectuation of anti-alien measures at the federal level.”).
84 Sunstein and Kuran, Availability Cascades.
85 Sunstein and Kuran, 51 STAN. L. REV. at 685-701 (discussing how availability cascades can generate widespread mistaken beliefs because of informational availability and reputational concerns, and the susceptibility of the public and elected officials to cognitive biases in information processes).
86 Id. at 714; See also Cass R. Sunstein, Deliberative Trouble? Why Groups Go to Extremes, 110 YALE L. J. 71, 76 (2001) (describing how, in the absence of their own private information, people tend to follow others, and this process helps reach extreme policy positions); Eric Talley, Precedential Cascades, 73 S. CAL. L. REV. 87, 90 (1999) (discussing how “social entrepreneurs” are eager to exploit group pathologies).
87 Id.
88 See Carpenter, Legislative Epidemics, 58 BUFF. L. REV. at 8-10.
legislation passed, and subsequently drove out labor and consumer sources.89

The critical difference than, between a cascade understanding of state and local immigration lawmaking, and a steam-valve theory is that, in the cascade model, the issue entrepreneurs’ goal is to continue proliferation in every jurisdiction that is politically ripe for legislation. Each successive enactment builds, rather than dissipates, momentum. Specifically, in the immigration context, we suggest that interested policy activists coordinate activity between the local and federal levels so that legislative activity at the federal level does not stand as an obstacle to further subfederal proliferation.90 In other words, part of the receptive context for continued subfederal policy proliferation is strategic stalling of federal legislative responses, until an acceptable de facto national consensus on restrictionist policies can be instituted at the federal level.

Accordingly, whereas Professor Spiro imagines the restrictionist subnational expression as the pressure-relieving end of a policy movement,91 our explanation perceives such expressions as the beginning of a legislative cascade.92 Hazelton, for example, was the test case that led to the Farmers Branches, Spring Valleys, Arizona, and Alabama. The restrictionist issue entrepreneur’s goal is to proliferate such subfederal regulations and purposefully forego federal control that might moderate the gains made at the state and local level. Increasing the number of states and localities with extreme restrictionist measures builds, rather than dissipates, the pressure upwards to the federal level, eventually shifting the terms of national discourse towards a new, more restrictionist status quo.

89 Peter J. Spiro, Be Careful What You Wish For, N.Y. Times, Room for Debate, Oct. 4, 2011 (arguing that Alabama’s law, driving out immigrants, will force the state to learn the importance of immigrants to its economic well-being); Patrik Jonsson, Why Republicans are doing an about-face on tough Alabama immigration law, THE CHRISTIAN SCIENCE MONITOR, November 16, 2011, available at, http://www.csmonitor.com/USA/Politics/2011/1116/Why-Republicans-are-doing-an-about-face-on-tough-Alabama-immigration-law; (“Prof. Samuel Addy at the Center for Business and Economic Research at the University of Alabama recently predicted that HB 56 will reduce the Alabama economy by $40 million as income and spending by both illegal and legal Hispanic immigrants will decline. What's more, employers face troves of fresh paperwork and licensing requirements to comply with the law that they say will potentially hurt business.”); PBS Newshour, Alabama’s Immigration Law: Assessing the Economic, Social Impact, Transcript, Oct. 13, 2011, http://www.pbs.org/newshour/bb/business/july-dec11/alimmigration_10-13.html
90 See supra Part I.C; see also Gulasekaram and Ramakrishnan, The Importance of the Political in Immigration Federalism (forthcoming) (using qualitative empirical data to show the highly networked and coordinated work of immigration issue entrepreneurs at the federal and subfederal levels).
91 Peter J. Spiro, Let the Arizona Law Stand, Then Wither, NEW YORK TIMES, April 23, 2012.
92 Here, we defend this claim only with regard to the time period we investigate (2000-2012). In future projects we will address Professor Spiro’s account of legislative action prior to this current era of enhanced party polarization on immigration issues.
In the context of policy proliferation and steam-valve theory, we note that our analysis applies only to restrictionist legislation and not to integrationist policymaking. While further research might yield evidence that similar cascade-like effects work in sanctuary cities and those creating integrationist policies, as yet our inquiry indicates insufficient coordinating and networking by integrationist activists across horizontal and vertical jurisdictions to create the necessary conditions for a legislative cascade.93

C. The Role of Partisanship and Intra-Party Dynamics in Fomenting Congressional Inaction

An important consequence of adopting this more descriptively accurate version of the genesis of subfederal immigration law is the increased salience of both the creation and idea of new legislation at the federal level. As courts and commentators find it more difficult to resolve subfederal immigration cases through categorical, sovereignty-based allocations of power, they must adopt more nuanced comparisons of federal and subfederal laws to determine the scope of delegated power, and the preemptive intent of federal law.94 When rudimentary power allocations fail to capture the real nature of federal and subfederal involvement, when and how Congress legislatively responds (or fails to respond) to state and local policy proliferation makes a difference.

The existence or creation new federal law, vel non, matters a great deal in preemption and federalism cases. This is true in immigration, as in other regulatory areas. Congress could, theoretically, use existing subfederal policies as a blueprint to discover and fill-in significant ambiguities in federal law,95 thereby curtailing subfederal proliferation for the near future. In recent immigration cases testing the viability of subfederal enactments, courts have looked to existing federal law from prior comprehensive efforts to determine whether subfederal laws are expressly or impliedly preempted.96

Therefore, federalism commentators generally, and immigration federalism scholars specifically, have premised their descriptive and

93 Our interviews with four pro-immigrant organizations in Washington, D.C., and analysis of pro-immigrant legislative campaigns in various jurisdictions, have all indicated no coordinated national effort to promote legislation such as in-state tuition or “immigration sanctuaries” through city policing. Indeed, the only coordinated effort on subnational legislation among these pro-immigrant groups has been to react defensively to restrictive efforts in Arizona, Alabama, Georgia, Mississippi, and elsewhere.


95 Hills, Against Preemption, 82 N.Y.U. L. Rev. at 9-10 (“State lawmaking can give Congress the right incentives to focus on the most important ambiguities in federal law”).

96 See, e.g., Lozano v. Hazleton; Whiting, 131 S.Ct. 1968 (upholding state E-Verify law as an exception to federal immigration law governing employment of unauthorized workers); U.S. v. Arizona, 641 F.3d 339 (determining whether S.B. 1070 ran afoul of federal prerogatives or stood as an obstacle to accomplishing federal objectives).
prescriptive arguments on the ability of Congress, under the Supremacy clause, to respond and override suboptimal subfederal policy.\textsuperscript{97} Focusing on the particularity and extent of federal law means that Congressional silence also speaks. Continued proliferation of subnational policy without Congressional response signals tacit approval by the federal government, or lack of political will to address the issue.\textsuperscript{98} If subnational enactments were patently suboptimal and significant, theorists generally presume that they would appear on the national agenda and Congress would use its “trump” card to speak clearly on the issue and disapprove of the subnational action.\textsuperscript{99}

But, this description of federal responsiveness assumes independence of the federal political and legislative mechanism from the state and local ones. Our model, which focuses on the salience of political dynamics and notes the coordination of restrictivist activity at the federal and subfederal levels, however, suggests that federal inaction is not incidental to the issue entrepreneurs plan; it is a necessary precondition to subnational policy proliferation.

The link between national and subnational policy positions exists in part because of the decentralized structure of political parties across various levels of government. Political parties provide the connective tissue between federal and subfederal actors, and they provide opportunities for factional contestation within party electoral contests (like

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\textsuperscript{97} See, e.g., Huntington, Immigration Federalism, 61 Vand. L. Rev. at 848 (arguing for statutory preemption approach to subfederal immigration law, and stating that such an approach would “[lead] to a far more constructive and structured debate over the role for state and local governments. The federal government can always statutorily preempt particular state and local conduct, but to the extent it has not, this kind of analysis will help to evaluate the propriety of the subnational regulation.”); Kramer, Understanding Federalism, 47 VAND. L. REV. at 1544 (“[State officials are guaranteed] a voice in the process. Not necessarily an equal voice: because federal law is supreme and Congress holds the purse strings, the federal government is bound to prevail if push comes to shove.”); Spiro, States and Immigration, 35 Va. J. Int’l. L. at 123 (“At the same time, Congress should maintain the capacity expressly to preempt state-level measures.”); Hills, Against Preemption, 82 N.Y.U. L. Rev. at 9; Gerken, Federalism All the Way Down, 124 Harv. L. Rev. at 51 (“[M]y arguments are premised on the notion that it is perfectly acceptable for the national majority to play the Supremacy clause card whenever it sees fit.”); see also Gerken and Pulman-Bozen, 118 YALE L. J. at 1256 (“If a strong commitment to uncooperative federalism would lead you to conclude that the Court should permit commandeering and foster state dissent, it would also lead you to conclude that the Court should rein in preemption.”).

\textsuperscript{98} Gerken and Pulman-Bozen, 118 YALE L. J. at 1304-1306 (“A more limited preemption doctrine….would require Congress engage more directly with state policies it wished to override.”).

\textsuperscript{99} See, e.g., Hills, Against Preemption, 82 N.Y.U. L. Rev. __; Peter J. Spiro, States and Immigration in an Era of Demi-Sovereigns, 35 VA. J. INTL. L. 121, 170 (1994) (“The ultimate answer to these and other speculations is that even without the dormant foreign affairs power, the political branches of the federal government would continue to maintain the capacity affirmatively to preempt state activity that posed any serious threat to the national interest.”).
primaries). As Dean Larry Kramer has long-argued, national lawmakers of a particular party are dependent to some extent on state and local officials from the same party. According to Kramer, the unique characteristics of political parties has created “a political climate in which members of local, state, and national chapters are encouraged, indeed expected, to work for the election of party candidates at every level – creating relationships and establishing obligations among officials that cut across government planes”\(^\text{100}\). Accordingly, party decentralization and interdependence on officials across jurisdictions helps ensure that the “politics” of the political process will protect federalism values (without court intervention).\(^\text{101}\) We use Kramer’s foundational observation to make a related, but different point.

Because national party members are in part beholden to, and must account for, the policy preferences of state and local party members, immigration issue entrepreneurs are especially effective at stalemating national legislation. The federated nature of parties plays an important role in forcing federal lawmakers to take heed of the immigration positions taken by subfederal officials affiliated with their political party.\(^\text{102}\) So, when state and local politicians promote politically-charged restrictionist policies in their jurisdictions to gain notoriety or to challenge incumbents by exploiting intra-party schisms,\(^\text{103}\) party members at the federal level must account for these positions lest they harm their own chances for re-election.\(^\text{104}\)

This dynamic was certainly evident during the Republican presidential primaries of 2012, as the major candidates backed Arizona’s efforts.\(^\text{105}\) Local party actors are increasingly taking highly restrictionist positions. These individuals, like Arizona governor Jan Brewer or former State Senator Russell Pearce, are the local entry points for restrictive issue entrepreneurs who seek to proliferate subnational legislation. Subsequently, these policy positions filter upwards and affect the party’s policy vision at the national level, as members of Congress and those


\(^{101}\) *Id.* at 1536 (“[T]he parties influenced federalism by establishing a framework for politics in which officials at different levels were dependent on each other to get (and stay elected.”); *See also*, Larry Kramer, *Putting the Politics Back into the Political Safeguards of Federalism*, 100 Colum. L. Rev. 215 (1994).


\(^{103}\) Cf. Hills, *Against Preemption*, 82 N.Y.U. L. Rev. at 23-24 (“Finally, given that nonfederal politicians constitute the major source of competition to congressional incumbents, it is natural that nonfederal politicians want to make a name for themselves by taking the risk of advocating new policies.”).

\(^{104}\) Kramer, *Understanding Federalism*, 47 Vand. L. Rev. at 1536.

vying for the Presidency are compelled to expressly or tacitly support the actions of fellow party members. As such, national party officials feel compelled to support enforcement-only provisions at the federal level, because momentum for restrictionist policies was already generated by local party actors. Consequently, federal immigration proposals – particularly those which are bipartisan and tend to moderate the more extreme enforcement elements of state and local laws - inexorably grind towards gridlock.

Notably, the same was not true among Democrats in the 2008 primary, who distanced themselves from pro-immigrant state measures such as then-Governor Elliot Spitzer’s plan to provide driver licenses to unauthorized immigrants. Thus, the inter-party dynamic asymmetrically affects restrictionist and integrationist agendas. Because Democratic party leaders distance themselves from state and local actors on immigration issues, the national legislative debate becomes heavily skewed towards an enforcement-only approach.

Obviously then, our analysis impacts immigration federalism analysis to the extent those frameworks rely on unfettered and viable federal responsiveness to subfederal policies. Accounting for the federated nature of political parties and the purposeful stalling work of entrepreneurs adds an extra layer of caution to the difficulties with federal action that are already described in the literature. Thus, the lack of federal lawmaking to override a subfederal immigration policy does not necessarily reflect failure to garner the political will to place an item on the national agenda, avoid a controversial issue, or galvanize popular support for federal legislative trump. Nor does it signal tacit support for state and local participation in immigration regulation.

To be sure, these federated party dynamics may well be operative in policy areas beyond immigration. Yet, it is a point worth emphasizing with respect to immigration specifically: The notion of a federated policy dynamic shaped by party structures rubs against the still-dominant understanding of subnational involvement in immigration enforcement as dictated by the national government. In our model, interested groups and individuals actively hold-up federal lawmaking processes, thereby creating the appropriate constitutional conditions and gaps to justify subfederal lawmaking. Accordingly, the resulting proliferation of subfederal legislation, unchecked by federal legislative override, is unlikely to

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107 Hills, 82 N.Y.U. L. Rev. at ___ (noting that it is much easier to derail federal legislation than it is to enact it).
108 Hills, 82 N.Y.U. L. Rev. at ___
109 See Gerken, Federalism All the Way Down, 124 Harv. L. Rev. at 47 (“I argue that minority rule without sovereignty offers a more attractive model of federalism because it allows the national majority to reverse a decision if it is willing to spend the political capital to do so.”).
represent desired public policy or national will to allow variegated subfederal regulation. Further, the decentralized and inter-dependent party structure described by Kramer ensures that non-mainstream restrictionist positions promoted by opportunistic state and local party members will necessarily tie the hands of national lawmakers of the same party, even when those positions do not reflect broad national consensus.

Conclusion

For the better part of the last decade, states and localities have markedly increased their immigration-related lawmaking. Our statistical analysis has shown that these laws are rarely driven by pressing demographic problems. We believe this paper provides a necessary corrective to this trend of apoliticized, demography-based evaluations of this rising phenomenon. Moreover, we explicate the implications of our findings for existing legal theories of federalism, including the lack of evidentiary support for functionalist accounts of subfederal legislation on immigration, and the varying applicability of legislative cascades and federated party dynamics to restrictive and permissive legislation, respectively. By showing how these extra-constitutional factors inherently affect legal appraisal of these phenomena, we hope that courts, commentators, elected officials, media actors, and the general public will modulate their responses based on this more accurate understanding.

\[110\] Hills, Against Preemption, 82 N.Y.U. L. Rev. at 18 and at 26 ("[B]efore one balks at the cost of enduring a patchwork of inefficient state policies, recall that the gridlock at the federal level also potentially imposes an even greater inefficiency.").
Appendix A

Description of our Municipal and State Data Sets

We start with a baseline of municipalities (defined as “places” in most states, but also including “county subdivisions” in others). Next, we obtained lists of municipalities that have proposed restrictive ordinances and regulations from various sources, including the American Civil Liberties Union, the Puerto Rican Legal Defense and Education Fund, the Fair Immigration Reform Movement, the National Immigration Law Center, and the Migration Policy Institute. We then validated these lists by making phone calls to jurisdictions noted as considering or passing ordinances, as well as by monitoring news stories on local ordinances. The data on municipal ordinances become far less reliable after 2007, with a sharp decline in newspaper reports of new municipal ordinances and no further tracking of municipal legislation by national advocacy groups. We merged information on the proposal and passage of ordinances with census data on various demographic factors. The census data are primarily from 2000.

Finally, we came up with a measure of state-level legislative activity on immigrant integration based on reports from the National Conference of State Legislatures from 2005, 2006, and 2007, and included any measures that bear a significant relationship to illegal immigration. Two graduate research assistants were instructed to code the bills an ordinal scale of 1: “low impact” and 2: “high impact” on immigrant rights and/or access to benefits, based on the provision’s likely effects on immigrant life chances and the number of immigrants likely to be effected. Since these two categories offered a stark distinction, inter-coder reliability was 94%. In the cases where two codes conflicted, the principal investigator (Ramakrishnan) provided the tie-breaking vote. Finally, when we use state-level activity as a contextual variable in our municipal dataset, we use a net total measure of such activity, given multiple laws passed in various states, including a mix of permissive and restrictive ones.
Appendix B

Multivariate Regression Analyses

<table>
<thead>
<tr>
<th>Table B.1. Logit Regression Estimations of Municipal Ordinances</th>
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</thead>
<tbody>
<tr>
<td>PROPOSAL</td>
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<tr>
<td></td>
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<tr>
<td>Republican majority in county</td>
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<tr>
<td>Percent naturalized in population</td>
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<tr>
<td></td>
</tr>
<tr>
<td>Growth in Immigrant population, 2000-2007</td>
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<tr>
<td></td>
</tr>
<tr>
<td>Agriculture jobs (share)</td>
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<tr>
<td></td>
</tr>
<tr>
<td>Percent of immigrants who are recent arrivals</td>
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<tr>
<td></td>
</tr>
<tr>
<td>Overcrowded households (% of total)</td>
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<tr>
<td></td>
</tr>
<tr>
<td>White poverty rate</td>
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<tr>
<td></td>
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<tr>
<td>Black poverty rate</td>
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<tr>
<td></td>
</tr>
<tr>
<td>Population (ln)</td>
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<tr>
<td></td>
</tr>
<tr>
<td>State policy climate</td>
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<td></td>
</tr>
</tbody>
</table>

* significant at 10%; ** significant at 5%; *** significant at 1%, based on two-sided t tests
Significance (p) values in brackets

Note: Number of observations reduced because of missing data on nativity data in cities below 6,000 residents. Poverty rates from 2000 census because of missing data on black poverty rates in an additional 7,176 cities.
Table B.2. Regression Estimations of Restrictive State Laws Enacted, 2005-2010

<table>
<thead>
<tr>
<th>Variable</th>
<th>Coefficient</th>
<th>Standard Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republican share of voters</td>
<td>0.156**</td>
<td>[0.441]</td>
</tr>
<tr>
<td>Percent of immigrants who are recent arrivals</td>
<td>-0.0536</td>
<td>[-0.116]</td>
</tr>
<tr>
<td>Growth of Latino population</td>
<td>0.0521</td>
<td>[0.219]</td>
</tr>
<tr>
<td>White poverty</td>
<td>0.139</td>
<td>[0.113]</td>
</tr>
<tr>
<td>Black poverty</td>
<td>-0.0285</td>
<td>[-0.0605]</td>
</tr>
<tr>
<td>Agriculture jobs (share of total)</td>
<td>-0.504*</td>
<td>[-0.391]</td>
</tr>
<tr>
<td>Constant</td>
<td>-4.28</td>
<td>[0.000760]</td>
</tr>
</tbody>
</table>

Observations 50
R-square 0.22

* significant at 10%; ** significant at 5%; *** significant at 1%, based on two-sided t tests
Significance (p) values in brackets

Note: The dependent variable is no major laws, one major law, 2 or more major laws.
Table B.3. OLS Regression Estimations of Restrictive State Policies on Enforcement and Work Authorization

<table>
<thead>
<tr>
<th></th>
<th>Coefficient</th>
<th>Standard Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republican share of population</td>
<td>0.084***</td>
<td>[0.000]</td>
</tr>
<tr>
<td>Growth of foreign born population since 2000</td>
<td>0.0147</td>
<td>[0.155]</td>
</tr>
<tr>
<td>White poverty</td>
<td>0.0452</td>
<td>[0.794]</td>
</tr>
<tr>
<td>Black poverty</td>
<td>-0.00524</td>
<td>[0.410]</td>
</tr>
<tr>
<td>Agriculture jobs (share of total)</td>
<td>-0.251***</td>
<td>[0.001]</td>
</tr>
<tr>
<td>Constant</td>
<td>-4.329***</td>
<td>[0.000]</td>
</tr>
</tbody>
</table>

Observations: 50
Pseudo-R2: 0.55

* significant at 10%; ** significant at 5%; *** significant at 1%, based on two-sided t tests
Significance (p) values in brackets

Note: Laws current as of December 31, 2011.