

# WHAT COMMUNITIES CAN DO TO REIN IN PAYDAY LENDING: STRATEGIES FOR SUCCESSFUL LOCAL ORDINANCE CAMPAIGNS THROUGH A TEXAS LENS

NATHALIE MARTIN\* AND ROBERT N. MAYER\*\*

## I

### INTRODUCTION

Sometimes communities are unable to get state or federal lawmakers to deal with concerns communities face every day. For example, consumers have consistently expressed a desire for meaningful regulation of small dollar, high-cost loans, like payday and title loans,<sup>1</sup> but federal and state legislatures have not always moved toward meaningful regulation.<sup>2</sup> This inaction results from a number of factors, ranging from higher priorities for lawmakers to huge lobbying donations to legislative campaigns.<sup>3</sup> Regardless of the reasons for inaction, local

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\* Frederick M. Hart Chair in Consumer and Clinical Law, University of New Mexico School of Law. The author thanks the University of New Mexico School of Law for its summer research support and Austin Megli, Jaclyn Page, and Benjamin Jacobs for their fine research assistance. The author also thanks Cheryl Burbank for her tireless editorial assistance. We also thank Steve Graves, California State University at Northridge for his geographical assistance.

\*\* Robert N. Mayer, Professor of Family and Consumer Studies, University of Utah. The authors thank Silicon Valley Community Foundation for their funding of the study that underlies this article.

1. Nathalie Martin, *Public Opinion and the Limits of State Law: The Case for Federal Usury Caps*, 34 N. ILL. U.L. REV. 259, 269–73 (2014) (discussing, for instance, a wide variety of state and national polls showing broad public support for interest rate caps); Joshua Cooper, Note, *Reassessing Payday Lenders in the Wake of their Most Negative Court Holding to Date*, 18 J. CONSUMER & COMM. L. 15, 16 (2014) (describing the inclusion of payday lending on “Shark Week,” as well as on John Oliver’s show “Last Week Tonight” as part of a growing national movement to curb payday lending).

2. See, e.g., Ted Seeger, Comment, *Texas Cities Respond to Payday Lending*, 52 HOUS. L. REV. 741, 753–58 (2014) (discussing failures of the Texas legislature to combat payday loan abuses).

3. Christopher L. Peterson, “Warning: Predatory Lender”—*A Proposal for Candid Predatory Small Loan Local Ordinances*, 69 WASH. & LEE L. REV. 893, 932 (2012); Cooper, *supra* note 1, at 17. As Joshua Cooper explains:

The question to be asked, then, is why the Texas legislature has failed to engage in any substantive action to regulate payday loans. A likely answer lies in the significant lobbying power of the payday-lender industry. During the 2013 Texas legislative session alone, payday loan companies spent over \$4.4 million on lobbyists advocating their cause. Further, the industry’s campaign contributions to members of the legislature doubled between 2008 and 2012, with House Speaker Joe Straus receiving a substantial \$312,000. When Sen. Wendy Davis tried to initiate meaningful reforms in 2011, lawmakers outright rejected her proposal and instead backed a much weaker package sponsored by then-House Financial Services Committee Chair Vicki Truitt. In a turn of events unlikely to surprise an astute observer of Texas politics, Truitt left office and is now employed as a lobbyist for payday lender ACE Cash

communities have begun to take matters into their own hands.<sup>4</sup>

This article discusses the tools available to local communities when state or federal lawmakers fail to act on issues of community concern. It stems from an empirical study that we, a consumer law professor and a sociology professor who studies community action and social movements, recently completed. Our study sought to determine what makes a local payday loan ordinance movement successful through detailed in-person interviews with community members who participated in successful local payday loan ordinance campaigns. Our goal was to create a textured template for communities wishing to stage a successful local movement on any subject.<sup>5</sup>

We chose three broad geographic regions to study, each for its diverse, social, political, and geographic natures: Silicon Valley of Northern California, greater metropolitan Dallas, Texas, and greater Salt Lake City, the home to one of the Nation's first payday loan ordinances.<sup>6</sup> Over the past two decades, payday loan ordinances grew significantly in these three areas, consistent with a pattern across the nation as a whole.<sup>7</sup>

Our work builds on two previous "how to" guides for individuals and organizations wishing to address payday lending through local action, and provides a level of detail not found in the previous reports.<sup>8</sup> In this article, we

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Express. Further, Texas Finance Commission Chairman William White has repeatedly resisted attempts to regulate payday lenders via legislative means. A reasonable observer might question whether White's objections have something to do with the identity of his employer when the legislature is not in session: Cash America, a leading payday lender.

4. KELLY GRIFFITH, LINDA HILTON & LYNN DRYSDALE, CONTROLLING THE GROWTH OF PAYDAY LENDING THROUGH LOCAL ORDINANCES AND RESOLUTIONS: A GUIDE FOR ADVOCACY GROUPS AND GOVERNMENT OFFICIALS (2012), <http://www.consumerfed.org/pdfs/Resources.PDL.LocalOrdinanceManual11.13.12.pdf> [<https://perma.cc/P223-ZQNU>]; TIM LOHRENTZ, INSIGHT CTR. FOR CMTY. ECON. DEV., THE NET ECONOMIC IMPACT OF PAYDAY LENDING IN THE U.S. 1 (2013), <http://ww1.insightcced.org/uploads/assets/Net%20Economic%20Impact%20of%20Payday%20Lending.pdf> [<https://perma.cc/WRD7-L6ZC>]; see also Sheila Foster, *Breaking Up Payday: Anti-Agglomeration Zoning and Consumer Welfare*, 75 OHIO ST. L.J. 57 (2014); Peterson, *supra* note 3, at 893; Amy Lavine, *Zoning Out Payday Loan Stores and Other Alternative Financial Services Providers* (July 13, 2011) (unpublished manuscript) available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1885197](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1885197) [<https://perma.cc/TJ2W-CJTW>].

5. For another example of religious motivations inspiring action, some evangelical churches in Texas have also recently taken on human trafficking. People do seem very anxious to take action. Telephone interview with Jim Hawkins, associate professor at the University of Houston Law Center (Dec. 1, 2016).

6. Our travel and other expenses were funded by Silicon Valley Community Foundation, the world's largest community foundation, which has been active in local payday loan reform. The foundation had no editorial discretion over our findings, but did review our study results for factual accuracy. Before we began our interviews, we then each obtained Institutional Review Board approval from our respective universities, and researched which persons in the communities we studied knew the most about the process of passing local payday loan ordinances. Interviewees signed a consent form allowing us to take and then transcribe their interviews, under the condition that they could approve the use of all quotes attributed to them prior to publication.

7. Research being conducted by Professor Steve Graves of California State at Northridge, on file with authors.

8. GRIFFITH ET AL., *supra* note 4; TIM LOHRENTZ, INSIGHT CTR. FOR CMTY. ECON. DEV., TOOLS FOR ADVOCATES OF LIMITING PAYDAY LENDING: HOW YOUR COMMUNITY CAN LIMIT PAYDAY

share some of our study data in broad terms, directing the reader to our longer paper, *The Power of Community Action: Anti-Payday Loan Ordinances in Three Metropolitan Areas*, for more details.<sup>9</sup> After discussing the law applicable to local payday loan ordinances nationwide, we draw our examples from one geographical area—greater Dallas—focusing on Dallas itself and nearby Denton. Within this greater Dallas region, we focus here on the passage of just one type of ordinance, a regulatory-style ordinance as opposed to the usual zoning-style ordinance. Dallas-style regulatory ordinances spread like wildfire following the passage of the Dallas ordinance and now there are thirty-six such local payday loan regulatory ordinances throughout Texas, covering over thirty-three percent of the state’s population.<sup>10</sup>

Payday lending is a good subject for local reform.<sup>11</sup> The harms of high-cost loans—often carrying interest rates of three hundred percent or more—are felt first in local communities, where people borrow primarily to pay for day-to-day living expenses. Local governments are often more motivated to fix problems like this than are states or the federal government, and are frequently more aware that these problems exist.

We believe the local payday loan ordinance movement is part of two broader social movements. First, the Local Law Movement, which describes the phenomenon in which inactivity on the state and federal level has given rise to local action.<sup>12</sup> Second, the New Fair Lending Movement, which draws participants from consumer and anti-poverty movements, but is distinct from each.<sup>13</sup> These movements reflect the unique values of the communities from which local laws emerge. For example, in Texas, the same local ordinance spread statewide, but that core ordinance still reflects the unique populist, highly religious culture of each of the local parts, perhaps in a way that is truly greater than the sum of the parts.

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LENDING THROUGH MUNICIPAL LAND-USE AND OTHER ORDINANCES (2013), <http://ww1.insightcecd.org/uploads/assets/paydaylending/plat.pdf> [<https://perma.cc/Z97T-QXD4>].

9. See Robert N. Mayer & Nathalie Martin, *The Power of Community Action: Anti-Payday Loan Ordinances in Three Metropolitan Areas* (Jan. 24, 2017), [http://fcs.utah.edu/\\_documents/MayerMartinPaydayOrdinances.pdf](http://fcs.utah.edu/_documents/MayerMartinPaydayOrdinances.pdf) [<https://perma.cc/XNT2-YLMM>].

10. We calculated this percentage by taking the population of the 30 or so cities in Texas with ordinances and dividing this by the state’s total population. As a point of reference, six of the seven largest cities in the state have these regulatory ordinances: Houston, San Antonio, Dallas, Austin, El Paso, and Arlington. These six cities by themselves account for 23% of the population of Texas.

11. Peterson, *supra* note 3, at 932 (discussing local officials’ perceived need to step in and fill the gap caused by lax state and federal payday loan regulations).

12. Mayer & Martin, *supra* note 9, at 1–2.

13. *Id.* at 2–3.

## II

## THE NATIONAL LAW OF LOCAL PAYDAY LOAN ORDINANCES

As of the fall of 2016, nearly 160 local municipalities were working on limiting payday lending.<sup>14</sup> This part briefly explores the logistics and the practical utility of these local ordinances and the primary legal impediment to the ordinances—preemption.

## A. Preemption

Preemption refers to the rule that federal law is supreme over state law on the same subject<sup>15</sup> and that state law is supreme over local or municipal law on the same subject.<sup>16</sup> Perhaps because of a fear of preemption challenges, the vast majority of local payday loan ordinances (other than mere licensing and registration) are zoning ordinances.<sup>17</sup> Although zoning ordinances are safe from preemption challenges, municipalities are by no means limited to zoning tools in regulating payday loans.<sup>18</sup> Given that some states have not regulated payday loans at all, there is often broad capacity for municipalities to do more than just zone.<sup>19</sup>

The preemption doctrine comes in three basic forms: express preemption, implied preemption, and conflict preemption.<sup>20</sup> Express preemption occurs when state payday loan laws explicitly state that they preempt local law.<sup>21</sup> Implied preemption, which is also called field preemption, occurs when state laws are so pervasive and thorough on a topic that they leave no room at all for supplemental or additional regulation by local governments.<sup>22</sup> Conflict preemption occurs when even though there is no express or implied preemption, explicit laws in place make it impossible to comply with both a state law and a local ordinance.<sup>23</sup>

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14. Graves, *supra* note 7.

15. The federal preemption doctrine comes from the U.S. Constitution. *See* U.S. CONST. art. VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding”).

16. GRIFFITH ET AL., *supra* note 4, at 37.

17. *Id.* at 17–35.

18. *Id.* at 12 (summarizing the many ways in which municipalities have regulated payday lending, including moratoria on new payday lending while studying the issue, permanent moratoria, limits on density and distance, and special permit requirements, among others).

19. Other jurisdictions regulated piecemeal, leaving many opportunities for local governments to fill in the blanks. For an excellent summary of these laws across the Nation as of 2010, see NAT’L CONSUMER L. CTR., SMALL DOLLAR LOAN PRODUCT SCORECARD: UPDATE (May 2010), <http://consumersunion.org/pdf/Scorecard-5-12-10.PDF> [<https://perma.cc/Y28Q-ZC4V>].

20. GRIFFITH ET AL., *supra* note 4, at 37–38.

21. *Id.* at 37.

22. *Id.*

23. A local ordinance is most likely to survive if the ordinance states a different legislative purpose than any state law, references any state laws on the general topic, and then states an intention to complement rather than conflict with these existing state laws. Local authorities then must closely analyze the state laws on the subject and regulate topics not already covered by the state laws. *See* GRIFFITH ET AL., *supra* note 4, at 38–39. One approach is to draft the local ordinance to fit within any exceptions

Chris Peterson has analyzed payday lending ordinances in the context of consumer finance, finding that, absent express or field preemption, local authority extends to setting interest rate caps and regulating loan procedures in addition to zoning.<sup>24</sup> For example, South Carolina municipalities were permitted to set such interest rate caps,<sup>25</sup> and Missouri municipalities were permitted to require pawn shops to maintain photos of every customer that came in to pawn an item.<sup>26</sup> Although zoning ordinances have been widely upheld in the face of preemption challenges, zoning is not the only tool municipalities have for reining in payday lending.

## B. A National Look At Typical Local Payday Loan Ordinances In Light Of Preemption

This subpart describes what existing local payday lending regulations do. Many states explicitly permit payday lending through enabling regulation. For those states, communities must work around these regulations, choosing to regulate things not explicitly covered in the state regulations.

### 1. Licensing and Registration Regulation

Licensing and registration regulations are the most fundamental and common form of regulation, and also the least substantive.<sup>27</sup> If a state has no licensing or registration regulations, such regulations passed by municipalities are not preempted, though they also do little to rein in payday lending. They can be useful for providing information to inform future, more substantive regulations, however, if they require disclosures about the number of loans, the dollar amount of loans, and particularly the number of loans taken out, or the number of rollovers, by particular borrowers.

### 2. Moratoria, Permanent Bans on Lenders, and Permitting Regulations

Municipalities can impose a temporary moratorium on new stores while the effects of high-cost lending on the community are studied.<sup>28</sup> Permanent bans on future stores can also be imposed.<sup>29</sup> Although these bans do not affect existing

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provided to state law or within any regulation gaps contained under state law. For example, if a state law, such as New Mexico's, only governs laws with a duration of fourteen to thirty-five days, local laws might govern longer loans. In this way, local government can capitalize on the same loopholes lenders used to avoid regulation on the state level. If a state law only governs title loans, local governments can regulate other small-dollar loans. Martin, *supra* note 1, at 274–75.

24. Peterson, *supra* note 3, at 948–49.

25. *Id.* at 948 (citing *City of Columbia v. Phillips*, 85 S.E. 963, 963–64 (S.C. 1915)).

26. *Id.* at 949 (citing *Liberman v. Cervantes*, 511 S.W.2d 835, 837–38 (Mo. 1974)).

27. Lavine, *supra* note 4, at 5. For a few state statutory examples, see CAL. GOV. CODE § 65858 (2002); COLO. REV. STAT. § 30-28-121 (2001); KY. REV. STAT. §§100.201, 100.328 (2002); ME. REV. STAT. ANN. tit. 30-A § 4356 (1989); MINN. STAT. ANN. § 394.34 (1998); MONT. CODE ANN. § 76-2-206 (2013); N.H. REV. STAT. ANN. § 674:23 (2008); N.J. STAT. ANN. § 40:55D-90 (1985); OR. REV. STAT. ANN. § 197.520 (1995); S.D. COD. L. § 11-2-10 (2000); UTAH CODE ANN. § 10-9A- 504 (2005); WIS. STAT. ANN. § 62.23 (2017).

28. Lavine, *supra* note 4, at 8; LOHRENTZ, *supra* note 8, at 17.

29. See LOHRENTZ, *supra* note 8, at 17; see also SANTA CLARA COUNTY ORD. CODE, § 2.10.040,

payday lenders, they do eliminate future stores.<sup>30</sup> Municipalities may also create permitting requirements that can drastically slow growth in the number of lenders.<sup>31</sup>

### 3. Caps on the Total Number of Payday Lenders within a Municipality or County through Traditional Zoning Powers

Municipalities may place a numerical cap on the total number of payday lenders within their borders or within a certain geographical location.<sup>32</sup> The rationale behind these types of regulations is that, even if these loans do help some people, no one needs a lender on every corner. Utah local payday loan ordinances limit the number of lenders to one for every 10,000 residents.<sup>33</sup> West Valley City, Utah was one of the first municipalities in nation to adopt an ordinance addressing payday loan proliferation.<sup>34</sup>

### 4. Using Traditional Zoning Powers to Limit the Location of Lenders in Relation to One Another and to Other Uses

Similar to the idea of limiting the number of lenders within a municipality or county, some municipalities also limit how closely lenders can be located to one another. The rationale for this type of ordinance is that, if the area is already saturated with lenders, additional lenders are not needed.

Municipalities can and often do use traditional zoning powers to impose permanent restrictions that exclude high-cost lenders from certain zoning districts or neighborhoods.<sup>35</sup> One rationale for this type of ordinance is that the lenders' existence in a particular location runs contrary to the stated purpose of the district, which could include health care, schools, or strictly residential living. Local ordinances can prohibit new stores within a certain distance, say a quarter of a mile, from an existing store, or within a certain number of feet, often 500–1000, of a residential use or residentially zoned parcel, school, park, playground, church or religious facility, child care or preschool facility, bank, savings

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subd. (6); LOS ALTOS MUN. CODE § 14.02.070.

30. LOHRENTZ, *supra* note 8, at 17.

31. *Id.* at 18 (Permitting is different than licensing because permitting requires the municipalities to approve of the permit. They can be written to be more complex and laborious than mere licensing.).

32. *Id.* at 18.

33. GRIFFITH ET AL., *supra* note 4, at 33–34. (Since payday lending grew out of check cashing in Utah (and incidentally in California as well), most definitions and prohibitions include restrictions on both check cashing and payday lending.).

34. Indeed, the other locations we studied adopted these same or similar zoning provisions in their subsequently passed ordinances, along with the other provisions briefly described below. Though this similarity may have been somewhat inadvertent, it seems that both substantively and temporally, California law builds on Utah law, and Texas law builds on both Utah and California law. Some information on writing these ordinances was available to community groups, but it is unclear if the community groups used it. See Mayer & Martin, *supra* note 9.

35. GRIFFITH ET AL., *supra* note 4, at 17–35; LOHRENTZ, *supra* note 4, at 18.

association, or credit union, or perceived negative use like an adult book store or a liquor store.<sup>36</sup>

Many locales have ordinances that forbid payday and title lenders from locating in certain city zones<sup>37</sup> because of the vulnerability of the population to predatory lending practices.<sup>38</sup> For example, San José, California, both imposes a numerical cap and prohibits new payday lenders from locating in or near very-low-income census tracts.<sup>39</sup>

#### 5. Setting Good Neighbor Policies and Educating About and Creating Alternatives

Municipalities may also require good neighbor polices by setting limits on hours of operation and requiring certain lighting and signage.<sup>40</sup> They may also require the distribution of information about local alternatives to payday loans.<sup>41</sup> Additionally, municipalities can adopt resolutions to encourage the development of non-predatory alternatives and adopt broader policies that incentivize the development of non-predatory alternatives.<sup>42</sup>

#### 6. Using Local Ordinance Campaigns to Encourage State Legislatures to Pass Meaningful Legislation

Finally, many local communities would much rather have states pass meaningful payday loan regulations than attempt to cure the problem with local ordinances. Specifically, municipalities can adopt a resolution to support state legislative efforts to curb the damaging effects of payday lending on communities. In other words, local governments can force the state legislatures to see what the people actually want, in effect shaming them into doing something about the problem. Local payday loan ordinances were used very successfully for this purpose in Oregon, when the number of payday loan storefronts dropped from 329 to just 81 one year after state regulations went into effect.<sup>43</sup>

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36. LOHRENTZ, *supra* note 4, at 18.

37. *Id.*; San Francisco has established a “Fringe Financial Service Restricted Use District,” which excludes new payday lenders from locating in certain neighborhoods based on the over-proliferation of such uses. See 36 SAN FRANCISCO PLANNING CODE, § 249.35, subd. (d).

38. See LOHRENTZ, *supra* note 4, at 18.

39. SAN JOSE (CAL.) MUNICIPAL CODE § 20.80.1055(A).

40. See, e.g., MESA, ARIZONA ZONING ORDINANCE § 11-6-3(B) (specifying that to receive a permit, a non-chartered financial institution must obtain any required state licenses, meet the separation requirements, submit documentation showing that the site would be in compliance with all landscaping, parking, signage, and design regulations, and demonstrate that it would be compatible with surrounding uses and consistent with the general plan).

41. See Memorandum from James Zahradka, Supervising Attorney, Law Foundation of Silicon Valley, to City of Morgan Hill 6-7 (Oct. 1, 2014), <http://www.morganhill.ca.gov/DocumentCenter/View/14214> [<https://perma.cc/H9U7-XMAP>].

42. *Id.*

43. Bill Graves, *Oregon’s Payday Lenders All But Gone*, THE OREGONIAN (July 6, 2008), <http://www.oregonlive.com/news/oregonian/index.ssf?/base/news/1215226530277170.xml> [<https://perma.cc/LF9Q-C3F8>].

### 7. Communities Can Use Many of these Techniques at Once

Many municipalities have used a combination of these techniques simultaneously. For example, Silicon Valley ordinances limit the number of lenders to the current level, and also require a minimum distance between payday lenders. Some also limited the distance between a lender and certain other uses such as schools and churches<sup>44</sup> on the one hand, and bars, liquor stores, and adult businesses on the other. Most ordinances prohibit new stores from opening in certain zones, like low-income census tracts or outside commercial tracts. Many ordinances also have lighting, hours, signage about alternatives, and other “good citizen” requirements.<sup>45</sup> In Dallas, for example, the City Council passed a zoning ordinance, an ordinance urging the state to take meaningful action,<sup>46</sup> and finally, the substantive regulatory ordinance described in the next part.<sup>47</sup>

## III

### THE TEXAS LOCAL ORDINANCE STORY: UNIQUE LAW, PERSEVERANCE, PLANNING, AND PASSION

The rest of this article focuses on the regulatory ordinances passed in the Dallas area, along with the unique laws and culture that created them. Specific stories from our study bolster advice from advocates Griffith et al. and Lohrentz.<sup>48</sup> This part describes the Dallas regulatory ordinance and the laws that created Texas’s unique local ordinances—including the creditor service organization model used by Texas payday lenders and the Texas home rule. It then describes the unique Texas culture, including a culture of deep religious conviction and bipartisan populism, that made the Dallas ordinance so successful. First, we describe our Texas methodology.

#### A. Texas Methodology

For the Texas interviews, we asked consumer advocate Jean Ann Fox of the Consumer Federation of America to recommend a contact person in Texas to tell us who to interview in the greater Dallas area. Ms. Fox recommended we speak first with Ann Baddour of Texas Appleseed.<sup>49</sup> We eventually limited her list to

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44. See CITY OF SUNNYVALE, REPORT TO MAYOR AND COUNCIL attachment I, 7 (Sept. 24, 2013), <http://sunnyvale.ca.gov/Portals/0/Sunnyvale/CouncilReports/2013/13-228.pdf> [<https://perma.cc/2CNA-SLXJ>].

45. See LOHRENTZ, *supra* note 4, at 18.

46. Mayer & Martin, *supra* note 9, at 87 (stating that at the city council meeting, the “Council unanimously passed a resolution calling on the state legislature to address problems associated with CSOs.”).

47. See *infra* note 53–59 and accompanying text.

48. GRIFFITH ET AL., *supra* note 4; LOHRENTZ, *supra* note 4.

49. Texas Appleseed is a public interest justice center, that works to change unjust laws and policies that prevent Texans from realizing their full potential, and conducts data-driven research that uncovers inequity in laws and policies and identifies solutions for lasting, concrete change. TEXAS APPLESEED, <https://www.texasappleseed.org/mission> [<https://perma.cc/N55K-XTVQ>] (last visited Feb. 6, 2017).



people who were most involved in local ordinance campaigns,<sup>50</sup> and arranged thirteen in-person interviews in the Dallas area. We also interviewed Ann Baddour by phone. Our interviewees included Susan Williams of Texas AARP, Marc Jacobson of the Jewish Community Relations Council (JCRC), Gerald Britt of Dallas CitySquare, Josephine Lopez Paul and Walker Moore from Dallas Interfaith, an arm of the Industrial Areas Foundation, Katie Murray from Wilshire Baptist Church, Stephanie Mace of the Dallas United Way, Danielle Ayers of Friendship-West Baptist Church, Jerry Allen of the Dallas City Council, Jim Mitchell of *The Dallas Morning News*, and Pat Smith and Kayce Strader from Serve Denton.

Study participants in Texas were deeply interested in being interviewed. People wanted to tell their stories, so much so that many were willing to travel to us to do so. Stephanie Mace of the United Way offered her office as a meeting place, and we met most interviewees there.

## B. The Dallas Regulatory Ordinance

The crown jewel of the Dallas area local payday loan ordinance movement was a substantive regulatory ordinance that limited the way payday lenders could lend. The ordinance was passed in 2011, and thanks to the effort of Jerry Allen, Ann Baddour, and the Texas Municipal League,<sup>51</sup> quickly spread to thirty-five other cities and towns throughout the state.<sup>52</sup>

Pursuant to the ordinance, a payday loan cannot exceed twenty percent of a consumer's gross monthly income, a title loan cannot exceed the lesser of three percent of the consumer's gross annual income or seventy percent of the retail

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50. We sent an initial interview email to each person on the list and then asked if there was a good time to call them. We followed up with phone calls to those that responded. The vast majority called or wrote back right away and expressed a desire to talk to us in an upcoming trip to Dallas. A few did not and fell off the list.

51. The Texas Municipal League (the Municipal League) is a non-profit association that assists Texas cities through legislative, legal, and educational activities. *City Regulation of Payday and Auto Title Lenders*, TEX. MUN. LEAGUE, <http://www.tml.org/history> [<https://perma.cc/RW4Z-3M3W>] (last visited Feb. 7, 2017). It was founded in 1913 to allow leaders and officials of Texas municipalities to confer with each other on issues facing their individual cities. *Id.* The Municipal League has been instrumental in the state's fight against payday loans businesses, especially through its dissemination of a model payday loan ordinance based on the Dallas regulatory ordinance and its extensive coverage of news pertaining to the passage of ordinances and legal challenges to them. *Example Ordinance Disclaimer*, TEX. MUN. LEAGUE, <http://www.tml.org/payday-example-ordinance> [<https://perma.cc/VE4S-GU5V>] (last visited Feb. 7, 2017). The model ordinance is seven pages long and contains options for minor modifications to the Dallas ordinance. *Id.* The model ordinance has made it easy for Texas cities to pass Dallas-type ordinances. The model ordinance, by encouraging cities to pass identical or very similar ordinances, undercut the ability of the payday lending industry to claim that compliance with a patchwork of differing ordinances would be an undue burden and therefore is or should be preempted by state law. The Municipal League's coverage of the litigation based on this preemption argument emboldens Texas cities, particularly given that industry litigation has been unsuccessful to date. *Updates*, TEX. MUN. LEAGUE, <http://www.tml.org/payday-updates> [<https://perma.cc/V6CT-AUQW>] (last visited Oct. 20, 2016); *Lawsuit Pleadings*, TEX. MUN. LEAGUE, <http://www.tml.org/payday-lawsuit-pleadings> [<https://perma.cc/8RVW-9GAX>] (last visited Oct. 26, 2016).

52. See *Example Ordinance Disclaimer*, *supra* note 51.

value of the motor vehicle, and lenders must consider the consumer's ability to repay by using a paycheck or other documentation establishing income.<sup>53</sup>

Additionally, a longer installment loan cannot be payable in more than four installments, and the proceeds from each installment must be used to repay at least twenty-five percent of the principal amount of the loan.<sup>54</sup> Installment loans cannot be refinanced or renewed at all, and lump-sum loans like payday and title loans cannot be refinanced or renewed more than three times.<sup>55</sup> When lump-sum loans are refinanced or renewed, the proceeds from each refinancing or renewal must be used to repay at least twenty-five percent of the principal amount of the original loan.<sup>56</sup> By limiting actual loan terms, Dallas and other Texas cities and towns have become models for passing substantive local laws.<sup>57</sup>

### C. The Law That Created Texas' Unique Local Ordinances

#### 1. The CSO Loophole

Although Texas technically caps interest rates on all loans at ten percent through a traditional usury cap,<sup>58</sup> payday lenders operate through an exception to the cap called the Credit Service Organization or CSO model.<sup>59</sup> Originally passed in 1987 to combat deceptive practices in the debt repair industry, Texas's CSO statute allows CSOs to help consumers get credit from third parties.<sup>60</sup> Payday lenders took little notice of this statute when it was first enacted. But the Federal Deposit Insurance Corporation, in 2005, passed regulations closing the loophole through which payday lenders had been operating,<sup>61</sup> known at the time as the rent-a-bank model.<sup>62</sup> This caused lenders to abandon the rent-a-bank model in favor of the CSO loophole in order to avoid the usury cap and other state payday loan regulations.<sup>63</sup>

Under the CSO loophole, a payday loan becomes a three-party transaction and CSOs act like brokers between the lender and borrower. The storefront business is technically not a lender, but a broker—a CSO. The lender is set up as a separate entity, though the broker and lender may have an exclusive

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53. *Id.*

54. *Id.*; see also Martin, *supra* note 1, at 267–69 (for a description of the different kinds of high-cost loans).

55. See *Example Ordinance Disclaimer*, *supra* note 51.

56. *Id.*

57. For a critique of the Dallas regulatory ordinances, see Seeger, *supra* note 2, at 763–65.

58. Michael A. Garemko III, Note, *Texas's New Payday Lending Regulations: Effective Debiasing Entails More than the Right Message*, 17 TEX. J. ON C.L. & C.R. 211, 229–30 (2012).

59. *Id.* at 229.

60. *Id.*

61. Fed. Deposit Ins. Corp., Financial Institution Letter FIL-14-2005 Payday Lending Programs Revised Examination Guidance (Mar. 1, 2005).

62. *Id.* at 229–30.

63. *Id.* (These included not just the usury cap, but also a series of 2000 regulations described in detail in Garemko, *supra* note 58, at 227–28).

relationship with one another.<sup>64</sup> The broker sometimes charges an enormous fee—for example \$1,500 on a \$2,000 loan, meaning the loan would be \$500 if not for the need to pay the CSO fee—for the service of obtaining credit from a lender.<sup>65</sup> Although the lender itself is subject to the ten percent interest rate limit, the CSO claims to be providing a separate brokering service, not offering a loan, and thus claims they can charge any fee they like.<sup>66</sup>

And charge they do. CSO fees are similar, if not higher than, payday loan interest rates in other states,<sup>67</sup> yet lenders insist that the fees are not interest. This is despite the fact that it is not necessary to have three parties to these transactions, and despite the obvious implication of the substance-over-form test or duck test.<sup>68</sup> Under the duck test, you can change the name of something, but the law will consider the thing's true nature, not the name, when deciding what the thing is and when deciding whether two things with different labels are functionally the same.<sup>69</sup> The timing of the sudden switch from rent-a-bank to CSO model shows lenders' obvious motive and intent when using this loophole to circumvent the law.

Nevertheless, when the legal reality of the CSO relationship was challenged in *Lovick v. Ritemoney*,<sup>70</sup> the United States Court of Appeals for the Fifth Circuit held that CSO fees do not constitute “interest” under the usury statute, and are thus not subject to Texas usury laws.<sup>71</sup> Though the Fifth Circuit noted that, “to say the least, a \$1,500 fee for a \$2,000 loan is more than questionable,”<sup>72</sup> it nevertheless concluded that because the Texas Legislature has not technically restricted the amount of a CSO service fee in proportion to the services provided, the court would not substitute its own judgment.<sup>73</sup> In so holding, the court accepted lenders' arguments that lenders are “brokers” and that their fees can be unlimited. This article calls these payday loan brokers “lenders” despite what they call themselves, in honor of the duck test. Post *Lovick*, an industry web site gleefully explained: “An important aspect of the CSO or Credit Services Organization model is that there IS NO LICENSING required by the state!

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64. See *Lovick v. Ritemoney, Ltd.*, 378 F.3d 433, 440 (5th Cir. 2004).

65. See *id.* at 436.

66. Garemko, *supra* note 58, at 229–30. As Garemko explains, “[t]he lender lends the money to an approved consumer at the default 10% usury cap rate, [b]ut the CSO runs up unregulated fees for the “services” it provides in helping the consumer get the loan.”

67. Cooper, *supra* note 1, at 16.

68. *S.I. Stud Inc. v. United States*, 24 F.3d 1394, 1396 (Fed. Cir. 1994) (Plager, J., dissenting) (“if it looks like a duck, walks like a duck, and quacks like a duck, then it’s a duck”).

69. *Wattson Pac. Ventures v. Valley Fed. Sav. & Loan (In re Safeguard Self-Storage)*, 2 F.3d 967, 970 (9th Cir. 1993).

70. *Lovick v. Ritemoney, Ltd.*, 378 F.3d 433, 440 (5th Cir. 2004).

71. See Cooper, *supra* note 1, at 16 (“*Lovick*] had obtained a \$2,000 auto-title loan from a broker that utilized the lending services of the defendant, Ritemoney. *Lovick*’s loan was set at an ostensible APR of 10 percent, but on top of that amount she agreed to pay a \$1,500 fee to the broker for ‘loan brokerage or other credit services.’”).

72. *Id.* at 16–17.

73. *Lovick*, 378 F.3d at 438.

CSO's are required to 'REGISTER' with the Secretary of State, they are NOT licensed, AND THEIR FEES ARE NOT REGULATED."<sup>74</sup> Although the Fifth Circuit decision in *Lovick* is disappointing and perhaps analytically unsound, lenders' use of the CSO model has some benefits for communities wishing to use local payday loan ordinances to curb payday lending abuses.

Although Texas CSOs are subject to recent regulations on licensing, registration, and disclosures,<sup>75</sup> Texas courts have consistently found that more substantive local ordinances are not preempted by the CSO regulations.<sup>76</sup> More specifically, lenders are operating through a business practice loophole that has not been substantively regulated by the state. This leaves a huge regulatory hole that can be filled by local ordinances. In other words, the state has not regulated the substance of the CSO relationship expressly, impliedly, or through field preemption. This frees consumer groups, working through local governments, to regulate any loan terms not already covered in existing regulation, not just zoning matters. Incidentally, this same broad power is present for communities in states that have not regulated small loans at all.<sup>77</sup> Moreover, a few other states also use the CSO model.<sup>78</sup> So, depending on home rule and other relevant law, a similar ordinance could work in these other CSO states.

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74. *Texas CAB – Texas CSO – Credit Access Business*, PAYDAY LOAN INDUSTRY, <http://www.payday-loan-industry.com/texas-cso.html> [<https://perma.cc/FH4R-SSBP>] (last visited Oct. 2016).

75. Sealy Hutchings & Matthew J. Nance, *Credit Access Buss.: The Regulation of Payday and Title Loans in Tex.*, 66 CONSUMER FIN. L.Q. REP. 76, 82–90 (2012) (containing a very thorough review of all of the regulations on CSOs passed by the Texas state legislature in 2011); see also Jim Hawkins, *Are Bigger Companies Better for Low-Income Borrowers?: Evidence from Payday and Title Loan Advertisements*, 11 J.L. ECON. & POL'Y 303, 308–09 (2015).

76. *Consumer Serv. All. of Tex. v. City of Dall.*, 433 S.W.3d 796 (Tex. App. 2014); *ACE Cash Express, Inc. v. City of Denton*, 2015 WL 3523963, at \*2 (Tex. App. 2015). As explained by Professor Kathleen Engel:

The Dallas City Council used its zoning authority to prohibit payday lenders from operating near highways and in residential areas. The ordinance also restricts the location of auto title lenders, who loan cash to owners of cars and take the borrowers' car titles as collateral. A trade association of lenders challenged the ordinance, seeking declaratory and injunctive relief on the grounds that state law preempted the Dallas ordinance. Because the ordinance allowed imposition of a fine for violators and was intended to protect the public at large, the trial and appellate courts found that the statute was penal in nature and, therefore, that civil courts did not have subject matter jurisdiction.

See Kathleen C. Engel, *Local Governments and Risky Home Loans*, 69 SMU L. REV. 609, 616 (2016) (citing *Consumer Serv. All. of Tex.*, 433 S.W.3d at 796). As Professor Engel further explained:

The appellate court found that "the Ordinance states its primary purpose is 'to protect the welfare of the citizens of the city of Dallas by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices.' As such, it is clearly addressing a wrong to the public at large." Unless a party is claiming that an ordinance is "unconstitutional and its enforcement will result in irreparable injury to vested property rights," the vehicle through which to contest a penal ordinance is by defending a charge under the ordinance.

*Id.* n.53 (citations omitted).

77. See SMALL DOLLAR LOAN PRODUCT SCORECARD: UPDATE, *supra* note 19, at 2.

78. Allison S. Woolston, Note, *Neither Borrower Nor Lender Be: The Future Of Payday Lending In Arizona*, 52 ARIZ. L. REV. 853, 878 (2010) (stating that "when faced with unfavorable regulation, payday lenders in Texas, Florida, and Virginia re-organized as credit service organizations (CSOs)").

## 2. The Texas Home Rule

In addition to the unique operation of payday lenders under the CSO model, Texas has a uniquely broad home rule. In general, the home rule doctrine makes most think of powers given to or left for municipalities by states, to deal with uniquely local issues.<sup>79</sup> Home rule doctrine, however, is actually more nuanced. It allows local governments to govern either: (1) all legal issues that are not precluded by state legislation, or (2) all issues that are expressly granted by a state legislature to local government.<sup>80</sup> These two dramatically different ways to define home rule powers derive from the method in which the home rule is created in each state.

If the home rule is created in a state's constitution, the home rule will often be stronger because the state legislature cannot take away the constitutional rights of municipalities to self-govern, except in very explicit terms.<sup>81</sup> The resulting home rule can be quite broad, and at least under some interpretations, can extend to every possible regulatory right, except those explicitly reserved to the state.<sup>82</sup> If the state constitution does not grant broad home rule powers, it may grant more limited ones, or more likely, the home rule powers come, if they come at all, from state legislatures themselves. Similar to the powers expressed in Job 1:21, "the Lord gave, and the Lord hath taken away."<sup>83</sup> These are the rights that the state has given to local governments, category two above, and they are limited to the rights explicitly enumerated.

Specifically enumerated home rule powers created by state legislation often relate to things like public works, social services, and local economic development, as well as the right to enter into contracts, exercise eminent domain, self-govern, pick public officials, and choose rules by which to govern.<sup>84</sup> Home rule was created in order to establish a sphere within which cities could act on their own initiative, on matters of local concern.<sup>85</sup> Advocates for home rule were motivated by "a Progressive era concern with the limited scope and capacity

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79. See, e.g., CAL. CONST. art. 11, § 11; but see OH. CONST. art. XVIII, § 3, 7. ("Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." "Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.").

80. See Peterson, *supra* note 3, at 948.

81. JOHN MARTINEZ, 1 LOCAL GOVERNMENT LAW § 4:7, WESTLAW (updated Oct. 2016) (home rule can come from state constitutions or from state legislation, though constitutions obviously hold up better against state attempts to control municipalities.).

82. David Schleicher, *The City As A Law And Economic Subject*, 2010 U. ILL. L. REV. ONLINE 1507, 1555 (2010) (citing RICHARD BRIFFAULT & LAURIE REYNOLDS, CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW 333-34 (7th ed. 2008)) (stating that "under this concept, home rule cities were free to make policy in any area where the state legislature did not bar or preempt them from acting").

83. Job 1:21 (King James).

84. See N.Y. CONST. art. IX, § 1.

85. Sarah J. Fox, *Home Rule in an Era of Local Environmental Innovation* at 16 (2017), available at [http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1001&context=ipr\\_papers](http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1001&context=ipr_papers) [https://perma.cc/4SWU-ZPZT].

of municipal governments in the state constitutional system.”<sup>86</sup> According to Professor Sarah Fox, home rule was designed to combat the dangers of state control evidenced in targeted special legislation, which interfered with city governance.<sup>87</sup> As Professor Fox further explains:

Thus, the two underlying goals of the home rule movement were (1) to give cities a degree of initiative in city affairs based on a more general grant of authority from the state, and (2) to “give cities an area of autonomy immune from state control, even by general legislation.” “In contrast to a Dillon’s Rule regime that presumes city powerlessness, home rule provides presumptive city authority to engage in a wide variety of governmental activities.” Early conceptions of home rule took a variety of forms and justifications,<sup>88</sup> and may have been motivated more by the cause of “good.”<sup>89</sup>

The Texas home rule in particular derives from a 1912 amendment to the Texas Constitution which provides that cities with a population of 5,000 or more may “adopt or amend their charters.”<sup>90</sup> These powers are limited to those that are consistent with the rest of the state constitution and with the laws passed by the state legislature.

Although these home rule powers can be diminished by subsequent state legislation, this subsequent legislation must be crystal clear in its intent to limit local powers. Texas courts zealously protect home rule, stating that “legislative intent to limit the broad powers of the home-rule cities must appear with unmistakable clarity,”<sup>91</sup> because this intent will never be implied.<sup>92</sup> Local governments can be limited by the state but these governments by no means look to state legislation to receive their home rule power. Rather, the power comes directly from the constitution.<sup>93</sup> This leaves municipalities in Texas with expansive power to enact local laws and makes it much less likely that local legal

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86. *Id.* at 15 (citing Lynn A. Baker & Daniel B. Rodriguez, *Constitutional Home Rule and Judicial Scrutiny*, 86 DENV. L. REV. 1337, 1340 (2009)).

87. *Id.* (citing GERALD E. FRUG AND DAVID J. BARRON, *CITY BOUND: HOW STATES STIFLE URBAN INNOVATION* 37 (Cornell Univ. Press, 2008)).

88. *Id.* at 16. (citing David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255, 2292–20 (2003)).

89. *Id.* at 15–16 (citations omitted).

90. TEX. CONST. art XI, § 5.

91. Olivia M. Peña, Note, *Municipal Regulation of Payday and Title Loans in Texas*, 17 J. CONSUMER & COMM. L. 71, 74 (2014) (citing *MJR’s Fare of Dall., Inc. v. City of Dall.*, 792 S.W.2d 569, 573 (Tex. App. 1990) (writ denied)).

92. *Id.* (citing *City of Dall. v. Dall. Merchs. & Concessionaires Ass’n*, 823 S.W.2d 347, 353 (Tex. App. 1991)).

93. *Id.*

actions will be preempted by state lawmakers.<sup>94</sup> This strong home rule is mirrored in Texas' strong populist spirit, discussed in the following subpart.

#### D. The Culture That Created The Unique Texas Regulatory Ordinances: Populism And Religious Conviction

Texas culture is unique in many ways, which makes it hard to replicate what happens in Texas elsewhere. Some of what happened in the greater Dallas local ordinance campaign is motivating, however, and the same motivational and organizing techniques can be replicated anywhere. Two unique cultural features of Texas life, populism and religious conviction, were important.

##### 1. Texas Populism

Texans tend to have a strong populist spirit that disdains big government and prefers that Washington, DC and Austin stay out of local affairs.<sup>95</sup> This populism crosses the political spectrum. For example, progressive activist Jim Hightower and conservative ex-governor Rick Perry both call themselves populists.<sup>96</sup> Home rule permits localities to control payday lending, and populism supports local control. They therefore go hand in hand.

94. This does not mean that state lawmakers will not try to preempt local payday ordinances or that industry lawsuits will not argue that local action is preempted by the state. In 2013, a bill filed by California State Senator John Carona would have imposed some restrictions on lenders but would have also preempted city regulations (other than zoning.) The bill did not pass, however. *Payday Lending Bill Enhanced in Senate, Maybe Too Much*, TEXAS MUNICIPAL LEAGUE, [http://www.tml.org/legis\\_updates/legis\\_update042613a\\_Payday\\_Lending%2520Bill](http://www.tml.org/legis_updates/legis_update042613a_Payday_Lending%2520Bill) [https://perma.cc/9Z56-D33F] (last visited Oct. 20, 2016). Similarly, the Consumer Service Alliance of Texas, a payday industry trade association, argued unsuccessfully in a lawsuit that the Dallas payday ordinance was preempted by state law. Jess Krochtengel, *Texas Court Won't Revive Fight Against Payday Loan Law*, LAW360 (May 27, 2014), <http://www.law360.com/articles/541547/texas-court-won-t-revive-fight-against-payday-loan-law> [https://perma.cc/55GQ-TXCS]. See also Peña, *supra* note 91.

95. Populism comes in several forms, including progressive populism and conservative populism. For examples of progressive populism, see The Witliff Collections, *Populism in Texas Politics Panel*, YOUTUBE (Jan. 19 2012), <https://www.youtube.com/watch?v=0bbog3oG4Kw> [https://perma.cc/2P6N-6238] (Panel discussion moderated by Bob Moser and featuring Fred Harris, Linda Chavez-Thompson, and Jim Cullen); The Witliff Collections, *The Living Spirit of Texas Populism—Part II by Jim Hightower*, YOUTUBE (Jan. 19 2012), <https://www.youtube.com/watch?v=0bbog3oG4Kw> [https://perma.cc/VGH2-NLXV] and <https://www.youtube.com/watch?v=Gf0PHYwomJg> [https://perma.cc/QL44-AUM2]. For examples of conservative populism, see Matt Taylor, *Rick Perry is a Master of Right-Wing Populism; But Can He Go National*, NAT'L MEMO (July 7, 2011), <http://www.nationalmemo.com/rick-perry-master-right-wing-populism-can-he-go-national/> [https://perma.cc/FAU8-J6N6]; Joe Conason, *Country Music, Tea Party 'Populism' and Ted Cruz*, TRUTHDIG (Mar. 28, 2015), [http://www.truthdig.com/report/item/country\\_music\\_tea\\_party\\_populism\\_and\\_ted\\_cruz\\_20150328](http://www.truthdig.com/report/item/country_music_tea_party_populism_and_ted_cruz_20150328) [https://perma.cc/FL82-WQNC]; Steve Fraser & Joshua B. Freeman, *The Strange History of Tea Party Populism*, SALON (May 3, 2010), [http://www.salon.com/2010/05/03/tea\\_party\\_populism\\_history/](http://www.salon.com/2010/05/03/tea_party_populism_history/) [https://perma.cc/KQY6-ND4K]; *Texas Tea Party: Groups and Locations*, TEA PARTY, <http://www.teaparty911.com/info/locations/texas.htm> [https://perma.cc/8TMY-JH2L] (last visited Oct. 24, 2016).

96. JIM HIGHTOWER, <http://jimhightower.com/> [https://perma.cc/FLN7-XDW9] (last visited Feb. 8, 2017); Patrick Svitek, *Perry Launches Populist Offensive Against Big Banks*, THE TEXAS TRIBUNE (Jul. 29, 2015), <https://www.texastribune.org/2015/07/29/perry-wall-street-reform-speech/> [https://perma.cc/HD84-NQQL].

## 2. Religious Conviction and Resulting Bipartisan Support for Payday Reform

a. Religious conviction. Second, religious spirit or conviction runs deep in Texas and in the case of payday lending, this spirit galvanized reform. Whether the Texans interviewed for our study were Catholic, Baptist, Non-denominational, or Jewish, they were uniformly passionate about their faiths and the social justice obligations that flowed from them. In the predominantly Black churches of South Dallas, social justice plays a prominent role in church life, to the point where some churches have specialized social justice ministers. Danielle Ayers, who is a Minister of Justice at Friendship-West Church in South Dallas, explained that the Black churches have always been an important catalyst for social change, both nationally and in Texas.<sup>97</sup>

Religious organizations initially heard about the payday lending problem when, in late 2009 and early 2010, congregants came to them and said, “I need help paying my utility bill.” The church would help them, but then realized that the money they were providing was really going to a payday lender who would have gone unpaid otherwise. Similarly, the United Way realized that by helping people with bills, they were really just helping them to pay payday lenders. Stephanie Mace of the AARP explained:

A lot of our basic needs service providers have limitations on what they can pay off for their clients. And so, it’s usually limited to utilities, mortgage, things like that. The Texas Catholic Conference actually did a survey of non-profits that provide financial assistance to individuals. They found that 32 or 33 percent of the clients needing financial assistance actually have a payday loan too.<sup>98</sup>

Faith was consistently used as a catalyst for reform. Demonstrating the power of religious organizing, prior to enacting any ordinances, Reverend Britt of CitySquare helped lead a large revival meeting dedicated to social justice issues. The revival drew participants from about fifteen churches and took place in a church accommodating nine hundred people. According to Britt:

The church was packed, and the last night of the revival, we stationed people at each of the exits with petitions for people to sign. The hallways leading to those exits were so clogged with people signing the petition that mayoral candidate Mike Rawlins [a known payday industry advocate] couldn’t get out.<sup>99</sup>

Several months later, the petition was presented to the Dallas City Council with nearly four thousand signatures.<sup>100</sup>

Similarly, Danielle Ayers of Friendship West Baptist Church, along with the church’s anti-poverty coalition, organized a march down Camp Wisdom Road in South Dallas, a street lined with payday loan stores. Reverend Ayers said people came and marched because of their faith and to take a stand for those harmed.

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97. Mayer & Martin, *supra* note 9 at 72 (Ayers interview).

98. *Id.* at 76 (Mace interview).

99. *Id.* at 79 (Britt Interview) (This was actually passage of the zoning ordinance, not the regulatory ordinance.).

100. Reverend Gerald Britt, Jr, *VICTORY! Dallas City Council Unanimously Passes Zoning Ordinance to Regulate Payday Lenders*, CHANGE THE WIND, (May 26, 2011), <http://www.changethewind.org/2011/05/victory-dallas-city-council-unanimously.html> [<https://perma.cc/334A-7BME>].



Between 300 and 400 people marched, including individuals from other area churches.<sup>101</sup> One payday lender actually came to Friendship-West and offered to pay off the existing loans of every person in the congregation if the church would stop “marching and making noise and advocating and trying to get the [CSO] loophole closed.”<sup>102</sup> Ayers said that the lender’s intention was not just to stop the march:

The idea was to stop the movement. To stop us from doing the advocacy work, going down to Austin, making noise, having [our head pastor] Dr. Hayes stand up in the pulpit and talk about the issue. The church is not his only audience. The word goes out to thousands of people around the country and world.<sup>103</sup>

The idea that faith should drive political action extended well beyond the Baptist churches of South Dallas. Members of interfaith organizations like the Dallas Industrial Areas Foundation<sup>104</sup> felt that tackling a social issue through faith would lead to greater faith development.<sup>105</sup> Other faith leaders felt that tackling social issues was a way for a religious organization to stay relevant with all parishioners but particularly with millennials looking for reasons to stay affiliated with formal religious organizations. Some religious leaders were bothered by inaction in the churches in which they grew up and wanted to fight hypocrisy with action, to actually do something and not just talk about rewards in heaven.<sup>106</sup>

The social justice implications of faith and justice not only crossed religious congregations and denominations, it also brought these congregations together. For example, Wilshire Baptist, a relatively wealthy Baptist church in a predominantly White North Dallas suburb, teamed with Friendship-West, a Baptist church in predominantly Black South Dallas to form a strong multiracial partnership to address social issues and inequalities, including payday lending. Inclusive religious coalitions also made it possible for the Jewish community to take a stand against payday lending, even though few members had direct experience with it.

Additionally, the breadth and depth of coordination among different races, religions, ethnic groups, and socio-economic groups in combatting payday lending was unique to the Texas experience in our study. The bonds made while

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101. Mayer & Martin, *supra* note 9, at 84 (Ayers Interview).

102. *Id.* at 80 (Ayers Interview).

103. *Id.*

104. For a description of the Industrial Areas Foundation, see *Who We Are*, INDUSTRIAL AREAS FOUNDATION, <http://www.industrialareasfoundation.org/> [<https://perma.cc/7BCE-SBEP>] (last visited on Nov. 2, 2016).

105. Mayer & Martin, *supra* note 9, at 72 (Lopez Interview).

106. As Walker Moore explained:

I became really angry at the church for not doing anything. I saw, you know, community issues just getting ripped to shreds, and the church is just sitting there—especially the Baptist Church sitting there preaching hellfire and brimstone. And that pissed me off. And so organizing it is a way about reclaiming faith, and actually putting, you know—let’s actually do something, and not tell people they’re damned and going to hell all the time. And you ask what did I draw from this? I started organizing in Waco, yet another hotbed of activism and things like that. *Id.*

organizing, and the message sent to city council through the cohesive group, helped chip away at historical racial and economic divides such as those between North Dallas and South Dallas. The takeaway for future organizers is that diverse community groups make a very strong statement to city governments, one that is difficult for officials to ignore.

b. Bipartisanship. Religiously based opposition to payday lending had the further advantage of being viewed by the campaign participants as being non-political and non-partisan. Several interviewees felt it was important to mention that they were political conservatives, a philosophy not typically associated with government control of business practices. Furthermore, some interviewees flinched at being called activists, a term often associated with liberal social causes. Walker Moore, an organizer for Dallas Area Interfaith, said:

We are not activists. We are engaging with a congregational member who is anti-this, but he's part of a religious institution, and his opposition is part of his faith development. If we're in a Catholic Church, it's development of Catholic faith. If it's a Jewish synagogue, it's the Jewish faith.<sup>107</sup>

Ann Baddour of Texas Appleseed also frames opposition to payday lending in completely apolitical terms:

We were [not] activists in the traditional sense of the word. This was a real community-based call for help. The nonprofits were seeing their investments in the community drained. Pastors were seeing this as both a moral and a bottom line issue for their communities and were speaking up. That's what was really driving the cause—problems that were very real to the organizations in the community as well as individuals. The word “activist” can lead to connotations that make it seem like, “Oh, people were just out to do something.” This was really driven by, bottom line, very real impacts in the community and people trying to find a way to address a problem.<sup>108</sup>

Whether by virtue of payday lending's relationship to faith development or the everyday problems of communities, the ability to present the issue as non-political helped support local reform efforts. For example, the campaign's primary insider was Jerry Allen, who at the time served on the Dallas City Council.<sup>109</sup> Allen is a former banker and a self-described conservative who wanted people to know that the payday ordinance movement was not created by a “bunch of crazy liberals.”<sup>110</sup> Allen has a long-standing interest in helping bridge the gap between the rich and the poor. He grew up in the same Dallas neighborhood he represented on the City Council, an area with pockets of deep poverty, and many of his actions on the Council were directed at alleviating this poverty in his district.<sup>111</sup> Yet the last thing he wanted to be called was “liberal.”

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107. *Id.* at 73 (Moore interview).

108. *Id.* (Baddour interview).

109. *Id.* at 73 (Allen interview).

110. *Id.* at 74 (Allen interview).

111. *Id.*

## IV

## SPECIFIC INGREDIENTS OF A SUCCESSFUL LOCAL ORDINANCE CAMPAIGN

The greater Dallas campaign and the similar subsequent campaign in nearby Denton illustrate important ingredients for a successful payday lending movement. Local payday loan ordinance advocates Tim Lohrentz, Kelly Griffith, Linda Hilton, and Lynn Drysdale have previously identified many of these ingredients, and their works provide the framework for this discussion. For example, in his primer on successful local payday loan ordinances, Tim Lohrentz pinpoints many important things advocates can do to prepare for a local campaign, including gathering data, creating understandable educational materials on the debt-trap nature of payday lending, framing issues, and creating coalitions and a campaign plan.<sup>112</sup> Similarly, Kelly Griffith, Linda Hilton, and Lynn Drysdale prepared a detailed guide for advocacy groups and government officials on how to pass an ordinance.<sup>113</sup> They suggest learning about the local lawmaking process, contacting local officials, gathering witnesses to testify at local hearings, and passing a temporary ordinance while working on a more permanent one.<sup>114</sup>

The Dallas and Denton campaigns included many of these ingredients. For background, the timing of the Dallas campaign went as follows: Dallas organizers began preparing to present local ordinances in early 2010 through the formation of a coalition,<sup>115</sup> worked diligently throughout the spring, and then passed one ordinance to support state reform,<sup>116</sup> and then one to zone.<sup>117</sup> The zoning hearing was heavily attended by community groups, which virtually overwhelmed lawmakers with their bipartisan, multi-racial, interfaith support. This zoning hearing was also very heavily planned and prepared for, with coalition members spending hundreds of hours on the cause.<sup>118</sup> The zoning ordinance passed on May 25, 2011.<sup>119</sup> For the far more important regulatory ordinance, passed on June 22,

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112. LOHRENTZ, *supra* note 8 at 11, 27–33. More specifically, Lohrentz explains the importance of gathering key data on demographics and payday lending, identifying key background research, reviewing the laws and ordinances passed in similar communities, creating a campaign work plan, framing the issue, and building reform coalitions. Lohrentz particularly emphasizes the benefits of understanding and educating others on the debt-trap nature of payday lending. He then provides specific advice on how to develop an overall strategy or course of action, allies, and a timeline, as well as how to prepare for opposition and potential challenges to a successful campaign.

113. GRIFFITH ET AL., *supra* note 4, at 11–15.

114. *Id.* More specifically, Griffith et al. suggest these six concrete steps: learn all you can about payday lenders in your area, choose the type of ordinance that fits your community and will help you accomplish your goals, learn what system your city or town has in place for passing ordinances, talk to your local mayor, neighborhood, city or county elected official, get a temporary moratorium first, and find advocates and payday loan victims to testify at your planning, zoning or council hearing. These authors also caution groups to be prepared to counter payday loan industry and council member arguments, such as preemption and unmet need.

115. Mayer & Martin, *supra* note 9, at 77.

116. *Id.* at 83–91.

117. *Id.*

118. *Id.* at 77, 91.

119. *Id.* at 88–89.

2011, there was no fanfare and no petitions.<sup>120</sup> The regulatory ordinance sailed right through, given the level of preparation and participation for the zoning ordinance.<sup>121</sup> The Denton campaign went similarly, though much more quickly. The vast majority of the work and planning was done well in advance of the actual hearing to consider the ordinance.<sup>122</sup>

This part describes some critical ingredients for a successful campaign, including careful coalition building and priority setting, adopting a detailed messaging strategy, finding an inside ally in City Hall, and using passion to fuel campaign action, all within the context of the Dallas and Denton campaigns. The Dallas campaign story is shared in subparts A, B, and C, and then the Denton story is recounted in subpart D. Because Dallas has a population of 1.25 million and Denton, 123,000, together these stories demonstrate how cities of different sizes might organize around issues.

#### A. Detailed Coalition Building And Priority Setting Process In Dallas

The greater Dallas AARP began the Dallas organizing effort but it was somewhat by chance. The AARP did not set out to fight payday lending.<sup>123</sup> Rather, it originally set out to build a coalition to fight poverty among the elderly through financial literacy education. It sought out partners in the community, and the resulting group sat down and prioritized poverty alleviation strategies.<sup>124</sup> In early brainstorming sessions, the group used clickers to set priorities and payday lending rose to the top organically.<sup>125</sup> The clicker process ensured that people agreed on the importance of the payday loan issue, a key requirement given the time coalition members would dedicate to the cause. The Dallas community groups then formed the tight-knit Anti-Poverty Coalition, founded by Jewish Community Relations Council,<sup>126</sup> CitySquare,<sup>127</sup> and the Dallas area United

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120. *Id.* at 90–91.

121. *Id.*

122. *Id.* at 93–96.

123. *Id.* at 76–77.

124. *Id.* at 76.

125. *Id.* at 77.

126. See *About Us*, JEWISH FED’N OF DALL., <https://jewishdallas.org/jcrc/about-us> [<https://perma.cc/DT35-24BP>] (last visited Feb. 9, 2017). The JCRC is the public affairs division of the Jewish Federation of Greater Dallas. Its mission includes community outreach and legislative relations through a variety of interfaith, social action, and Israel initiatives. It cultivates relationships to increase cultural understanding and to enact positive and progressive change in the greater Dallas area. In keeping with the Jewish concept of *Tikkun Olam*, or repairing the world, it became a founding member of the Anti-Poverty Coalition of Greater Dallas, which “brings together a number of area organizations to improve the financial health of our communities. One such project focuses on combating predatory payday lending practices in low-income neighborhoods.” *Id.*

127. See *About Us*, CITY SQUARE, <http://www.citysquare.org/about/> [<https://perma.cc/ZX3K-DG4U>] (last visited Feb. 9, 2017). CitySquare’s mission and core values are to fight the causes and effects of poverty through service, advocacy, and friendship, to change the trajectory of peoples’ lives as a community of neighbors, to invest in each other and develop meaningful relationships, and to use faith and justice to demand equality for all its neighbors. CitySquare’s belief is that community resources belong to the community and that as stewards of those resources it should act with integrity, demonstrate accountability and operate efficiently and effectively.

Way.<sup>128</sup> From there, the coalition carefully planned its strategy to address payday lending through frequent meetings, which included working very closely with insider Jerry Allen of the Dallas City Council.

### B. A Detailed Messaging Strategy In Dallas

The Anti-Poverty Coalition understood the importance of messaging. It learned that painting borrowers as victims did not play well with borrowers or the public as a whole.<sup>129</sup> Thus, during the course of the campaign, the coalition shifted its message from being against predatory lending to being in favor of fair lending.<sup>130</sup> They also took care to make sure that the problem of payday lending was not viewed as one affecting only poor people.<sup>131</sup> Rather, the Coalition stressed that everyone should care because it affects everyone.<sup>132</sup> Walker Moore of Dallas Interfaith gave the example of a woman who worked for one of the banks that Dallas Area Interfaith used. At first, the woman said she did not know of anyone who had used a payday loan but then recalled that her daughter had. Moore explained:

She's not an executive of this bank, but she works with the executives. And her daughter had just had to take out a payday loan for her car, which had some serious problems. After talking with me, this lady goes home and starts checking on what her daughter did because she knew what her daughter had done, but she didn't understand the ramifications. And so the woman from the bank started coming to our training sessions. And she immediately got that loan paid off for her daughter. She [ended up doing] all the behind the scenes organizing it takes to get the meetings set up because she saw what happened to her daughter. And this is a white lady, the nicest sweetest, lady in the world. I mean, she works for a bank. Her daughter is a schoolteacher. We're not talking about a low-income person barely scraping by.<sup>133</sup>

The Coalition's strongest message addressed the payday industry's argument that regulation would leave poor people with no place to go to get loans. Reverend Britt noted that this industry argument fails to acknowledge how the industry "feeds the need,"<sup>134</sup> but the argument nevertheless persists. Advocates in the Dallas campaign got out in front of this industry argument by creating a flyer for the first city council meeting that listed alternatives to payday loans.<sup>135</sup> The Coalition repeated the message that there were alternatives throughout the ordinance campaign.<sup>136</sup>

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128. Mayer & Martin, *supra* note 9, at 77.

129. *Id.* at 85.

130. *Id.* (Moore interview).

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. See, e.g., *Before You Take Out a Payday or Auto-Title Loan, Look at Your Options*, ANTI-POVERTY COALITION OF GREATER DALLAS, <http://mymoneydfw.com/wp-content/uploads/2015/04/Payday-Lending-Alternatives.pdf> [<https://perma.cc/4KTP-YBYR>] (flyers circulated by the Anti-Poverty Coalition). Jim Mitchell at the Dallas Moring News had an interesting take on this common industry "unmet need" argument, explaining that "the argument about what poor people are going to do is

### C. An Insider On The Case: Finding a Person In Power With Passion For The Issue In Dallas

As Lohrentz and Griffith et al., note,<sup>137</sup> to get a local payday loan ordinance passed, the proponents must have connections to leadership within city government. If no one in City Hall is interested, nothing will happen no matter how much support local groups build. Ann Baddour of Texas Applesseed explained, “I can have as many good ideas as I want, but if there is not someone who has the capacity to implement it, then it will never happen.”<sup>138</sup> Jerry Allen played that inside role in Dallas. He carefully worked behind the scenes to get the Dallas ordinances passed.<sup>139</sup>

Thereafter, councilmember Jerry Allen was not content to rest on his laurels. He went from town to town to help other municipalities pass regulatory-style ordinances. His approach was to look for like-minded councilmembers in these other cities. He believed that he just needed one, then he would do whatever it took to help him or her. He said: “Just give me one councilmember. I’ll pick the phone up, I’ll go down to do business with them, and if I have to, you know, I’ll get on the plane. I’ll go down there. If I get ‘em one-on-one, I got ‘em. I get anybody one-on-one, I’ll get you.”<sup>140</sup>

Allen was careful not to frame his conversations with councilmembers elsewhere in terms of passing the Dallas ordinance, but rather the Denton, Austin, or Mesquite ordinance. He elaborated: “If I am in San Antonio, I am not going to talk about how great what we did in Dallas was. No, I’m going to talk about what a great city San Antonio is: second largest city in Texas, proud history that has got the Alamo.”<sup>141</sup> Allen instead focused on the city council’s role serving the public, as this service related to the issues faced by that particular city. In Houston, Allen privately told the mayor, “You’re a public servant. You’re not a politician. Politicians know that these poor people don’t vote, but you’re a public servant and you’re after their best interests.”<sup>142</sup> In addressing a city council hearing at which industry also spoke, he said:

Fellow public servants...[t]hat’s what you are because you care about people. That’s why you’re sitting here. That’s why you’re here today. What’d he [an industry spokesperson] just say? He said, “[we lenders are] going to have to leave Dallas.” I said, “You know what? Y’all remember reading the Consumer Financial Protection Bureau fined his company \$10 million for lying and mistreating the people?”

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disingenuous because, industry doesn’t care what poor people are going to do.” Interview with Jim Mitchell, pg. 26, Dallas Texas, January 4, 2016.

137. See GRIFFITH ET AL., *supra* note 4 at 13; LOHRENTZ, *supra* note 8 at 27.

138. Mayer & Martin, *supra* note 9 at 74 (Baddour interview).

139. See *id.* (detailing Allen’s role).

140. *Id.* at 91 (Allen interview).

141. *Id.*

142. *Id.*

You're good, solid public servants. That's not the kind of company I want to see in Dallas. But let's take it a step further. He talked about other companies leaving. Well, yeah, we've had 'em leave. I had maybe 250 payday lenders; today, I've got maybe 125. Well, guess what? Those doors are still open to those 125, and our guess? They're still making money after three years.<sup>143</sup>

Jerry Allen's plainspoken messaging helped spread the regulatory ordinances throughout Texas. Although Allen was careful not to be Dallas-centric, he encouraged other cities to keep things simple by passing an ordinance similar to the one in Dallas. Doing so would help Dallas and other cities defend their ordinances against industry claims that differing ordinances made compliance onerous.

#### D. Fire In The Belly Of a Different Municipal Demographic: The Denton Story

The ordinance passage process in nearby Denton was equally inspiring. The organizing done in Denton, a much smaller town, demonstrates the power of two individuals fueled by the injustice they found in payday lending. Pat Smith, a retired U.S. Air Force officer, directs the non-profit Serve Denton. Serve Denton provides other nonprofits with shared infrastructure. In 2012, Kayce Strader had just earned a master's degree in non-profit organizations, and joined Serve Denton as its director of development.<sup>144</sup>

##### 1. Denton Discovers Payday Lending

Neither Smith nor Strader had really heard about payday lending until they each attended a conference called *No Need Among You*, organized by *Mission Waco, Mission World*, on October 19, 2012. The goal of the conference was to mobilize middle-class Americans to find "Christian-based, holistic, relationship-based" solutions to the problems of poor and marginalized people.<sup>145</sup> The conference particularly hit home for Strader.

At the conference, Strader attended a session called *The Politics of Poverty* by Suzii Paynter, which included the topic of payday lending.<sup>146</sup> As described in our Report, *The Power of Community Action: Anti-Payday Loan Ordinances in Three Metropolitan Areas*:

As Paynter described payday lending through statistics and anecdotes, Strader felt herself getting very angry. When people at the session started asking how these loans could be legal, Ms. Paynter said to the crowd, "That is your job. Go home and change it." Paynter advised people to talk to their city council members. As Strader exited the session, she ran into her colleague Pat Smith in the hallway. Smith immediately became concerned about Strader's physical well-being because she looked ill. Smith asked Strader if she was alright, and Strader answered that she was, but she informed Smith

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143. *Id.*

144. *Id.* at 93 (Strader's friend and mentor, Pat Smith, a church and community leader and elder, as well as the executive director of Serve Denton, brought her to our interview because, in her words, "she was the one that brought the issue [of payday lending] back to me and to Denton.").

145. MISSION WACO, <http://missionwaco.org/mission-waco/> [<https://perma.cc/W7AD-AHKD>] (last visited Oct. 20, 2016).

146. Mayer & Martin, *supra* note 9, at 93.

that they had a job to do when they got home. Strader had become aware of a serious injustice, and her Christian faith impelled her to act.<sup>147</sup>

For both Pat Smith and Kayce Strader, injustice was the impetus for their campaign for payday reform.<sup>148</sup>

## 2. Finding an Inside Champion in Denton

Not long after the conference, Smith and Strader met had lunch with Kevin Roden, a young member of the Denton City Council who was first elected in 2011.<sup>149</sup> Smith and Strader shared what they had learned about payday lending at the Christian conference with Roden. Smith had chosen to contact Roden rather than other councilpersons because Smith knew that Roden was supportive of grassroots efforts and making local government work for people. As Smith explained, “Roden is a big believer in local government. He’s said many times in different web posts that he believes local government is more impactful than any national election or national policy ever could be.”<sup>150</sup>

At lunch, Roden said that he had heard a bit about payday loans, but did not know the details about how they worked. Roden knew these loans were financial products used primarily by the poor and suspected the loans might be connected to neighborhood blight, but he was unaware of how much the loans affected his community.

After speaking with Smith and Strader, Roden agreed to try to help change the law in Denton. Roden also gave Smith and Strader advice on how to move forward with other council members. As explained by Strader, Roden gave them the breadcrumbs and said, “This is the path you need to follow.”<sup>151</sup> Although Roden gave general advice, he was also careful not to get too involved because doing so might compromise his ability to serve as the ordinance’s inside champion on the city council. Roden did, however, help Smith and Strader gain access to one city councilman and then another. According to Strader, Roden told them to be well prepared and very organized when they came to the city council meeting at which the ordinance would be discussed.

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147. *Id.* This was not the first time that Strader had aligned her faith-based beliefs and actions. During graduate school, she and several other people from her church moved into Section 8 subsidized housing to improve their ability to work with residents there. She explained:

We could go and do outreach, we could go and play kickball with the kids, but no one would ever trust us because we were in their eyes rich, wealthy people, coming in to do benevolence or charity. And so we moved in to really become their friends and to learn from them, to share back and forth with them, ultimately with the hope of sharing the Gospel with them. And so I lived there as a missionary for eleven months until I got married, and then my husband and I decided not to live there. It’s a hard place to live. But that really opened my eyes. I grew up on a farm, and so it really opened my eyes to the issues of poverty.

*Id.* at 131.

148. *Id.*

149. *Id.* at 94 (Strader and Smith interview).

150. *Id.*

151. *Id.*



### 3. Lobbying the City Council in Denton

The Denton City Council is composed of a mayor and six other council members. Smith and Strader knew that there was an informal rule against council members meeting informally in groups of three or more, so they met with the remaining city council members in groups of two and began cultivating relationships with them, if they did not already have them.

Strader and Smith also reached out to local non-profits and churches for support, resulting in the formation in early December 2012 of a coalition with the catchy name, Denton for Fair Lending.<sup>152</sup> In addition to Serve Denton, the coalition included: Hope, Inc., Village Church, Vision Ministries, and the United Way of Denton.<sup>153</sup> The United Way of Denton was initially quite cautious about supporting the local ordinance because it did not want to upset some of its donors.<sup>154</sup> Fortunately, Smith was very good friends with the president of the Denton United Way, Gary Henderson, and according to Smith:

A turning point for [Gary] was when we had a meeting with Councilman Allen from Dallas, and United Way of Dallas attended that meeting. The United Way had launched *Bank On* here in Denton and in Dallas, and that flipped the switch for Gary and he became a very strong supporter of the ordinance.<sup>155</sup>

Smith, Strayer, and the members of Denton for Fair Lending gathered research to bolster their case. With the help of Ann Baddour at Texas Appleseed, they extrapolated to Denton the results of a recent study by Tim Lohrentz of the Insight Center for Economic Development showing the negative net economic effect of payday lending on communities.<sup>156</sup> They reached out to nonprofits to gather personal stories that exemplified the problems with payday loans. They asked the nonprofits, “Are people coming to you for food because they’re spending their money on payday loans?”<sup>157</sup> Smith and Strader also got some nonprofits to add questions on their intake forms, “Are you paying on a payday loan? Are part of your financial struggles due to a title loan?”<sup>158</sup> In this way, Smith and Strader were able to obtain anecdotal stories from borrowers.

As had been the case in Dallas, non-profit social service organizations came to realize that the benevolent aid they were providing ultimately ended up in the hands of payday lenders. Longtime Denton resident Janet Shelton is on the board of Giving Hope, which began tracking whether clients had payday loans. She informed the staff of Giving Hope to watch for people with payday loans, and the staff concluded that over fifty percent of the dollars that they distributed to help the poor were being used to offset payday lending.<sup>159</sup>

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152. *Id.*

153. *Id.*

154. *Id.* at 94–95.

155. *Id.* at 95 (Smith).

156. LOHRENTZ, *supra* note 4.

157. Mayer & Martin, *supra* note 9 at 96 (Strader interview).

158. *Id.*

159. *Id.* at 95 (Smith interview).

One borrower story involved Dorothy, an 86-year-old widow. Dorothy's neighbor was concerned about Dorothy's health because she was living on crackers and brought Dorothy's plight to Strader and Smith's attention. Dorothy's husband had been a POW in World War II and had passed away. Dorothy had gone to get a \$75.00 payday loan to pay insurance on her car and the loan ended up costing her nearly \$10,000.00 in combined loan payments and overdraft fees. Dorothy was hospitalized for stress related to the loan. When Smith and Strader sat down with Dorothy and started unpacking what was going on, they realized this was "just pure hell for her."<sup>160</sup>

The members of Denton for Fair Lending had to move fast because they were scheduled to make an initial presentation at the December 18, 2012 city council meeting. Following Roden's admonition to be well prepared, the coalition found a graphic designer who donated his time to create flyers for the meeting.<sup>161</sup> The flyers employed the same graphic theme as the polished Prezi presentation that the members of Denton for Fair Lending gave in tag-team fashion at the meeting.<sup>162</sup> The presentation ended with a request for three actions: (1) add predatory lending to the city's lobbying agenda at the state legislature, (2) pass a zoning ordinance similar to that in Dallas, and (3) enact a regulatory ordinance similar to the one in Dallas that requires repayment of payday loan and auto title loans in no more than four installments.<sup>163</sup>

The audience for the hearing turned out to be larger than expected because the agenda item right after the payday loan ordinance was a proposed bill that would outlaw smoking in bars. The room was packed, and although many in the crowd did not know the details of payday lending, they cheered after the payday presentation and gave the people from Denton for Fair Lending a standing ovation. Some people in attendance said it was the best presentation they had ever heard.<sup>164</sup> Eventually all three requested ordinances passed.

## V

### SOME INTANGIBLE BENEFITS OF LOCAL ORDINANCE CAMPAIGNS

It is unclear whether these local ordinance movements, which are described more fully in our Report, *The Power of Community Action: Anti-Payday Loan*

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160. *Id.* at 96 (Strader interview); *see also* Britney Tabor & Megan Gray, *Groups Try to Reform Loan Practices*, DENTON RECORD-CHRONICLE (Mar. 18, 2013), <http://www.dentonrc.com/local-news/local-news-headlines/20130318-groups-try-to-reform-loan-practices.ece> [<https://perma.cc/9U4X-D5SS>].

161. *Denton Predatory Lending*, RODENFORDENTON.COM, [http://rodenfordenton.com/wp/wp-content/uploads/2012/12/Predatory\\_Lending\\_Handout1.pdf](http://rodenfordenton.com/wp/wp-content/uploads/2012/12/Predatory_Lending_Handout1.pdf) [<https://perma.cc/6SZ6-56H8>] (last visited Oct. 20, 2016).

162. Peggy Heinkel-Wolfe, *Group Informs Council of Issue*, DENTON RECORD-CHRONICLE, (Jan. 1, 2013), <http://www.dentonrc.com/local-news/local-news-headlines/20130101-group-informs-council-of-issue.ece> [<https://perma.cc/KY7Z-DXZ9>].

163. Joe Ader, *Predatory Lending*, PREZI (Dec. 19, 2012), [https://prezi.com/olv59pdraoi/predatory-lending/?auth\\_key=963d15c2de96c40551957de263bbaceafbbe5c6e](https://prezi.com/olv59pdraoi/predatory-lending/?auth_key=963d15c2de96c40551957de263bbaceafbbe5c6e) [<https://perma.cc/2ATL-MRDE>].

164. Mayer & Martin, *supra* note 9, at 95 (Smith interview).

*Ordinances in Three Metropolitan Areas*,<sup>165</sup> have actually affected payday loan practices or reduced the number of loans or lenders. However, mere participation in the movements has benefited participants and communities.

In all of the locations we studied, advocates learned to form strong coalitions through which they can engage in future lawmaking on other topics. The Anti-Poverty Coalition of Greater Dallas was able to cross boundaries of religion, race, and social class. Even more remarkably, the Coalition functioned without generous financial resources, creating a truly organic and grassroots movement.

Organizing also helped community groups and their members find their voices in policymaking. One of the most powerful human skills is the ability to “speak in [one’s] own voice with full authority.”<sup>166</sup> Working on a successful local ordinance campaign can help advocates, including payday loan customers who sometimes shared their stories publicly, to find voice, power, and purpose. Danielle Ayers, Minister of Justice of Friendship-West Baptist Church explained, after passing the ordinances, church members “were encouraged and felt empowered. They felt that they had succeeded at something that there was good news.”<sup>167</sup> Several years later, the congregation remained mobilized around other critical issues in society.<sup>168</sup> In one interesting story we heard in our interviews, a nursery located near Friendship-West Baptist Church closed and was replaced by a title lender.<sup>169</sup> Through the church’s advocacy, the lender was forced to leave after it opened for business. Thereafter, the restaurant chain Raising Cane’s moved in, creating a huge, visible victory for the community. Ayers commented:

When that title loan store closed, we announced it [in church]. People were excited . . . [and] happy [even if they didn’t march] . . . [a]nd the ones who did [were also able to] sharpen their advocacy skills and . . . see that, in the end, we can win. But it takes [all of] us doing our part.<sup>170</sup>

Some campaigns also taught payday loan borrowers how to become advocates, by helping them tell their stories publicly and help others avoid loss.

Helping individuals find their voice was not limited to members of non-profits, religious congregants, or payday loan borrowers. Stephanie Mace explained how the United Way took wealthy United Way donors and educated them about how payday loans worked, how little protection the law provided, and then encouraged them to go to state or local politicians and talk to them about changing the law to help serve people, not payday lenders. The United Way, with the help of Ann Baddour of Texas Appleseed, trained some of these donors to pose as borrowers and go into stores and do secret shopper experiments. The donors asked for a loan of say \$500, and asked questions to see not only what it felt like to borrow in this way, but also what terms were offered

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165. *Id.*

166. GEORGE KINDER, SEVEN STAGES OF MONEY MATURITY 171 (2001).

167. Mayer & Martin, *supra* note 9, at 18 (Ayers interview).

168. Other issues include homelessness, healthy food choices, and mass incarceration. See Ayers interview at 12.

169. *Id.*

170. Mayer & Martin, *supra* note 9, at 107 (Ayers interview).

and how much information one could glean before taking out the loan.<sup>171</sup> Thus, the United Way helped major donors learn how their voice and their money can facilitate change in the world. Mace explained:

At United Way, our mission is to change lives forever. And we encourage people to do that by giving, by volunteering, and by advocating. So, this is kind of that third pillar, by advocating. And one of the things that I think is very unique to United Way is that it's not just United Way staff or the organization that advocates. We actually train our major donors to go out and to visit—to go to Austin, we've gone to DC—to visit with elected officials. To educate them on these issues, how they impact the community, see where their money is going—it's their money.<sup>172</sup>

In Texas, religious organizations played an important, and often crucial, role. Although religious convictions often motivated individuals to participate in payday campaigns, these convictions were deepened and reinforced through organizational participation. This is what Josephine Lopez and Walker Moore of the Industrial Areas Foundation called faith development. Lopez explained:

This work [as a community organizer] is the development of people and helping them understand their own power in their community. I've organized in El Paso, and we passed millions of dollars of water infrastructure laws there, people in the Colonias....

It's the same basic principles with payday lending—just listening to people and teaching them then how to act on what it is that they care about.... It's really about the formation of people and the development of people.... The people in the congregation who had never been a part of anything like this before can suddenly say, "I can do something. And I'm a pretty effective speaker in front of the city council. I can make something happen. And this is a way for me to live out my faith."<sup>173</sup>

Danielle Ayers called the same process faith formation and described connecting what is heard in church on a Sunday morning and:

how we govern ourselves between Sundays. What does God have to say about our existential situation? What is going on? He cares. God cares about children who were impoverished and don't have food to eat. So, we try to connect those dots, and Dr. Haynes [Senior Pastor of Friendship-West Baptist Church] does an excellent job at opening up the text and giving it some original context.<sup>174</sup>

Finally, while developing their faiths and their voices, people learned about the political process and its pitfalls, and learned to hold politicians accountable. For example, at St. Joseph's, a 5,000-member church in Arlington, Father Dan Kelly of Arlington, Texas became involved in the Arlington campaign and became a role model for constituents. One week before the Arlington City Council was scheduled to consider the payday ordinance, Kelly and other ordinance supports were invited to address the Arlington Chamber of Commerce. As Walker Moore recalls the event, Kelly entered the room and saw that one of his congregants was chairing the meeting. He was a "pro-business, anti-regulation guy."<sup>175</sup> But the chairperson was now conflicted because "he's heard about all the anti-payday activity that has been going on at St. Joseph's,

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171. *Id.* (Mace interview).

172. *Id.* at 108 (Mace interview).

173. *Id.* at 108–09 (Lopez interview).

174. *Id.* at 109 (Ayers interview).

175. *Id.* at 109 (Moore interview).

and he knows what faith says.” Perhaps as a result of Father Dan’s presence, the Chamber of Commerce took no position on the proposed ordinance rather than oppose it.<sup>176</sup>

Walker Moore and Josephine Lopez-Paul helped organize people to go and testify at a crucial Arlington City Council meeting in 2015. Father Kelly was one of ten people who spoke in favor of the ordinance.<sup>177</sup> Moore noted that after Kelly spoke, members of the city council repeatedly quoted him when speaking in favor of the ordinance.<sup>178</sup> In the Dallas area, advocates were able to force politicians to publicly face possible conflicts between their faith and their politics, and to be more accountable to their constituents.

Beyond any impact on payday lending itself, the campaigners changed others and themselves. In the process of opposing payday lending, campaigning organizations discovered that policy advocacy was consistent with other missions, like providing services to low-income people. These organizations also came to realize the power of coalitions and developed trust in other organizations. Finally, individuals found their voices as active members of their communities and experienced the sense of empowerment that comes along with it.

## VI

### CONCLUSION

Economic self-determination is one of the last frontiers of human rights. Perhaps it is not surprising then that citizens who are unable to achieve economic legal reform on a state or federal level are turning in record numbers to the local lawmaking process, creating a Local Law Movement. In the arena of payday lending reform in particular, unlikely allies are joining forces to fight at the local level, giving rise to the New Fair Lending Movement. Although the campaigns described here relate to payday loan reform, the lessons they teach can be applied to any local ordinance campaign.

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176. *Id.*

177. *Arlington City Council Minutes*, CITY OF ARLINGTON, TEX. (Nov. 10, 2015), [http://arlingtontx.granicus.com/MinutesViewer.php?view\\_id=9&clip\\_id=1918](http://arlingtontx.granicus.com/MinutesViewer.php?view_id=9&clip_id=1918) [<https://perma.cc/E7MS-D86J>].

178. Mayer & Martin, *supra* note 9, at 109 (Moore interview).