“Let Us Work, Man”: Asserting Rights to Employment for Individuals with Conviction Histories in Austin, Texas

Elissa Underwood Marek

Follow this and additional works at: https://ir.lawnet.fordham.edu/ulj

Recommended Citation
Available at: https://ir.lawnet.fordham.edu/ulj/vol51/iss4/3

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Urban Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.
“LET US WORK, MAN”: ASSERTING RIGHTS TO EMPLOYMENT FOR INDIVIDUALS WITH CONVICTION HISTORIES IN AUSTIN, TEXAS

Elissa Underwood Marek*

INTRODUCTION

Conviction histories and criminal records often create barriers to economic security by preventing access to stable employment.¹ Although scholars and policymakers have advocated for federal Ban the Box legislation to protect individuals with criminal histories, that call has not been completely answered.² While the federal Fair Chance to Compete for Jobs Act prevents federal agencies and contractors from inquiring into criminal histories prior to making conditional offers of employment (with

---


---

* Assistant Professor of Business Law, Department of Finance and Economics, Texas State University. Special thanks to my friends from the Second Chance Democrats. You inspire me every day.
and many states have enacted laws to reduce obstacles to public sector employment for people with criminal records, this movement is not yet widespread in the private sector. Moreover, disparities persist such that disproportionate numbers of low-income people of color suffer imprisonment and continue to suffer disparately post-incarceration. Although municipal governments have long imposed harsh ordinances that impede occupational licensing for individuals with criminal histories, local governments have also emerged as leaders in this arena, particularly by passing fair chance hiring ordinances. Such ordinances have the potential to provide positive economic outcomes — employers benefit from a more diverse pool of talent; formerly incarcerated job applicants are eligible for new opportunities, can avoid further involvement in the criminal legal system, and can help solve the extreme labor shortage; and the economy thrives as more people, including those with criminal records, can engage with and invest in local businesses.

In 2016, Austin became the first city in the southern United States to pass a fair chance hiring ordinance for both public and private employers. The legislation prohibits employers with 15 or more employees from considering criminal background checks prior to making conditional offers of employment. Representing the culmination of several months of work by

9. See id.
formerly incarcerated people, local activists, businesses, and City Council members, this success in Texas was particularly meaningful considering the area’s long history rooted in slavery, discrimination, and mass/hyper incarceration of people of color. During the legislative session following the ordinance’s passage, Republican Representative Paul Workman filed House Bill 577, which would have invalidated local laws, including the Austin ordinance, that regulate private employers’ ability to “request, consider, or take employment action” based on applicants’ criminal record information. Organizers, including those who had advocated for fair chance hiring locally in Austin, continued their fight at the state level; they lobbied state legislators to help them understand the significance of the ordinance and also held a press conference at the Texas Capitol with signs that said “Let Us Work, Man.”

Three years later, another bill was proposed that would have barred municipalities from regulating employers’ decisions regarding job applicants’ criminal records. While neither of those bills passed, a similar “Death Star Bill” that was proposed during the 2023 legislative session did pass and would have gone into effect on September 1 but for a lawsuit filed by the City of Houston. In that case, Travis County District Judge Maya Guerra Gamble ruled that the proposed law, which would severely curtail cities’ ability to enact rules that would benefit local communities, was unconstitutional. The Texas Attorney General appealed the district court’s decision, immediately staying the district court’s order pending resolution of the appeal. Although the law in Texas is currently effective and likely to remain so, the local government’s lawsuit reiterates the importance of

amplifying marginalized voices and can serve as a model for other cities trying to assert rights for their constituents.

This Article foregrounds the role of local government as an innovator in terms of fair chance hiring policies, employing Austin, Texas as a case study. Part I focuses on the grassroots development of the Ban the Box movement and fair chance hiring ordinances in various cities, led by formerly incarcerated persons with the support of local government. Part II looks specifically at the collaborative process that took place in Austin and that privileged the voices of individuals directly affected by the criminal legal system. Part III highlights preemption attempts in southern states, as well as responses to them, which represent a type of radical resilience and a move toward effecting change in the criminal legal and labor contexts in conservative regions. Finally, Part IV underscores the significance and role of local governments in amplifying the voices of directly impacted individuals and communities to achieve equitable and sustainable economic advancement. This Article concludes by addressing limitations, raising new questions, and making suggestions for next steps.

I. THE (GRASS)ROOTS OF THE BAN THE BOX AND FAIR CHANCE HIRING MOVEMENT

Individuals with criminal convictions and formerly incarcerated people experience discrimination when they return home and apply for jobs, perpetuating cycles of incarceration. According to the National Employment Law Project, about 70 million people have arrest or conviction records that prevent them from getting jobs despite having relevant knowledge and skills. Moreover, as sociologist Devah Pager has shown, criminal records present a significant impediment to obtaining work, and that difficulty is exacerbated by race. Once a potential employer learns of an applicant’s criminal history, the chances of that job seeker receiving a callback decreases by 50%. The effect is even worse for Black men, where only one in three receives a callback. Although Pager’s research showed

19. See Devah Pager, The Mark of a Criminal Record, 108 AM. J. OF SOC. 937, 957 (2003) (concluding that race played a significant role in incarceration and in hiring decisions post-incarceration based on an experiment that matched pairs of Black and non-Black people who applied for actual jobs to test the extent to which a criminal record affects later employment).
20. See id. at 955.
21. See id.
that employers were hesitant to hire Black people even without criminal records, they became more reluctant to make job offers when they were aware of a known criminal history. Subsequent research also illustrates the correlation between criminal records and obstacles in the hiring process.

All Of Us Or None, a grassroots organization that advocates for the human and civil rights of currently and formerly incarcerated people and their families, also learned of these struggles after hosting Peace and Justice Community Summits in 2004 and 2005, during which people with conviction histories shared similar experiences of employment discrimination they faced while attempting to rejoin their communities.

The organization sought to increase employment opportunities and economic stability for people suffering the direct and disproportionate effects of the criminal legal system. Thereafter, it initiated efforts to Ban the Box, seeking to preclude employers from asking whether someone has a criminal conviction as part of an employment application.

Through its work, All Of Us Or None learned that in 1998, Hawaii enacted the first law in the United States prohibiting public and private employers from asking about criminal histories prior to making conditional job offers. The movement has continued to advance, in large part due to the work of All Of Us Or None, which has devoted almost 20 years to this cause — first by focusing on banning the box in public employment and setting an example for private employers, then by foregrounding the importance of banning the box in housing applications, later by successfully encouraging the United States Equal Employment Opportunity Commission (EEOC) to improve

---

22. See id. at 958–59.
their guidelines, and currently by advocating for nonprofit employers to become part of the campaign and create opportunities for vulnerable populations.27

All Of Us Or None’s endeavors established the grassroots foundation on which other states, cities, and counties could build Ban the Box movements and craft fair chance hiring policies.28 The organization has led the way in California, and central to its approach is the involvement and leadership of people directly affected by the criminal legal system, particularly formerly incarcerated people.29 The group, comprised of people with little or no experience with governmental policy, began its campaign in San Francisco and learned valuable lessons during that process.30 Those lessons included collaboration with the city’s Human Rights Commission, preparation of a resolution and acceptance of some — but not all — modifications from city staff, participation in outreach efforts that involved collecting signatures in various neighborhoods, execution of a media campaign highlighting testimonies on the radio and in newspapers, communication with and receipt of input from Boston’s human resources department that had just implemented that city’s policy, and education on the human resources process to learn hiring processes, analyze policies, and assist in writing guidelines.31 The thorough and thoughtful approach became the basis for All of Us Or None’s later campaigns throughout the region.32

Key to the organization’s success was the cooperation and support of local government entities and their staff. As the group moved forward in Oakland, East Palo Alto, and Berkeley, members worked in partnership with other nonprofit organizations like Critical Resistance; planned outreach efforts at drug treatment centers, community barbecues, and other community events; and met with city and county human resources personnel, which was extremely successful.33 In Alameda County, for example, the director of human resources herself wrote the resolution planning a pilot fair chance hiring program.34 Similarly, in East Palo Alto, Ban the Box came to life

27. See Evans, supra note 24; see also About: The Ban the Box Campaign, BAN THE BOX CAMPAIGN, https://bantheboxcampaign.org/about/ [https://perma.cc/6KB2-X3S5] (last visited Feb. 29, 2024).
29. See Evans, supra note 24, at 10.
30. See Evans, supra note 24, at 11–12.
31. See Evans, supra note 24, at 33, 43.
32. See Evans, supra note 24, at 11–12.
33. See Evans, supra note 24, at 37–38.
34. See Evans, supra note 24, at 37.
administratively when the city manager issued an order eliminating the question from applications and delaying background checks until the final step in the process. In Berkeley, where the Human Resources director and most of the city government were extremely progressive, All Of Us Or None’s several meetings with them led to removal of the question and delay of background checks until employers made conditional offers. Finally, in Oakland, the Mayor’s staff organized a meeting between All Of Us Or None and the city’s department of human resources, which adopted all of the organization’s suggestions.

Other cities’ movements have likewise been led by formerly incarcerated people and bolstered by municipalities. For example, in New Orleans, Louisiana — a state with one of the highest per capita prison populations — advocates from Voice of the Experienced (VOTE) (formerly known as Voice of the Ex-Offender) could not garner any support among state legislators but found allies in local government. The mayor wanted to implement a program where formerly incarcerated people could assist with handling street violence, but he could not employ anyone because of the prohibition on hiring people with criminal convictions; to work around the issue, he put forth an administrative order that delayed the criminal history question until after an interview. VOTE members then enlisted people with conviction histories to deliver moving personal testimonies in front of City Council, which solidified support and led New Orleans to Ban the Box for public city employment in 2014. VOTE has continued to advocate for fair chance hiring and has garnered support from local government officials. In 2018, VOTE’s work led to the enactment of a new ordinance prohibiting the City and City contractors from questioning potential employees about criminal convictions on employment applications. Similarly, in Boston, a group of

36. See Evans, supra note 24, at 37–38.
37. See Evans, supra note 24, at 38.
38. See Evans, supra note 24, at 46.
39. See Evans, supra note 24, at 46.
41. See New Orleans, La., Code of Ordinances, §§ 2-8, 2-13 (2019); What We Do, supra note 40; Kristin Gisleson Palmer, Council Passes “Ban the Box” Ordinance by Councilmember Kristin Gisleson Palmer, New Orleans City Council (Oct. 18, 2018),
Black activists, the Union of Minority Neighborhoods, founded MARC (the Massachusetts Alliance to Reform CORI, the state’s Criminal Offender Record Information) to pursue fair chance hiring.\textsuperscript{42} MARC worked with a progressive City Council member who, in 2001, had protested regulations that banned people with criminal convictions from working in health and human services and had been arrested for civil disobedience.\textsuperscript{43} In 2004, the city enacted an ordinance covering public employers, and in 2006, extended the ordinance’s purview to cover private employers with city contracts.\textsuperscript{44}

These campaigns are not without hardship. In fact, sometimes individual officials can disrupt seemingly successful campaigns. A group of formerly incarcerated women from various organizations and their allies led the campaign in Fulton County, Georgia, and received training to speak at public hearings and meet with county commissioners; the campaign worked closely with certain Commissioners, as well as with the Fulton County Human Resources department, to draft an equitable policy.\textsuperscript{45} Later, though, a commissioner who was not previously involved came up with a weaker version of the ordinance that passed.\textsuperscript{46} Similarly, in Durham, North Carolina, the Durham Second Chance Alliance, comprised of formerly incarcerated people, religious groups, community leaders, and other allies, learned while negotiating with governmental officials that a city ordinance was unlikely to gain the support of City Council.\textsuperscript{47} The group adapted its strategy and instead worked with city administrators to make policy changes at the administrative level, ultimately leading Durham to become the first city in North Carolina to Ban the Box for public employment.\textsuperscript{48} Organizers also faced pushback in Charlotte, North Carolina.\textsuperscript{49} Despite the collaboration and support of All Of Us Or None/Charlotte, the Charlotte Center for Community Transitions, Homeless Helping Homeless, Action North Carolina, as well as students in the Civil Rights Clinic at the Charlotte School of Law and allied individuals and businesses, the Charlotte City Council did not pass the Ban the Box ordinance and sent it to the economic

\begin{itemize}
\item \textsuperscript{42} See Evans, \textit{supra} note 24, at 48.
\item \textsuperscript{43} See Evans, \textit{supra} note 24, at 48.
\item \textsuperscript{44} See Evans, \textit{supra} note 24, at 48.
\item \textsuperscript{45} See Evans, \textit{supra} note 24, at 48.
\item \textsuperscript{46} See Evans, \textit{supra} note 24, at 48.
\item \textsuperscript{48} See id.
\item \textsuperscript{49} See Evans, \textit{supra} note 24, at 53.
\end{itemize}
Activists continued to push forward, but when allies in city government shared that the proposal was too broad, they adjusted their approach. After learning that the City Manager controlled the hiring process, organizers met with the City Manager and the Director of Human Resources to articulate the benefits of similar policies in nearby areas and hefty burdens they faced due to the criminal history question on job applications. Advocates were persuasive, and the City Manager directed the City to pass the ordinance. Likewise, in Austin, although the ordinance ultimately passed, the process was not seamless. The group advocating on behalf of the ordinance met with city councilmembers to discuss the ordinance and made compromises to address concerns, but even so, two councilmembers actively opposed the ordinance and worked against its passage. While it is clear that the processes often have flaws, with some flexibility and adaptation, individuals, businesses, and local governments can work together to make Ban the Box and fair chance hiring campaigns successful.

The District of Columbia, 37 states, and about 150 cities and counties in the United States have now enacted fair chance policies for public employment. A much smaller number of jurisdictions — about 15 states...
and 22 cities and counties — have prohibited private employers from asking questions about conviction histories.\textsuperscript{56} While the term “Ban the Box” refers to eliminating the question asking about criminal history or delaying the question until the employer has made a conditional job offer, most legislation is more comprehensive and many jurisdictions include best practices from 2012 EEOC guidance on how to evaluate an applicant’s prior convictions.\textsuperscript{57} These statutes often include additional requirements for employers to evaluate the nature of the offense in the context of the job, the amount of time between conviction and application, and any rehabilitation or mitigation efforts.\textsuperscript{58}

Cities that adopted fair chance legislation prior to their respective states, as well as those that provide more protections than their corresponding states, illustrate the innovation taking place in this arena at the local level. In Pennsylvania, for example, the governor issued a fair chance policy in 2017 that applies to non-civil service positions that fall under his authority that prohibits questions about criminal convictions on job applications as well as evaluation of certain record information.\textsuperscript{59} But under state law, public and private employers may still use felony and misdemeanor convictions to the extent they relate to an applicant’s suitability for a particular job.\textsuperscript{60} Not only has Philadelphia legislated a more progressive policy, but, in 2011, it was also the first city in the country to pass a fair chance hiring policy that covers both public and private employment.\textsuperscript{61} California established its current state law, the California Fair Chance Act, in 2017.\textsuperscript{62} Covering both public and private employment, this robust law amended the state’s existing historic antidiscrimination statute — the California Fair Employment and Housing Act — to prohibit conviction history questions on job applications, delay

\begin{itemize}
  \item \textsuperscript{56} See Avery & Lu, supra note 4, at 3.
  \item \textsuperscript{58} See Avery & Lu, supra note 4, at 3.
  \item \textsuperscript{59} See Pa. Off. of Admin., Fair-Chance Hiring Policy, No. HR-TM001, https://www.oa.pa.gov/Policies/hr/Documents/TM001.pdf [https://perma.cc/MEL8-PTCN] (last visited Feb. 27, 2024) (prohibiting the consideration of arrests that did not result in convictions; annulled, expunged, or pardoned convictions; convictions unrelated to an applicant’s suitability for a job; and consideration of public interest in ensuring employment after incarceration).
  \item \textsuperscript{60} See 18 Pa. Cons. Stat. § 9125 (1982).
  \item \textsuperscript{61} See Phila., Pa., Code § 9-3503 (2011).
\end{itemize}
consideration of criminal records until the employer makes a conditional offer of employment, and illegalize the consideration or dissemination of information about specified prior “arrests, diversions, and convictions.” Its passage followed a comprehensive campaign by All Of Us Or None in California cities that led to San Francisco banning the box for city and county employment applications. The city of San Francisco also created a strong fair chance ordinance for private employers in 2014; not only does it prevent inquiry into convictions until after an employer makes a conditional offer, but it also includes several additional protections like a prohibition on considering arrests that did not lead to convictions, convictions that have been invalidated, convictions that are more than seven years old (with a few exceptions), and convictions for any decriminalized conduct. The ordinance also requires the employer to provide individuals with an opportunity to present mitigating evidence prior to the employer taking any adverse action. In 2015, New York also adopted a fair chance policy that applies to state employment, and Westchester County, Suffolk County, Buffalo, Rochester, and New York City have further enacted ordinances that extend to private employers. New York City’s policy is extremely robust and incorporates amendments that strengthen the law by preventing consideration of offenses that did not result in a conviction but still appear on background checks. Missouri’s governor signed an executive order in 2016 directing public employers to delay questions about criminal convictions until later in the employment process to “ensure that state government continues to be a model for increasing economic opportunity, improving public safety, and strengthening communities. This is about fairness. Giving folks a fair chance to redeem their lives, support their families, and make a contribution to their communities is a value we

63. Id.
66. See id.
72. See supra note 71 and accompanying text.
share as Missourians and as Americans.” While the state may have created the foundation and provided the impetus to create antidiscrimination legislation, local governments in Columbia, Kansas City, and St. Louis extended their reach by implementing policies that cover private employers and add protections. These types of local campaigns and actions demonstrate the important role local governments play in working toward equity in employment.

In the same way, ordinances in local jurisdictions that do not have comprehensive state fair chance statutes highlight the role of local governments as innovators in labor and employment law as well as in social justice. For example, Iowa has no statewide Ban the Box or fair chance hiring legislation, but the cities of Waterloo and Des Moines have enacted fair chance laws that prevent private employers from inquiring into criminal history until after they make a conditional offer of employment. The Waterloo ordinance survived a specific preemption challenge when the Iowa Supreme Court held in 2021 that the ordinance was not preempted insofar as it only regulates timing (i.e., when an employer may ask a question about criminal convictions); the court did strike down aspects of the ordinance that attempted to regulate whether an employer could inquire into criminal history at all. The partial victory is particularly meaningful in Waterloo, which has the highest population of Black people in Iowa and has also suffered “from some of the starkest racial disparities in the state and in the nation.” Although fair chance policies do not regulate what employers can evaluate, they can “help prevent unfair bias from coming into play so early in the process that people with criminal records are not even considered on their merits.” And a policy aimed at improving employment equity in an area with such blatant hyper-incarceration of Black people has the potential to spur further antidiscrimination legislation in the region and the country. Likewise, Texas does not have a state fair chance hiring statute, but Dallas


75. See DES MOINES, IOWA, CODE OF ORDINANCES § 62-71.1 (2021); WATERLOO, IOWA, CODE OF ORDINANCES § 5-3-15 (amended 2020).

76. See Iowa Ass’n of Bus. & Indus. v. City of Waterloo, 961 N.W. 2d 465, 468 (Iowa 2021).


78. Id.
County, Travis County, Harris County, and San Antonio enacted fair chance laws for public employers.\textsuperscript{79} Even more, two cities in Texas — Austin and DeSoto — crafted fair chance hiring ordinances that extended to private employers.\textsuperscript{80} Advocates have also been working toward implementation of another ordinance in Denton, Texas.\textsuperscript{81} While that vote has been delayed until January 2024, the president of DeSoto’s chamber of commerce presented to the Denton City Council regarding the effects of the bill’s passage in DeSoto.\textsuperscript{82} Although the Attorney General’s recent appeal of Judge Gamble’s ruling that the Texas preemption law is unconstitutional has stayed the enforcement of local fair chance hiring policies,\textsuperscript{83} the cooperation between cities to effect change at the local level is noteworthy. Indeed, it leaves open the possibility that local progressive endeavors in employment law and antidiscrimination law may lead to change at the state level in the future.

All Of Us Or None initiated and has greatly expanded employment rights for formerly incarcerated people, but the intangible benefits that the organization has brought to vulnerable populations are equally as valuable. Indeed, as its cofounder and executive director, Dorsey Nunn, has explained, All Of Us Or None has “harnessed the power of the community of millions of formerly incarcerated people to organize for ourselves, to speak in our own voices, and make demands on the system.”\textsuperscript{84} This notion of privileging

\begin{footnotes}
\footnotetext{80}{See \textit{Austin, Tex., Code of Ordinances} § 4-15-2(F) (2016); \textit{DeSoto, Tex., Code of Ordinances} § 4.2100 (2021).}
\footnotetext{84}{Dorsey Nunn, \textit{Ban the Box Keeps Families and Communities Together}, \textit{N.Y. Times} (Apr. 13, 2016), https://www.nytimes.com/roomfordebate/2016/04/13/should-a-jail-record-}
the voices of individuals who have suffered the direct impacts of policing, surveillance, and imprisonment is central to the fair chance successes achieved in Austin, Texas, which I discuss in Part II.

II. COLLABORATIVE POLICYMAKING & COMMUNITY ENGAGEMENT IN AUSTIN, TEXAS

In 2015, two activists in Austin — one with a family member in prison and the other an advocate working on behalf of individuals with convictions — brought together formerly incarcerated people and allies to form a democratic club and build a fair chance hiring campaign in the city. The group referred to itself as the Second Chance Democrats (SCD), and its goals included serving as a voice for people with conviction histories and advocating for local policy change, working to remove the stigma associated with incarceration, assisting communities suffering direct impacts, educating others to organize, endorsing particular candidates who support criminal legal policy change, and being a public voice for disenfranchised communities in the Democratic Party in Austin and Travis County. For about eight months, the group met often to strategize, plan outreach events, meet with City Council members, educate the community, and draft resolutions and ordinances. Members thought through the essential elements of a fair chance hiring ordinance and determined where and how they might compromise to garner enough support to effect real change in the capital city of an extremely conservative state with a considerable prison population. This process and the policy that materialized from it reflected the values and aspirations of individuals suffering the most direct and disproportionate impacts, the necessity of local government endorsement, and the significance of compromise.

SCD required that its leadership be comprised of formerly incarcerated people, an organizational move that completely reframed the dialogue around incarceration. The significance of that charge cannot be overstated; indeed, it flipped the script such that an entire population typically immediately and continually eliminated from consideration in the hiring be-an-employers-first-impression/ban-the-box-keeps-families-and-communities-together [https://perma.cc/JND9-CLM9].


87. See id.
process would be influencing the direction of the organization and potentially creating local policy change in Austin. As Jacqueline Conn, president of the group, explained, “[o]n the surface, this is not an ordinance that’s a big deal . . . . Below the surface, this is something that dramatically shifts the narrative.” In that regard, the organization not only privileged the voices of those with direct experience with incarceration, but also shared knowledge about policymaking and advocacy and served as a springboard to additional opportunities. One group member indicated that prior to their involvement with SCD, they felt voiceless, “both in the experience of disenfranchisement and having the desire to be involved in policy work but not knowing how to start.” The group provided them with a platform to become politically active. Similarly, another member, Lewis Conway, shared the ways SCD motivated him to engage further in city politics — he said, the group “voted me in as political director. We were able to pass that ordinance. Soon people were asking me to run for city council in Austin.”

It seems that his involvement with SCD, and specifically his role as political director and his experience honing advocacy skills, contributed to his decision to become a candidate for Austin City Council. Conn’s leadership as SCD President, along with the participation and engagement of other individuals who have long suffered the consequences of imprisonment, not only provided employment opportunities but greatly contributed to reframing the discourse around incarceration and restoring humanity to a perpetually oppressed population.

Advocates believed that certain parts of the ordinance were non-negotiable and fought to ensure their inclusion. For example, although the SCD agreed with the city’s decision to not assess criminal penalties for violations of the ordinance, they also wanted to guarantee that the law would...

88. See SECOND CHANCE DEMOCRATS OF AUSTIN, supra note 85; Woog, Second Chance Democrats, supra note 85.
90. See Bannon, supra note 86, at 93.
91. Bannon, supra note 86, at 69.
have teeth.95 Thus, the final ordinance provided that after a first offense, an employer would receive a warning with no fine from the city if they also agreed to participate in a training session regarding compliance.96 But after a second offense, an employer would receive a fine.97 Although the city initially proposed a $100 fine, supporters of the ordinance pushed for the fine to increase to $500, equal to some other civil ordinances.98 Finally, and most importantly, those who worked tirelessly on this ordinance required a prohibition on considerations of convictions until after employers made conditional offers; though Councilmember Ellen Troxclair attempted to remove that language, Councilmember Greg Casar would not give in, as the entire purpose of the legislation rested on providing formerly incarcerated individuals with a fair opportunity to work.99 The inclusion of such enforcement mechanisms suggests that the city took seriously the work of SCD and believed that employers should do the same.100

The success of SCD also hinged on the support of local government officials. Austin’s mayor at the time, Steve Adler, and particular City Councilmembers, most notably Councilmember Casar, ushered the regulation through passage.101 Although their ultimate objectives were similar, their reasoning was not always the same. Mayor Adler connected fair chance hiring to the ongoing “affordability crisis,” suggesting that additional employment opportunities would help Austinites obtain jobs and earn more money to afford the increasing cost of living in the city.102 Councilmember Casar linked the policy both to economic development and civil rights, stating, “I believe it’s a landmark civil rights policy and legislation here in the heart of Texas,” emphasizing that Austin was “ready to be the first fair chance hiring city in the South,” and urging residents to

97. See id.
99. See id. at 10:00:58.
101. See Austin City Council Regular Meeting Transcript, supra note 98, at 10:03:07.
102. See McBride, supra note 89.
expand their understanding of economic development.\textsuperscript{103} As former Austin Chronicle writer Amy Kamp, who covered the entire fair chance campaign, explained, while the city’s typical approach was “top-down” and included enticements like financial incentives, fair chance represented a grassroots model from the bottom up.\textsuperscript{104}

Support for the ordinance was not immediate, as business representatives worried about the additional burdens they would face with its passage. For example, many businesspeople inquired about the city’s proposal to establish standards to assess criminal convictions; since the EEOC already sets out such procedures, new standards would require additional education. To save resources and avoid new work for small businesses, Councilmember Casar agreed to match the city’s standards with those already in place at the EEOC.\textsuperscript{105} Staffing agencies also voiced concern over their ability to run background checks, and Councilmember Casar ensured the addition of an amendment to the original ordinance that clarified the ability of such an agency to assess a particular candidate’s convictions prior to placing them in a position.\textsuperscript{106} Similarly, certain ordinances on which supporters relied (like Seattle’s) apply to employers with any number of employees, even just one.\textsuperscript{107} But requiring smaller business organizations to follow fair chance hiring procedures would also impose an additional record-keeping burden.\textsuperscript{108} Advocates modified Austin’s ordinance so that it applied to businesses with 15 or more employees because employers of that size are already subject to record retention rules and would not need to spend more time and resources.\textsuperscript{109} In addition, certain regions prohibit the consideration of criminal records outright, particularly in cases of juvenile convictions or convictions older than seven years, but advocates in Austin made clear that they were not pushing to eliminate background checks altogether.\textsuperscript{110} Instead, they were merely delaying the process to allow for consideration of an applicant’s merits rather than overemphasizing past convictions.\textsuperscript{111} Finally, certain cities also impose criminal penalties for non-compliance, but supporters in Austin explained that the ordinance here was written to

\begin{flushright}
\textsuperscript{103} See McBride, \emph{supra} note 89.
\textsuperscript{104} See Kamp, \emph{supra} note 100.
\textsuperscript{105} \textit{See Austin City Council Regular Meeting Transcript, supra} note 98, at 8:02:11.
\textsuperscript{106} \textit{See Austin City Council Regular Meeting Transcript, supra} note 98, at 8:44:03, 8:46:07.
\textsuperscript{107} \textit{See Austin City Council Regular Meeting Transcript, supra} note 98, at 8:06:19.
\textsuperscript{108} \textit{See Austin City Council Regular Meeting Transcript, supra} note 98, at 8:08:22.
\textsuperscript{109} \textit{See Austin City Council Regular Meeting Transcript, supra} note 98, at 8:06:19, 8:08:22.
\textsuperscript{110} \textit{See Austin City Council Regular Meeting Transcript, supra} note 98, at 8:08:22.
\textsuperscript{111} \textit{See Austin City Council Regular Meeting Transcript, supra} note 98, at 8:08:22; Woog, \emph{Second Chance Democrats, supra} note 85.
\end{flushright}
increase employment rather than to punish and take away work opportunities.112 As Councilmember Casar reiterated, “[Austin’s ordinance] is not about finding or punishing any individual business, but about setting a norm and a standard. Fighting against stigma in our community and having a real conversation about the rights of those people in our community who are growing in number that happened to have a criminal record.”113 Through this transparent and collaborative process, advocates were able to alleviate concerns regarding record retention, off-limits provisions, and criminal penalties for non-compliance.

Despite revision and cooperation, some opposition to the ordinance persisted. Certain organizations expressed their apprehension during the City Council meeting at which the Council presented the proposed ordinance.114 For example, the Texas Credit Union Association indicated its disapproval of the ordinance due to a lack of clarity around particular risks for financial institutions, namely the federal prohibition on hiring individuals with certain convictions and the potential time and costs associated with defending claims based on the language of the ordinance.115 The Credit Union Association pushed for an exemption for financial institutions, but Councilmember Casar explained that a blanket prohibition for an entire institution would be too broad as it would prevent people not prohibited under federal law and not working with sensitive financial information (like landscaping companies or cleaning companies) from getting hired at such an entity.116 To prevent such a broad overcorrection that would eliminate rather than increase employment opportunities, the language of the ordinance exempted particular jobs rather than entire institutions.117 Likewise, the Austin Chamber of Commerce’s position was that despite the positive benefits of fair chance hiring, the Chamber would not support an ordinance that prohibited employers from questioning conviction histories until after a conditional offer; instead, the Chamber pushed for the prohibition to last only until after the first interview, much earlier in the process.118 Similarly, the Texas Association of Staffing did not support the ordinance, arguing that its unique model that involves creating a pool of applicants or jobs to be

112. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:08:22, 8:10:28.
113. Austin City Council Regular Meeting Transcript, supra note 98, at 8:10:28.
114. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:14:41, 8:20:58, 8:27:25, 8:44:03.
115. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:12:32, 8:14:41.
116. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:18:45.
117. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:18:45.
118. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:23:03.
available, would not benefit from delaying background checks.119 Although the Council attempted to work through this issue prior to the meeting, and even made amendments to address this issue on the dais, the Association was not comfortable moving forward without additional time to review.120 Representatives from a local company called vcfo that provides technology consulting services to companies also opposed the ordinance because they felt that by delaying inquiries into conviction history until so late in the process, their business clients would suffer because they would lose out on other potentially qualified candidates.121 Even organizations whose missions seemed aligned with formerly incarcerated people were not fully in support. Goodwill Industries, for example, stated that the organization believes in fair chance hiring, actively practices it, and employs people with conviction histories at all levels.122 Nonetheless, the organization objected to the ordinance as written because the language did not carve out exceptions for individuals disallowed from certain jobs according to federal laws.123

The individual council members’ comments both for and against the ordinance at the City Council meeting illustrated the significance of ongoing dialogue in the policymaking process. Councilmember Casar opened the meeting by reminding attendees that this process started about a year prior when he shared the model ordinance from the National Employment Law Project and the first draft of the Austin ordinance. He went on to say, “I think, [w]hat you have laid out before you is a very balanced [ordinance] that I think weighs the concerns on many different sides that we’ve listened to over the course of the months while still holding true to the core mission of the policy.”124 In response to unease over the ordinance’s application to jobs in banks or schools, Councilmember Casar pointed out that those types of restrictions “have always been in the area where this ordinance does not apply, because they’re already-existing restrictions.”125 When staffing agencies and organizations that hire temporary workers indicated hesitation about the timing of background checks, Councilmembers Ann Kitchen and Delia Garza asked questions to more fully understand their business models

119. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:31:40, 8:33:42, 8:44:03, 8:46:07.
120. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:37:52, 8:39:59, 8:44:03, 8:46:07.
121. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:54:23.
122. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:58:35.
123. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:58:35, 9:00:37.
124. Austin City Council Regular Meeting Transcript, supra note 98, at 8:00:03.
125. Austin City Council Regular Meeting Transcript, supra note 98, at 9:02:46.
and to clarify the ways the amendments would alleviate their concerns. Councilmember Troxclair reiterated her view that the background check should happen after the first interview rather than after the conditional offer. Councilmember Casar acknowledged that while people have different points of view regarding waiting until the conditional offer to inquire into conviction history, that piece stayed in the ordinance because research showed candidates who made it through the process were more likely to obtain jobs, stating, “I think this is a point on which disagree, and that’s okay. Thank you for your testimony.” Finally, Councilman Don Zimmerman stated that mandates were unnecessary as several businesses were already committed to fair chance hiring practices. The open communication during the meeting highlighted the fact that while various individuals had distinct perspectives and viewpoints, all interested parties were able to voice their opinions and even more so, that the city could make change in the face of disagreement.

The personal narratives that formerly incarcerated people shared throughout the campaign and at the City Council meeting were not only emotional but fundamental to the success of this movement. Lauren Johnson began her testimony with a heartfelt account of experiencing pregnancy while incarcerated, and thinking about the lessons she wants her children to learn and the kind of people she wants them to grow up to be. She shared, “it’s important to me that my children grow up in a community where they know they’re able to learn and grow from their mistakes, instead of being relegated to the shadows of stigma and shame.” Isa Arizola likewise shared the stress of being unable to secure housing and employment even though her offense occurred eight years prior. She urged the Council to support the law and warned them that “[i]f you don’t support fair chance, you’re not only denying us employment and a better equal opportunity of jobs, but you’re also denying our children a fair chance at a better future.” James Preston talked about his difficulties finding a job and returning to school, sharing his fears of not being able to pay off student loans. He also explained that, in his role as communications director with Second

127. See Austin City Council Regular Meeting Transcript, supra note 98, at 10:00:58.
128. Austin City Council Regular Meeting Transcript, supra note 98, at 9:06:52.
129. See Austin City Council Regular Meeting Transcript, supra note 98, at 9:02:46.
130. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:12:32.
131. Austin City Council Regular Meeting Transcript, supra note 98, at 8:12:32.
132. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:23:03.
133. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:23:03.
134. See Austin City Council Regular Meeting Transcript, supra note 98, at 8:56:34.
Chance Democrats, “I’ve had a chance to meet so many people that are affected by these issues. This is important. This is civil rights legislation that needs to pass. There are families that can’t feed their children because they can’t get paying jobs. I urge you, please pass this ordinance . . . . We need this in Austin. Let’s make history. This is a tsunami of change that can go through the [S]outh.”135 Susannah Bannon discussed the work she has done and the perpetual disregard she experiences from employers: “While I have taken every opportunity possible to redeem myself in the eyes of society by staying sober, by sponsoring others, by earning two degrees, entering a competitive doctoral program, published my research, volunteering for multiple organizations, and being an honest, hard-working, and compassionate municipal being, discriminatory practices keep employers from ever seeing those things about me.”136 Jorge Renaud emphasized the hardships that persist when formerly imprisoned people with extensive education and vocational training are still unsuccessful at finding work upon release.137 He implored the Council to ignore the privileged few who are trying to persuade you to continue a policy that has resulted in families, communities, and entire neighborhoods on the east side and south side of Austin impoverished, destitute, and unable to climb out of poverty. I ask you to please vote for those families, and for fair chance.138

Finally, Reginald Smith expressed his disappointment in the business community for their attempt to minimize such an important issue that deeply affects people’s lives. He stated: I understand how important the business community is in Austin, but it’s the citizens, the everyday people in this town who go to these businesses and spend their money. I understand you have to hear their voice. I’m asking you tonight to hear our voice.”139 These accounts provide insight into the disparities and adversity that formerly incarcerated people, many Black and Brown, continue to endure, and also evoke the significance of meaningful community engagement.140

135. Austin City Council Regular Meeting Transcript, supra note 98, at 8:56:34.
137. See Austin City Council Regular Meeting Transcript, supra note 98, at 9:19:17.
140. See generally TRAVIS REGINAL ET AL., URB. INST., JUST. POL’Y CTR., COMMUNITY ENGAGEMENT STRATEGIES TO ADVANCE JUSTICE REFORM: IMPLEMENTATION LESSONS FROM BUNCOMBE COUNTY, NORTH CAROLINA, COOK COUNTY, ILLINOIS, AND NEW ORLEANS (2023); see also NAT’L INSTS. OF HEALTH, CTRS. FOR DISEASE CONTROL, & AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY, NIH PUB. NO. 11-7782, PRINCIPLES OF COMMUNITY ENGAGEMENT 3 (2d ed. 2011) [hereinafter PRINCIPLES OF COMMUNITY ENGAGEMENT] (defining community engagement as “the process of working collaboratively with and through groups of people affiliated by geographic proximity, special interest, or similar situations to address issues affecting the well-being of those people”).
Meaningful community engagement signifies opportunities for thoughtful participation by all, including and perhaps especially, those who have been disproportionately marginalized. Indeed, it is “grounded in the principles of community organization: fairness, justice, empowerment, participation, and self-determination.” The campaign for fair chance hiring in Austin reflects the values of meaningful community engagement in theory and in practice. SCD, organized and led by formerly incarcerated people, worked with committed allies, including local government officials, to realize their goals. As the testimony the evening of the City Council meeting made clear, this endeavor included thorough communication and discussion among diverse interests over the course of a year. All Councilmembers but two voted in favor of the ordinance, making Austin the first city in the South to enact fair chance hiring. Unfortunately, when local governments have successfully passed such progressive reforms, states have attempted to thwart the local efforts through preemption, further exacerbating inequities among marginalized groups. Part III reports on this trend in detail.

III. RADICAL RESILIENCE IN RESPONSE TO PREEMPTION IN SOUTHERN STATES

In recent years, as cities across the United States have led the way on various progressive labor issues including the minimum wage, paid sick leave, fair scheduling, project labor agreements, and fair chance hiring, states have intervened to limit their power. These preemptive acts are permissible under federal law, which provides states with the discretion to confer specific powers to municipalities. To situate preemption historically, until the mid-1800s, Dillon’s Rule, or the rule that “[municipalities] possess no powers or faculties not conferred upon them, either expressly or by fair implication, by the law which creates them[,]” controlled conflicts between states and local governments. But during this period, preemption was rare, as there were not many instances wherein state

142. PRINCIPLES OF COMMUNITY ENGAGEMENT, supra note 140, at 4.
143. See Austin City Council Regular Meeting Transcript, supra note 98, at 10:03:07.
144. See HUNTER BLAIR ET AL., ECON. POL’Y INST., PREEMPTING PROGRESS: STATE INTERFERENCE IN LOCAL POLICYMAKING PREVENTS PEOPLE OF COLOR, WOMEN, AND LOW-INCOME WORKERS FROM MAKING ENDS MEET IN THE SOUTH 9–20 (2020).
and local law overlapped.\textsuperscript{147} Later in the 19th century, states began to grant localities broader power to govern over municipal matters.\textsuperscript{148} This “home rule” model gave cities the ability to establish policies reflecting their constituents’ views, limit state intrusion into local affairs, and encourage greater citizen participation in policymaking.\textsuperscript{149} As home rule evolved, cities gained even more authority, such that the only powers they did not have were ones that states expressly reserved.\textsuperscript{150} With this greater power came the potential for more disputes over city and state regulation.\textsuperscript{151} And while classic preemption cases questioned whether state and local laws disagreed, recent disputes involve states attempting to stifle the progressive policymaking role of local governments.\textsuperscript{152} This happens more often in the South than any other region and consequently silences the voices of marginalized populations who would benefit from progressive local ordinances.\textsuperscript{153} Evaluating the ways that preemption has limited the employment rights of people with conviction histories in Mississippi and Texas, as well as the responses to those infringements, can be a useful practice for policymakers and advocates to employ as they search for ways to build inclusive and equitable cities.

While several state and local governments have enacted fair chance hiring regulations to cover public sector employment, and some have extended those laws to the private sector, certain states expressly preempt municipalities from legislating with respect to that issue.\textsuperscript{154} Five of those states have statewide policies in place, so localities cannot ask about convictions in their job applications.\textsuperscript{155} Although Iowa’s preemption statute

---

\footnotesize{147. See id.; see also Richard Briffault, Preemption: The Continuing Challenge, 36 J. LAND USE & ENV’T L. 251, 255 (2021).}

\footnotesize{148. See Lankachandra, supra note 146, at 945.}

\footnotesize{149. See Lankachandra, supra note 146, at 946.}

\footnotesize{150. See Lankachandra, supra note 146, at 946.}

\footnotesize{151. See Lankachandra, supra note 146, at 946.}

\footnotesize{152. See Briffault, supra note 147, at 259–60 (highlighting the various local laws states have attempted to preempt, including legislation on fracking, firearms, employment benefits, antidiscrimination, public health, environment, and immigration enforcement); see also Erin Adele Scharff, Hyper-Preemption: A Reordering of the State-Local Relationship?, 106 GEO. L. J. 1469, 1481–83 (2018).}

\footnotesize{153. See Blair et al., supra note 144, at 15; Yannet Lathrop, Nat’l Emp. L. Project, Fighting Labor Policy Preemption That Undermines Local Power and the Democratic Process: The Experience of Colorado, Missouri, & Texas 14 (2022).}

\footnotesize{154. See Spencer Wagner et al., Nat’l League Of Cities, Tracking State Preemption 2019: The Pre-Pandemic Landscape 7 (2019) (explaining that Iowa, Indiana, Michigan, Mississippi, New Jersey, Tennessee, and Utah disallow municipalities from enacting Ban the Box ordinances).}

\footnotesize{155. See id. (indicating that Indiana, Michigan, New Jersey, Tennessee, and Utah have passed statewide Ban the Box laws, while Iowa and Mississippi have not enacted any statewide Ban the Box legislation).}
prohibits local Ban the Box ordinances without a statewide policy in place, the city of Waterloo recently successfully challenged that law.\textsuperscript{156} But Mississippi continues to disallow local governments to adopt laws regarding Ban the Box.\textsuperscript{157} Since 2014, the state has prohibited municipalities from enacting any legislation “that in any way interfere[s] with an employer’s ability to become fully informed about the background of an employee or potential employee.”\textsuperscript{158} Nonetheless, support for fair chance hiring has continued to grow throughout the state, leading Senator Tammy Witherspoon to introduce a statewide public-sector Ban the Box bill in 2020, which died in conference,\textsuperscript{159} and later, Senator John Horhn to introduce a statewide public-sector Ban the Box bill in 2023, which died in committee.\textsuperscript{160}

As the Economic Policy Institute has reported, the lack of local authority to adopt laws that delay inquiries into conviction histories is especially harmful to Black and Latinx people, communities disproportionately policed and imprisoned in Mississippi.\textsuperscript{161} Moreover, Black and Latinx formerly incarcerated people earn lower incomes when compared with white formerly incarcerated people, further exacerbating the state’s racial disparities.\textsuperscript{162} Because public sector work is typically on the frontlines of anti-discriminatory employment, continuing to work toward fair chance hiring in public employment is an important goal.\textsuperscript{163} Although legislative attempts at banning the box have been unsuccessful thus far, they have been central to developing the movement. Indeed, the conversation around establishing employment rights for formerly incarcerated Mississippians continues; in 2019, the Senate passed Senate Bill 2871, the “Fresh Start Act,” to remove barriers to licensing for formerly incarcerated people in specific occupations.\textsuperscript{164} Supporters of that bill and Ban the Box legislation also

\textsuperscript{156} See Iowa Ass’n of Bus. & Indus. v. City of Waterloo, 961 N.W.2d 465, 468 (Iowa 2021) (holding the ordinance was not preempted insofar as it only regulates the timing of inquiry into criminal convictions, but striking down aspects of the ordinance that attempted to regulate whether an employer could inquire into criminal history at all).


\textsuperscript{158} Id.


\textsuperscript{160} See S.B. 2342, 2023 Leg., Reg. Sess. (Miss. 2023) (died in committee).

\textsuperscript{161} See BLAIR ET AL., supra note 144, at 20–21.

\textsuperscript{162} See BLAIR ET AL., supra note 144, at 21 (giving BRUCE WESTERN & BECKY PETTIT, ECON. MOBILITY PROJECT & PEW CHARITABLE TRS., COLLATERAL COSTS: INCARCERATION’S EFFECT ON ECONOMIC MOBILITY (2010)).

\textsuperscript{163} See BLAIR ET AL., supra note 144.

recommended extending the Fresh Start Act to additional occupations and shortening the timeframe for people with non-violent offenses to be eligible to apply for expunctions. Ban the Box protests on college campuses have also inspired younger people to become part of the campaign. If a Mississippi city enacts a local fair chance hiring ordinance and challenges the preemption statute, courts will provide additional clarity on such policies and potential guidance to help advocates craft a thoughtful strategy moving forward.

Preemption attempts in Texas likewise aim to interrupt the work of progressive localities. On June 14, 2023, Governor Greg Abbott signed House Bill 2127, the “Death Star” or “Super” preemption bill into law, creating a statewide regulatory scheme that essentially ignores the unique needs of municipalities. While the Texas Constitution establishes the ways home-rule municipalities may adopt or amend charters, including a limitation that “no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State[,]” HB 2127 seems to effectively repeal constitutional home rule in Texas, disregard the fact that a constitutional amendment election would be necessary to initiate a repeal, and shift the burden of disproving preemption to cities. It is also well settled among Texas courts that when a local law appears in conflict with state statute, courts have a duty to reconcile if possible. Based on this authority, the City of Houston sued the State. The City was successful in the trial court, where Judge Gamble ruled the bill unconstitutional, but the Attorney General immediately appealed, thereby staying the district court’s

165. See Bayram, supra note 164.
168. TEX. CONST. art. XI, § 5(a).
169. See Schneider, supra note 167.
170. See Cooke v. City of Alice, 333 S.W.3d 318, 323 (Tex. App. 2010) (“When a home rule city ordinance appears to be in conflict with a state statute, our duty is to reconcile the two ‘if any fair and reasonable construction of the apparently conflicting enactments exist[s] and if that construction will leave both enactments in effect.”).
order pending resolution of the appeal. As of this writing, local governments throughout the state are not permitted to enforce local fair chance hiring ordinances. Nonetheless, the lawsuit initiated by the City of Houston is significant as it represents the work of social justice advocates pushing to effect change in a conservative state. As mentioned earlier, prior to this preemption bill, Austin was the first city in the southern United States to adopt fair chance hiring, and other Texas cities were considering enacting similar policies. Once the appellate court reaches its decision, localities will know whether they will have the opportunity to continue policymaking in the antidiscrimination arena to benefit marginalized populations and boost local economies. Although other Texas decisions suggest the court may rule against the localities, it is possible that the court may narrowly construe its holding and allow regulation into the timing of background checks, similar to the conclusion reached by the Iowa Supreme Court discussed earlier.

Municipalities have proven their resilience in their resistance efforts; they have enacted ordinances that aim to provide opportunities for people who have suffered the most disparate impacts of structural racism, and they have filed lawsuits that contest state attempts to unilaterally reframe preemption in Texas. State policy and practice continue to create obstacles to employment for individuals with criminal records. With the pressure of both targeted and blanket preemption at the state level, local governments should craft multilayered strategies to effect change in the criminal, legal, and labor and employment arenas. Part IV addresses some potential tactics for advocates and policymakers to employ.

IV. LOCAL GOVERNMENTS AS FACILITATORS OF EQUITABLE AND SUSTAINABLE ECONOMIC ADVANCEMENT

With the continual spread of state preemption of local government regulation, municipalities will be more successful at effecting change in both the criminal legal system and the labor and employment arena if they develop thoughtful and comprehensive approaches. By considering more consistent administrative action, potential collaborations with nearby localities, statewide legislative movements based on local practice, a framework that

173. See Martinez, supra note 81.
175. See Iowa Ass’n of Bus. & Indus. v. City of Waterloo, 961 N.W.2d 465, 468 (Iowa 2021).
includes relevant state and federal issues, and economic development incentives, local governments can contribute to achieving equitable and sustainable economic advancement for individuals with conviction histories.

After Austin’s Fair Chance Hiring Ordinance passed in 2016, advocates looked forward to its implementation and enforcement. Unfortunately, two years later, records and interviews with city staff suggested that city officials were not enforcing the regulation. Of the four complaints the city received in 2016, all were still listed as “pending” in 2018. One complainant alleged that a workers’ compensation insurance company administered a background check prior to making a conditional offer, and another alleged that a local moving company inquired about convictions in an online application. Human resources staff for the City admitted that they had made education a priority rather than enforcement, and they hadn’t had time to craft rules regarding investigating complaints. Councilmember Casar indicated that this failure to fully implement the enforcement process was unacceptable; it also showed that the City was not following the National Employment Law Project’s best practices, which the model ordinance Councilmember Casar shared early in the process incorporated, and which include having “the infrastructure to process complaints and audit compliance.” After staff alerted City Manager Spencer Cronk, Cronk directed a swift resolution of complaints and implementation of administrative rules, which the City established several months later on May 18, 2018. However, establishing and implementing administrative rules is merely the first step in achieving more consistent administrative actions in this context. Potential next steps include a complete audit to determine whether and when the ordinance has been implemented, assess consistency among industries, sort and categorize submitted allegations, and analyze the timeframe for resolution of complaints. This straightforward administrative action could potentially assist other cities in their quest to write successful regulations.


177. See id.

178. See id.

179. See id.


Austin’s success in endorsing fair chance hiring could be a potential springboard to attract allies and offer support in nearby areas interested in crafting similar legislation. San Marcos, Texas, which is part of Hays County, is one potential ally; in the November 2022 midterm elections, Democrats were successful in all but one race, and flipped four of ten county races from Republican to Democrat. One local organization, Mano Amiga, worked hard to mobilize youth to vote by reaching out to Texas State University students. That campaign, along with the changing population due to an increase in individuals moving from Austin, contributed to these election results. Progressive policies that aim to provide opportunities to vulnerable populations seem likely to be successful in San Marcos. Williamson County seems like another potential, though perhaps less likely, ally; midterm elections in November 2022 indicated a shift from red to purple, and comments from Republican County Judge Bill Gravell suggest there may be room for collaboration. He stated, “if we want to continue to lead here, we can’t be extreme. We’ve got to listen to both sides and be respectful of both sides. And I think that’s the future of Williamson County.” He also highlighted public safety as a key concern from voters; if advocates structured a thorough education campaign illustrating the ways in which fair chance hiring policies have been successful in giving individuals with convictions jobs rather than contributing to recidivism, Williamson County might be a place where Ban the Box exists in the near future. These ideas also depend on the pending results of the “Death Star” preemption appeal.

Grounding a statewide legislative campaign in the policies and practices of particular localities might be another method of successfully championing employment rights for formerly incarcerated people. After the 2023 session and the subsequent lawsuit around preemption, it seems as though a statewide push for fair chance may be unlikely; that said, as discussed in Part


184. See Al-Shaikh, supra note 182.


186. Id.

187. See id.

III, highlighting the narrow construction of the policy (that pertains only to the timing of conviction history inquiry), and developing a comprehensive education campaign that explains socioeconomic benefits, may be a tactic that proves fruitful. After the Texas appellate court decides the preemption issue, advocates will have more guidance on whether such a strategy makes sense at this time.

Creating a framework that includes collaboration with federal campaigns on closely aligned issues may be a more likely strategy. For example, the Clean Slate Initiative establishes laws that automatically clear eligible records for individuals who have finished their sentences and not committed additional crimes.\textsuperscript{189} Twelve states have already enacted Clean Slate laws, and the executive director has set the stage for future work, indicating “in the states where the environment isn’t as favorable, we will begin groundwork, changing hearts and minds and creating the conditions to pursue campaigns in the future.”\textsuperscript{190} Continuing to engage and communicate with former City Councilmember and fair chance hiring sponsor, Greg Casar, who now serves as the United States Representative for Texas’s 35th congressional district and the Whip of the Congressional Progressive Caucus,\textsuperscript{191} might also be useful in determining which causes have the potential to effect the most change at the present time.

Finally, initiating an economic development incentive campaign that would award grants to businesses with high compliance with fair chance hiring best practices and high employment rates of individuals with convictions (if conviction history is known due to a delayed background check) could be another strategy to foster economic and social justice in municipalities. In Texas, for example, chapter 380 of the Local Government Code allows cities to enter into economic development agreements and to offer incentives to developers, landowners, and businesses to promote business or commercial activity.\textsuperscript{192} While 380 agreements have been controversial due to a lack of transparency, the legislature passed a law in 2021 that instructed the Comptroller to create a database containing information on all economic development projects in the state.\textsuperscript{193} It seems that if cities could make investments to local, socially responsible organizations that were committed to providing employment opportunities

\textsuperscript{190} Id.
\textsuperscript{192} See TEX. LOC. GOV’T CODE § 380.001 (1989).
\textsuperscript{193} See TEX. GOV’T CODE § 403.0246 (2021).
based on credentials and not past convictions, marginalized populations, local businesses, and the economy overall would thrive.

**CONCLUSION: ALL OF US AMPLIFYING VOICES, ASKING QUESTIONS, ASSERTING ABOLITION**

Commenting on the transformative potential of Austin’s Fair Chance Hiring ordinance, SCD President Jacqueline Conn said, “This is something that means I get to be considered a human again, legally.”\(^{194}\) Her point speaks to the fact that legislation is a key component in antidiscrimination work; it can serve a vital purpose by establishing rights for marginalized groups. At the same time, it is just one part of a multifaceted strategy. Darwin Hamilton, another SCD member, testified that “the state of Texas already has 200 laws that restrict employment for persons with criminal histories, and there are also 1900 separate licensing and [statutory] restrictions that prohibit or bar employment. So this fair chance ordinance is only one measure to help those people overcome that hurdle.”\(^{195}\) A multilayered approach comprising organizing, lobbying, litigating, legislating, and community building could be successful in effecting even more change and creating abolitionist possibilities.

As Dorsey Nunn explained, All Of Us Or None’s primary objective is to end structural discrimination through community organizing.\(^{196}\) All Of Us Or None built the foundation for fair chance hiring and set the standard for successful collaboration between grassroots organizations and cities. These alliances and policies seem most successful when local governments amplify the voices of directly affected people and present them with opportunities to work. Local governments can make even more progress by ensuring the implementation of local ordinances, pushing for statewide legislation based on local practice, contributing to federal campaigns, providing community services (like educational opportunities, housing, and holistic and inclusive healthcare) that prevent incarceration in the first place, and introducing more opportunities for thoughtful economic development and meaningful engagement in neighborhoods that have suffered disproportionate and direct impacts of incarceration. In these ways, local governments will not only play a major role in asserting the right of individuals with conviction histories to be free from discriminatory behavior; they can also make valuable contributions to freedom building.

\(^{194}\) McBride, *supra* note 89.

\(^{195}\) *Austin City Council Regular Meeting Transcript, supra* note 98, at 9:33:36.

\(^{196}\) See Nunn, *supra* note 84.