

TEXAS COLONIAS: INJUSTICE BY DEFINITION

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I. INTRODUCTION

In Rio Grande City, Texas, the Martinez family, has an annual income of about \$15,000 and worries about making their \$200 monthly payments toward their home.¹ Last year, the family paid \$700 for a septic tank.² Prior to that, the family had been using a bathroom in their relative's house.³ This is not an unusual hardship according to residents of the Texas colonias. "How sad to be born here, live here all your life, die here, and not know what it is like to be an American," said one resident while describing the deplorable living conditions in colonias.⁴

The United States-Mexico border stretches from Texas to California and is 1,933 miles long.⁵ The Texas-Mexico border alone is 1,254 miles long, extending from the Gulf of Mexico to El Paso, Texas.⁶ There are 2.7 million people living on the Texas side of the border, 87.8 percent of which are Hispanic.⁷ Border residents face grave financial struggles as 29.8 percent of the residents are below poverty level.⁸

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¹Erik Eckholm, *Inside a Jumble of Poverty, Texas Build a Future*, N.Y. TIMES (Aug. 27, 2007),

http://www.nytimes.com/2007/08/27/us/27colonias.html?pagewanted=all&_r=0.

² *Id.*

³ *Id.*

⁴ Hector Galan, THE FORGOTTEN AMERICANS (Pub. Broad. Serv. 2000) <http://www.pbs.org/klru/forgottenamericans> (depicting the difficulties of living in colonias in Texas in substandard conditions).

⁵ U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES (2012).

⁶ *Texas-Mexico Border Area*, TEX. DEPT. OF STATE HEALTH SERVICES (Sept. 24, 2014), <https://www.dshs.state.tx.us/borderhealth/>.

⁷ *Id.*

⁸ *Id.*

Colonias are usually characterized as rural or semi-rural slums inhabited by Mexican-origin immigrants and Mexican Americans.⁹ Colonias are specifically defined in federal law as identifiable communities along the US-Mexico Border region which includes: Arizona, California, New Mexico and Texas. Colonias lack basic necessities such as potable water, adequate sewage systems, and decent, safe and sanitary housing.¹⁰ In the Texas Colonias alone, dire living conditions have resulted in adverse public health and environmental effects on low income minority residents.¹¹

This Comment examines the socioeconomic and environmental burdens faced by Texas colonias and the public and private attempts to address these hardships. Part II provides a history and overview of the Texas colonias. Part III discusses the lack of potable water supply, access to sanitation systems, basic health care, and their lasting effects on Texas colonias. Part IV examines state and federal programs and their impact. Part V explores the call for a statewide definition and declassification of Texas colonias. Finally, Part VI of this Comment considers the future for Texas colonias.

II. HISTORY AND OVERVIEW OF TEXAS COLONIAS

“Colonia” is the Spanish word for neighborhood or community.¹² The typical suburban American neighborhoods are not reflective of the border communities in Texas.¹³ The Texas Secretary of State defines “colonias” as economically distressed areas that often lack some of the most basic living necessities: potable water and sewer systems, electricity, paved roads, and safe and sanitary housing.¹⁴ There are

⁹ Robert D. Bullard, *The Quest for Environmental Justice: Human Rights and the Politics of Pollution* 205 (2005).

¹⁰ 42 U.S.C. § 1479(f)(8) (2000) (defining a colonia for the purposes of identifying which types of housing in undeserved areas would receive assistance from the Secretary of Housing and Urban Development).

¹¹ See generally Anietie Maureen-Ann Akpan, *Tierra y Vida: How Environmental Injustice Has Adversely Impacted the Public Health of Rural Brown Populations in South Texas*, 43 TEX. ENVTL. L.J. 321, 322 (2013).

¹² The Oxford Spanish Dictionary 168 (1994).

¹³ See generally David L. Hanna, *Third World Texas: NAFTA, state law, and environmental problems facing Texas colonias*, 27 ST. MARY'S L. J. 871, 877 (1996),

¹⁴ *Colonias Frequently Asked Questions*, TEX. SEC'Y OF STATE <http://www.sos.state.tx.us/border/colonias/faqs.shtml> (last visited Oct. 16, 2014) [hereinafter *Colonia FAQ*].

approximately 400,000 people living in 2,300 colonias in Texas.¹⁵ Roughly half of these are in Hidalgo County alone.¹⁶ Almost 100,000 of these residents are children.¹⁷ Most of those residents are tax-paying American citizens, receiving little benefit from their government.¹⁸ Additionally, many of those residents are veterans.¹⁹ While there are colonias dispersed through out the state, most of the colonias are located along the US-Mexico border.²⁰

In order to understand how these communities struggle, it is important to look to the history of colonias in Texas. The formation of colonias along the Texas-Mexico border can be traced back to the 1950s.²¹ Unscrupulous farmers and land developers, seeing the demand for housing by migrant workers, divided land into small lots and sold them to low-income individuals seeking affordable housing.²² These developers created unincorporated subdivisions with promises of water, sewage, electricity and other necessary services but most of those promises went unfulfilled.²³ Further, these developers have and continue to charge up to twenty-five percent interest on these illegal mortgages.²⁴

Most of the lands sold to first time homebuyers were agriculturally worthless because they were located on floodplains or in dismal rural areas.²⁵ These lots were usually sold to low-income buyers through a contract for deed with a minimum down payment and low monthly

¹⁵ *Id.*

¹⁶ *Healthy Eating Research, Food Access in Colonias Along the Texas-Mexico Border*, Feb. 2011, <https://www.youtube.com/watch?v=tbNd8Nxb8A0> (last visited Jan. 25, 2015).

¹⁷ *Hidden America: Life in Colonias*, ABC NEWS, <http://abcnews.go.com/Nightline/video/hidden-america-life-las-colonias-16216812> (last visited Jan. 26, 2015).

¹⁸ *Id.*

¹⁹ Oscar J. Muñoz, *Third World in Texas: Myths and Realities*, <https://www.youtube.com/watch?v=SIOFKqpttuw> (last visited Jan. 26, 2015).

²⁰ See Colonias FAQ, *supra* note 14.

²¹ *Id.*

²² *Id.*

²³ U.S. Gen. Accounting Office, Pub. No. GAO/RCED-91-37, Report to the Chairman, Committee on Agriculture, House of Representatives, Rural Development: Problems and Progress of Colonia Subdivisions Near Mexico Border 3 (1990) (stressing that under Texas law, in early days of Colonias development, developers only had to provide roads and drainage, which often led to lack of water and wastewater disposal services in Colonias).

²⁴ See Muñoz, *supra* note 19.

²⁵ See Colonias FAQ, *supra* note 14.

payments.²⁶ Since the residents were unable to obtain the title to the property until the final payment was due,²⁷ they were viewed as merely occupying land.²⁸

The expansion of colonias continued.²⁹ New colonias appeared and existing ones continued to expand due to the limited affordable housing along the border, paired with the rising need for housing due to the onset of the maquiladora program, a cross border free trade zone factory program in Juarez and El Paso.³⁰ While many of the developments' first settlers were born in Mexico, according to the Texas Secretary of State's website, most colonias residents are now in the United States legally; 64.4 percent of all colonias residents, and eighty-five percent of residents under eighteen, were born in the United States.³¹

Today the average per capita income in Texas colonias is \$14,200 per year³² as compared to the rest of the state, which averages \$25,800 per year.³³ The typical cost of a lot in a colonias community is between \$3,000 and \$12,000.³⁴ Due to the low-income population, colonias homes are usually built on a cash basis, meaning wall-by-wall, built over the course of many years.³⁵ This piecemeal approach to construction usually leaves many of the homes in colonias: far below the minimum standards for safety, and lacking the necessary sanitation needed for habitation.³⁶

Colonias dwellings often lack any central heating or cooling systems, and the systems that do exist are typically homemade and inefficient.³⁷ To make matters more difficult, the cooling and heating

²⁶ *Id.*

²⁷ *Id.*

²⁸ Akpan, *supra* note 11.

²⁹ *Id.*

³⁰ *Id.* at 882.

³¹ See Colonia FAQ, *supra* note 14.

³² *Texas Commission on Environmental Quality*, COLONIAS (Aug. 2013), <https://www.tceq.texas.gov/assets/public/border/colonias-text.pdf>.

³³ See U.S. CENSUS BUREAU, *supra* note 5.

³⁴ Joann Matthiesen, *What now for the Texas Colonias?*, 27 N.M.L. REV. 1, 3 (1997).

³⁵ *Id.*

³⁶ *Id.* at 4.

³⁷ Carlos Olmedo et al., *Empowering Change in Texas Colonias: A Proposal to Provide Electricity Access to Colonia Residents* (2013) http://www.poweracrosstexas.org/wp-content/uploads/2013/03/EIC-Colonias-Proposal_UT-Austin_Final.pdf.

systems are typically gas or diesel powered, forcing residents to choose between: running base-line appliances such as refrigerators, pumping water, or creating a livable environment in the home.³⁸ Many homes borrow electricity from neighboring homes, using long systems of extension cords.³⁹

An ongoing difficulty in tracking colonias stems from a lack of agreement as to the definition of a colonia, and when a colonias community ceases to fit under this definition.⁴⁰ In 2005, through the leadership of Senator Judith Zaffirini and Representative Ryan Guillen, the Texas Legislature passed Senate Bill 827, which mandated the creation of a colonias tracking system to better identify, track, and address the individual needs of colonias.⁴¹ Led by the Office of the Texas Secretary of State, a working group of Texas health, water, and housing agencies adopted an existing system and used it to create a database.⁴² Each colonias received a unique identification number and an Ombudsman collected infrastructure, demographic, and health related criteria from the relevant counties.⁴³

After collecting this data, the colonias were sorted by category based on state of infrastructure, allowing Texas to track the progress of legislative projects.⁴⁴ The end result became the Colonia Health, Infrastructure, and Platting Status tool (CHIPS) database.⁴⁵ Using this new system, Texas was able to identify within six populous counties, 1,786 colonias with a population of 359,825 residents.⁴⁶ 1,092 counties, having a population of 249,675 residents, either have complete or partial services and 442 colonias with 62,675 residents still lack services altogether.⁴⁷

³⁸ *Id.*

³⁹ *See Hidden America*, *supra* note 17.

⁴⁰ Jean W. Parcher & Delbert G. Humberson, *CHIPS: A New Way to Monitor Colonias Along the United States-Mexico Border* (Dec. 2007) <http://pubs.usgs.gov/of/2007/1230/pdf/OFR2007-1230.pdf> [hereinafter CHIPS].

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Final Report in Response to Senate Bill 827 by Senator Judith Zaffirini and Representative Ryan Guillen 79th Regular Session*, TEXAS LEGISLATURE (Dec. 2006) http://www.sos.state.tx.us/border/forms/sb827_111706.pdf [hereinafter Final S. Rep. Bill 827].

⁴⁷ *Id.*

**III. LACK OF POTABLE WATER SUPPLY, ACCESS TO SANITATION
SYSTEMS, BASIC HEALTH CARE AND THEIR EFFECTS ON TEXAS
COLONIAS**

In July of 2010, the United Nations (U.N.) declared access to clean water and sanitation a human right.⁴⁸ The U.N. created a global challenge through its Millennium Project to reduce by half the portion of worldwide population without sustainable access to clean drinking water and basic sanitation by the year 2015.⁴⁹

From a global perspective, there are 884 million people in the world who do not have access to clean, safe drinking water.⁵⁰ That equates to one in nine people without clean, safe drinking water.⁵¹ “2.6 billion people lack access to basic sanitation”, or in other words, “one in three persons are without a proper sanitation system”.⁵² Additionally, two million tons of sewage is discharged each day into the world’s water supply.⁵³ Due to these deplorable conditions, approximately 3.5 million people die each year due to inadequate water supply, sanitation and hygiene.⁵⁴

The burden of water disparity regarding access to basic piping and catchment systems for drinking water or basic sanitation falls almost exclusively on the world’s poor, who are largely non-white and located in informal settlements.⁵⁵ These current water disparities exist in America.⁵⁶ It is nearly unimaginable that such third world conditions

⁴⁸ United Nations, General Assembly, Res. 64/292 (July 2010).

⁴⁹ *Right to Water Fact Sheet No. 35, U.N. Water Decade Programme on Advocacy and Communication*, (2010), http://www.un.org/waterforlifedecade/pdf/facts_and_figures_human_right_to_water_eng.pdf.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Tom Romero, *The Color of Water: Observations of a Brown Buffalo on Water Law and Policy in Ten Stanzas*, 15 U. DENV. WATER L. REV. 329, 337 (2012).

⁵⁴ See *Right to Water Fact Sheet*, *supra* note 49.

⁵⁵ United Nations, *The Millennium Development Goals Report 59*, at 59 (2010) [hereinafter UN MDG 2010 Report].

⁵⁶ See James VanDerslice, *Drinking Water Infrastructure and Environmental Disparities: Evidence and Methodological Considerations*, AM J PUBLIC HEALTH, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3222486/> (last visited Jan. 23, 2015).

exist in Texas colonias communities along the United States-Mexico border.⁵⁷

The unregulated colonias have evolved into unincorporated municipalities.⁵⁸ Due to the lack of local government guidance and regulation, these colonias have no basic zoning regulations, taxing structure, or eminent domain policies.⁵⁹ This leaves them lacking basic infrastructure, meaning no water or sewage lines servicing these poverty-stricken residents.⁶⁰

Lack of potable water is one essential component that defines colonias.⁶¹ “Certainly, clean and fresh water is not a reality for these colonias residents.⁶² The water they use to wash dishes or in bathrooms still comes from private wells, and in the worst case, it comes out dirty or does not come out at all.⁶³ Residents cannot drink well water and they spend about two dollars every day for a five gallon bottled water.”⁶⁴ Obtaining water for drinking, bathing, cleaning dishes, or even cooking can prove to be very difficult for colonias communities.⁶⁵ Some residents dig shallow wells, while others buy water by the bucket or drum to meet their needs.⁶⁶ In the San Carlos colonia, a truck driver goes out daily to fill a large container and distributes it to the neighborhood.⁶⁷

Those that choose to buy water by the drum as their families’ water supply face challenges unique to storing the potable water. Storing this

⁵⁷ See Hanna, *supra* note 13; See also Janin Friend, *The Colonias, Shantytowns on Mexico Border, Are Focus of Talk, Some Action by Texas, U.S., Bond Buyer*, Oct. 14, 1993, at 1 (quoting HUD Secretary Henry Cisneros after tour of South Texas Colonias implying that they are worse than any of the poorest urban slums in other parts of United States).

⁵⁸ See Jane E. Larson, *Free Markets Deep in the Heart of Texas*, 84 GEO. L.J. 179, 183 (1995). The structure of Texas government denied general ordinance making powers to counties and counties had only the power delegated to them by the State.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See 42 U.S.C. § 1479 (f)(8)(c), *supra* note 10.

⁶² Nicole Chavez, *Clean Water is a Prayer Answered in El Paso’s Colonias*, *Borderzine*, BORDERZINE (Aug 2, 2012), <http://borderzine.com/2012/08/clean-water-is-a-prayer-answered-in-el-paso’s-colonias/>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See Romero, *supra* note 53 at 350.

⁶⁶ *Id.*

⁶⁷ *Poorest Town in Texas*, <https://www.youtube.com/watch?v=iHzaO73pC-A> (last visited Jan. 28, 2015).

potable water correctly is imperative.⁶⁸ According to the Centers for Disease Control and Prevention (CDC) proper water storage includes: label storage container as “drinking water and include storage date, replace water not commercially bottled every six months, keep water stored in a place with a fairly constant cool temperature, and do not store water in direct sunlight.”⁶⁹ The CDC warns, “water from sources outside the home must be treated...do not drink water that has an unusual odor or color, or that you know or suspect might be contaminated with fuel or toxic chemicals; use a different source of water.”⁷⁰ With colonias resembling third world shantytowns and dealing with excruciating desert-like Texas heat, there is little room for these colonias residents to properly store their potable water to ensure safe consumption.⁷¹

Most colonias do not have sewage lines to service their residents.⁷² Colonias residents are forced to create private sanitary sewage systems through open pit cesspools, septic tanks, or outhouses.⁷³ This improperly treated human waste seeps into the soil, contaminates ground water and well water sources.⁷⁴

Colonias are also food deserts.⁷⁵ Supermarkets are far away from most Colonia neighborhoods and transportation is often an obstacle.⁷⁶ Obesity and diabetes rates are among the highest in the country.⁷⁷ Non-traditional food vendors have become common, especially mobile vendors and flea markets.⁷⁸ While these vendors provide options nearby,

⁶⁸ See Jane E. Larson, *Free Markets Deep in the Heart of Texas*, 84 GEO. L.J. 179, 186 (1995).

⁶⁹ *Personal Preparation and Storage of Safe Water*, CENTERS FOR DISEASE CONTROL AND PREVENTION, http://www.cdc.gov/healthywater/emergency/safe_water/personal.html (last visited Oct. 18, 2014).

⁷⁰ *Id.*

⁷¹ See generally Alex Hinojosa, *UTEP Students & Professors Team up with NMSU, EPA to Provide Colonia Residents with Drinking Water*, EL PASO TIMES (July 19, 2014), http://www.elpasotimes.com/news/ci_26182877/utep-students-professors-teams-up-nmsu-epa-provide.

⁷² See Romero, *supra* note 53 at 348.

⁷³ Larson, *supra* note 33 at 187-8.

⁷⁴ *Id.*

⁷⁵ See Food Access in Colonias, *supra* note 16.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

the quality of their products is nutritionally lacking.⁷⁹ Fast food options are typically the closest, with limited supermarket options being the farthest.⁸⁰ Residents also are unable to compare prices or value shop.⁸¹ These factors lead to families purchasing foods with higher fat contents and children often purchasing unhealthy foods independently.⁸²

Complicating environmental factors, many colonias residents fall into a coverage gap in the new national healthcare law.⁸³ The uninsured rate in these communities ranges between fifty percent and eighty percent of residents.⁸⁴ For those with public insurance, wait times often lasts a month to see a healthcare professional.⁸⁵ One doctor reported that patients often leave broken bones untreated for weeks.⁸⁶ Likewise, residents are hesitant to travel south to Mexico for cheaper medical treatment due to drug and gang violence.⁸⁷ Most residents are unable to receive treatment for high rates of asthmas, rashes, and lice infestations.⁸⁸ Additionally, Tuberculosis, Lyme disease, and Dengue fever are also found in these communities.⁸⁹ Further, public health departments as a whole all report that cholera, hepatitis A, salmonellosis, and dysentery all exceed the state average.⁹⁰

⁷⁹ *Id.*

⁸⁰ Joseph R. Sharkey et al., *Association between Neighborhood Need and Spatial Access to Food Stores and Fast Food Restaurants in Neighborhoods of Colonias*, INTERNATIONAL JOURNAL OF HEALTH GEOGRAPHICS (Feb. 2009), <http://www.ij-healthgeographics.com/content/8/1/9>.

⁸¹ *Id.*

⁸² Joseph R. Sharkey et al., *Convenience Stores are the Key Food Environment Influence on Nutrients Available from Household Food Supplies in Texas Border Colonias*, BMC PUBLIC HEALTH, (Jan. 2013), <http://www.biomedcentral.com/1471-2458/13/45>.

⁸³ Alex Ura, *Trying to Help Thousands in Colonias Obtain Health Coverage*, N.Y. TIMES (Feb. 22, 2014), <http://www.nytimes.com/2014/02/23/us/trying-to-help-thousands-in-colonias-obtain-health-coverage.html>.

⁸⁴ *Id.*

⁸⁵ See Muñoz, *supra* note 19.

⁸⁶ *Rio Grande Valley Colonias, Part 1*, Fox 2, <https://www.youtube.com/watch?v=aE3RPudvaL4> (last visited Jan. 26, 2015).

⁸⁷ See Ura, *supra* note 83.

⁸⁸ Emily Ramshaw, *Conditions, Health Risks Sicken Colonias Residents*, THE TEX. TRIBUNE (July 10, 2011), <http://www.texastribune.org/2011/07/10/conditions-health-risks-sicken-colonias-residents/>.

⁸⁹ *Id.*

⁹⁰ *Id.*

While colonias are usually served by public schools, they lack the infrastructure to support education in home.⁹¹ Residents typically do not have access to phone, cable, or Internet.⁹² Further, the access roads to these communities are often flooded out, cutting them off from work and school.⁹³

In 1996, the Texas Department of Housing and Community Affairs adopted a set of minimum “Colonias Housing Standards” which included provisions on sanitary facilities in colonias homes.⁹⁴ “The dwelling unit shall contain its own sanitary facilities which will be in proper working condition, which can be used in privacy, and which are adequate for personal cleanliness and the disposal of human waste: (1) a sink, bathtub and/or shower, and flush toilet shall be a room separate from the other parts of the unit, and (2), the unit’s sanitary facilities shall be connected to an approved sewer or septic system.”⁹⁵

For every US one dollar spent on sanitation, it brings a five dollar and fifty cent return by keeping people healthy and productive.⁹⁶ Colonias face mild to severe health risks due to the lack of clean potable water and necessary sanitation services.⁹⁷ Poor sanitation and contaminated water are linked to transmission of diseases such as cholera, diarrhea, dysentery, hepatitis A, and typhoid.⁹⁸ Every year there are two million diarrheal deaths related to unsafe water, sanitation, and hygiene—the vast majority among children under five years old.⁹⁹ The rate of tuberculosis in the colonias is double that of the Texas rate.¹⁰⁰ Public health departments report rates of cholera, hepatitis A, salmonellosis and dysentery in the colonias that far exceed the state

⁹¹ See Hidden America, *supra* note 17.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Colonia Housing Standards*, TEX. DEPT. OF HOUSING AND COMMUNITY AFFAIRS, <https://www.tdhca.state.tx.us/oci/chs.htm> (last visited Oct. 18, 2014).

⁹⁵ *Id.*

⁹⁶ *U.N. Right to Sanitation Fact Sheet*, UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS (UNDESA), <http://www.un.org/waterforlifedecade/sanitation.shtml> (last visited Oct. 17, 2014).

⁹⁷ See *Fed. Reserve Bank of Dallas, Texas Colonias: A Thumbnail Sketch of Conditions, Issues, Challenges and Opportunities* 12, <http://www.dallasfed.org/assets/documents/cd/pubs/colonias.pdf>.

⁹⁸ See Matthesen, *supra* note 34.

⁹⁹ *Household Water Treatment and Safe Storage*, WORLD HEALTH ORGANIZATION, http://www.who.int/household_water/en/ (last visited Oct. 17, 2014).

¹⁰⁰ See *Colonia FAQ*, *supra* note 14.

average.¹⁰¹ In addition, inadequate or absent water and sanitation services in health care facilities put already vulnerable patients at additional risk of infection and disease.¹⁰²

IV. EXAMINING STATE AND FEDERAL PROGRAMS AND THEIR IMPACT ON TEXAS COLONIAS

In 1989, the seventy-first Texas Legislature passed comprehensive legislation that established the Economically Distressed Area Program (EDAP) to be administered by the Texas Water Development Board (TWDB) and established the Model Subdivision Rules for the regulation of future residential subdivisions.¹⁰³ These laws focused on two major goals: delivering water and wastewater services to meet the immediate health and safety concerns, and stopping the proliferation of sub-standard subdivisions through tougher enforcement of development standards.¹⁰⁴ The program originally applied to border counties but was expanded statewide in 2005.¹⁰⁵

The EDAP program provides financial assistance in the form of a grant, or a combination grant/loan to disadvantaged political subdivisions, including cities, counties, water districts and non-profit water supply corporations.¹⁰⁶ Grants and loans are administered to fund the planning, acquisition, design, and construction of much needed basic water and wastewater infrastructure.¹⁰⁷ These EDAP projects can include: wastewater treatment plants, water towers, water storage tanks, sewers, pipelines, fire hydrants and numerous other water delivery systems.¹⁰⁸

Between 1989 and 2005, Texas spent \$425 million on colonias projects.¹⁰⁹ The citizens of Texas approved a \$250 million dollar bond

¹⁰¹ *Id.*

¹⁰² WHO/UNICEF highlight need to further reduce gaps in access to improved drinking water and sanitation, WORLD HEALTH ORGANIZATION (May 8, 2014), <http://www.who.int/mediacentre/news/notes/2014/jmp-report/en/>.

¹⁰³ *Economically Distressed Areas Program*, TEX. WATER DEV. BD., <http://www.twdb.texas.gov/financial/programs/EDAP/> (last visited on Oct. 16, 2014).

¹⁰⁴ *Id.*

¹⁰⁵ See Final S. Rep. Bill 827, *supra* note 46.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Model Subdivision Rules Training Course*, TEX. WATER DEV. BD., http://www.twdb.texas.gov/financial/programs/EDAP/msr/doc/MSRs_border_english.pdf (last visited Dec. 7, 2014).

¹⁰⁹ See Final S. Rep. Bill 827, *supra* note 46.

water projects in 1989 and an additional \$175 million for road paving in 2001.¹¹⁰ This improved conditions for the 145,408 colonias residents living in the 636 colonias receiving benefits. The EDAP itself has spent over a half billion dollars in water projects construction and planning.¹¹¹ These funds, while significant, are intermittent in their dispersal and it has been recommended by state agencies that a permanent fund be established.¹¹²

This financial assistance has been aided since 2005 by the CHIPS database.¹¹³ Colonias are divided by their level of health risk; high, medium, or low, to help determine how EDAP funds are best spent.¹¹⁴ This has resulted in greater efficiency and cooperation between involved agencies.¹¹⁵ The US Environmental Protection Agency had reduced federal funds by fifty percent in the previous years, making this great efficiency necessary.¹¹⁶ Since 2005, over 250 colonias have been moved out of the high-risk category.¹¹⁷

All political subdivisions, including cities, counties, water districts, and nonprofit water supply corporations, are eligible to apply for funds.¹¹⁸ The applicant must be capable of maintaining and operating the completed system.¹¹⁹ Furthermore, the applicant is also responsible for securing any necessary water permits or rights, wastewater discharge permits, and any other required licenses to complete and maintain the project.¹²⁰

To receive funds, an applicant must reside in an economically distressed area.¹²¹ According to the TWDB, an economically distressed area has “the following characteristics: the median household income less than seventy-five percent of the median state household income; the water supply or sewer services are inadequate to meet minimal needs of

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See Parcher & Humberson, *supra* note 40.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ See Final S. Rep. Bill 827, *supra* note 46.

¹¹⁷ Emily Ramshaw, *Improvement Comes Up Short in South Texas Colonias*, N.Y. TIMES (July 7, 2011), http://www.nytimes.com/2011/07/08/us/08ttconditions.html?_r=0.

¹¹⁸ Economically Distressed Areas Program *supra* note 103.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

residential users; the financial resources are inadequate to provide water supply or sewer services to satisfy those needs; and the area was an established residential subdivision as of June 1, 2005.”¹²²

Unfortunately, certain Texas municipalities have fallen short in implementing the programs funded by the state and federal government.¹²³ Santa Rosa failed to utilize a four million dollar grant in 2002, which would have built sewer services for the Grande Acres colonia.¹²⁴ As a result, each heavy rain flooded septic systems threatening to spread infection throughout the community.¹²⁵

Other communities have had to force their local governments to act through voter registration efforts, becoming voting blocs powerful enough to oust local elected officials who fail to act.¹²⁶ Cameron Park, outside of Brownsville, took this approach and in ten years, paved ninety percent of its roads and built sidewalks, streetlights, and bus stops.¹²⁷ Community Centers, including the Brownsville Housing Center for Cameron Park and Colonias Unidas in Las Lomas in Starr County, have become focal points for action.¹²⁸

Proyecto Azteca is a leading group advocating for home upgrades.¹²⁹ They serve as a bridge between the communities and government programs.¹³⁰ Proyecto Azteca is currently helping residents build sustainable homes with energy efficient appliances, solar panels, and rain harvested water.¹³¹ Homeowners in their communities pay between \$400 and \$500 a month, but do so interest free.¹³²

¹²² *Id.*

¹²³ Eric Gay, *Millions to Improve Texas Colonias Go Unspent*, USA TODAY (July 16, 2008) http://usatoday30.usatoday.com/news/nation/2008-07-16-colonias_N.htm.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Ramshaw, *supra* note 117.

¹²⁷ *Id.*

¹²⁸ Emanuella Grinberg, *Impoverished Border Town Grows from Shacks into Community*, CNN (July 9, 2011) <http://www.cnn.com/2011/US/07/05/texas.colonias/index.html>.

¹²⁹ *Rio Grande Valley Colonias, Part 2*, Fox 2, <https://www.youtube.com/watch?v=X0yfEGCBQJ4> (last visited Jan. 26, 2015).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

The US Housing and Urban Development Department is now passing grants through nonprofits, such as Accion Texas.¹³³ Accion Texas is a not-for profit micro-lender that will invest in business loan financing and project developments to create more affordable housing projects within Texas colonias.¹³⁴ Colonia residents often report being unsatisfied with larger government programs, preferring local efforts that lack cultural gaps.¹³⁵ Distrust in government has led to many residents avoiding the 2010 census, despite most residents being American citizens.¹³⁶

The United States Department of Agriculture Rural Development program has begun an all-inclusive approach.¹³⁷ By partnering with local health programs, such as the Indian Health Service, it has begun building wastewater plants that can service a colonia area.¹³⁸ These facilities will serve the current population with the capacity to anticipate future growth.¹³⁹ In conjunction with this, they are producing modular bathroom structures with sanitary systems, including a toilet, shower, water heater, and indoor/outdoor lighting that can be connected to wastewater systems and placed adjacent to an existing home.¹⁴⁰

These initiatives are part of a one billion dollar investment spearheaded by the Obama administration, directly addressing the water inequality faced by colonia communities, especially those in remote areas that have not experienced revitalization efforts.¹⁴¹ When successfully implemented, colonia neighborhoods can be improved to

¹³³ Davis Hendricks, *Accion Texas receives HUD Grant*, MY SAN ANTONIA (Mar. 4, 2014) <http://www.mysanantonio.com/default/article/Accion-Texas-receives-HUD-grant-5288665.php>.

¹³⁴ *Id.*

¹³⁵ Ramshaw, *supra* note 88.

¹³⁶ See Poorest Town in Texas, *supra* note 67.

¹³⁷ Judith Canales, *Colonias Receive Support from USDA Rural Development*, UNITED STATES DEPARTMENT OF AGRICULTURE (Nov. 2, 2012, 11:54 AM), <http://blogs.usda.gov/2012/11/02/colonias-receive-support-from-usda-rural-development/>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Policy Initiatives, WHITE HOUSE RURAL COUNCIL, <http://www.whitehouse.gov/administration/eop/rural-council/policy-initiatives> (last visited Jan. 29, 2015).

modern standards.¹⁴² New structures are often typical modern American homes, with driveways and multi-car garages.¹⁴³

Adopting Model Subdivision Rules for regulating subdivisions is required by the city or county where the project is located prior to applying for financial assistance.¹⁴⁴ These rules must be consistent with the model rules adopted by the TWDB.¹⁴⁵ The purpose of these rules are to promote the public health of the county residents, to ensure that adequate water and wastewater facilities are provided in subdivisions within the jurisdiction of this county, and to apply the minimum state standards for water and wastewater facilities to these subdivisions.¹⁴⁶

These Model Subdivision Rules detail restrictions on dividing land and the amount of dwellings on particular types of plats.¹⁴⁷ For example, the establishment of a residential development with two or more lots of five acres or less where the water supply and sewer services do not meet the minimum standards of this division is strictly prohibited.¹⁴⁸ Additionally, a subdivision with lots of five acres or less is presumed to be a residential development unless the land is restricted to nonresidential use on the final plat and all deeds and contracts for deeds.¹⁴⁹ The rules dictate that there can be no more than one single-family detached dwelling located on each lot and this restriction must be noted on the final plat and in all deeds or contracts for deeds for real estate sold within the subdivision.¹⁵⁰

There are generally three ways to provide the water supply requirements for adequate drinking water mandated by the Model Subdivision Rules.¹⁵¹ The applicant can connect to an existing public water system, create a new public water utility provider that complies with the requirements of the Texas Commission on Environmental Quality (TCEQ), or install individual wells that meet public drinking water standards.¹⁵² Whichever option the applicant deems appropriate for their area, the rules require that the applicant certify that they will

¹⁴² Grinberg, *supra* note 128.

¹⁴³ *Id.*

¹⁴⁴ Tex. Water Dev. Bd., *supra* note 103.

¹⁴⁵ *Id.*

¹⁴⁶ Tex. Admin. Code §364.12 (2004).

¹⁴⁷ Tex. Admin. Code §364.37 (2004).

¹⁴⁸ Tex. Admin. Code §364.31 (2004).

¹⁴⁹ *Id.*

¹⁵⁰ *See* Tex. Admin. Code §364.37, *supra* note 147.

¹⁵¹ *See* Model Subdivision Rules Training Course, *supra* note 108.

¹⁵² *Id.*

provide thirty years of service or supply to serve the needs to of the subdivision or area.¹⁵³

Waste disposal systems are also required of these applicants living in economically distressed areas and the rules specifically provide for three general ways to comply with these sewage system requirements.¹⁵⁴ The applicant can connect to an existing wastewater utility, create a new central wastewater provider, or install on-site sewage facilities meeting the state requirements.¹⁵⁵

In addition, the model rules require that setbacks from the roads and right-of-ways be a minimum of ten feet and setbacks from adjacent property lines be a minimum of five feet.¹⁵⁶ This allows for future projects to meet nationally recognized fire codes and provide water lines sized properly for fire protection.¹⁵⁷

As of February 2009, more than forty counties have adopted the Model Subdivision Rules and some fifty-eight cities within those counties have also successfully adopted them.¹⁵⁸ A notable success is the Indian Hills East Community in Hidalgo County.¹⁵⁹ This colonia, adjacent to the Capisallo Heights colonia, was largely undeveloped before 2005.¹⁶⁰ Since then, the community has developed with adequate water and power access.¹⁶¹ Overall, the adoption of Model Subdivision Rules has greatly cut the amount of homes lacking access to electricity.¹⁶²

A criticism of the Model Subdivision Rules is that while it aids new development, it also prevents improvement and investments in many of the existing developments.¹⁶³ The requirement to fully build out or bond infrastructure before selling a lot has curbed private investment,

¹⁵³ Tex. Admin. Code §364.32 (2004).

¹⁵⁴ Tex. Admin. Code §364.33 (2004).

¹⁵⁵ *Id.*

¹⁵⁶ Tex. Admin. Code §364.36 (2004).

¹⁵⁷ *Id.*

¹⁵⁸ Tex. Water Dev. Bd., *supra* note 103.

¹⁵⁹ *See* Olmedo, *supra* note 37.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ John Henneberger, *Where Texas Border Housing and Community Development Issues Stand After the Legislative Session*, TEXAS HOUSING (July 17, 2011) <http://texashousers.net/2011/07/17/after-the-legislature-where-texas-border-housing-and-community-development-issues-stand/>.

increasing reliance on government funding.¹⁶⁴ The permitting process to upgrade existing structures is often too expensive for colonias owners to legally utilize.¹⁶⁵

The model rules set forth by the TWDB are enforced by the adopting county or city and by the office of the Attorney General.¹⁶⁶ Civil and criminal penalties may apply to developers who fail to provide adequate water, waste systems and for failure to file a plat or for the conveyance of a property without adequate water services.¹⁶⁷ Since 1995, the Attorney General has obtained eighty-seven judgments against developers who are selling land to residents lacking proper infrastructure.¹⁶⁸ The office of the Attorney General has faced a shortage in funds to investigate border communities and this has limited its enforcement power.¹⁶⁹

V. CALLING FOR A STATEWIDE DEFINITION FOR TEXAS COLONIAS

While the Model Subdivision Rules greatly aided many communities, they have major problems stemming from the fact that they are focused on the infrastructure surrounding the homes, but not the homes themselves.¹⁷⁰ Going forward in order to solve the long-term plights facing colonias, the state of Texas must do the following things: redefine colonias to account for infrastructure surrounding environment and the homes themselves; create a mechanism to add communities to the list of colonias and remove them when proper improvement have been made; and empower the counties to have the proper authority to oversee colonias.¹⁷¹

¹⁶⁴ *Id.*

¹⁶⁵ Ramshaw, *supra* note 117.

¹⁶⁶ *See generally Colonias Prevention*, ATTORNEY GENERAL OF TEXAS KEN PAXTON, <https://www.texasattorneygeneral.gov/cpd/colonias-prevention> (last visited Jan. 26, 2015).

¹⁶⁷ *Id.*

¹⁶⁸ Grinberg, *supra* note 128.

¹⁶⁹ *See* Final S. Rep. Bill 827, *supra* note 46.

¹⁷⁰ Telephone Interview with Ann Williams Cass, Executive Director, Proyecto Azteca (Mar. 5, 2015).

¹⁷¹ *See generally* TEX. SEC'Y OF STATE, Tracking Progress of State Funded Projects that Benefit Colonias (Dec. 1, 2014), *available at* <http://www.sos.state.tx.us/border/forms/2014-progress-legislative-report.pdf> [hereinafter 2014 Tracking Progress].

Despite having modern infrastructure surrounding them, there are still homes made out of shipping palates.¹⁷² As Proyecto Azteca's Executive Director Ann Williams Cass observed, many residents living in Model Subdivisions live in "dilapidated mobile homes or go to the grocery store and get palates and build their homes out of these palates". She continued by saying, "we even have pictures of these folks building their homes out of old campaign billboards."¹⁷³ Homes need to be made out of sustainable materials, like the one Proyecto Azteca is currently building in Edcouch.¹⁷⁴ Proyecto Azteca went beyond simple addresses of infrastructure with this project and took a wholesale approach with its planning.¹⁷⁵ It is Silver LEED-certified and will house thirty-two families when it first opens.¹⁷⁶ It is the first LEED-certified neighborhood south of Austin in any circumstance.¹⁷⁷ These homes were built to survive harsh Texas weather, with metal roofs, rain harvest systems, solar panels, and energy efficient appliances.¹⁷⁸ These residents are "creative and resilient, but the living standards for Model Subdivision homes are way below par"¹⁷⁹.

Proyecto Azteca's approach used private foundation equity and required each family in Edcouch to contribute 550 hours of work time.¹⁸⁰ The mortgages are forty years long and fixed at \$500 a month.¹⁸¹ This top to bottom form of self-empowerment is a new approach to addressing the systemic problems faced by Colonias.¹⁸² Proyecto Azteca took a long-term approach instead of a 'band-aid' fix that will allow this community and future ones like it thrive.¹⁸³

¹⁷² Neena Satija, *Border Towns Struggle to protect Water Infrastructure*, THE TEXAS TRIBUNE (Jan. 10, 2014), <http://www.texastribune.org/2014/01/10/border-towns-struggle-protect-water-infrastructure/>.

¹⁷³ Telephone Interview with Ann Williams Cass, *supra* note 170.

¹⁷⁴ Jared Janes, *Neighborhood to Provide Families a Solid Foundation*, THE MONITOR (May 24, 2013), http://www.themonitor.com/news/local/article_a944c014-c40d-11e2-8382-001a4bcf6878.html.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Telephone Interview with Ann Williams Cass, *supra* note 170.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

Beyond home construction, it is necessary to address the basic components of neighborhood construction that impact health.¹⁸⁴ Model Subdivision Rules moved Colonias forward by providing access to clean water but did not address the human aspects of day-to-day life.¹⁸⁵ When children still were going without exercise, and the majority of children were overweight or obese, Dr. Nelda Mier used a *Salud America!* grant to study how to increase healthy habits in Colonias residents.¹⁸⁶ Dr. Mier found that children were not active because they had no access to sidewalks or parks.¹⁸⁷ Children were both aware of this and of the negative effects it was having.¹⁸⁸ Dr. Mier says, “they even brought up that more exercise would help them handle stress, and they felt bad about the amount of TV watching they did”.¹⁸⁹

Streetlights and playgrounds are rare and what equipment children had access to was typically rusty and decrepit.¹⁹⁰ Working with Proyecto Azteca, Dr. Mier found funding sources and integrated these findings into the planning of the Edcouch community.¹⁹¹ Because of this, residents will enjoy access to sidewalks, a playground, basketball courts, hiking trails, and a community center.¹⁹²

It is also necessary to expand the scope of services beyond just the Colonias but to the Texas Border Region as a whole.¹⁹³ Recently, an elementary school in La Villa, Texas, temporarily shut down due to an argument with the city utility company over water rates.¹⁹⁴ The disconnected political entities have been unable to unify their water

¹⁸⁴ *Nonprofit Adds Sidewalks, Playground to Affordable Housing Neighborhood, SALUD AMERICA!*, http://www.communitycommons.org/sa_success_story/nonprofit-adds-sidewalks-playground-to-affordable-housing-neighborhood/ (last visited Mar. 18, 2015).

¹⁸⁵ Telephone Interview with Ann Williams Cass, *supra* note 170.

¹⁸⁶ *Nonprofit Adds Sidewalks, Playground to Affordable Housing Neighborhood*, *supra* note 184.

¹⁸⁷ *Id.*

¹⁸⁸ Sandra Lilley, *Building Sidewalks to Combat Child Obesity*, NBC NEWS LATINO (2013), available at <http://nbclatino.tumblr.com/post/21451741002/building-sidewalks-to-combat-childhood-obesity>.

¹⁸⁹ *Id.*

¹⁹⁰ *Nonprofit Adds Sidewalks, Playground to Affordable Housing Neighborhood*, *supra* note 184.

¹⁹¹ *Id.*

¹⁹² Janes, *supra* note 174.

¹⁹³ Satija, *supra* note 172.

¹⁹⁴ *Id.*

systems for a much needed water upgrade.¹⁹⁵ “Basically, it’s planning and lack of money, and lack of management,” said Carlos Acevedo, a senior project manager for the Border Environment Cooperation Commission, which is a binational agency addressing the environmental impact of towns along the Mexico-US Border.¹⁹⁶ There is a high turnover rate in small border towns and there is rarely a consistent direction or long term plan.¹⁹⁷ While funds are available for the Colonias neighborhoods to aide these situations, money should also be available for the needed services these communities rely on but cannot obtain.¹⁹⁸

Like the fines of the Model Subdivision Rules, the TCEQ fines are crippling instead of enabling.¹⁹⁹ Texas needs to move away from punitive forms of treatment and instead find ways to reach long term solutions.²⁰⁰ Fines run as high as \$10,000 a day and the Commission orders will put the town into \$140,000 of debt.²⁰¹ The TCEQ should also speed its grant process.²⁰² A sewer project outside of Donna, Texas took two years to move through the application process before construction could begin.²⁰³ Along with EDAP projects, TCEQ grants that benefit Colonias are given less priority than those that benefit municipal residents.²⁰⁴ Projects are also hampered by obtrusive reporting requirements.²⁰⁵ In both the 2010 and 2014 Colonias Initiatives Programs Reports to the Texas Legislature, they recommended changing reporting requirements from quarterly to annually to lessen

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Satija, *supra* note 172.

²⁰⁰ Telephone Interview with Ann Williams Cass, *supra* note 170.

²⁰¹ Satija, *supra* note 172.

²⁰² Elizabeth Findell, *Donna Expands Sewer Lines to Colonias, Eyes Annexation*, THE MONITOR (May 26, 2011), http://www.themonitor.com/news/local/donna-expands-sewer-lines-to-colonias-eyes-annexation/article_8a992196-2fdb-5007-8121-6c08375e7a88.html.

²⁰³ *Id.*

²⁰⁴ Nicole Carter and Leonard Ortolano, *Subsidies for Public Service at an international Border: Implementing Government Assistance for Environmental Infrastructure in Texas Colonias*, Stanford, (Nov. 28, 2006), available at <http://stanford.edu/dept/france-stanford/Conferences/Risk/Ortolano.pdf>.

²⁰⁵ TEX. SEC’Y OF STATE, Tracking Progress of State Funded Projects that Benefit Colonias (Dec. 1, 2010), available at <http://www.sos.state.tx.us/border/forms/reports-11/sb-99-progress.pdf> [hereinafter 2010 Tracking Progress].

administrative costs and cut down on the occurrence of double reporting.^{206 207}

The Colonias Self Help Center program is one government entity that could be used to better effect.²⁰⁸ Created in 1995 to address the five neediest Colonias in several counties, the self-help centers go beyond community infrastructure and help residents build new and safe homes.²⁰⁹ If these programs were expanded and better funded, they would be able to serve as a focal point for state and federal funding flowing into new home efforts.²¹⁰ Currently they only serve 10,000 residents in twenty-eight Colonias.²¹¹ The funding is also limited to 1.5 million dollars per year, a small sum compared to what is spent on new water systems and roads.²¹²

It is difficult to assess the efficacy of state and federal dollars spent on colonias communities because the list of colonias does not get smaller.²¹³ Despite communities incorporating, or upgrading to modern standards, they still appear on the state colonias list.²¹⁴ State agencies use seven different colonias definitions, which can vary widely.²¹⁵ The following definition of a colonia from the Texas Department of Housing and Community Affairs is an example of a thorough definition by one state agency:

A “Colonia,” Spanish for neighborhood or community, is a geographic area located within 150 miles of the Texas-Mexico border that has a majority population composed of individuals and families of low and very low income. These families lack safe, sanitary and sound housing and are without basic services such as potable water, adequate sewage systems, drainage, utilities, and paved roads. With living conditions often compared to Third World countries, the colonias present one of the most critical housing needs in the State. Housing in

²⁰⁶ *Id.*

²⁰⁷ See 2014 Tracking Progress, *supra* note 171.

²⁰⁸ Crystal Price, *Declassification Proposal Concerns County Leader about Colonia Program Funding*, KFOX14 (Mar. 5, 2015), <http://www.kfoxtv.com/news/features/top-stories/stories/Program-pushes-for-colonia-declassification-mechanism-99343.shtml#.VQeLkVPs1eY>.

²⁰⁹ TEX. DEP'T OF HOUS. & CMTY. AFFAIRS, *Colonias Self Help Center (SHC) Program*, <http://www.tdhca.state.tx.us/oci/centers/> (last visited Mar. 15, 2015).

²¹⁰ Price, *supra* note 208.

²¹¹ See TEX. DEP'T OF HOUS. AND CMTY. AFFAIRS, *supra* note 209.

²¹² *Id.*

²¹³ Satija, *supra* note 172.

²¹⁴ *Id.*

²¹⁵ *Id.*

the colonias is primarily constructed with scarce materials. Professional builders are rarely used. Residents frequently start with makeshift structures of wood, cardboard or other materials, and as finances allow they continue to improve their homes.²¹⁶

For the last five years, the Colonias Initiative Program has asked the Texas legislature to address the redefinition and declassification issues. According to the Texas Secretary of State, there are various definitions for colonias by state agencies due to funding requirements. “The differences among its applied definitions are attributed to the varying emphases placed on its specific characteristics by government agencies and codes. Consequently, the characteristics that define a colonia differ according to the type of agency, government code or issue being addressed at any given time.”²¹⁷ This has led to many communities being misidentified as Colonias.²¹⁸ Because cities and counties can request that a community receive a Colonias designation, but there is a lack of funding to confirm, these misidentifications can happen, allowing other funding and resources to eventually be diverted from the communities where they are most needed.²¹⁹

There should be one statewide definition with a multifaceted checklist that determines whether a neighborhood qualifies as a colonia and then should be appropriately added or removed from the master state colonias list.²²⁰ To achieve this, the Texas Legislature should create the system in statute.²²¹ By tracking the inclusion and exclusion of communities on the colonias list, state and federal dollars can be better prioritized.²²² Local leaders would also be empowered to direct their own efforts as well as those of nonprofits to the areas most in need.²²³ Within the colonias list, the severity rankings from the CHIPS database

²¹⁶ See e.g., TEX. SEC’Y OF STATE, What is a Colonia?, http://www.sos.state.tx.us/border/colonias/what_colonia.shtml (last visited March 20, 2015) (“The term ‘colonia,’ in Spanish means a community or neighborhood. The Office of the Secretary of State defines a ‘colonia’ as a residential area along the Texas-Mexico border that may lack some of the most basic living necessities, such as potable water and sewer systems, electricity, paved roads, and safe and sanitary housing.”).

²¹⁷ *Id.*

²¹⁸ See 2014 Tracking Progress, *supra* note 171.

²¹⁹ *Id.*

²²⁰ Satija, *supra* note 172.

²²¹ Price, *supra* note 208.

²²² Satija, *supra* note 172.

²²³ Price, *supra* note 208.

should play a larger role in directing funds to the most immediate needs.²²⁴ Unfortunately, the Texas Legislature, which meets biennially, has failed to pass any legislation for Colonias since 2005, and has filed no legislation for the 2015 Legislative Session.²²⁵ Some legislators representing these even claimed to be unaware of these reports or their recommendations.²²⁶ Another legislator suggested this be done without legislative action and instead as a joint effort between state agencies.²²⁷

Furthermore, the Texas Legislature needs to fund a comprehensive survey of all Colonias.²²⁸ Texas needs an up to date assessment of the state of its Colonias communities and the state of their infrastructure, as well as locations and populations.²²⁹ This has been a request from both the 2010 and 2014 Colonias Initiatives Program Reports to the Texas Legislature.²³⁰ The Colonias Initiatives Program Reports indicate great progress that has been made but demonstrate the many roadblocks facing true assessment and rehabilitation.²³¹

Since its inception, Texas has deferred to property owners when crafting its constitution and legislation.²³² Because of Texas' devotion to property rights, expanding counties zoning authority has always been met with opposition.²³³ This devotion is ingrained the constitution.²³⁴ Counties have minimal autonomy from the state and have no general ordinance making authority.²³⁵ While counties were granted the

²²⁴ Satija, *supra* note 172.

²²⁵ See generally TEX. SEC'Y OF STATE, Colonia Legislation in Texas, available at <http://www.sos.state.tx.us/border/colonias/legislation.shtml> (last visited at Mar. 18, 2015).

²²⁶ Alexa Ura, *State Waits for Directions to Declassify Colonias*, THE TEXAS TRIBUNE (Mar. 3, 2015), <http://www.texomashomepage.com/story/d/story/state-waits-for-directions-to-declassify-colonias/34680/AMMtl5jrvUSVL7JynDnY5w>.

²²⁷ *Id.*

²²⁸ See 2014 Tracking Progress, *supra* note 171.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² ATTORNEY GEN. OF TEX., Private Real Property Rights Preservation Act Guidelines, available at <https://www.texasattorneygeneral.gov/agency/private-real-property-rights-preservation-act-guidelines> (last visited Mar. 18, 2015).

²³³ TEX. H. RESEARCH ORG., DO COUNTIES NEED NEW POWERS TO COPE WITH URBAN SPRAWLS (Nov. 6, 2002).

²³⁴ Private Real Property Rights Preservation Act Guidelines, *supra* note 232.

²³⁵ *Id.*

authority to impose platting requirements by House Bill 1001 in 1995, they are still very limited in what they can do.²³⁶

Currently in Texas, only cities and towns have the authority to create and enforce building codes.²³⁷ Counties have no mechanism by which they can enforce housing standards in the unincorporated areas within their boundaries.²³⁸ The County Commissioners Court is the ruling body for each county and is limited in its scope of jurisdiction.²³⁹ Each Court has four elected commissioners and is chaired by the county judge.²⁴⁰ By constitutional authority, the court sets the county budget, sets the tax rate, approves subdivision platting, and may oversee county activities such as bridge and road repair, local courts, or county hospital administration.²⁴¹

Any city with a population over 5,000 people has the authority to adopt a home rule charter that gives it a great deal of autonomy, while counties remain a creation of state statute.²⁴² Home Rule Cities have “inherited powers” that the Legislature can neither grant nor deny.²⁴³ While these cities would be able to yield greater influence over Colonias, they are rarely incorporated into city limits.²⁴⁴ Residents have historically opposed bringing the Colonias into their city limits.²⁴⁵ Further, the Colonias would also require more tax dollars than their inclusion would provide.²⁴⁶

²³⁶ TEX. H. RESEARCH ORG., *supra* note 233.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *See generally* TEX. ASS’N OF CNTY., County Commissioner, available at <https://www.county.org/for-county-officials/resources-by-office/Pages/County-Commissioner.aspx> (last visited Mar. 18, 2015).

²⁴¹ TEX. H. RESEARCH ORG., *supra* note 233.

²⁴² *Id.*

²⁴³ *Local Government in Texas*, Tex. Mun. League, <https://www.tml.org/pdftexts/HRHChapter1.pdf> (last visited Mar. 18, 2015).

²⁴⁴ PETER M. WARD, *COLONIAS AND PUBLIC POLICY IN TEXAS AND MEXICO: URBANIZATION BY STEALTH*, 250 (1999).

²⁴⁵ Joel Williams, *Annexation of Colonias Concerns Residents*, *The Dallas Morning News* (Dec. 23, 1987), http://nl.newsbank.com/nl-search/we/Archives?p_product=DM&p_theme=dm&p_action=search&p_maxdocs=200&p_topdoc=1&p_text_direct=0=0ED3CF85082D2866&p_field_direct=0=document_id&p_perpage=10&p_sort=YMD_date:D&s_trackval=GooglePM.

²⁴⁶ *See* Carter & Ortolano, *supra* note 204.

One exception is the West Donna Colonias Project, which received over five million dollars in sewer work.²⁴⁷ The City of Donna can legally grow up to thirty percent over three years, although annexation is looking to bring the Colonias into its boundaries.²⁴⁸ Donna found that annexation would allow proper planning in the future, benefiting both residents and the environment.²⁴⁹ The City's EDAP grant helped subsidize current construction while including Colonias needs.²⁵⁰

Border counties have broader authority, but are still limited.²⁵¹ Local Government Code, chapter 232, subchapter B allows Counties within fifty miles of the border set subdivision regulations requiring that water and wastewater facilities meet minimum state standards and that solid waste disposal service meets state and county standards.²⁵² These "Subchapter B Counties" are able to enforce Colonias prevention laws.²⁵³ These laws only apply to communities that were platted after 1989, the numerous Colonias that predate this were grandfathered in.²⁵⁴ The funding for these programs overwhelmingly went towards water programs and funding to address actual living conditions was nonexistent.²⁵⁵ Even success stories such as Cameron Park suffered from lack of homes that are capable of accessing the new infrastructure.²⁵⁶ Because of the grandfathered plats, the Model Subdivision Rules also encouraged infilling in existing Colonias, exasperating community problems.²⁵⁷

While Colonias are addressed in an American context, it is worthwhile to study the response of the Mexican Government towards these communities.²⁵⁸ Mexico and the Mexican States normalized the state of these Colonias and they became effective voter blocs.²⁵⁹ Mexico actively sought to meet the Colonias and their residents where they were at instead of enforcing unreasonable regulations that only worsen the

²⁴⁷ Findell, *supra* note 202.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ See Carter & Ortolano, *supra* note 204.

²⁵¹ TEX. H. RESEARCH ORG., *supra* note 233.

²⁵² *Id.*

²⁵³ ATTORNEY GEN. OF TEX., Private Real Property Rights Preservation Act Guidelines, *supra* note 232.

²⁵⁴ WARD, *supra* note 244, at 108.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ See WARD, *supra* note 244.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

situation for citizens.²⁶⁰ Mexican Colonias are also incorporated as part of the surrounding communities, making integration easier.²⁶¹ The Texas Legislature should incentivize Texas Municipalities to annex Colonias and take them under their long-term care.

VI. CONCLUSION

Looking forward, by 2017 the Texas Legislature should pass encompassing legislation to consolidate and overhaul its many disparate programs serving the Colonias. Grants from the EDAP and the TCEQ should be combined. A streamlined process should be developed that addresses needs quickly. Because of the volatility and lack of stability in local government, more grants should be available to local non-for profit organizations as well.

This legislation should also redefine how Texas views and defines Colonias. There should be one single definition for all state agencies and cabinet departments. This definition should include a road map for declassification. Within the definition, the CHIPS database should be integrated. Funding priority should immediately go to the direst Colonias.

The Model Subdivision Rules should also be revisited and repealed. These rules were meant to stop the proliferation of Colonias neighborhoods but only led to denser existing Colonias. A new code should be established that includes rehabilitative instead of punitive options. This should also be tied into Housing Grants that help create more neighborhoods like the ones Proyecto Azteca is constructing.

Finally, any legislation considered should be proactive instead of reactive. The Colonias in Texas are not a problem in themselves but instead represent American citizens facing great hardships. They should not be punished but empowered to take control of their own communities with the same resources available to the rest of Texas.

Admirable progress has been made in dealing with the Texas colonias communities in the past two decades. But while improvements have been made, efforts have been uneven and often come up short, prolonging the environmental crisis faced by residents. Large bureaucratic programs are well intentioned, but unfortunately lack a local interface to maximize effectiveness. State and federal grant

²⁶⁰ *Id.*

²⁶¹ *Id.*

programs lose their effectiveness when relying on local governments that change direction with every election. Instead, these programs must partner with local nonprofits and community centers, standing programs that understand the unique needs of each colonia.

Furthermore, Texas must look beyond community infrastructure and focus on individual family units. Modern infrastructure is useless when the homes surrounding it have no way to connect into it. Outdated programs must be reevaluated and reformed so that residents receive self-empowerment instead of punitive action. Only then will Texas be able to modernize these communities and fully mitigate their negative human and environmental impacts.