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### What's in a Name? The Changing Definition of Colonias in Texas

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**WHAT’S IN A NAME?: THE CHANGING DEFINITION OF COLONIAS IN TEXAS**

*By: Karino Rios<sup>†</sup>*

**ABSTRACT**

*Colonias are unincorporated subdivisions that lack access to basic infrastructure and safe, suitable housing. While research shows that there are currently seven definitions of a Colonia, those definitions have been ineffective in halting their proliferation or improving residents’ living conditions. The lack of infrastructure has led to significant health and environmental problems such as hepatitis, cholera, lice infestation, groundwater contamination, and air pollution. Additionally, counties have little power to regulate development in unincorporated areas, which has contributed to unsafe, substandard housing. Legislative efforts have attempted to address these problems but have had little to no success. State programs are attempting to fill in the gaps that legislation has left by providing adequate housing, health services, education, and other basic needs. However, discrepancies in the Colonia definition prevent programs and agencies from providing services to the Colonias that need it the most. Without a method of tracking and prioritizing the Colonias in need of services, funds and resources are spread too thin. By creating a uniform definition, tracking the progress of Colonias, providing more funds, and empowering counties, efforts can finally succeed in making Colonias a thing of the past.*

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## I. INTRODUCTION

In Spanish, the word “Colonia” means community or neighborhood. However, Colonias are far from the normal neighborhoods we expect to see in a developed country. The life of a Colonia resident is unlike that of the average American. In Colonias there are no white picket fences or perfectly mowed lawns. Children in Colonias do not run on the sidewalk to catch their school bus every morning or come home to watch cartoons on the television. Instead, living in a Colonia means driving to the nearest water source periodically to make sure that your home will have access to clean water. Living in a Colonia means rushing home before it gets dark out because street lights are a wished-for commodity. Living in a Colonia means driving slowly and carefully on unpaved roads to avoid massive potholes, ditches, and trash littered on the street. Living in a Colonia means living without electricity, well-lit streets, septic and sewer systems, and safe, suitable housing.

While Colonias are also present in other border states like Arizona, New Mexico, and California, Texas has more Colonias along the United States-Mexico border than any other state.<sup>1</sup> A larger number of Colonias exist in Texas, at least in part, because counties in Texas have little power to regulate development in unincorporated areas.<sup>2</sup> In contrast, states like Arizona and New Mexico have state-level codes that regulate building standards, county area plans for unincorporated areas, or land use codes.<sup>3</sup> In response to the rapid increase in the number of Colonias, the Texas Legislature made numerous efforts to

1. JORDANA BARTON, ET. AL., FED. RESERVE BANK DALL., LAS COLONIAS IN THE 21ST CENTURY: PROGRESS ALONG THE TEXAS-MEXICO BORDER 1 (2015), <https://www.dallasfed.org/~media/documents/cd/pubs/lascalonias.pdf>.

2. Alana Semuels, *The American Neighborhoods Without Water, Sewers, or Building Codes*, ATLANTIC (Mar. 3, 2016), <https://www.theatlantic.com/business/archive/2016/03/the-americans-without-running-water/471909/>.

3. ADRIAN X. ESPARZA & ANGELA J. DONELSON, COLONIAS IN ARIZONA AND NEW MEXICO: BORDER POVERTY AND COMMUNITY DEVELOPMENT SOLUTIONS 69, 69–70 (The University of Arizona Press 2008).

prevent the proliferation of Colonias and improve the living conditions in pre-existing, established Colonias. However, despite the Legislature's best efforts the new laws "represent no more than political rhetoric."<sup>4</sup> These efforts to stop the expansion of Colonias are rendered useless because of various loopholes in legislation, poor enforcement mechanisms, and the changing definition of a Colonia. This Comment contends that the changing definition of what qualifies as a Colonia has provided an incentive to develop new ones, not address the conditions of existing ones. As a result, agencies and organizations began defining Colonias internally, thus perpetuating the discord in definition. As more areas qualify as a Colonia and become eligible to receive government aid, the amount of funds available for allocation to each Colonia has decreased dramatically. In order to rectify this situation and truly prevent the expansion of Colonias, this Comment proposes that the legislature narrow the definition of Colonias.

This Comment focuses on why past efforts to define Colonias have failed, and why there is a strong need for a uniform, state-wide definition. Part III defines a Colonia and discusses the problems faced by Colonia residents, many of which result from the variety of definitions. Part III also discusses failed legislative efforts to define a Colonia. Part III explores the seven varying definitions of Colonias that state agencies and programs have developed. Part IV discusses a uniform definition that should be adopted by both the legislature and all the agencies involved. Additionally, Part IV discusses other recommendations that will help end the proliferation of Colonias, such as effectively tracking Colonias, restructuring the allocation of funds, and empowering counties to oversee Colonias.

## II. WHAT ARE COLONIAS AND WHY SHOULD WE CARE?

### A. *Background and Development*

#### 1. History of Colonias

Colonias first emerged in Texas in the 1950s<sup>5</sup> and rapidly grew in the 1980s as the promise of the American Dream lured immigrants

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4. David L. Hanna, *Third World Texas: NAFTA, State Law, and Environmental Problems Facing Texas Colonias*, 27 ST. MARY'S L.J. 871, 877-78 (1996).

5. Anietie M. Akpan, *Tierra y Vida: How Environmental Injustice Has Adversely Impacted Public Health Rural Brown Populations South Texas*, 43 TEX. ENVTL. L. J. 321, 322 (2013).

from Mexico and Central America to Texas.<sup>6</sup> In the 1960s, after the collapse of the cotton market, farmers sold their land to real estate developers who subdivided the land into small plots.<sup>7</sup> At the same time, the “Maquiladora Program,” which was established in 1965 by the Mexican government, allowed raw materials, components, and equipment to be imported to Mexico, assembled, and then exported back into the United States.<sup>8</sup> The program also addressed the need to “industrialize northern Mexico and slow down migration to the U.S. by creating jobs along the border.”<sup>9</sup> Ultimately, the “Maquiladora Program” caused the border population to increase dramatically, which led to a housing shortage for low-income wage earners.<sup>10</sup> The unincorporated land purchased by the individuals had no sewage system, electric wiring, or other basic infrastructure because the land developers were not subject to regulations.<sup>11</sup> This lack of regulation meant the developers were able to provide cheap housing alternatives for low income families.<sup>12</sup> As a result of this and the county’s inability to enact building codes, Colonia residences are in various stages of development as residents build their homes room by room, occasionally with no foundation, floors, windows, or walls.<sup>13</sup>

Today, an estimated 500,000 people live in nearly 2,300 Colonias in Texas.<sup>14</sup> According to the United States Census Bureau, 96% of Colonia residents are Hispanic. Additionally, contrary to the misconception that most Colonia residents are illegally present in the United States, 73% of residents are United States citizens.<sup>15</sup> Literature suggests that Hispanics settle down in Colonias because they allow them to be close to relatives who live in northern Mexico, provide a level of comfort with the culture and language of the border, and provide the most affordable housing for low-income families.<sup>16</sup> However, despite the appeal Colonias may have for Hispanics and

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6. Maria-Cristina Garcia, *Colonia*, TEX. STATE HISTORICAL ASS’N (July 28, 2015), <https://tshaonline.org/handbook/online/articles/poc03>.

7. *Id.*

8. Mike White, *NAFTA and the Maquiladora Program*, TEAM NAFTA (April 18, 2016), <http://teamnafta.com/manufacturing-resources-pages/2016/4/18/nafta-and-the-maquiladora-program>

9. *Id.*

10. Hanna, *supra* note 4, at 882–83.

11. Akpan, *supra* note 5, at 322.

12. *Id.*

13. *Id.* at 323.

14. BARTON ET. AL., *supra* note 1, at 1.

15. *Id.* at 2 (reporting that 94 percent of children in colonias are citizens and 60 percent of adults in colonias are citizens).

16. *Id.*

low-income individuals in general, settling down in a Colonia presents a series of infrastructure, health, and legal problems.

## 2. Problems Faced by Colonia Residents

The living conditions in Colonias are often called “primitive” and are compared to living conditions in developing countries.<sup>17</sup> According to a 2014 Senate report prepared by the Texas Office of the Secretary of State Colonia Initiatives Program, the Secretary of State has developed a Colonia identification system to classify Colonias depending on their living conditions.<sup>18</sup> Colonias that are classified as “green” are Colonias with access to potable water, paved roads, and operational wastewater disposal systems.<sup>19</sup> The number of green Colonias in Texas increased from 891 to 922 from 2010 to 2014.<sup>20</sup> As more and more Colonias graduate to green status, the number of people living in suitable living conditions also increases. However, this improvement comes with a costly trade-off. As the infrastructure in these Colonias improves, the price of residential lots increases, thus making affordable housing more difficult to obtain.<sup>21</sup> The more residents have to spend on their lots, the less money they have to spend on their housing; as a result, Colonia residents may be unable to afford connecting to utilities.<sup>22</sup> For example, research shows that electrical connectivity alone can cost residents hundreds of dollars, assuming their homes have proper wiring.<sup>23</sup>

“Yellow” Colonias are those with existing potable water service (via private well or public system) and an approved water disposal system, but they have a lack of adequate road paving, drainage, or a solid wastewater disposal system, which poses an intermediate health

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17. Hanna, *supra* note 4, at 884.

18. TEX. OFFICE OF THE SEC’Y OF STATE, COLONIA INITIATIVES PROGRAM, TRACKING THE PROGRESS OF STATE-FUNDED PROJECTS THAT BENEFIT COLONIAS 3 (2014), <https://www.sos.texas.gov/border/forms/2014-progress-legislative-report.pdf-report.pdf> [hereinafter COLONIA INITIATIVES PROGRAM].

19. *Id.*

20. *Id.*

21. *See generally* BARTON ET. AL., *supra* note 1.

22. *Id.* at 5.

23. CARLOS OLMEDO ET AL., THE UNIV. OF TEX. AT AUSTIN, EMPOWERING CHANGE IN TEXAS COLONIAS: A PROPOSAL TO PROVIDE ELECTRICITY ACCESS TO COLONIA RESIDENTS 10 (2013), [http://sites.utexas.edu/energyinstitute/2013/03/19/ut-austin-students-win-10000-scholarship-in-power-across-texas-competition/files/migratedimages/power\\_across\\_texas\\_competition-eic\\_colonias\\_prop\\_ut\\_f.pdf](http://sites.utexas.edu/energyinstitute/2013/03/19/ut-austin-students-win-10000-scholarship-in-power-across-texas-competition/files/migratedimages/power_across_texas_competition-eic_colonias_prop_ut_f.pdf).

risk.<sup>24</sup> The number of yellow Colonias increased from 519 in 2010 to 555 in 2014.<sup>25</sup> Hidalgo County, which has the highest number of yellow Colonias in the state, has over 60,000 people living in yellow Colonias. “Red” Colonias are those that lack basic infrastructure such as potable water, functional wastewater disposal, or platted subdivisions. While only two Colonias graduated from the red classification between 2010 and 2014, the population within those 337 red Colonias dropped by over 6,000 people.<sup>26</sup> Despite the fact that conditions in Texas Colonias seem to be improving, there are still thousands of people living in substandard living conditions.

The poor living conditions in Colonias also create significant health-related problems for residents. Health problems for Colonia residents emanate from the outside surroundings and from the structures of their households.<sup>27</sup> The cause for these health problems arise primarily from the lack of proper sanitation systems or waste management programs,<sup>28</sup> which facilitates the spread of contagious diseases.<sup>29</sup> Colonia residents are especially susceptible to “hepatitis, cholera, dysentery, and even leprosy.”<sup>30</sup> Colonia residents also exhibit high rates of anencephaly, lupus, leukemia, and breast cancer.<sup>31</sup> Children suffer from high rates of asthma, lice infestation, and diabetes.<sup>32</sup> Despite all the different health problems that arise from living in a Colonia, few residents have access to medical and health services.<sup>33</sup> The most common barriers to services include lack of transportation, health insurance, language barriers, lack of public awareness regarding available social service programs, and immigration status.<sup>34</sup>

The living conditions in Colonias also pose significant environmental threats and concerns. The Texas State Legislature’s bills are designed to focus on three areas that often times overlap: adequate services, quality of life, and the overall health of residents.<sup>35</sup>

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24. COLONIA INITIATIVES PROGRAM, *supra* note 18, at 3.

25. *Id.*

26. *Id.*

27. Akpan, *supra* note 5, at 323.

28. *Id.*

29. Hanna, *supra* note 4, at 884.

30. *Id.* at 885.

31. *Id.* at 885.

32. Akpan, *supra* note 5, at 323.

33. The reasons for the high rates of diseases and ailments will be discussed in another section of this comment.

34. COLONIA INITIATIVES PROGRAM, *supra* note 18, at 21.

35. *Id.* at 18.

While many Colonias now have access to safe drinking water and wastewater facilities, some Colonias still do not.<sup>36</sup> Colonia residents without access to safe drinking water have to depend on bulk water transportation, bottled water, or private groundwater wells.<sup>37</sup> However, private groundwater wells can often be contaminated by bacteria, nitrates, or other contaminants because of the poor living conditions, poor storm water drainage, and lack of adequate infrastructure.<sup>38</sup>

Colonias have also become cesspools of waste due to the lack of waste management programming.<sup>39</sup> Many Colonias lack the resources or services to dispose of normal household solid waste, and this problem is often intensified when the roads within the Colonia are not paved.<sup>40</sup> The limited disposal options have led Colonia residents to resort to illegal dumping and trash burning.<sup>41</sup> Vacant lots are often used for illegal dumping, which can attract rodents or mosquitos that transmit diseases.<sup>42</sup> Trash often lays in the unpaved roads or piles up on resident's property. Additionally, trash burning can lead to poor air quality, endangering residents.<sup>43</sup> Trash burning is especially harmful because it releases chemicals that pollute food, lakes, and streams.<sup>44</sup> One study found that residential trash burning from a single home is more harmful than an industrial incinerator because of the pollutants it releases.<sup>45</sup> Frequent trash burning also creates a significantly hazardous environment for Texans in general.<sup>46</sup>

Finally, Colonia residents are plagued by legal problems related to home ownership. In Colonias, homeownership begins with the purchase of land and then home construction follows as residents save up enough money to make new additions.<sup>47</sup> Land purchases for Colonias are usually seller-financed through contracts for deed ("CFDs"), typically described as "rent-to-own financing arrangements."<sup>48</sup> Unlike a conventional purchase, under a CFD, the

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36. *Id.* at 13.

37. *Id.* at 18.

38. *Id.*

39. Akpan, *supra* note 5, at 325.

40. COLONIA INITIATIVES PROGRAM, *supra* note 18, at 19.

41. *Id.*

42. *Id.*

43. *Id.*

44. Akpan, *supra* note 5, at 326.

45. *Id.*

46. *Id.*

47. BARTON ET. AL., *supra* note 1, at 6.

48. *Id.*



buyer does not immediately gain equity in the property.<sup>49</sup> The most typical problem for Colonia home buyers arises because a purchaser accrues no equity while making the payments.<sup>50</sup> Therefore, if any payments are missed, the seller will reclaim the property and is not obligated to return any of the buyer's payments, even if the buyer made improvements to the property.<sup>51</sup> While the Texas Legislature has attempted to make CFDs obsolete by making them illegal, loopholes in the laws allow the use of CFDs to persist.<sup>52</sup> While buyers have legal recourse, they require legal services, which are often unavailable or unaffordable.<sup>53</sup> This problem is especially prevalent in Maverick County Colonias where research shows that an estimated 45% of buyers have lost their property through repossession from 1989 to 2010.<sup>54</sup>

### B. Legislative Development

Starting in the late 1980s, Texas lawmakers began to recognize the problems caused by Colonia development and proliferation. The Legislature responded to this by enacting laws that would improve infrastructure conditions and prevent more Colonias from emerging. The first bill addressing Colonias was passed in 1987 during the 70th Session of the Texas Legislature.<sup>55</sup> The goal of Senate Bill 585 was to "improve infrastructure conditions and end further Colonia construction."<sup>56</sup> Senate Bill 585 attempted to accomplish this goal by allowing the Texas Water Development Board ("TWDB") to "facilitate funding opportunities for Colonias to gain access to water and wastewater programs."<sup>57</sup> The bill never mentioned or defined the

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49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. STATE BAR OF TEX. DEP'T OF RESEARCH & ANALYSIS, 2017 ATTORNEY POPULATION DENSITY BY METROPOLITAN STATISTICAL AREA (2018), <https://www.texasbar.com/AM/Template.cfm?Section=Home&ContentID=40396&Template=/CM/ContentDisplay.cfm> (reporting that in 2017 there were 27,838 active Texas state attorneys in the Dallas-Fort Worth area and 6,981 active Texas attorneys in the San Antonio area, but only 345 active attorneys in Laredo and 50 active attorneys in Maverick county).

54. BARTON ET. AL., *supra* note 1, at 6.

55. Chelsea L. Hanchett, *Colonias in the Eyes of Texas: The State of Texas and Spaces of Inequality*, 57 (May 2010) (unpublished Master's thesis, Pa. State Univ.), [https://etda.libraries.psu.edu/files/final\\_submissions/1030](https://etda.libraries.psu.edu/files/final_submissions/1030).

56. *Id.*

57. *Id.*

term “Colonia.”<sup>58</sup> Instead, SB 585 termed these communities as “economically distressed areas” whether incorporated or unincorporated “with an average household income less than 40 percent of the statewide average in which substandard water and wastewater systems or the absence of water and wastewater systems present human health problems.”<sup>59</sup> While SB 585 provided financial assistance for Colonias, it broadly stated that the funds could only be used to provide grants for projects that supplied water and wastewater services to the economically distressed area, thereby severely limiting the use of funds.<sup>60</sup>

One of the most extensive attempts to prevent the proliferation of Colonias came in 1989. The Texas Legislature passed Senate Bill 2, which created the Economically Distressed Area Water Assistance Program (“EDAP”) and introduced a comprehensive system to grant Colonias money. The purpose of SB 2 was to make grants, loans, and technical assistance available to local governments through the TWDB to develop plans to provide adequate water and sewer services to economically distressed areas where these services were inadequate.<sup>61</sup> SB 2 would provide this funding by issuing bonds and then selling them in order to acquire enough funds for loans and grants.<sup>62</sup> Then, these funds would be used to subsidize the cost of constructing, improving, and extending the water supply and sewer lines to residents’ houses in distressed areas at a price they could afford.<sup>63</sup> SB 2 redefined an economically distressed area to one where there was an inadequate supply of water or sewer services to meet the minimal needs of residents.

To receive assistance, an economically distressed area must be within an affected county.<sup>64</sup> An affected county is one that has a per capita income 25% below the state average and an unemployment rate 25% above the state average for the last three years or that are located adjacent to the Mexico-United States border.<sup>65</sup> However, in order to be eligible for the EDAP funds, the counties must adopt certain

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58. S.B. 585, 70th Reg. Sess. (Tex. 1987).

59. Tex. S.B. 585 § 2.

60. Tex. S.B. 585 § 3.

61. S.B. 2, 71st Reg. Sess. § 21.003(1) (Tex. 1989).

62. Tex. S.B. 2 § 21.003(2).

63. Tex. S.B. 2 § 21.003(3).

64. Joann Matthiesen, *What Now for the Texas Colonias?*, 27 N.M. L. REV. 1, 8 (1997).

65. *Id.*

“model subdivision rules.”<sup>66</sup> The EDAP model rules require counties to provide a “safe and sanitary water supply and sewage facilities to affected residential areas.”<sup>67</sup> Since most counties do not have state building codes that require proper infrastructure development, counties must also prohibit future development of subdivision with lots of five acres or less without adequate water and wastewater services.<sup>68</sup> After implementing the model subdivision rules, the county qualifies for state funding of environmental infrastructure development.<sup>69</sup> Additionally, Colonias in qualifying counties become eligible to receive state financial assistance for the development of water and wastewater projects.<sup>70</sup> SB 2 seemed pretty straightforward: as long as an economically distressed area adopted the model subdivision rules, it became eligible for over \$400 million to improve conditions.<sup>71</sup> However, there were a variety of problems that prevented SB 2 from fulfilling its intended purpose.

While in theory SB 2 would provide a feasible and swift solution for the Colonia proliferation problem, funding problems prevented the effectiveness of the EDAP.<sup>72</sup> An officer of the State Auditor conducted a study in 1993 and found that the TWDB estimated EDAP funding requirements of \$696 million, but they had only been appropriated \$400 million. Additionally, of that amount, less than half had been allocated to the appropriate projects.<sup>73</sup> Furthermore, the EDAP only funded projects for entire subdivisions, not individual homes.<sup>74</sup> As a result, Colonia residents required separate funding to connect their homes to water and wastewater services once those services had been established in their subdivisions.<sup>75</sup> However, since 42% of Colonia residents fell below the poverty line,<sup>76</sup> a majority could not afford to connect their homes to water and wastewater services, and while other programs designed to address this problem exist, those programs could only provide \$17 million of the estimated \$80 million needed to connect subdivisions.<sup>77</sup> Unfortunately, because

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66. *Id.* at 8–9.

67. Hanna, *supra* note 4, at 907.

68. *Id.* at 907, 915.

69. *Id.*

70. *Id.*

71. *Id.* at 907–08.

72. *Id.* at 908.

73. *Id.*

74. *Id.*

75. *Id.*

76. BARTON ET. AL., *supra* note 1, at 2.

77. Hanna, *supra* note 4, at 908–909.

Colonia residents were unlikely to have funds left over to pay for the cost of water and sewer connections and indoor plumbing, this lack of funding made infrastructure development useless to Colonia residents.<sup>78</sup>

Aside from the lack of adequate funding, an additional problem with SB 2 came from the lack of enforcement of the EDAP's model rules.<sup>79</sup> Practically speaking, the EDAP program provided some much needed financial resources for Colonias but was unable to compel counties to abide by the EDAP rules and prevent developers from eluding them.<sup>80</sup> One study found that "lack of awareness, resources, authority, and confusion over the language of the model rules combined to contribute to the lax enforcement in counties where new Colonias are developing."<sup>81</sup> The study also found that among counties that had adopted the model rules, counties that strongly enforced the rules showed no new growth, but those with weak enforcement showed new Colonia growth.<sup>82</sup> In an attempt to improve enforcement and compliance with the model rules, the Texas Legislature, under the authority of House Bill 2079, authorized the Texas Attorney General or local district attorneys to prosecute both the developers that violated the model rules and the counties that failed to enforce them.<sup>83</sup> Under HB 2079, the Attorney General implemented the Colonias Strike Force to prevent future developments and attempt to mitigate the conditions in already existing Colonias.<sup>84</sup> While the Colonias Strike Force was moderately successful in tackling the Colonia problem by forcing developers to follow the model rules, studies indicated that most developers were still evading the Colonia Strike Force and the model rules.<sup>85</sup>

The next attempt to preclude Colonia development came in 1995 when the Texas Legislature signed House Bill 1001. HB 1001's purpose was to confer authority on Commissioners Courts in affected counties to: regulate subdivisions in economically distressed areas; impose platting requirements and service requirements; impose changes affecting local tax authorities by conferring authority on affected counties to create economically distressed area tax increment

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78. *Id.* at 909.

79. *Id.* at 910.

80. *Id.* at 910–11.

81. *Id.*

82. *Id.*

83. *Id.* at 911.

84. *Id.* at 913.

85. *Id.* at 913.

zones; confer authority to issue bonds and create public debt; and impose civil and criminal penalties.<sup>86</sup> The legislative findings for HB 1001 focused on the lack of potable water supply and sewer services, the environmental hazards to the subdivisions, and health risks associated with Colonias.<sup>87</sup>

HB 1001 specifically created the guidelines and restrictions for subdivisions of land in economically distressed areas.<sup>88</sup> In an attempt to stop the proliferation of Colonias, HB 1001 imposed stricter requirements on the development and sale of rural subdivisions while simultaneously punishing those who violated the new restrictions.<sup>89</sup> One of the things that HB 1001 did was heighten the platting requirements on developers.<sup>90</sup> A plat is a plan or map of an area of land that is drawn to scale and includes actual or proposed features or lots.<sup>91</sup> HB 1001 required that “every plat be filed with the county if an individual, corporation, firm, or other legal entity subdivides a parcel of land into lots for sale or lease.”<sup>92</sup> Additionally, for the plat to be approved, it had to comply with the subdivision requirements established to prevent developers from creating more Colonias.<sup>93</sup> The developer had to register the plat with the county engineer’s office and gain the approval of the plat from the county commissioners court.<sup>94</sup> If the developer did not receive approval from both the county engineer and the county commissioners court, utility providers were prohibited from connecting residents to services.<sup>95</sup> Additionally, plats were meant to show the “feasibility of connecting the development to existing utility lines or construct[ion] [of] on-site facilities.”<sup>96</sup>

While HB 1001 appeared to be a solid piece of state legislation that could effectively halt the spread of Colonia development, the legislation came with its own set of deficiencies and loopholes. HB 1001 was supposed to implement strict standards that required developers to provide essential services that Colonia residents need.<sup>97</sup>

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86. H.B. 1001, 74th Reg. Sess. (Tex. 1995).

87. *Id.*

88. Hanna, *supra* note 4, at 915.

89. *Id.* at 915–16.

90. *Id.* at 916.

91. Plat, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/platting?src=search-dict-box> (last visited Sept. 26, 2019).

92. Hanna, *supra* note 4, at 916–17.

93. *Id.* at 917.

94. Hanchett, *supra* note 55, at 59.

95. *Id.*

96. *Id.*

97. Hanna, *supra* note 4, at 917.

Despite these strict requirements, however, the law provided for some exceptions.<sup>98</sup> HB 1001 allowed for the granting of “extensions and variances that would allow developers to subdivide, develop, and sell lots that did not have water, sewage, roads, or drainage.”<sup>99</sup> The extensions and variances were not indefinite but by the time the extension expired, the developer would have sold all the lots in the subdivision and therefore escape any potential liability or penalties.<sup>100</sup> These exceptions proved to be the downfall of HB 1001 because they allowed subdividers to skirt around the platting requirements and continue to build substandard housing.<sup>101</sup> As a result, the Texas Legislature was forced to find a different method of halting the spread of Colonias. From 1995 to 2005, the Texas Legislature enacted over ten new bills related to Colonia and Colonia development.

In the early 2000s, Colonia legislation slowed down. The few legislative bills enacted addressed the funding of already established programs.<sup>102</sup> The next important piece of legislation that addressed Colonia conditions and their promulgation was introduced in 2007 as Senate Bill 99. Senate Bill 99 requires the Secretary of State’s office to update the legislative leadership regarding the progress of state-funded Colonia infrastructure.<sup>103</sup> In conjunction with Senate Bill 827, Senate Bill 99 charged the Secretary of State with three tasks.<sup>104</sup> First, the Secretary of State must develop and maintain a Colonia identification system. Second, the Secretary of State must create and maintain a statewide system for classifying Colonias with the highest public health risks. Finally, the Secretary of State must develop a report to the legislature on the progress of state-funded infrastructure projects.<sup>105</sup>

Aside from SB 99, other bills were enacted that specifically targeted significant problems associated with living in unincorporated areas. For example, House Bill 573, also enacted in 2007, required all counties within 150 miles of the border to provide street lights if residents of unincorporated communities requested them.<sup>106</sup>

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98. *Id.*

99. *Id.* at 917–18.

100. *Id.* at 918.

101. *Id.*

102. Hanchett, *supra* note 55, at 67.

103. COLONIA INITIATIVES PROGRAM, *supra* note 18, at 3.

104. *Id.*

105. *Id.*

106. Hanchett, *supra* note 55, at 68.

Another piece of legislation enacted in 2009 addressed the problems that flooding caused in unincorporated areas. The bill was drafted in response to the flooding that resulted from Hurricane Dolly in 2008.<sup>107</sup> Many Colonias are developed in low-lying areas, and as a result, water remains present for weeks or months following the rainfall.<sup>108</sup> For example, in Hidalgo County, officials refused to enter a Colonia to pump out excess water because they would have to trespass through private property to reach the heavily flooded areas.<sup>109</sup> Instead of intervening to help Colonias and their residents, the county decided to let the water drain naturally and slowly.<sup>110</sup> To address these types of incidents, House Bill 1579 permitted county employees to enter private property to reach flooded areas and pump out water from the unincorporated areas.<sup>111</sup>

Many of the problems faced by residents of Colonias could have been ameliorated by federal or state funding. However, laws passed by the legislature to improve infrastructure and living conditions in Colonias were inadequate, ineffective, and created more definitions for Colonias. In response, agencies and other programs decided to adopt or create their own definitions of Colonias to help fill in the gaps that legislative efforts left.

### III. AGENCY AND PROGRAM DEFINITIONS

While the legislative initiative to combat the proliferation of Colonias was an important first step, agencies and organizations played a major role in executing and overseeing the success of these legislative efforts. The programs established by Texas government officials were developed to improve living conditions within Colonias by, amongst other things, installing water systems, delivering health services, and building roads.<sup>112</sup> However, the programs had one detrimental caveat: to receive help, the Colonia must meet each specific program's definition of a Colonia. Another problem that Colonias and Colonia programs face is budget cuts. For example, recently in 2017, Governor Greg Abbott defunded a Colonia program

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107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* at 68–69.

112. Daniel C. Vock, *On the Texas Border, Building Infrastructure is Hard. Critics Say It's About to Get Harder*, GOVERNING THE STATE AND LOCALITIES, (Aug. 24, 2017 3:30 PM), <http://www.governing.com/topics/transportation-infrastructure/gov-texas-colonias-border-infrastructure.html>.

that was responsible for tracking the state's progress in improving conditions and reporting those results to the legislature.<sup>113</sup> As resources are spread thin and qualifying for some types of aid becomes more difficult, the pressure to address the infrastructure, health, and safety problems in Colonias continues to build.<sup>114</sup>

One of the most important agencies involved with Colonias is the Secretary of State's Colonia Initiatives Program. 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, septic or sewer systems, electricity, paved roads, or safe and sanitary housing."<sup>115</sup> The ombudsman program was responsible for tracking the state's progress in improving conditions in Colonias and reporting the results to the legislature.<sup>116</sup> However, as previously mentioned, the program was terminated by Greg Abbott in 2017. Governor Abbott justified cutting the program by stating that "funding to the Colonias should go directly to the Colonias instead of using tax dollars to fund a bigger government bureaucracy."<sup>117</sup> However, local representatives and residents were disappointed and described the termination of the program as a "big loss" since it will have consequences for people's health and safety.<sup>118</sup>

The Texas Department of Transportation ("TxDOT") has the Border Colonia Access Program. Under this program, a Colonia is defined as "a geographic area that consists of eleven or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood and located in an eligible county that is identified as a Colonia in the Texas Water Development Board's Colonia database."<sup>119</sup> The Texas Administrative Code defines an eligible county as "a county located in the El Paso, Laredo, or Pharr department districts, and Terrell County, that has adopted the model rules promulgated by the Texas Water Development Board under Water Code §16.343."<sup>120</sup>

Another program available for qualifying Colonias is the Texas A&M University ("TAMU") Colonias Program. The program's mission is to "enhance the quality of life for residents of Colonias,

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113. *Id.*

114. *Id.*

115. COLONIA INITIATIVES PROGRAM, *supra* note 18, at 24.

116. Vock, *supra* note 112.

117. *Id.*

118. *Id.*

119. COLONIA INITIATIVES PROGRAM, *supra* note 18, at 29.

120. Section 15.101 of the Texas Administrative Code, Title 43, Part 1



rural, and surrounding urban communities by addressing needs specific to each economically distressed area and forging partnerships with municipal, county, state, national government and private foundations and other community partners.”<sup>121</sup> The program defines a Colonia as “an economically distressed unincorporated community that lacks one or more of the major infrastructures such as potable water, sewer systems, electricity, paved roads, or safe and sanitary housing.”<sup>122</sup> Perhaps the most important role that this program plays in the community is to serve as the cultural mediator between residents and health and human service systems. The TAMU Colonias Program also works closely and has established a strong relationship with municipal, state, federal, and private partners to conduct outreach and bring education, health and human services, job training, youth development and elderly programs within Colonias.<sup>123</sup>

Additionally, the program has established 42 Community Resource Centers along the Texas-Mexico border region. The TAMU Colonias Program focuses on six areas: outreach, health, education, water filtration training academy, partnerships with strategic relationships development, and research.<sup>124</sup> Research shows that there are currently five definitions of “border” and seven definitions of “Colonias.”<sup>125</sup> Because of these varying definitions, the areas that the TAMU Colonias Program helps extends beyond those counties that are on the Texas-Mexico border.<sup>126</sup> As a result, the program is planning to expand in order to encompass those emerging rural and urban regions that are not included in current geographical service areas.<sup>127</sup> However, there is a major problem to this expansion plan. The legislative appropriation that is given to the TAMU Colonias Program has remained the same for twenty-three years, which has forced the program to seek funding from government grants, private donations, and private foundations, which totals 200-300% more than their annual legislative funding.<sup>128</sup>

Finally, the Texas Health and Human Services Commission works to facilitate planning, coordination, and evaluation of service delivery

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121. COLONIA INITIATIVES PROGRAM, *supra* note 18, at 38.

122. *Id.*

123. *Id.* at 38–39.

124. *Id.* at 39–40.

125. *Id.* at 40.

126. *Id.*

127. *Id.*

128. *Id.*

in Colonias along the Texas-Mexico border.<sup>129</sup> The agency defines a Colonia as “unincorporated communities that lack physical infrastructures such as running water, storm drainage, sewers, electricity, or paved streets.”<sup>130</sup> This agency has five Border Specialists in El Paso, Eagle Pass/Del Rio, Laredo, and the Upper and Lower Rio Grande Valley.<sup>131</sup> These specialists supervise and lead Health and Human Services agencies in providing outreach and program services in local Colonias.<sup>132</sup> Some of the services provided include: client intake, agency program applications, dental and physical health services, mental health and substance abuse evaluations, health screenings, information and referral to local resources, skills training, and English as a Second Language instruction and General Education Development test classes.<sup>133</sup> The specialists also serve as a bridge between federal, state, county, local, community, and faith-based organizations that help Colonias.<sup>134</sup> Like the TAMU Colonias Program, the budget for the Texas Health and Human Services Commission has remained the same over the last few years. The budget, around \$1,125,000 per year, is meant to cover all program costs including any contracts between the agency and community health workers and the salaries and administrative expenses of the five Border Specialists, the projects coordinator, and an administrative assistant.<sup>135</sup>

#### IV. RECOMMENDATIONS

Colonias in Texas are defined by their lack of infrastructure and utilities; however, the social conditions that existed in Colonias, and the problems related to those social conditions, continue to persist even after infrastructure and utilities are gained. Programs and legislative action have helped to improve the living conditions in Colonias by providing better infrastructure, but many Colonias still face problems that stem not from the infrastructure but from the homes themselves.<sup>136</sup> In order to ameliorate the living conditions of Colonia residents and stop the proliferation of Colonias, the Texas Legislature

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129. *Id.* at 41.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.* at 42.

136. Caitlin A. Lewis, *Texas Colonias: Injustice By Definition*, 5 BARRY U. ENVTL. & EARTH L.J. 163, 179 (2015).

must take action to address the problems presented by the lack of uniformity in the definition of a Colonia. Specifically, the Texas Legislature must do the following: redefine Colonias and create a uniform statewide definition that will be used by all agencies and programs; develop a method of adding and removing Colonias as improvements are made and infrastructure is added; give counties the power to regulate Colonias; and allocate the necessary funds to make the necessary improvements to these communities.<sup>137</sup>

#### *A. Create a State-Wide Colonia Definition*

As explored in the previous section, the word “Colonia” has various definitions depending on the agency, program, or law. Because a Colonia will vary depending on the agency, government code, or issue being addressed, communities and areas are being misidentified as Colonias.<sup>138</sup> The Colonias Initiative Program, which is an agency within the office of the Texas Secretary of State, has asked the legislature to address the redefinition issue for at least five years.<sup>139</sup> The Texas Secretary of State reports that various definitions for Colonia exist because it determines funding requirements for state agencies.<sup>140</sup> These discrepancies can be “attributed to the varying emphases placed on [their] specific characteristics by government agencies and codes.”<sup>141</sup> The new definition promoted by the Texas Legislature should not only address the infrastructure of the Colonia as a whole but should also consider the infrastructure of the homes themselves.

Despite the fact that many Colonias have graduated to “green” status, these same Colonias still harbor some of the most poorly constructed and unsafe homes.<sup>142</sup> Thus, programs that equip Colonias with modern infrastructure will continue to fail in improving living conditions so long as the homes themselves are still subpar.<sup>143</sup> “Proyecto Azteca,” which is a non-profit self-help construction company that serves Colonias in the Rio Grande Valley, reports that many homes in Model Subdivision Colonias are still constructed with

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137. *See generally* COLONIA INITIATIVES PROGRAM, *supra* note 18.

138. Lewis, *supra* note 136, at 184.

139. *Id.*

140. *Id.*

141. *Id.*

142. *See id.*

143. *Id.* at 180.

shipping pallets.<sup>144</sup> Proyecto Azteca focuses on not only improving the infrastructure of the Colonia as a whole but also on building homes that will survive the harsh Texas weather.<sup>145</sup> Proyecto Azteca's director reports that while the residents of Colonias are "creative and resilient," the living standards for Model Subdivision homes are still "way below par."<sup>146</sup> Advocates recognize that despite the fact that conditions in Colonias have improved overall, this is nothing but a modest victory.<sup>147</sup>

The current definitions have facilitated access to potable water, adequate drainage, wastewater and solid waste disposal, paved roads, and electricity in Colonias, but these advances have only brought up the living conditions of Colonia residents to the same level as other poor people in the state.<sup>148</sup> For example, one common problem that many Colonia residents face is house fires.<sup>149</sup> This problem arises because homes are poorly built and do not have central heating or cooling.<sup>150</sup> Since homes do not have central heating or cooling, residents are forced to use space heaters, which combined with poor electrical wiring, lead to deadly house fires.<sup>151</sup> This continues to be a problem because Colonias fall within the jurisdiction of counties, which have less tax revenue and less regulatory control than cities, who cannot afford to hire an electrician to do the wiring of homes.<sup>152</sup> Pueblo de Palmas is another example of a subpar "model subdivision."<sup>153</sup> Despite the fact that this Colonia has electricity, water connections, and wide paved roads, it is made up of trailers, shacks, and small houses in various states of completion.<sup>154</sup> While legislation has allowed these Colonias and subdivision to have all the infrastructure that the law says they *need*, the housing conditions on the "newer model subdivisions" end up being "far more dire" than in older Colonias.<sup>155</sup>

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144. *Id.*

145. *Id.*

146. *Id.*

147. Henry Gass, *Texas's colonias: solution to housing crisis or moral blot on rich nation's conscience?*, CHRISTIAN SCIENCE MONITOR (Feb. 25, 2018), <https://www.csmonitor.com/USA/Society/2018/0225/Texas-s-colonias-solution-to-housing-crisis-or-moral-blot-on-rich-nation-s-conscience>.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

On the other extreme are the subdivisions that are still classified as Colonias but which are more similar to subdivisions seen in developed countries. Cameron Park is one of the largest Colonias in Brownsville, which by 2003 had secured around \$8 million in public funds for its infrastructure and people.<sup>156</sup> Cameron Park is a true success story with its paved roads, water and sewer hookups, curbs, gutters, sidewalks, and streetlights.<sup>157</sup> In addition, Cameron Park has a community center with social services, a Boys and Girls club, a sheriff's substation, a health clinic, and a park.<sup>158</sup> Regardless of all the new amenities and infrastructure that this Colonia has gained, its greatest challenge is the same one that many other green Colonias face: housing.<sup>159</sup> Many of the homes in the Colonia are built by the land owners themselves, and as a result, they take years to complete and are hardly ever in compliance with building codes.<sup>160</sup> Yet, Cameron Park continues to be included on the Colonias list, not because of problems with housing or because it still does not have all the necessary infrastructure, but simply because there is no way to take it off the master Colonias list.<sup>161</sup> Despite the fact that this Colonia, along with many others similarly situated, now have the necessary infrastructure that a traditional Colonia does not have, there is no mechanism to take them off the Colonias list.

The new Colonia definition should take into consideration not only the infrastructural needs but also the living conditions within these developing areas. By ensuring that the new Colonia definition encompasses both infrastructural needs and living conditions, the Texas Legislature and agencies will be able to focus their efforts on areas and communities that need the most help. A Colonia should be defined as "unincorporated communities that lack physical infrastructures such as running water, storm drainage, sewers, electricity, or paved streets; alternatively, a Colonias are unincorporated areas which lack safe and sanitary housing. Once infrastructural needs and housing conditions are met, these areas are no longer considered a Colonia." A definition such as this one that defines a Colonia by the lack of infrastructure, or when infrastructure is no longer an issue, by housing conditions, would be broad enough

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156. Cecilia Balli, *Bottom's Up*, TEX. MONTHLY (Jan. 2003), <https://www.texasmonthly.com/articles/bottoms-up-2/>.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

to encompass all areas in need but also narrow enough to exclude communities that no longer need state or private funding.

*B. Create a Mechanism that Keeps Track of Colonias*

In creating and refining a new definition for Colonias, the legislature should create a multifaceted checklist that regulates which neighborhoods qualify as Colonias and which Colonias have improved enough to no longer fit within the definition.<sup>162</sup> Once a Colonia is properly defined and regulated, then the Legislature should develop a mechanism to remove previously designated Colonias that clearly do not meet the definition anymore.<sup>163</sup> As one article explained, “[i]t is difficult to assess the efficacy of state and federal dollars spent on Colonias communities because the list of Colonias does not get smaller.”<sup>164</sup> As Colonias continue to incorporate, modernize, and upgrade from yellow to green, it is important to keep track of which Colonias no longer qualify for federal and state aid.<sup>165</sup> This should include and define the point at which a Colonia ceases to be a Colonia and ensure that higher-end Colonias are not receiving federal and state aid that is more needed elsewhere.

Creating and maintaining a master Colonias list will allow agencies and the legislature to keep track of the progress that Colonias make.<sup>166</sup> The master Colonias list should also be prioritized based on infrastructure and housing needs. As we have already seen, there are some Colonias that no longer require basic infrastructure but continue to receive aid because they have continued to be defined as a Colonia.<sup>167</sup> This system, along with the new statewide definition of a Colonia, should be created by statute in order to ensure that agencies comply with the prioritizing and reporting requirements. To ensure that the master Colonias list is properly prioritized and updated, the legislature should: first, change the frequency of reporting requirements; and second, fund a comprehensive survey of all Colonias. While the Colonias Initiative Program has a Colonia identification system, maintains the systems based off of public health risk, and reports the progress made to the legislature, this report is only compiled once every four years and does not take into account housing

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162. See Lewis, *supra* note 136, at 184.

163. See generally COLONIA INITIATIVES PROGRAM, *supra* note 18, at 51.

164. Lewis, *supra* note 136, at 183.

165. See *id.*

166. COLONIA INITIATIVES PROGRAM, *supra* note 18, at 51.

167. See generally Lewis, *supra* note 136.

or other needs.<sup>168</sup> Instead, the legislature should fund a new comprehensive survey or give more funding to the Colonias Initiative Program so that they can compile a report every year instead of every four. Finally, creating a master Colonias list based off of the new definition will not only allow agencies and the Legislature to keep better track of Colonia progress, it will also allow for better allocation of funds.

### *C. Restructuring the Allocation of Funds for Colonias*

Problems in Colonias go beyond a lack of infrastructure and utilities. Colonia programs help residents obtain assistance in several areas including: health, legal services, education, and voting. Limited budgets and bureaucratic challenges have prevented residents from attaining services that could improve their health and quality of life. Instead of cutting the budget for these programs, the legislature should allocate more funds to them. Considering that the amount of green Colonias keeps increasing, and the fact that current funds are predominantly focused on infrastructure, water systems, and roads, there seems to be a discrepancy in what funds are needed for and what funds are actually meant to be spent on.<sup>169</sup> For example, the Colonias Self Help Center, created in 1995 for the purpose of building new and safe homes, would be able to provide homes to Colonia residents in more than just five counties if it were expanded and better funded.<sup>170</sup> Currently, funding for this program is limited to \$1.5 million per year, which in comparison to what is spent on water systems and roads is just a small piece of the budget.<sup>171</sup>

Additionally, budget cuts are making it harder for programs and agencies to carry out their intended purpose, much less any extra help they may wish to provide. In 2017, Governor Greg Abbott signed a law that would raise the overall state budget.<sup>172</sup> This veto included nearly \$900,000 in Secretary of State funding that helps Texans who live in Colonias.<sup>173</sup> In order to truly stop the proliferation of Colonias, and improve existing Colonias infrastructure and residents' quality of

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168. See COLONIA INITIATIVES PROGRAM, *supra* note 18.

169. Lewis, *supra* note 136, at 183.

170. *Id.*

171. *Id.*

172. Edgar Walters & Chris Essig, *A close look at the final Texas 2018-19 budget*, THE TEX. TRIB. (Jun. 6, 2017), <https://apps.texastribune.org/final-budget-2017/>.

173. *Governor Signs Texas' \$217B Budget, Cuts \$120M With Vetoes*, CBS DFW (Jun. 12, 2017, 4:46 pm), <https://dfw.cbslocal.com/2017/06/12/governor-signs-texas-217b-budget-cuts-120m-with-vetoes/>.

life, the legislature should restructure the allocation of funds for Colonias to allow for a more generous budget for programs and allow these funds to be used for programs that improve more than just infrastructure.

#### D. Empower Counties to Oversee Colonias

Finally, the last step to preventing the spread of Colonias is to give counties the necessary power and authority to properly oversee Colonias. In the past, efforts to expand counties' zoning authority has been rejected and met with hesitation.<sup>174</sup> Counties have little to no autonomy from the state. While HB 1001 gave counties authority to impose platting requirements, they were not given any more authority than that, and their possible actions are severely limited.<sup>175</sup> Cities are the only ones that have authority to create and enforce building codes, which has led to such disastrous housing conditions in Colonias.<sup>176</sup> Counties are left unable to enforce any housing standards in the Colonias within their jurisdiction. Without any constitutional authority, the counties are unable to set their own budget, set their own tax rate, approve subdivision platting, or oversee county activities.<sup>177</sup> Unlike a county, which is created by state statute, cities with a population of 5,000 or more can create a home rule charter, which is an organizational plan or framework that serves as a constitution<sup>178</sup> and gain their autonomy.<sup>179</sup> But counties are unable to do this regardless of how big their Colonias are and how many residents they have. While the cities would be able to incorporate Colonias and have the necessary authority over them, they usually refuse to include them in their city limits because their inclusion is politically unpopular.<sup>180</sup> Additionally, city residents refuse to include Colonias because providing them with missing infrastructure would be more costly to them and the city.<sup>181</sup> Therefore, by empowering counties with the authority to oversee Colonias, the legislature would drastically improve not only the infrastructure of the Colonias but also the

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174. Lewis, *supra* note 136, at 185.

175. *Id.* at 185–86.

176. *Id.*

177. *Id.*

178. *Home-Rule Charter Law and Legal Definition*, US LEGAL, <https://definitions.uslegal.com/h/home-rule-charter/>. (last visited Oct. 2, 2019).

179. Lewis, *supra* note 136, at 186.

180. *Id.*

181. *Id.*



residents' quality of life by providing more funding, basic services, and compliance requirements.

#### V. CONCLUSION

Colonias have been a problem for decades now, but the conversation around them has ceased. While conditions in most Colonias have improved and more Colonias graduate to green level status, the legislature and public forget that this classification system does not account for some of the most basic human needs. While past legislation has attempted to remedy these problems, the effect was simply to confuse agencies, organizations, and the residents themselves. To ameliorate the conditions in Colonias and prevent their proliferation, the Texas Legislature should pass legislation addressing the prevailing concern that this Comment and many agencies and programs share: the definition. Creating a uniform, statewide definition will finally allow the legislature, agencies, and programs to keep track of Colonias, prioritize their needs, and allocate funds accordingly.