State Approaches to Illegal Immigration

The Final Report of the
TCCRI Illegal Immigration Task Force (2006)

Updated following the 80th Texas Legislature (2007)

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About TCCRI and the Illegal Immigration Task Force

The Texas Conservative Coalition Research Institute (TCCRI) is committed to shaping public policy through a principled approach to state government.

The TCCRI was founded in 1996 by a group of conservative leaders with a vision to implement conservative public policies in state government. The organization was inspired by the success of the Texas Conservative Coalition, the conservative caucus in the Texas Legislature that has served as a resource for information and public policy strategies for Texas legislators since 1985.

The TCCRI Illegal Immigration Task Force began its work in January 2006 with the objective of offering practical policy solutions that address the incentives that draw immigrants to Texas illegally. The final report of the Task Force was issued in October 2006. This report reflects the Task Force's findings, which are summarized, updated (as of May 2007), and made general to apply to any state.

Task Force members included the following Texas state legislators:

- State Representative Linda Harper-Brown (Task Force Chairman, TCCRI Board member),
- State Representative Bryan Hughes,
- State Representative Larry Taylor,
- State Representative Debbie Riddle,
- State Representative Corbin Van Arsdale (TCCRI Board member),
- State Representative Bill Zedler, and
- Former State Representative Bill Keffer (TCCRI Board member).

The Task Force and its final report would have been impossible without the hard work and dedication of these legislators. The final report, on which this document is based, was the result of many months of research and discussion on the part of the Task Force members, their legislative staffs, and the TCCRI. We would like to thank all of the individuals and groups who have supported our work and come to meet with the Task Force. In addition to the leadership of the legislators listed above, we also thank Cari Christman, Jon English, Michele Moore, and Erin Sanders for their contributions to the Task Force, as well as John Colyandro, Brent Connett, and Tom Aldred.

Executive Summary

The American domestic debate over illegal immigration is stalled and radicalized for two reasons. First, leftist organizations see the political value in rapidly extending public benefits—and ultimately the franchise—to millions of Mexican nationals. Second, business groups—largely the agriculture and construction sectors—want cheap labor. In Texas, for example, the state's leading business group, the Texas Association of Business, aligned with the Mexican American Legal Defense and Education Fund (MALDEF) to oppose state action on illegal immigration.

This political alignment has helped to foster large-scale demonstrations. In March and April 2006, marches and rallies were organized to oppose proposed criminal sanctions against migrants and those individuals and organizations, such as the Catholic Church and the Central American Resource Center, which aid them. Similar rallies took place across the nation in May 2007. The common chant at these rallies: Cesar Chavez's "Si Se Puede!" [Yes, we can!]. During the 80th Session of the Texas Legislature, there were frequent marches against any action on illegal immigration, often with demonstrators carrying Mexican flags through downtown Austin.

Meanwhile grassroots organizations, such as the Minuteman Project, have formed to patrol the vast, unprotected desert regions of California, Arizona, New Mexico, and Texas to prevent illegal border crossings.

As one extreme seeks to fortify the entire U.S.–Mexico international boundary to prevent more Mexicans from entering the United States, the other faction seeks blanket amnesty and expedited citizenship for all illegal immigrants.

The estimate of the number of illegal immigrants in the United States varies. A generally accepted figure seems to be 11–12 million people.[1] Other estimates state that the number of illegal immigrants in the United States may be as high as 20 million people.[2] These figures are imprecise because of limitations of the enumeration process. The former Immigration and Naturalization Service (INS) estimated, based on the 2000 Census, that 7 million "unauthorized immigrants resided in the United States as of January 2000" and identified "Mexico as the largest source country for unauthorized immigration to the United States."[3] The INS also reported that "Mexico's share of the total unauthorized resident population increased from 58 percent in 1990 to 69 percent in 2000."[4] In Texas, the number of illegal immigrants is estimated between 1,041,000 (the former INS

[1] "Not criminal, just hopeful," *The Economist*, April 13, 2006; and, "Modes of Entry for the Unauthorized Migrant Population," Pew Hispanic Center Fact Sheet, May 22, 2006.
[2] Robert Justich and Betty Ng, CFA, "The Underground Labor Force is Rising to the Surface,", Bear Stearns Asset Management report, January 3, 2005.
[3] "Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000", Immigration and Naturalization Service, January 31, 2003; http://www.dhs.gov/xlibrary/assets/statistics/publications/2000ExecSumm.pdf
[4] *Ibid.*

estimate as of 2003[5]) and 1,633,000 (estimate by the Federation for American Immigration Reform, as of 2005[6]).

That the number is large and growing seems beyond dispute, but the questions that are infrequently asked are: What are Mexican nationals running from and what are they running to? The short answers to those questions are: They are running from extreme poverty to the promise of higher wages and public benefits. Scenes of Mexican nationals and other Latin Americans scaling walls, wading rivers, traversing deserts, and stealing a ride in tractor-trailers are all tragic and depressing. They flee for a legitimate purpose—a better life—and are, for the most part, willing to work to achieve that goal when they get here. Indeed, these are the people that the country should gladly embrace. The problem is that, regardless of their motives and virtues, illegal immigrants are *illegal*.

That is why talk of amnesty and "paths to citizenship," as in the failed May 2007 illegal immigration "consensus" in Congress, is falderal. In fiscal year 2005, the United State Citizenship and Immigration Services (USCIS) approved 267,131 H-1B visas so that workers could migrate to the United States legally.[7] Those individuals who were awarded H-1B visas completed an arduous, bureaucratic, and expensive process. Those who fail to live up to the bargain—to legally gain entry into our country and learn our language—degrade the value of citizenship and undercut the rule of law: a disruption that all too many people in the private sector and non-governmental organizations are willing to aid and abet at great cost to national sovereignty, cultural homogeny, and civic peace, not to mention the cost to taxpayers.

Ultimately, the failure of the federal government to enforce the law has exposed that states are equally derelict in their duties. Effective immigration reform, therefore, should be based on the acknowledgment that states invite illegal immigration through:

- Lax enforcement of the citizenship requirements to enroll in public benefit programs (such as S-CHIP),
- Lax enforcement of penalties against employers who hire illegals,
- A public school system that will teach students entirely in Spanish,
- Inadequate processes and procedures to uphold the citizenship requirements for voting, and
- Municipalities that act as sanctuary cities and operate day laborer sites.

A report from Bear Stearns Asset Management summarizes the relationship between the federal and state governments with regard to illegal immigration:

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[5] 2002 Yearbook of Immigration Statistics, DHS Office of Immigration Statistics, Oct. 2003

[6] "Texas: Illegal Aliens", Federation for American Immigration Reform; http://www.fairus.org/site/PageServer?pagename=research_researchab4e

[7] U.S. Department of Homeland Security, "Report on H-1B Petitions, Fiscal Year 2005, Annual Report"; Issued April, 2006; http://www.uscis.gov/files/nativedocuments/H1B05Annual_08_7.pdf

> "Although the federal government has the sole authority to govern immigration flows, the responsibility for providing support to legal and illegal immigrants rests with the state and local governments."[8]

It is that responsibility for support that channels the costs of illegal immigration to the states. To abate those costs, both fiscal and social, *State Approaches to Illegal Immigration* makes policy recommendations in five broad policy areas:

- Voter identification and citizenship verification,
- Denying access to public benefit programs,
- Employer sanctions,
- Ending bilingual education in public schools, and
- Enhancing local law enforcement and border security.

Despite the fact that federal regulations govern immigration and customs policy, there are clearly many policy options at the state level that can provide real solutions to the costs posed by illegal immigration. For states, this acknowledgement must drive legislators to enact reforms to reduce illegal immigration by giving state agencies and officials tools to effectively enforce both state and federal regulations.

[8] Robert Justich and Betty Ng, CFA, "The Underground Labor Force is Rising to the Surface,", Bear Stearns Asset Management report, January 3, 2005.

Voter Identification and Citizenship Verification

In the fervent and well-publicized debates over illegal immigration, a major concern has been mainly overlooked—the need to secure our elections against voting by non-citizens.

Our paramount democratic right, the right to vote, is guarded indifferently. Federal and state laws are clear in their intent: Only citizens may vote. In practice, however, polling places are just as porous as are our borders.

In fact, the U.S. Department of State will not accept a voter registration document as proof of citizenship for a passport application.[9] That healthy skepticism is justified because of significant gaps in election law and enforcement procedures.

Just one person denied the right to vote on the basis of race is enough to launch federal action under the Voting Rights Act. But even though vote fraud cancels the legitimately cast votes of minorities, the elderly, and the poor, fraud is treated almost casually, if not indifferently.

Laws Without Meaning

The United States Constitution does not provide an affirmative voting right. However, the Fifteenth, Nineteenth, Twenty-fourth, and Twenty-sixth Amendments to the Constitution, ratified over the course of more than 100 years, all contain the same phraseology: "the right of citizens of the United States to vote…." The intent of these amendments is clear and substantiates a view held since the founding: Only citizens have the right to vote. Similarly, Article 6, Section 2 of the Texas Constitution grants the right to vote only to U.S. citizens who are residents of Texas:

> "Every person subject to none of the disqualifications provided by Section 1 of this article [under age 18, mentally incompetent, persons convicted of felonies] or by a law enacted under that section who is a citizen of the United States and who is a resident of this State shall be deemed a qualified voter."

Voting is a right reserved for U.S. citizens. However, the lack of any explicit statutory mandate or procedural requirement to verify the qualification of voters leaves voting booths wide open to illegal immigrants and other non-citizens (as well as other forms of fraud), stripping constitutional rights of any real value.

[9] "How to Apply in Person for a Passport,", U.S. Department of State, at *http://travel.state.gov/passport/get/first/first_830.html* .

Sections 11.002(1) and (2) of the Texas Election Code list the top two qualifications for voting: age (18 or over) and citizenship (United States). The application to register to vote, available online through the Texas Secretary of State Web site, begins with the following questions:

Are you a United States Citizen?	☐ Yes	☐ No
Will you be 18 years of age on or before election day?	☐ Yes	☐ No
If you checked 'no' in response to either of the above, do not complete this form.		
Are you interested in serving as an election worker?	☐ Yes	☐ No

Applicants who check "yes" to the citizenship question are taken at their word; there is no verification of citizenship by state, local, or federal authorities. The Office of the Secretary of State, which oversees the administration of elections in Texas, confirms that citizenship verification goes no farther than the honor system. In a June 15, 2006, letter, the Secretary of State's office states:

> "[U]nder current Texas voter registration guidelines, there is no formal verification of an applicant's citizenship status.... Texas relies on the applicant to provide accurate/truthful information on his or her voter registration application. To the extent that an applicant must sign the application verifying that he or she has met the qualifications to register (one of which is U.S. citizenship) and that he or she has provided accurate/truthful information, the application is processed on those merits."[10]

That admission alone is sufficient basis for legislative action. However, the gaps in Texas election law are significant.

Pursuant to the Help America Vote Act of 2002 (HAVA), state election administrators check voter registration applications against driver's license and Social Security databases[11]. While such a measure may serve to verify the name and address of an applicant, it does not prevent foreign nationals from registering to vote since both Social Security numbers (SSN) and driver's licenses are available to non-citizens. In fact, the Texas Transportation Code contains an entire section dedicated to agreements with foreign countries under which the Texas Department of Public Safety (DPS) may issue driver's licenses to foreign nationals.

It is important to note that the DPS does not record the citizenship status of the driver's license applicant. Even if an applicant for a driver's license provides a permanent resident card (green card) or visa as proof of identity, the DPS does not record that the applicant is a non-citizen.[12] Therefore, when the Secretary of State cross-checks a voter registration application against DPS driver's license records, the agency cannot determine the citizenship status of the applicant.

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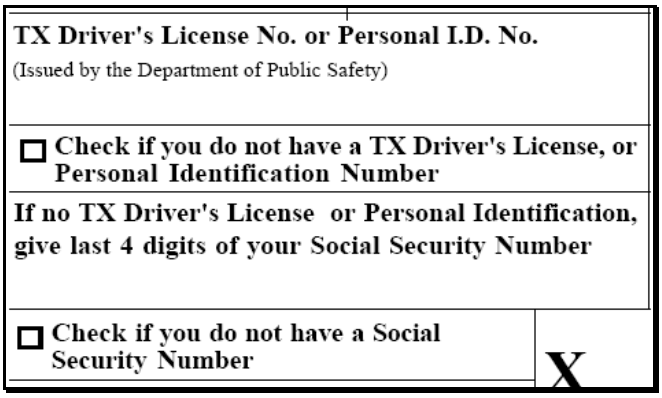
[10]Ann McGeehan, Director of Elections, Secretary of State, Texas, form letter dated June 15, 2006.
[11]Help America Vote Act of 2002, Section 303(a)(5)(A)(i), Page 116 STAT. 1711, at *www.fec.gov/hava/law_ext.txt*.
[12]Claire McGuinness, Senior Staff Attorney, Drivers License Division, Texas Department of Public Safety; TCCRI public information request submitted June 2, 2006; response received June 13, 2006.

A non-citizen, however, need not have an SSN or driver's license in order to vote. The Voter Registration Application continues:



Note the two boxes labeled "Check if you do not have a…"; even without a driver's license, personal identification card number, or SSN, an applicant may still be registered to vote. HAVA and the Texas Election Code make special provisions for persons without either a driver's license or SSN so that applicants without those forms of identification remain eligible to vote.[13] Driver's licenses, personal identification cards, and SSNs are all available to non-citizens. However, an illegal immigrant need not go so far as to obtain one of those identifying documents since federal and state laws make them completely unnecessary for voting.

Identification acceptable in lieu of a driver's license or SSN includes utility bills, bank statements, and pay checks. However, delivery of electricity and gas service for an apartment or home are not predicated on citizenship. Indeed, any person with the financial wherewithal, including an illegal immigrant, can obtain utility service. Similarly, a foreign national with or without a permanent resident card or visa can work and earn a pay check. The items acceptable as ID in lieu of a driver's license or SSN have nothing to do with the citizenship status of the applicant.

The Lack of Citizenship Verification Has Bred Proven Vote Fraud in Texas

On June 22, 2006, Harris County (Houston) Tax Assessor-Collector and Voter Registrar Paul Bettencourt testified before the U.S. Congress Committee on House Administration that in 2005 he identified at least 35 foreign nationals who either had applied for or received voter registration cards.[14] Since 1992, Mr. Bettencourt's office has cancelled 3,742 registered voters for non-citizenship; 683 of those non-citizenship cancellations have occurred from the year 2000 to present.[15]

[13]Help America Vote Act of 2002, Section 303(a)(5)(A)(ii). See also: Texas Election Code §13.002(c)(8).
[14]Testimony of Paul Bettencourt Before Committee on House Administration, June 22, 2006, at *www.hctax.net/forms/testimonyofPaul.pdf*.
[15]Voter registration records provided by the Harris County Voter Registration Department.

Furthermore, as a result of public information requests, the Texas Conservative Coalition Research Institute (TCCRI) learned that:

- Between 2003 and 2005, 303 people were removed from the voter rolls in Bexar County (San Antonio) because they were not citizens. Forty-one of these non-citizens voted in local, state, and federal elections.

- From September 1999 to March 21, 2007, Dallas County cancelled the voter registration of 1,889 individuals because of non-citizenship. Before being deleted from the voter rolls, 356 of those individuals had voted in Dallas County.

- In El Paso County, 213 non-citizens were removed from the voter rolls between January and October of 2006.

- In Tarrant County (Ft. Worth), 584 non-citizens have been removed from the voter rolls since 1999.

It is demonstrable that non-citizens have illegally registered to vote, and, in some cases, have cast ballots illegally. The results from public information requests are very likely to be only a small sampling of the non-citizens who are on the voter rolls. The non-citizens whose registration was cancelled in each county were not discovered through an exhaustive review by state or county authorities. Instead, voter registrars confirm that there are two primary, incidental means for discovering that a non-citizen is registered to vote:

- A non-citizen will contact the voter registrar because he or she is applying for citizenship and has been instructed to cancel his or her voter registration, or
- A non-citizen will claim "non-citizenship" as an excuse on a jury summons. Per Texas Government Code §62.113(b), the county clerk forwards the names of those individuals to voter registrars.

The irony is palpable. In Texas, non-citizens are stealing for themselves the right to vote, but shirking the civic responsibility, jury service, that is statutorily linked to the right to vote.

Recommendations:

Place citizenship status on driver's licenses and personal identification cards.

Pursuant to the REAL ID Act of 2005[16] and the rules drafted by the U.S. Department of Homeland Security, the states' driver's license application and issuance processes will change. By 2008 (or 2009, with a waiver), states motor vehicle departments will be required to verify the citizenship or legal residency status of all applicants for a driver's license or personal identification card. While the REAL ID Act lists certain fields that

[16]Public Law 109-13, Division B, Title II (109th Congress, H.R. 1268), at *http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR01268:@@@D&summ2=m&.*

must appear on the new identification cards, the Act does not require that the cards list citizenship status.

During the May 2006 U.S. Senate debates on legislation to address illegal immigration, Senator Mitch McConnell (R–KY) proposed amending the REAL ID Act of 2005 to require that all state driver's licenses and personal identification cards note whether the licensed driver is a United States citizen. The McConnell amendment to the 2006 Senate immigration bill[17] would have mandated each state to require that individuals voting in federal elections in person show valid photo identification that proves their citizenship.

The Senate immigration bill was passed without Senator McConnell's amendment, meaning that the onus is on state legislatures to require all driver's licenses and personal identification cards to indicate whether or not the holder of the card is a United States citizen. Non-citizens who can prove they are in the United States legally will still be able to obtain a driver's license or personal identification card, but it will label them as non-citizens in order to prevent them from voting.

An applicant for a U.S. passport must provide a birth certificate, naturalization papers, or other limited documents that prove citizenship. The standard for receiving a driver's license or personal identification card should be no less.

Require voters to present a driver's license or personal identification card at their polling place.

States should require each voter to present a photo ID that verifies U.S. citizenship at their polling place. Americans are frequently asked to show identification; some examples of identification requirements from statutes include:

- to drive a car [§ 521.021, Texas Transportation Code, states that a person "may not operate a motor vehicle on a highway in this state unless the person holds a driver's license" that has a photo ID];
- to board an airplane [Transportation Security Adminsitration, "What you Need: government-issued photo ID"];
- to buy alcohol or tobacco [see §109.61 and Chapter 106, Texas Alcoholic Beverages Code];
- to obtain a marriage license [§2.005, Texas Family Code requires proof of identity and age for the issuance of marriage license];
- to be a licensed doctor [§ 155.0031, Texas Occupations Code requires identifying documents, including photographs, for the licensure of doctors];
- to check out a library book [the City of Dallas, for example, requires name and address verification for a library card];
- to purchase products containing ephedrine or pseudoephedrine (most commonly known as Sudafed). Furthermore, in order to purchase the cold medicines, the person making the purchase must show a driver's license or other photo ID

[17]Comprehensive Immigration Reform Act of 2006, S. 2611 ES, passed in the U.S. Senate on May 25, 2006.

> indicating the person is over sixteen years of age. [Chapter 486, Texas Health & Safety Code]

Other, more mundane activities such as renting a DVD or applying for membership in bulk retail clubs like Costco or Sam's Club also require identification.

In each of those instances, an individual must present ID. The right to vote trumps all of them in importance. A worker at a polling place should be able to verify the identity of a voter just like a clerk at Blockbuster Video should be able to discern the identity of a person renting a movie. Additionally, workers at polling places must be sufficiently armed with the tools necessary to turn away non-citizens. A photo ID that lists citizenship status is the best means to achieve that end.

Require that all vote fraud allegations be sent to a county or district attorney, or a state attorney general, for investigation.

NOTE: Model legislation follows in Appendix 1.

Anticipating and Answering Objections

Opposition to voter identification and citizenship verification will be fierce. The points below provide facts that answer some of the arguments advanced by opponents in the 80th Texas Legislature.

1. Objection: States lack the authority enact to voter identification and citizenship verification.

Response: The U.S. Constitution, Article I, Section 4, reads:

> "The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof;"

The Texas Constitution, Article 6, Section 2(c), reads:

> "(c) The privilege of free suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence in elections from power, bribery, tumult, or other improper practice."

The Texas Constitution is unambiguous in allowing for regulations of voting in order to protect the integrity of elections.

Requiring identification at the polls is a minimum standard to protect against "improper practice" that contributes to fraudulent votes and stolen elections. Arizona, Florida, Hawaii, Indiana, Louisiana, Ohio, and South Dakota require photo identification for voting. Arizona's voter identification law includes a provision that requires citizenship verification.

2. Objection: Voter identification and citizenship verification will not pass Department of Justice pre-clearance.

Response: Opponents argue that voter identification and citizenship verification would not pass Department of Justice pre-clearance under Section 5 of the Voting Rights Act. Of the seven states that have enacted a photo identification requirement, however, Arizona and Louisiana are required to pre-clear election law changes. Some jurisdictions within Florida and South Dakota also must pre-clear election law changes. Photo identification laws have passed pre-clearance in those states. The citizenship verification requirement in Arizona also passed Department of Justice pre-clearance.

3. Objection: Voter identification and citizenship verification will not pass muster in the courts.

Response: In removing an injunction against Arizona's photo identification law (the only such law in the nation to require citizenship verification), the U.S. Supreme Court's per curiam opinion reads:

> "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised."[18]

Also, Indiana's photo ID law was upheld by U.S. Court of Appeals for the Seventh Circuit on January 4, 2007. In upholding Indiana's photo ID law, the U.S. Court of Appeals notes that voters who do not comply with the law by obtaining photo identification disenfranchise *themselves.*[19]

4. Objection: Voter identification and citizenship verification proposals amount to a poll tax.

Texas State Senator Mario Gallegos (D–Houston) argued in an opinion-editorial that "the cost of obtaining the ID and necessary documents amounts to a 21st century poll tax."[20]

Response: Courts have held that voter identification laws are *not* an unconstitutional poll tax.

In ruling on Indiana's and Georgia's voter identification laws, federal district courts have held that the photo ID laws at issue did not create a poll tax. Noting that voters could obtain a photo ID free of charge or vote absentee, both courts determined that the plaintiffs failed to prove the additional costs associated with procuring documents to obtain a voting photo ID were sufficiently tied to voting as to constitute a poll tax.

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[18]*Purcell v. Gonzalez*, U.S. Supreme Court per curiam opinion, October 20, 2006.
[19]Circuit Judge Richard A. Posner, *Indiana Democratic Party v. Rokita,* U.S. Court of Appeals, 7th Circuit Case Nos. 06-2218, 06-2317, January 4, 2007
[20]Mario Gallegos, "Why Right to Vote, Without an ID, Is Worth Fighting For," *Houston Chronicle*, May 22, 2007.

Relying on the Supreme Court's decision in *Burdick v. Takushi*[21],,both courts noted "[T]he imposition of tangential burdens does not transform a regulation into a poll tax."[22]

5. Objection: Many individuals without identification, especially minorities and the elderly, will be disenfranchised.

In a May 17, 2007, editorial, the *Houston Chronicle* argued that: "the elderly and minorities… are less likely to have the required identification than more affluent, working-age citizens."

Response: There are more Texas driver's licenses held by the voting-age population than there are registered voters. The following table compares the number of registered voters against the number of driver's licenses and personal ID cards:

Registered Voters (November 2005)[23]	12,577,545
Age 18+ Driver's Licenses (FY 2005)[24]	14,429,377
Personal ID Cards (2006)[25]	3,960,249

In fiscal year 2005, there were 14.4 million valid driver's licenses held by Texans of voting age. In November of 2005, however, there were only 12.5 million registered voters. With 1.8 million more drivers' licenses held by the voting-age population than there are registered voters, the argument that the voter ID proposal will be a barrier to voting is a fallacy. Add in another 3,960,249 unexpired personal identification cards in Texas as of April 2006, and 87 percent of the *total* Texas population (all ages) has some form of government identification card.

Similarly, statistics show that elderly currently hold valid Texas driver's licenses in large numbers. Nevertheless, in an opinion-editorial piece, Texas State Senator Mario Gallegos stated:

> "My grandmother came from Mexico, played by the rules, became a citizen and earned her right to vote. She didn't have a driver's license, but she had her voter registration card, went to the polls where the workers knew her, and voted. If the voter ID law were in effect, I'm not sure she or others like her could have voted."[26]

Senator Gallegos neglects to consider that a family member or friend could assist his grandmother in securing sufficient identification for voting. Senator Gallegos's grandmother, if unable to procure identification, would likely qualify to vote by absentee

[21] Justice Byron R. White for the majority, *Burdick v. Takushi, Director Of Elections Of Hawaii*, 504 U.S. 428 (1992)
[22]*Rokita* at 90; *Common Cause/Georgia v. Billups,* No. 4:05-CV-00201-HLM (N. D. Ga. July 14, 2006) at 177.
[23]Office of the Secretary of State, "Turnout and Voter Registration Figures (1970–Current)," at *www.sos.state.tx.us/elections/historical/70-92.shtml*.
[24]Department of Public Safety, Driver's License Division, review of Federal Highway Administration reports
[25]Department of Public Safety, Driver's License Division
[26]Gallegos, "Why Right to Vote, Without an ID, Is Worth Fighting For."

ballot, which remains unaffected by the Texas proposals. Furthermore, a driver's license was not the only acceptable identification under the Texas bill. Other acceptable forms of identification included a utility bill, employer identification card, a library card, or government mail.

The Department of Public Safety reports that 73 percent of the population aged 79 and older holds a valid driver's license.[27]

In sampling state election returns in Harris County (Houston) for the November 2006 General Election, 125,221 individuals who are 65 or older voted in that election. Of those, 84.7 percent voted in person, and 92.6 percent already held a driver's license,[28] rebutting the presumption that the elderly would be unfairly burdened by a voter identification and citizenship verification requirement.

An overwhelming majority of Texans who are 65 and older already have photo identification, vote in person, and have the option of voting by mail.

6. Objection: Requiring citizenship verification and voter identification is a Republican effort to disenfranchise traditionally Democratic voters.

A liberal Texas publication argued that the "GOP's efforts to clamp down on voter participation won't save them from electoral defeat."[29]

Response: The implied statement, that voter identification and citizenship verification are partisan issues, is far from the truth. The bipartisan Commission on Federal Election Reform chaired by former President Jimmy Carter and former Secretary of State James Baker III issued 87 recommendations for ensuring both equal access to elections and election integrity. Among the 87 recommendations, the Commission recommended that states verify citizenship before registering voters by employing the REAL ID Act.

The Commission's final report recommends:

> "The right to vote is a vital component of U.S. citizenship and all states should use their best efforts to obtain proof of citizenship before registering voters."[30]

The report also states:

> "The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters. Photo IDs currently are

[27]Department of Public Safety, Driver's License Division; and Texas State Data Center.
[28]Harris County Voter Registrar
[29] "The GOP's Darker Motives", *The Texas Observer*, Editorial, May 4, 2007; online at http://www.texasobserver.org/article.php?aid=2485
[30] Commission on Federal Election Reform ,*Building Confidence in U.S. Elections*, Final Report, September 2005; Recommendation 2.5.2, page 21; http://www.american.edu/ia/cfer/report/CFER_section2.pdf

> needed to board a plane, enter federal buildings, and cash a check. Voting is equally important."[31]

This recommendation, and former President Carter's support for it, clearly refutes claims that voter identification and citizenship verification are ploys by the Republican Party to disenfranchise select individuals. The recommendation of the Commission is simple, clear, and unequivocal: proof of citizenship should be a prerequisite for anyone registering to vote. In the 80th Texas Legislature, voter identification and citizenship verification proposals were filed in separate bills, neither of which relied on the REAL ID Act. Opponents, therefore, painted the use of the Commission on Federal Election Reform report as a mischaracterization of the Commission's recommendation. States should tailor their voter identification and citizenship verification proposals around the REAL ID Act.

Conclusion

With an estimated 500,000 illegal immigrants entering the United States each year,[32] and with over one million illegal immigrants in Texas, states cannot afford to leave their election systems susceptible to votes cast fraudulently by non-citizens. Voting is the paramount right of our representative democracy and must be reserved strictly for citizens of the United States.

Requests for identification are increasingly common: to buy alcohol or purchase tobacco; to board an airplane; to buy certain paints or glues (in many states); to rent a movie or a library book. Requesting identification of voters is a simple measure that will abate illegally cast votes by non-citizens. Additionally, state departments of motor vehicles will have to amend their driver's licenses pursuant to the federal REAL ID Act. This gives states the unique opportunity to verify the citizenship status of individuals at polling places, giving real meaning to the litany of laws mandating that only U.S. citizens may vote.

Whatever efforts are made to prevent illegal immigrants from penetrating our borders, states should amend their election laws and practices so that non-citizens are prevented from entering the voting booth.

[31] *Ibid*. Section 2.5, page 18.
[32] Jeffrey S. Passel, "The Size and Characteristics of the Unauthorized Migrant Population in the U.S.," Pew Hispanic Center, March 7, 2006, at *http://pewhispanic.org/files/reports/61.pdf*.

Enacting Meaningful Citizenship Verification for Receipt of Public Benefits

"Although the federal government has the sole authority to govern immigration flows, the responsibility for providing support to legal and illegal immigrants rests with the state and local governments."[33]
-- *Bear Stearns Asset Management report*

Section 6036 of the federal Deficit Reduction Act of 2005 requires that Medicaid applicants prove that they are U.S. citizens in order to enroll in the program. The goal of the legislation is to ensure that Medicaid coverage, which should be provided only to U.S. citizens and other qualifying legal residents, is not accessed by undocumented immigrants or those who are unable to prove their citizenship.

In Texas, the Medicaid citizenship verification requirement has proven to be a successful cost-saving measure. Since the rule went into effect on July 1, 2006, the Texas Health and Human Services Commission (HHSC) has removed, on average, 1,944 non-citizens from the Medicaid rolls each month (August 2006 through December 2006).[34]

The proof-of-citizenship requirement in the Deficit Reduction Act, however, does not apply to other government programs, such as Temporary Assistance for Needy Families (TANF), Food Stamps, the State Children's Health Insurance Program (S-CHIP), or the Housing Choice Voucher Program (known commonly as Section 8 Housing). Enrollment in most of these programs is typically restricted to citizens and certain eligible non-citizens, although the processes by which citizenship is verified are often deficient, if not non-existent.

The new Medicaid citizenship requirement comes as concerns about the costs of illegal immigration continue to increase. It is hard to accurately determine the cost of illegal immigration in terms of how much state and federal money is spent on illegal immigrants who unlawfully enroll in government programs. In Texas, the only reliable indicator of a portion of what the state spends on illegal immigrants relates to the cost of incarceration. In its 2006–2007 legislative appropriations request, the Texas Department of Criminal Justice sought over $31 million to fund the incarceration of illegal immigrants.[35] At the national level, the Center for Immigration Studies estimated in 2004 that illegal immigrants enrolled in Medicaid cost the federal government $2.5 billion, and that illegal immigrants enrolled in Food Stamps and other food-assistance programs cost the federal government $1.9 billion.[36]

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[33] Robert Justich and Betty Ng, CFA, "The Underground Labor Force is Rising to the Surface,", Bear Stearns Asset Management report, January 3, 2005.
[34]Texas Health and Human Services Commission, August through December, 2006 monthly averages.
[35]Texas Department of Criminal Justice, "Fiscal Year 2005 Operating Budget and Fiscal Years 2006-2007 Legislative Appropriations Request," August 23, 2004, at *www.tdcj.state.tx.us/publications/finance/lar-fy2006-7-short.pdf.*
[36]Steven A. Camarota, *The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget*, Center for Immigration Studies, Washington, D.C., August 2004, at *www.cis.org/articles/2004/fiscal.html.*

Despite these cost estimates, denying benefits to illegal immigrants remains controversial, not least because many illegal immigrants contribute to state and federal programs through taxes paid on their earnings, property taxes, and consumption taxes. Those who argue against denying benefits to illegal immigrants hold that undocumented workers pay into the system through their taxes, and that they therefore cannot rightfully be denied access to the government programs that their tax dollars have helped to fund.

However, any tax contributions made by illegal immigrants are negated by the amount of public spending they necessitate. An April 4, 2007, study by Robert Rector of The Heritage Foundation shows the negative impact that low-skilled, low-education households have on public benefits. In a comprehensive review of *all* federal government spending (in which each dollar spent is considered a benefit of some type), Rector found that:

> "[L]ow-skill households received $32,138 per household in immediate benefits and services and $43,084 in total benefits. …[L]ow-skill households received approximately $10,000 more in government benefits than did the average U.S. household.
>
> In contrast, low-skill households pay less in taxes than do other households. On average, low-skill households paid only $9,689 in taxes in FY 2004.
>
> Strikingly, low-skill households in FY 2004 had average earnings of $20,564 per household. Thus, the $32,138 per household in government immediate benefits and services received by these households not only exceeded their taxes paid, but also substantially exceeded their average household earned income."[37]

The deficit created by the use of public benefits and services by low-skill households is $22,449 per year, per low-skill household.[38] Rector argues that if low-skilled, low-education households (like those of many unauthorized immigrants) worked for free, essentially donating their labor to the economy and/or government, their receipt of benefits would still create a deficit.

Rector also argues that any "immigration policy that would substantially increase the future inflow of low-skill immigrants…would dramatically increase the future fiscal burden to taxpayers."[39]

The Texas Workforce Commission (TWC) has conducted a similar study of the public benefits that are available to a single parent of two children. With the exception of Medicaid benefits, the chart[40] on the next page illustrates the extent of federal and state benefits that illegal immigrants may claim due to lax or absent enforcement of citizenship verification requirements.

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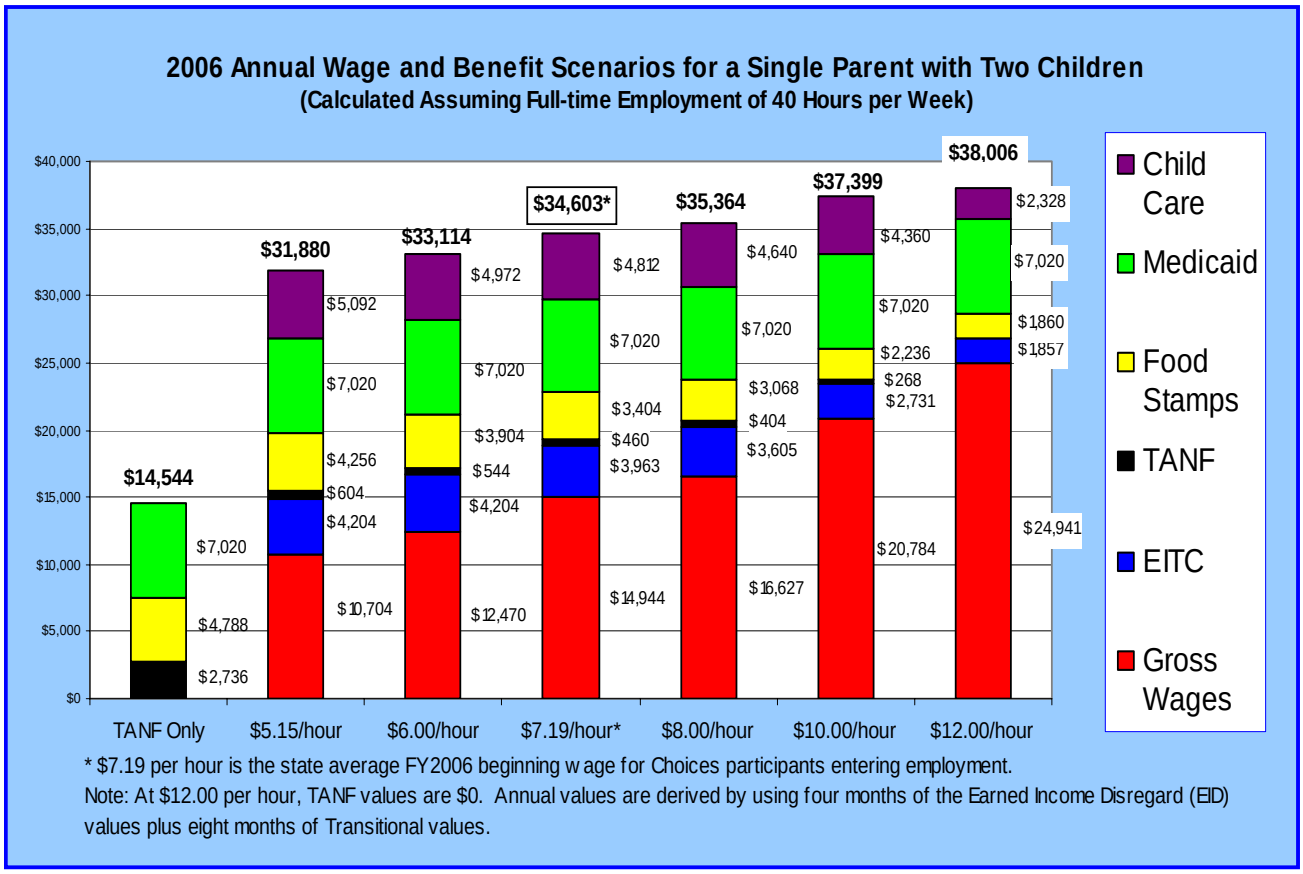
[37]Robert E. Rector, Christine Kim, and Shanea Watkins, Ph.D., "The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer," Heritage Foundation *Special Report* No. 12, April 4, 2007, Executive Summary, Page 1, at *www.heritage.org/Research/Welfare/sr12.cfm*
[38]*Ibid.*, Executive Summary, Page 2
[39]*Ibid.* Executive Summary, Page 2
[40] Chart provided by the Executive Staff of the Texas Workforce Commission



* $7.19 per hour is the state average FY2006 beginning wage for Choices participants entering employment.
Note: At $12.00 per hour, TANF values are $0. Annual values are derived by using four months of the Earned Income Disregard (EID) values plus eight months of Transitional values.

For a single parent of two children earning $7.19 per hour and working forty hours per week, gross wages of $14,944 per year are more than doubled by public benefits to $34,603 per year. Even subtracting Medicaid, the only public benefit listed that requires citizenship verification, an illegal immigrant who meets the same criteria would collect $27,583 in combined wages and public benefits per year.

Of course, the chart above details some of the benefits that illegal immigrants might access, but not all of them. An illegal immigrant child, for example, would be eligible for Head Start. Illegal immigrants access our courts and are eligible for state action on child support collections and could be awarded exemplary damages in a civil suit. The overarching point is that illegal immigrants represent a significant cost to state taxpayers.

Denying Benefits to Illegal Immigrants

The case against offering benefits to illegal immigrants is compelling.

Illegal immigrants have come here *illegally* and their very presence here is a violation of federal law. This argument was articulated succinctly by U.S. Senator Jim DeMint (R–SC) in May 2006, when he asked, "Why in the world would we endorse this criminal activity with federal benefits?" [41] Even if illegal immigrants were to fund their own

[41] Charles Hurt, "Illegals Granted Social Security," *The Washington Times*, May 19, 2006

public benefits through taxes paid, their presence in our nation is a violation of federal law that should not be rewarded with public benefits.

A supply-and-demand equation is at work. As long as federal and state governments continue to supply generous benefits, including public education [see next section], to those who have entered the U.S. illegally, and as long as employers are not penalized for knowingly hiring undocumented workers, people will continue to come (even if access to benefits isn't the chief reason they come).

Evidence of this has been well documented for many years; as far back as 1995, the General Accounting Office recorded 24,594 Medicaid-funded births to undocumented immigrants in Texas[42]. In 2005, the Pew Hispanic Center estimated that 3.1 million children of illegal immigrants currently reside in the U.S., having obtained citizenship by birth.[43] Similarly, according to *The Houston Chronicle*, in 2005, administrators at Houston's Ben Taub General Hospital and Lyndon B. Johnson General Hospital reported that as many as 80 percent of the two hospitals' 10,587 births were to "undocumented immigrant" parents.[44] The same *Houston Chronicle* article cites an illegal immigrant woman who has given birth to four children on U.S. soil.[45]

Denying benefits to illegal immigrants is as much about helping to stop illegal immigration as it is about doing what is right and just. The Legal Action Center reports that "federal law imposes a lifetime ban on anyone convicted of a drug-related felony from receiving federally-funded food stamps or cash assistance," [46] which demonstrates that simply being a resident of the U.S. does not confer upon an individual permanent eligibility for enrollment in all public programs. Those who engage in criminal activity, whether it be drug-related offenses or entering the country illegally, should be denied access to government programs on the basis of that activity.

The second part of the argument for denying benefits to illegal immigrants becomes apparent through the following question: To whom does the U.S. government have its primary responsibility? The U.S. government is primarily responsible, of course, for U.S. citizens. Any welfare benefits that the U.S. government offers are intended to help U.S. citizens and legal residents. It is absolutely clear that the U.S. government is not responsible for helping people who come here illegally. Anyone who enters the country illegally shows a blatant disregard for our laws. To expect that the government should then offer illegals the same benefits as it does to citizens shows either our own disregard for our laws or else our irrationality.

Those who argue that welfare programs should be expanded to include many or all of the illegal immigrants who live in the U.S. must know that such an expansion will dilute

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[42]U.S. General Accounting Office, "Undocumented Aliens: Medicaid-Funded Births in California and Texas," GAOLHEHS-97-124R, May 30, 1997 at *http://archive.gao.gov/paprpdf1/158747.pdf*.
[43]Jeffrey S. Passel, "Unauthorized Migrants: Numbers and Characteristics," Pew Hispanic Center, June 15, 2005, at *http://pewhispanic.org/files/reports/46.pdf*.
[44] James Pinkerton, "'Border Baby' Boom Strains South Texas," *The Houston Chronicle*, September 24, 2006.
[45]*Ibid.*
[46]Legal Action Center, "Opting Out of Federal Ban on Food Stamps and TANF," at *www.lac.org/toolkits/TANF/TANF.htm*.

resources. Stretching these resources to accommodate illegal immigrants may mean that everyone enrolled in these programs will receive less assistance.

Those who advocate the expansion of government welfare programs, such as the Texas-based Center for Public Policy Priorities (CPPP), are usually critical when rising costs cause welfare programs to be cut back. In February 2006, CPPP opposed federal Medicaid funding reductions because "65,000 individuals would lose Medicaid coverage entirely."[47] Yet research by the Center for Immigration Studies (CIS) conducted in 2005 revealed that nationwide, Medicaid enrollment among legal and illegal immigrant households is almost 40 percent higher than enrollment among "native" households.[48] According to the analysis by the CIS, 24.2 percent of the 35 million legal and illegal immigrants residing in the U.S. are enrolled in Medicaid—almost 8.5 million people. If just one percent of these Medicaid enrollees are illegal immigrants, then 85,000 people are enrolled illegally; which is higher than the 65,000 people CPPP complained would lose coverage in Texas when federal cuts were made. Allowing illegal immigrants to enroll in government programs because of lax citizenship verification procedures undermines the extent to which the programs can deliver services to eligible enrollees. If the government has the authority to deport people, it has a right to deny them benefits.

Additionally, certain welfare programs, such as TANF, require enrollees to participate in "work activities" such as work, job training, or even simply searching for a job, in order to wean them off welfare programs. Illegal immigrants cannot fully participate in these work programs because any employer that hires them is breaking the law.

Essential to the process of ensuring that illegal immigrants do not receive benefits to which they are not entitled is the method by which the citizenship of welfare applicants is verified. It is clear that, in Texas at least, citizenship verification procedures for a variety of programs, ranging from Medicaid to Section 8 Housing, often lack the appropriate level of scrutiny. The following sections highlight some of the most obvious flaws in how the citizenship of applicants for Medicaid, TANF, Food Stamps, S-CHIP, and Section 8 Housing in Texas is verified.

Medicaid

Despite the clear need for close inspection of applicants' citizenship status, scrutiny of the Texas Health and Human Services Commission's guidance on how Medicaid applicants must prove their citizenship reveals that the documentary requirements are not nearly as stringent as they should be.[49] Documents allowed by the Texas Health and Human Services Commission (HHSC) to prove citizenship are:

- U.S. birth certificate,
- U.S. citizen identification card,

[47]Center for Public Policy Priorities, "Last Chance to Oppose Federal Medicaid Cuts," February 1, 2006, at *www.cppp.org/files/3/Last%20Chance%20to%20Oppose%20Federal%20Medicaid%20Cuts.pdf.*
[48]Steven A. Camarota, "Immigrants at Mid-Decade: A Snapshot of America's Foreign Born Population in 2005," Center for Immigration Studies, December 2005, at *www.cis.org/articles/2005/back1405.html*.
[49]Texas Health and Human Services Commission, Texas Works Bulletin No. 06-13, June 9, 2006, at *www.dads.state.tx.us/handbooks/TexasWorks/res/Bulletins/06-09-06.htm*.

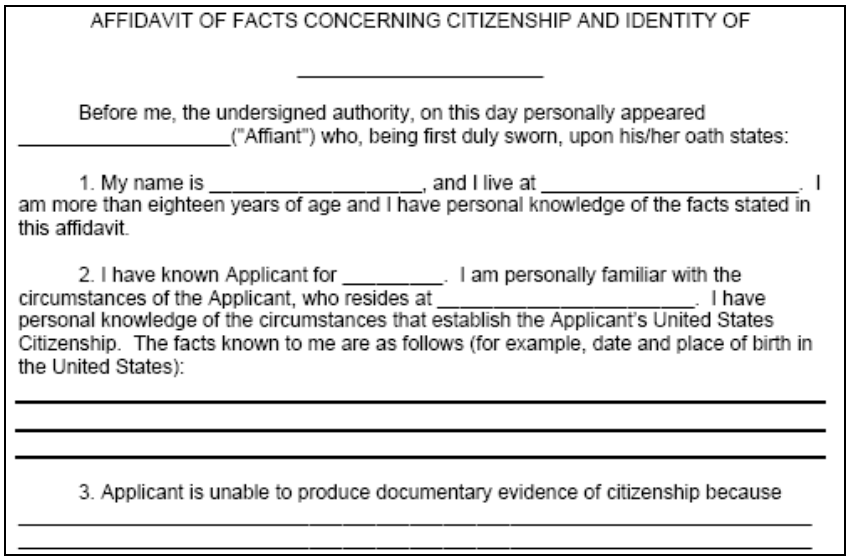
- Report of birth abroad of a U.S. citizen,
- Religious record of birth recorded in the U.S. or its territories,
- Hospital record of birth in one of the 50 states or affiliated territories,
- Northern Mariana or American Indian identification card,
- Affidavit from two blood-related individuals of the applicant who have personal knowledge of the events establishing the applicant's claim of U.S. citizenship.

Each of these documents is used based on rules promulgated by the Centers for Medicare and Medicaid Services (CMS). This guidance means that Medicaid applicants who cannot provide appropriate documentary evidence of their citizenship, such as a birth certificate, can still be approved if two family members simply attest to their citizenship. There is no indication of how or if HHSC officials are expected to verify the relationship between the applicants and their sponsors, or that the sponsors must themselves be U.S. citizens and if so, how this is verified.

Below is an excerpt from the sample affidavit that Texas HHSC suggests can be used by Medicaid applicants who are otherwise unable to prove their citizenship.[50] In addition to the information shown below, the affidavit must be signed by the affiant and must be notarized by a public official. A letter sent by HHSC to all Medicaid clients to advise them of the new citizenship requirement informs the clients that:

> "If you want to provide an affidavit to prove citizenship and identity, you can get a form at your local HHSC benefits office or online at www.hhsc.state.tx.us. An affidavit must be notarized. Free notary services are available to you at your local HHSC benefits office."[51]

An image of the sample affidavit follows, below.



AFFIDAVIT OF FACTS CONCERNING CITIZENSHIP AND IDENTITY OF

_____

Before me, the undersigned authority, on this day personally appeared _____("Affiant") who, being first duly sworn, upon his/her oath states:

1. My name is _____, and I live at _____. I am more than eighteen years of age and I have personal knowledge of the facts stated in this affidavit.

2. I have known Applicant for _____. I am personally familiar with the circumstances of the Applicant, who resides at _____. I have personal knowledge of the circumstances that establish the Applicant's United States Citizenship. The facts known to me are as follows (for example, date and place of birth in the United States):

_____

_____

_____

3. Applicant is unable to produce documentary evidence of citizenship because

_____

_____

[50]The full affidavit is available on the Texas Health and Human Services Commission Web site: *www.hhs.state.tx.us/medicaid/Affidavit_Adult.pdf*.

[51]Texas Health and Human Services Commission letter to clients, June 2006, at *www.hhs.state.tx.us/medicaid/engApp.shtml*.

Despite federal guidelines issued by the Centers for Medicare and Medicaid Services, which specify that affidavits must only be used in rare circumstances "when the state is unable to secure evidence of citizenship from another listing,"[52] HHSC fails to clearly instruct clients that the affidavit can be submitted only as a last resort, and only if there is no other way for a client to prove citizenship. Instead, the affidavit is promoted as a way for clients who do not have the appropriate documentation, such as a birth certificate or passport, to prove their citizenship. This is despite the obvious deficiencies of using a document that requires the affiant to provide only name, address, and signature in order to "verify" the citizenship of the applicant. Again, although federal guidelines indicate that "for the affidavit to be acceptable the persons making them must be able to provide proof of their own citizenship and identity,"[53] Texas HHSC fails to explain that the affiant must be a citizen, and much less how this can be verified if the affiant is instructed only to provide their name, address, and signature.

In short, the process of verifying a Medicaid applicant's citizenship is severely compromised by the potential for fraud that is presented by the use of affidavits such as the one suggested by CMS. The verification process is compromised both because the affidavit itself requires that only the bare minimum amount of information be provided by the affiant, and because the affidavit is promoted as a way to prove citizenship.

If an affidavit is to be used at all, it must be used only as a last resort, and as such, it should not be advertised to clients when they are first asked to prove their citizenship. Such an affidavit must be more detailed than the one currently suggested by Texas HHSC, so that information about the applicant and the affiant can be verified against existing state and federal records. The applicant and affiants should also be required to attend a face-to-face meeting with state administrators in the appropriate field office, so that all the relevant documentation can be presented, and the state can verify the identity and citizenship status of all three parties.

TANF and Food Stamps

Guidance on how administrators should verify the citizenship of TANF and Food Stamp applicants is even more deficient than the new processes to be followed for Medicaid applicants. HHSC's *Texas Works Handbook* permits citizenship to be verified by documents ranging from a U.S. birth certificate or passport to a hospital birth record or certificate of citizenship. A voter registration card is acceptable as proof of citizenship for the Food Stamp program only, which is significant because a voter registration card can be obtained without the applicant having to do anything other than indicate that he is a citizen; no supporting evidence is required.[54] Furthermore, the U.S. Department of State

[52]Medicaid Fact Sheet issued by U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, July 6, 2006, at *www.cms.hhs.gov/MedicaidEligibility/Downloads/Citizenshipfactsheet.pdf.*

[53]*Ibid.*

[54]In a June 15, 2006, letter, Ann McGeehan, Director of Elections, Texas Secretary of State's Office, states: "…under current Texas voter registration guidelines, there is no formal verification of an applicant's citizenship status... Texas relies on the applicant to provide accurate/truthful information on his or her voter registration application. To the extent that an applicant must sign the application verifying that he or she has met the qualifications to register (one of which is U.S. citizenship) and that he or she has provided accurate/truthful information, the application is processed on those merits."

specifically indicates that a voter registration card is *not* an acceptable proof of citizenship when applying for a passport.[55] Yet providing a voter registration card is sufficient evidence of citizenship to enroll an individual in the Food Stamp program in Texas.[56] This is a clear loophole which must be addressed. Other evidence that can be submitted by TANF or Food Stamp applicants to prove citizenship includes: baptismal records, Indian census papers, and local, state, or federal records showing a U.S. place of birth.[57]

If the applicant cannot provide documentation to prove his citizenship, HHSC administrators are instructed to "obtain an affidavit signed by someone who knows the applicant's history…. The affidavit must state that the signer: is a U.S. citizen; knows that the applicant is a U.S. citizen; and may be fined, imprisoned, or both if he gives false information."[58] Unlike Medicaid applicants, TANF and Food Stamp applicants are required to obtain an affidavit from only one person, and the person need not be a blood relative. When these facts are coupled with the more general deficiencies of the CMS suggested affidavit, severe doubts arise about the ability of states to accurately verify the citizenship of its TANF and Food Stamp applicants.

S-CHIP

A similarly slipshod citizenship verification process exists for the State Children's Health Insurance Program (S-CHIP), which is also administered by HHSC in Texas. Any child enrolled in S-CHIP must be a citizen or legal permanent resident,[59] but the parent or guardian who files the application on a child's behalf is not required to provide his own immigration status. Even if parents do provide this information, they are informed that it "cannot be used to deny you admission to the U.S., to harm your permanent residency status or to deport you."[60] This provision is derived from federal guidelines governing "public charge" that were announced in May 1999. The Center on Budget and Policy Priorities points out that the guidance:

> "[N]arrowly limits the situations in which receipt of public benefits is relevant to a "public charge" finding.…[T]he receipt of any non-cash benefit, with the sole exception of institutionalization for long-term care at government expense is *never* a factor in public charge determination…. Thus, immigrants can accept

[55]U.S. Department of State, "How to Apply in Person for a Passport," at *http://travel.state.gov/passport/get/first/first_830.html*.
[56]Texas Health and Human Services, *Texas Works Handbook*, Section 350, Item 358, October 1, 2006, at *www.dads.state.tx.us/handbooks/TexasWorks/A/300/358.htm*.
[57]*Ibid.*
[58] Texas Health and Human Services, Texas Works Handbook, Section 350, Item 351.2, January 1, 2007, at *www.dads.state.tx.us/handbooks/TexasWorks/A/300/351.2.htm*.
[59]Texas Health and Human Services Commission, CHIP/Children's Medicaid Web page, at *www.chipmedicaid.com/english/qualify.htm*.
[60]Texas Health and Human Services Commission, Application Information for Children's Medicaid and the Children's Health Insurance Program, at *www.chipmedicaid.com/files/CHIP_TexCare_Application_Eng.pdf.*

> Medicaid, food stamps, WIC, housing benefits, child care subsidies or other non-cash benefits without endangering their immigration status."[61]

The S-CHIP application form requests information about the citizenship status of each child for whom coverage is being sought.[62] Space on the form is also provided for the Social Security number (SSN) of each child, although the HHSC *Texas Works Handbook* notes that "undocumented aliens are not required to apply for an SSN."[63]

When S-CHIP was established in Texas 1999, the enabling legislation (Senate Bill 445) included Texas Health & Safety Code §62.105, allowing "qualified aliens" (as defined by §431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or PRWORA) to be eligible for S-CHIP coverage. The "2006–2007 Fiscal Size-Up"[64] notes that for the current biennium, $36.3 million has been appropriated toward immigrant health. However no statutory citizenship requirement exists, and HHSC confirms that there is no process by which the citizenship of S-CHIP applicants is verified. Currently, S-CHIP citizenship verification relies solely on the honesty of those completing application forms, since applicants are not asked to prove the citizenship or immigration status of the children for whom they are applying.

Furthermore, Section 403 of PRWORA provides that certain immigrants who enter the United States after August 22, 1996, are not eligible to receive federally funded benefits, including Medicaid and the State Children's Health Insurance Program (S-CHIP).

Texas expenditures on S-CHIP benefits for "qualified aliens" are purely state-funded; Texas receives no federal matching funds for the $36.3 million in biennial expenditures. This makes a compelling argument for state verification of the citizenship of S-CHIP recipients. To the extent that illegal immigrants are accessing the "qualified alien" services made available under S-CHIP, those services are financed entirely by Texas taxpayers.

To that end, State Representative Dan Flynn (R–Van) amended a bill on the floor of the Texas House to require HHSC to verify either the United States citizenship or qualified alien status of applicants for S-CHIP benefits. While the S-CHIP bill passed, the citizenship verification amendment was stripped from the bill in the closing days of the 80th Legislature.

Aside from the "qualified alien" program, the Texas HHSC openly acknowledges that illegal immigrant women are eligible for the S-CHIP Perinatal program, under which

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[61]Center on Budget and Policy Priorities, "The INS Public Charge Guidance: What Does it Mean For Immigrants Who Need Public Assistance?," , January 7, 2000, at *www.cbpp.org/1-7-00imm.htm* (emphasis in original).
[62] *www.chipmedicaid.com/files/CHIP_TexCare_Application_Eng.pdf.*
[63] Texas Health and Human Services, *Texas Works Handbook*, Section 410; http://www.dads.state.tx.us/handbooks/TexasWorks/A/400/410.htm
[64]"Fiscal Size-Up, 2006-2007 Biennium", Texas Legislative Budget Board athttp://www.lbb.state.tx.us/Fiscal_Size-up/Fiscal_Size-up_2006-2007_0106.pdf

coverage is technically provided to the unborn child, who is an assumed United States citizen.[65]

Section 8 Housing Choice Voucher Program

Section 8 Housing provides rental assistance to low-income families and individuals, and is administered locally by public housing agencies under the supervision of the Texas Department of Housing and Community Affairs (TDHCA). Illegal immigrants are permitted to live in Section 8 Housing; the only requirement is that one member of the household must be a legal resident. Rental payments are then pro-rated in accordance with the number of eligible immigrants in the household.[66] The U.S. Department of Housing and Urban Development reports that:

> "Eligibility for a housing voucher is determined by the PHA [Public Housing Agency] based on the total annual gross income and family size and is limited to US citizens and specified categories of non-citizens who have eligible immigration status."[67]

In a May 2004 report, the Audit Committee of TDHCA reported that Section 8 applicants are required to attest to their citizenship and to provide "at least a signed declaration of their U.S. citizenship or U.S. nationality."[68] The report pointed out that TDHCA's policy is to require that additional information, such as a U.S. passport, also be provided. However, the Audit Committee found that:

> "For one of 30 tenants selected for test work, documentation was not available to determine if the tenant met the requirements of citizenship or eligible immigration status. The tenant noted, was admitted to the program on February 1, 2000 without the proper citizenship documentation. During the renewal process…DHCA noted in the tenant's file that the required citizenship information was not provided and requested the information from the tenant. However, the documentation was not obtained and benefits of $1,262 were paid during the 2003 fiscal year."[69]

As a result of the Audit Committee report, TDHCA began using the U.S. Citizenship and Immigration Services' (USCIS) automated system, Systematic Alien Verification for Entitlement (SAVE), to verify the immigration status of applicants who claim to have eligible immigration status. SAVE is a database established by the USCIS to help employers and state agencies to ascertain the immigration status of any non-citizens.

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[65]July 27, 2006, legislative briefing for state legislators by HHSC intergovernmental affairs staff on S-CHIP and non-citizens.
[66]Andrea Ball,, "A Visible Housing Crunch," *Austin-American Statesman*, July 16, 2006.
[67]U.S. Department of Housing and Urban Development, Housing Choice Vouchers Fact Sheet, at *www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm*.
[68] Texas Department of Housing and Community Affairs, Audit Committee Report, May 12, 2004, at *www.tdhca.state.tx.us//pdf/agendas/040512-auditbook-040505.pdf*, p. 238.
[69]*Ibid.*, p. 239.

Employers may use the SAVE system to verify that a potential employee is permitted to work in the U.S., while state agencies can use it to establish a non-citizen's precise immigration status, and therefore the benefits or state programs for which the individual is entitled. The primary problem with using the SAVE system to verify citizenship however, is that the system contains information pertaining only to non-citizens.[70] If an individual applies for Section 8 housing claiming to be a U.S. citizen, SAVE cannot substantiate the veracity of the applicant's claim.

Recommendations

Verify the citizenship of all applicants for all state benefits.

This recommendation is critical to the fiscal solvency of Medicaid, S-CHIP, and other public benefit programs in the state of Texas, and is likely important to the integrity of those programs in other states.

Such state action may necessitate judicial challenges to the Fourteenth Amendment.

Alternatively, count the number of illegal immigrants who access public benefits.

Currently, statistics on illegal immigrants and their use of public benefits are limited, leaving policymakers to rely on estimates. By conducting a headcount of illegal immigrants who access services, states can arm legislators to make better, more informed decisions. Also, states can use the statistics to bill the federal government for the cost of providing benefits and services to individuals who are illegally in the state due to a failure of the federal government.

NOTE: Model legislation follows in Appendix 2.

Anticipating and Answering Objections:

1. Objection: Citizenship verification places an undue burden on minorities and the elderly.

Response: Perhaps the simplest way to circumvent this argument is to place the burden of citizenship verification on the state. The Texas Health and Human Services Commission, which administers most of the public benefit programs in the state, also houses the Bureau of Vital Statistics, which maintains all birth and death records. Texas HHSC officials confirm that in verifying citizenship for the Medicaid program, according to the Deficit Reduction Act and CMS rules, applicants need not bring a hard copy of a birth certificate. HHSC officials can verify a birth that occurred in Texas dating back to 1903. For Texas-born U.S. citizens, citizenship verification is a simple, electronic process of cross-checking state records. Other states can similarly place the burden of verifying citizenship for public benefits on state agencies.

[70]U.S. Immigration and Naturalization Service, *Systematic Alien Verification for Entitlement (SAVE) Program User Manual*, September 2000, at *http://dhfs.wisconsin.gov/EM/pdf/SAVEManual.pdf*.

2. Objection: Denying benefits to illegal immigrants is unconstitutional.

Response: Any argument that denying benefits to illegal immigrants is unconstitutional is unfounded based on the Deficit Reduction Act's requirement for citizenship verification for Medicaid.

More important, states should consider laws that test the Fourteenth Amendment to the U.S. Constitution. The Fourteenth Amendment reads that "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." This has been interpreted by courts to mean that a child of illegal immigrants who is born on U.S. soil is a United States citizen.

In Texas, State Representative Leo Berman (R–Tyler) filed House Bill 28 (80th Texas Legislature, 2007) to challenge that notion. The bill denied state benefits to children born in Texas to illegal immigrant parents. Representative Berman's bill, like so many others, fell victim to a lack of political will to take action against illegal immigration. The Texas Legislature took no substantive action to deny public benefits to illegal immigrants.

Nevertheless, just as the Supreme Court ruling in *Roe v. Wade* has been challenged by state laws (sometimes successfully, sometimes not), the notion that illegal immigrants' children may become automatic U.S. citizens should be similarly challenged by the states.

As a basis for challenging the Fourteenth Amendment, states should consider that the U.S. Supreme Court, in the late 1970s, denied that every exclusion of aliens was subject to strict scrutiny, "because to do so would 'obliterate all the distinctions between citizens and aliens, and thus deprecate the historic values of citizenship.'"[71] The Court later ruled that "governmental entities, when exercising the functions of government, have wider latitude in limiting the participation of noncitizens."[72] Supreme Court rulings generally conclude that a citizenship requirement need only bear a rational relationship to the state interest. By arguing the fiscal and social costs of illegal immigration, states have a rational basis to deny benefits to illegal immigrants.

A summary of the Supreme Court's interpretation of the Fourteenth Amendment as it relates to citizenship and aliens reads as follows:

> "Thus, the Court so far has drawn a tripartite differentiation with respect to governmental restrictions on aliens. First, it…would foreclose attempts by the States to retain certain economic benefits, primarily employment and opportunities for livelihood, exclusively for citizens. Second, when government exercises principally its spending functions, such as those with respect to public employment generally and to eligibility for public benefits, its classifications with an adverse impact on aliens will be strictly scrutinized and usually fail. Third, when government acts in its sovereign capacity, when it acts within its

[71] *Foley v. Connelie*, 435 U.S. 291, 295 (1978). The opinion was by Chief Justice Burger and the quoted phrase was from his dissent in *Nyquist v. Mauclet*, 432 U.S. 1, 14 (1977). Justices Marshall, Stevens, and Brennan dissented. Id. at 302, 307.
[72] *Ambach v. Norwick*, 441 U.S. 68, 75 (1979).

> constitutional prerogatives and responsibilities to establish and operate its own government, its decisions with respect to the citizenship qualifications of an appropriately designated class of public office holders will be subject only to traditional rational basis scrutiny."[73]

These notions must be challenged in order to protect taxpayers and respect the rule of law.

3. Objection: Denying benefits to illegal immigrants violates basic human rights.

In personal privilege speech from the floor of the Texas House of Representatives, State Representative Paul Moreno (D–El Paso) made impassioned human rights arguments:

> "We [Hispanics] have been here a long, long time, and we should not be called illegal aliens. We are a people devoted to love; to love and respect to all others….
>
> This state is showing total disregard, total disregard, and they're not showing that love that each of us as humans deserves. We have to show love, we have to show respect. Some of the younger Members that came into the House…they changed their views and they have forgotten that we are still people that are suffering. They have forgotten that we are people that believe in humanity. I am the strongest believer in humanity there is. I believe strongly in humanity."[74]

Response: The business of running a free, democratic state demands that leaders make tough decisions. In order to provide limited public benefits that help the most indigent state residents in times of need, states must dedicate their limited resources to U.S. citizens and lawful residents *only*. Programs must remain limited to keep citizens' tax burden equitable.

Conclusion

Illegal immigrants should be denied all state and federal benefits except genuine emergency medical care (most births do not require emergency medical care in the same way that a serious injury would). Any services or benefits provided to illegal immigrants should be on a strict fee-for-services basis. Just as the supply of jobs attracts immigrants illegally to America, so the supply of welfare programs with lax citizenship verification procedures serves as an incentive for immigrants to enter and stay illegally.

The method by which state and federal agencies verify the citizenship of applicants to welfare programs is the most important part of the process of ensuring that illegal immigrants do not receive benefits to which they are not entitled. Allowing stringent documentary requirements to be circumvented by permitting applicants to attest to their

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[73] FindLaw.com, "U.S. Constitution: 14th Amendment Annotations" p. 31, SECTION 1. RIGHTS GUARANTEED: THE NEW EQUAL PROTECTION, at http://caselaw.lp.findlaw.com/data/constitution/amendment14/31.html#1

[74] State Representative Paul Moreno, Personal Privilege Speech before the Texas House of Representatives on May 8, 2007 (transcribed from video by TCCRI)

own citizenship, or have a family member or other person attest on their behalf, represents a major flaw in the application process for many welfare programs in Texas.

A signed affidavit does not prove the citizenship of those applying for, or receiving, welfare. Allowing the signatures of three persons to "verify" citizenship blurs the line between clear verification of citizenship and an honor system, under which the state and federal government must trust the information provided by those applying to government programs. In reality, the only documents that absolutely prove citizenship are a birth record, naturalization certificate, or a U.S. passport. Allowing an affidavit as proof of citizenship undermines the entire system. The affidavit loophole should be eliminated from the new Medicaid rules if citizenship verification is to have any meaning.

Those who cannot provide appropriate documentary evidence of their citizenship should be denied enrollment in a program until such time as they can provide appropriate evidence of their eligibility. Similarly, those already enrolled in programs who are unable to satisfactorily prove their citizenship should be dis-enrolled until their citizenship can be verified.

States should also keep a record of the number of illegal immigrants who are enrolled in welfare programs. This count can be used to ask for a federal reimbursement for the cost of the services and financial support that the state provides to those who are here illegally.

Employer Sanctions Can Help Halt the Tide of Illegal Immigration

Background

In March 2005, the Pew Hispanic Center calculated that there were 7.2 million undocumented workers in the U.S. economy. In its study, the Center estimated that undocumented workers account for 24 percent of all agricultural employment in the U.S., 14 percent of all construction employment, and 12 percent of all food preparation employment.[75] The demand for jobs, and the willingness of American employers to supply them to undocumented immigrants in such large numbers, is the cause of much of the illegal immigration that takes place across America's southern border every day.

The polarization of the debate over illegal immigration is pushing into the shadows the fact that employers are willing to illegally hire migrant labor.

The Dynamics of Illegal Immigration

Much like it is with the flow of illicit drugs into the United States, the demand side appears to be the chief culprit of the present illegal immigration crisis. The willingness of employers to violate immigration and labor laws has negative ramifications for the body politic even if the American economy benefits from illegal immigration. Rather than rewarding lawbreakers through blanket amnesty and encouraging American isolation through wall-building and deportation, workplace enforcement and/or employer sanctions should be a primary focus of state lawmakers. That is an appropriate means to depress demand for illegal immigration.

A report by the Center for Immigration Studies highlights the dynamics of the process that sees so many people enter the United States illegally from Mexico each year:

> "The typical Mexican worker earns one-tenth his American counterpart, and numerous American businesses are willing to hire cheap, compliant labor from abroad; such businesses are seldom punished because our country lacks a viable system to verify new hires' work eligibility." [76]

As to the matter of why Mexicans come to the United States, the World Bank reports that although Mexico's economic situation has greatly improved over the last decade, the real-life situation confronting most Mexicans is horrific:

> "According to The World Bank, 48 percent of the Mexican population was living in poverty in 2004, compared to 64 percent following the 1995 crisis." [77]

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[75]Passel, "The Size and Characteristics of the Unauthorized Migrant Population in the U.S."
[76]Center for Immigration Studies, "Illegal Immigration," at *www.cis.org/topics/illegalimmigration.html.*
[77] Barnard R. Thompson, "Politics, the Wonderful Road to Riches in Mexico", Mexidata.info, September 11, 2006, at http://www.mexidata.info/id1049.html;

The crushing weight of Mexico's poor economic health is horribly clear when the situation is considered improved because just 50 percent of its population lives in poverty. The root of American unease with perceived job losses due to illegal immigration begins with the poverty faced by Mexicans who are now part of the U.S. workforce. The costs to that nation, through drain of its human capital, probably cannot be calculated but it is of great benefit to the U.S. economy in general and American corporations specifically.

However, the backlash over the increasing presence of illegal immigrants in the U.S. economy has not led to increased employer sanctions. Instead, it has led to greater calls for more border security—or a closed border—which is ancillary to the central problem of the willingness of corporations to flout federal law. If illegal immigrants did not have access to jobs, either at major U.S. corporations or at day laborer centers (often funded by taxpayers), illegal immigration would not have reached the magnitude it is today. The vast network of migrants now living and working in the United States clearly signals to others that crossing the border in search of a job is an acceptable risk because the likelihood of securing employment is high. Indeed, corporate interest groups have lauded the Senate "compromise" bill on illegal immigration.

Rather than focus on workplace enforcement or employer sanctions, policymakers, particularly on the political right, have instead searched for new ways to secure the border. As noted by the Center for Immigration Studies, "the standard response to illegal immigration has been increased border enforcement. And, in fact, such tightening of the border was long overdue. But there has been almost no attention paid to enforcement at worksites within the United States."[78] The fact that there is little or no workplace enforcement, and that Mexicans are perceived to violate American immigration laws at will in search of jobs, helps to explain why public opinion runs so strongly on the issue.

An Economic Benefit to America?

An extensive analysis of the impact of illegal immigrant labor by *Business Week* magazine underscores why the U.S. Chamber of Commerce and other business organizations generally oppose efforts to increase border and workplace enforcement. The Chamber puts the blame for the problem of illegal immigration clearly on the shoulders of the federal government.

> "Experts estimate there may be as many as 10 million undocumented workers throughout the country who are working hard and performing tasks that most Americans take for granted but won't do themselves, in such industries as construction, landscaping, health care, restaurants and hotels and others. The combination of a need for workers and an inadequate immigration system has caused an unacceptable status quo. By not creating adequate legal avenues for hiring foreign workers and not addressing the status of workers already here, Congress and this administration are not fully safeguarding the economy for the future."[79]

[78]Center for Immigration Studies, "Illegal Immigration."
[79] "Essential Workers: Needed Workforce for the Future", U.S. Chamber of Commerce athttp://www.uschamber.com/issues/index/immigration/essentialwork.htm

The Chamber's claim that business bears no culpability is hollow. Procedures already exist for hiring of foreign labor (even if those procedures are needlessly bureaucratic), and the "status of workers" is affected most by those who knowingly hire individuals who have not legally entered the United States.

Exploring Employer Sanctions

It is no great leap of logic to deduce that if the employment incentive for illegal immigrants is removed, the rate of illegal immigration will fall. It is a simple supply and demand equation, which can be likened to the problem of illegal drugs in American society. No matter how many poppy fields or drug cartels are destroyed by law enforcement officials, as long as the demand for illegal drugs remains high, so the supply of these drugs will continue. (The problems faced by coalition forces in Afghanistan are a strong rejoinder to skeptics of the demand side of the drug problem.) Similarly, no matter how many illegal immigrants are caught crossing the border, or detained and deported once they get here, as long as the supply of jobs exists, people will continue to attempt (and probably succeed) to enter the U.S. illegally in search of work, especially since economic conditions in Mexico are so deplorable compared to those in the United States.

Among the most effective ways to cut the supply of jobs would be to impose strict sanctions on American businesses that are found to be employing undocumented workers. A provision for sanctioning employers in this way was introduced at the federal level with the Immigration Reform and Control Act of 1986. However, enforcement of this legislation has been generally weak.

The *Washington Post* reported on June 19, 2006, that work-site enforcement operations by the Immigration and Naturalization Service (INS) were scaled back by 95 percent between 1999 and 2003.[80] In 1999, there were 182 prosecutions of employers who had employed illegal immigrants; in 2003, there were just four. Total fines imposed declined from $3.6 million to just $212,000 over the same period. The INS was succeeded by U.S. Immigration and Customs Enforcement in 2004, which led to a slight increase in convictions—46 in 2004 and 127 in 2005.

In order to ensure that this increase in convictions continues, the most sensible and needed measure to be introduced in Congress is the Comprehensive Enforcement and Immigration Reform Act (S. 1438, 109th Congress) by Texas' junior senator, John Cornyn. Among its primary recommendations is to authorize hiring 10,000 additional agents over five years to investigate employers who hire illegal immigrants. Workplace enforcement is crucial because it places the burden where it most justifiably belongs. Furthermore, workplace enforcement recognizes the sufficiency of federal law in matters relating to immigration and labor: It is already illegal to come to the United States to work without having secured a work visa or having achieved "resident alien" status, and

[80] Spencer S. Hsu and Kari Lydersen, "Illegal Hiring Is Rarely Penalized", *Washington Post*, June 19, 2006; at http://www.washingtonpost.com/wp-dyn/content/article/2006/06/18/AR2006061800613.html

it is already illegal to hire an undocumented worker. New federals laws are not necessary; it is simply the enforcement of existing laws that must be improved.

Despite the recent increase in convictions, and putting to one side the enforcement of employer sanctions by the federal government, there is still a role that individual states must play by drafting legislation and enforcing sanctions themselves. According to the National Conference of State Legislatures, over the past year as many as 30 states have considered a total of 75 bills targeting employers of undocumented workers. States considered almost 500 bills on immigration in 2006 alone. As far as imposing and enforcing stricter employer sanctions is concerned, the onus rests with the states.

Recommendations

In Texas, House Bill 3(79S3) in May 2006 created the gross margins business tax. The business tax excludes "any compensation paid to an undocumented worker" from the amount that an employer may deduct from his tax liability (Texas Tax Code, §171.1012). This is but one small example of an employer sanction. There are many other ways in which the employment of illegal immigrants could be penalized by any state:

Public Subsidies and Tax Penalties

1. Require that all public agencies, state or local taxing jurisdictions, and economic development corporations give public subsidies to businesses only on the condition that a business will not hire undocumented workers. If a business is convicted of hiring undocumented workers, it should pay back the entirety of its public subsidies, with interest. Public subsidies should include: grants, loans, loan guarantees, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax exemptions, tax refunds, tax rebates, or tax abatements. (See Appendix 3 for model legislation to this effect.)

2. Similarly, business taxes could be amended to include an additional tax penalty equal to 10 percent of tax liability for each undocumented employee a company is found to be employing.

3. State business taxes could be amended so that each taxable entity is required to declare that it employed no "unauthorized aliens" when submitting its reports or returns to the state each tax year. Employer actions contrary to this declaration could constitute perjury.

Monetary Penalties

1. Detail a monetary penalty (perhaps equal to the amount that was paid by the employer to illegal immigrants during the financial year) to be paid to the state by any business found to be employing one or more illegal immigrants. The revenue resulting from such fines could be credited to further enforcement efforts in order to increase their scope and effectiveness.

Business Formation and Affidavits

1. Make the act of paying wages or any other compensation constitute an admission by the employer that he has confirmed that the employee is authorized to work in the U.S. Any employer found to be paying wages or compensation to an unauthorized employee will be considered to have committed perjury.

2. Certificates of formation for all businesses filing with a state should be accompanied by an affidavit stating that the company will not hire "unauthorized aliens." Employer actions contrary to this affidavit could constitute perjury.

3. To further penalize repeat offenders, any business that is found to have employed "unauthorized aliens" for three out of any five years could be prohibited from conducting business in the state for a period of two years.

If passed, these laws could be enforced by attorneys general, state comptrollers, and/or the state workforce agencies.

Ban the use of public funds for day labor centers.

Day labor centers are areas where illegal aliens are known to congregate to wait for employment. When a city finances the construction or operation of a day labor center, it is providing a benefit to the illegal aliens who use that center to find employment. Similarly, the city is providing a benefit to employers who hire those illegal aliens in violation of federal law. States should prohibit cities from financing the construction, maintenance, or operation of day laborer facilities.

NOTE: Model legislation follows in Appendix 3.

Anticipating and Answering Objections

1. Businesses and left-leaning groups will come together to oppose state action.

The opposition to employer sanctions in Texas came in the form of a unique alliance. The Mexican American Legislative Caucus of the Texas Legislature, the Texas Association of Business, the Mexican American Legal Defense and Educational Fund, and the American Civil Liberties Union formed a coalition of convenience to oppose any state action against illegal immigration. Businesses, addicted to the drug of cheap labor, joined forces with left-leaning minority and civil liberties groups to forestall state action on illegal immigration.

Bill Hammond, president of the Texas Association of Business (TAB), argued that the border should not be secured unless "we allow enough legal immigration to meet the need of our employers."[81] TAB remained a strong opponent of illegal immigration reforms, especially employer sanctions, throughout the 80th Texas Legislature (2007).

[81]Juan Castillo, "Groups: Immigration Fight Belongs in Congress," *Austin American-Statesman*, February 16, 2007.

As states move forward in addressing illegal immigration, especially employer sanctions, they should anticipate the formation of such alliances.

The true goals of the members of this coalition of convenience are easily distilled. Business groups—largely the agriculture and construction sectors—want cheap labor. Other groups in the coalition make a play for a political constituency.

2. Objection: Enacting employer sanctions is antithetical to free enterprise and free markets.

Response: Despite the odd coalition of business groups and liberal caucuses, the Texas Legislature passed House Bill 1196 by State Representative Lois Kolkhorst (R–Brenham), requiring that all public agencies, state or local taxing jurisdictions, and economic development corporations give public subsidies to businesses only on the condition that a business will not hire undocumented workers. Under the bill, if a business is convicted of hiring undocumented workers, it should pay back the entirety of its public subsidies, with interest.

Representative Kolkhorst's employer sanction bill was the only bill that meaningfully addressed illegal immigration to pass the 80th Texas Legislature. In passing that bill, conservative leaders made clear that being a proponent of free enterprise and free markets is not at odds with being opposed to illegal immigration. That point was proved by the 135 members of the Texas House who voted for the bill and by a majority of the Texas Senate who did the same.

3. Objection: Illegal immigrants provide an economic benefit.

On the floor of the Texas House of Representatives, State Representative Paul Moreno (D–El Paso) railed against illegal immigration reforms in general. Part of Representative Moreno's argument is instructive in considering employer sanctions:

> "We do not get the credit for the tremendous economic success that this country is having right now. All you have to do is look here in Austin…there's so much construction going on. Who is performing a lot of the construction? Mexican people—a lot of them undocumented people—they are making and producing a robust economy not only in Austin but throughout the world and we do not get credit for that. We do not get credit for the tremendous economical growth that is happening in this country. We are blamed, we the Mexican people, are blamed for everything."[82]

Response: Economists differ as to the magnitude of the impact of illegal immigrants on the wages of low-skilled workers. George Borjas of the Kennedy School of Government argues that immigration has reduced the earnings of a "typical" high school dropout by $1,200 annually, or about 5 percent. Others, such as Pia Orrenius of the Federal Reserve

[82] State Representative Paul Moreno, Personal Privilege Speech before the Texas House of Representatives on May 8, 2007 (transcribed from video by TCCRI)

Bank of Dallas, believe "immigration had a small negative impact on manual laborers' wages—about 1 percent—but did not adversely affect the wages of professionals or service workers."[83] Put another way, depressed wages for low-skilled workers generally benefits employers and the economy as a whole. In response to a *Wall Street Journal* survey:

> "Nearly all of the economists—44 of the 46 who answered the question—believe that illegal immigration has been beneficial to the economy. Most believe the benefits to business of being able to fill jobs at wages many American workers won't accept outweigh the costs." [84]

Explaining that "farms, hotels restaurants, small manufacturers, and other employers have continued to hire the undocumented with little regard to the federal laws intended to stop them," the authors of a *Business Week* analysis emphasized why the illegal workforce is so attractive to U.S. businesses.

> "The fast-growing undocumented population is coming to be seen as an untapped engine of growth. In the past several years, big U.S. consumer companies—banks, insurers, mortgage lenders, credit-card outfits, phone carriers, and others—have decided that a market of 11 million or so potential customers is simply too big to ignore. It may be against the law for the Valenzuelas [a family profiled in the *Business Week* analysis] to be in the U.S. or for an employer to hire them, but there's nothing illegal about selling to them."[85]

In truth, these economic debates matter little. It makes no difference whether there are positive or negative economic consequences of illegal immigration. The point is that the immigration is *illegal*. Just as we do not condone theft or fraud because they can yield an economic benefit to certain parties, illegal immigration should not be condoned simply because some individuals, businesses, or consumers may benefit from it. It is a violation of federal law (8 U.S.C. 1325a) to enter the U.S. without approval by an immigration official, and it is similarly a violation of federal law (8 U.S.C. 1324a) to employ undocumented workers. Businesses and other employers have not only a legal responsibility, but also an ethical one, to ensure that they are not willfully employing illegal immigrants.

The economic benefits of illegal immigration, although debatable, are a distraction from the overriding point that illegal immigrants are here *illegally*.

Conclusion

Millions of people are compelled to leave Mexico because they live in abject poverty. The chronic problems of poverty and unemployment there, as well as the availability of jobs here, are the proximate, if not ultimate, causes of the mass migration from Mexico (even Central America) to the United States. Unless and until employers believe that they

[83]Pia Orrenius, "The Impact of Immigration," *The Wall Street Journal*, April 25, 2006, p. A18.
[84]Tim Annett, "Illegal Immigration and the Economy," *The Wall Street Journal*, April 13, 2006.
[85]Brian Grow, et Al., "Embracing Illegals," BusinessWeek online, July 16, 2005, at http://www.businessweek.com/magazine/content/05_29/b3943001_mz001.htm

cannot escape sanction for their illegal activity, the problem of illegal immigration will remain unabated and the illegal immigration debate will oscillate between the two extremes of deportation and wall-building on the one hand, and blanket amnesty and complete access to social services on the other. Neither extreme is tenable, but neither is any policy on illegal immigration that does not address the root cause of a long-simmering crisis.

Despite the central role of employer sanctions in the Immigration Reform and Control Act of 1986, enforcement of sanctions has been woefully poor at the federal level. For conservatives, the knowledge that we live in a world governed by the incentives of demand and supply leads us to a firm conclusion in the quest to halt illegal immigration. Removing the demand for illegal labor by creating significant disincentives for employers to break the law will cause a decline in the supply of jobs and employment potential for illegal immigrants. With no guarantee of finding a job, the incentive to come to the U.S. illegally will be dramatically reduced, and a decline in illegal immigration is likely to follow.

Illegal Immigrants and Public Education

In June of 1982, the United States Supreme Court ruled in *Plyler v. Doe* that:

> "A Texas statute [enacted in 1975] which withholds from local school districts any state funds for the education of children who were not "legally admitted" into the United States, and which authorizes local school districts to deny enrollment to such children, violates the Equal Protection Clause of the Fourteenth Amendment."[86]

Justice William Brennan, writing for the majority, explained that:

> "[L]ike all persons who have entered the United States illegally, these children are subject to deportation. But there is no assurance that a child subject to deportation will ever be deported… a State cannot realistically determine that any particular undocumented child will in fact be deported until after deportation proceedings have been completed. It would be most difficult for the State to justify denial of education to a child enjoying an inchoate federal permission to remain."[87]

Brennan and four other Justices of the United States Supreme Court restricted states' ability to limit the costs of illegal immigration. Employing the same logic as did Justice Brennan, it is fair to say that those children in state public schools with "inchoate federal permission" represent an unlegislated federal tax levied against state taxpayers.

A Compelling State Interest to Challenge *Plyler*

As part of the decision in *Plyler*, the Court ruled that Texas could not sufficiently prove a compelling state interest in denying public education to illegal immigrant children. Protecting taxpayers and reserving limited public resources for U.S. citizens, however, should be held up as a compelling state interest in challenging *Plyler*.

With eight new Justices on the Court, millions more illegal immigrants in the country, and increasingly sharp public attitudes relating to illegal immigration, the time has come for states to challenge the Court's ruling in *Plyler* that illegal immigrants qualify for Equal Protection under the Fourteenth Amendment.

The Texas Legislative Budget Board notes that:

> "Texas spent an estimated $7,168 per student in current public education expenditures in the 2003–04 school year, compared with a national average of $8,248…."[88]

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[86] *Plyler v. Doe*, 457 U.S. 202 (1982); Justice Brennan, writing for the Majority.
[87] *Ibid.*
[88] "Fiscal Size-Up, 2006-2007 Biennium", Texas Legislative Budget Board athttp://www.lbb.state.tx.us/Fiscal_Size-up/Fiscal_Size-up_2006-2007_0106.pdf

Each illegal immigrant student enrolled in public school in Texas receives a benefit worth $7,168 in state tax dollars. Factor in federal contributions, and each illegal immigrant child in public schools receives the benefit of approximately $10,000 in public education spending.

Therein lies a compelling state interest for denying public education benefits to illegal immigration children. Following is a more detailed case study of how bilingual education in public schools in Texas costs taxpayers and yields little education results.

Bilingual Education Case Study: Texas and California

Chapter 29 of the Texas Education Code declares that "English is the basic language of this state." However, this declaration is undermined by the subsequent qualification that:

> "[L]arge numbers of students in the state come from environments in which the primary language is other than English. Experience has shown that public school classes in which instruction is given only in English are often inadequate for the education of those students….Bilingual education and special language programs can meet the needs of those students and facilitate their integration into the regular school curriculum."[89]

The assertion that bilingual programs are imperative for students whose first language is not English is the basis for Texas' bilingual and English as a Second Language (ESL) programs. The logic employed in the Texas Education Code is unclear, since it suggests that despite English being the basic language of the state, those students whose first language is not English must be taught in their own language. This premise is based on the notion that students' academic achievement will be compromised if they are taught in English when they are not fluent in English or come from a home in which English is not the primary language.

However, experience from other states, most notably California, suggests that students whose primary language is not English perform *better* academically when they are taken out of bilingual or ESL programs. Academic achievement improved across the board in California after bilingual programs were significantly cut back in 1998, casting doubt on the assertion in the Texas Education Code that students with poor English proficiency need to be taught in bilingual programs.

The Californian Experience: Proposition 227

On June 2, 1998, California voters passed Proposition 227, which fundamentally revised the basis upon which bilingual education was made available to students in California's public schools. Proposition 227 required that:

> "[A]ll children in California public schools shall be taught English by being taught in English. In particular, this shall require that all children be placed in English language classrooms. Children who are English learners shall be educated

[89]Texas Education Code, Chapter 29, Subchapter B, §29.051.

> through sheltered English immersion during a temporary transition period not normally intended to exceed one year."[90]

As a result of the passage of Proposition 227, the number of schoolchildren enrolled in bilingual education programs in California fell from 409,879 in school year 1997–1998, to 169,440 in 1998–1999.[91] Bilingual education went from being widely available to all students at all grade levels, to being available only to students whose parents signed a waiver allowing them to be educated in bilingual programs, but only after they had spent the first 30 days of the school year being schooled completely in English. The only exception to this was a provision permitting one-year immersion courses during which students would learn English before being assimilated into mainstream programs.

Professor Christine Rossell, author of a number of detailed studies on bilingual education and the impact of Proposition 227, has pointed out that both the one-year immersion courses and the parental waiver have been abused by parents, teachers, administrators, and school districts. Rossell's research indicated that the one-year immersion period was deemed to be "renewable" by the California State Board of Education if a student had not "achieved a reasonable level of English proficiency,"[92] and that:

> "Teachers in schools with enough Spanish speaking English learners to run a bilingual education program explained…that they "worked very hard" telephoning and holding meetings during the 30 day all-English trial period to convince parents that their child would be better off in the bilingual education program." [93]

These exemptions to the eradication of bilingual education explain the number of students still enrolled in bilingual programs even following the passage of Proposition 227. Rossell's research indicates that the number of students remaining in bilingual programs remained constant in the years immediately after the Proposition was passed, with roughly 11 percent of high school students and 15 percent of elementary school students being enrolled in bilingual programs. This compares to enrollments rates of 29 percent and 39 percent for high school and elementary school participants, respectively, before the passage of Proposition 227.

The Benefits of Ending Bilingual Programs

Despite residual enrollment in bilingual programs, the passage of Proposition 227 has been beneficial for the California public school system. The American Institutes for Research (AIR) reported in February 2006 that "[s]ince the passage of Proposition 227, students across all language classifications in all grades have experienced performance

[90]Christine Rossell, "Dismantling Bilingual Education Implementing English Immersion: The California Initiative," Boston University, August 20, 2002, at http://www.bu.edu/polisci/people/faculty/rossell/papers/DismantlingBilingualEducationJuly2002.pdf
[91]*Ibid.*
[92]*Ibid.*
[93]*Ibid.*

gains on state achievement tests."[94] AIR's researchers also recommended that to further improve the educational achievement of English learners, California's schools should "ensure that the students' English learner status does not impede full access to the core curriculum," and that "[s]chools should limit prolonged separation of English learners from English-speaking students to cases of demonstrated efficacy."[95]

Rossell's research also indicates that, following the passage of Proposition 227:

> "[S]chools that eliminated their bilingual education programs had a 10-point gain in reading and a 13-point gain in math, but those that maintained some form of bilingual education program had only a 6-point gain in reading and a 14-point gain in math."[96]

The results in California demonstrate that the Texas Education Code's assertion that "[e]xperience has shown that public school classes in which instruction is given only in English are often inadequate for the education of those students," is at best a questionable basis from which to develop education policy for students with limited English proficiency. The California experience casts considerable doubt on the value of the bilingual and ESL programs being operated by schools in Texas and other states, particularly when the growing cost of these programs is taken into account.

Bilingual Education in Texas

The Texas Education Code provides that any school district with 20 or more enrolled students with limited English proficiency (as determined by language proficiency assessments undertaken during the first four weeks of the school year), must offer bilingual education or a special language program to its limited English proficiency students.[97] The programs that must be offered under §29.053 of the Texas Education Code are as follows:

- Kindergarten through elementary grades: Bilingual education
- Post-elementary grades through grade 8: Bilingual education or ESL
- Grades 9 through 12: ESL

Section 29.055 of the Texas Education Code draws a distinction between bilingual education and ESL, with the former being defined as "a full-time program of dual-language instruction that provides for learning basic skills in the primary language of the students enrolled in the program." ESL is defined as "a program of intensive instruction in English from teachers trained in recognizing and dealing with language differences." It is clear from the definition of "bilingual education" that students can be taught the main parts of the curriculum in their primary language. Indeed, the Texas Education Code also

[94]American Institutes for Research, "Five Year Study of Proposition 227 Finds No Conclusive Evidence Favoring One Instruction Approach for English Learners," News Release, February 21, 2006, at *www.air.org/news/documents/Release200602prop227.htm*.
[95]*Ibid.*
[96]Christine H. Rossell, "The Near End of Bilingual Education," *Education Next*, 2003 No. 4, at *www.educationnext.org/20034/44.html*.
[97]Texas Education Code, Chapter 29, §29.053.

makes it clear that "elective courses included in the curriculum may be taught in a language other than English,"[98] with the only exception to this being that "in subjects such as art, music, and physical education, students of limited English proficiency shall participate fully with English-speaking students in regular classes."[99]

The Cost of Bilingual Education to Texas Taxpayers

A report published by the Texas Comptroller of Public Accounts in December 2004 found that the Texas school population grew by 18 percent between the 1993–1994 and 2002–2003 school years. During the same period, the Comptroller found that the number of students in bilingual or ESL programs grew by 54 percent.[100]

In the 2005–2006 biennium, the Texas Education Agency spent $22.1 billion on educational programs. The vast majority of this, $14.5 billion, was spent on "regular" programs, $3.2 billion was spent on programs for students with disabilities, while $1 billion was spent on bilingual education programs.[101] These figures reveal that bilingual and ESL programs are the third largest component of the state's education budget, and that they receive more funding than programs for gifted or talented students, athletics programs, and career and technology programs. In short, Texas spends 5 percent of its education budget teaching its students in languages other than English and teaching English as a foreign language to students who have a limited English proficiency. The Texas Education Code declares that English is the language of the state; yet, flying in the face of that declaration, $1 billion of education funding is spent each year teaching students in languages other than English.

The vast majority of students enrolled in bilingual education or ESL in Texas are Hispanics. Research compiled by the Southern Methodist University indicates that 90 percent of students in Texas public schools who have "limited English proficiency" are Spanish speakers.[102] The growth rate of Texas' Hispanic population suggests that the cost of providing bilingual education programs will continue to rise. Since FY 2000–2001, the budgeted cost of bilingual education programs has grown by more than 40 percent, echoing the increase in the state's Hispanic population, which grew 54 percent during the 1990s.[103] Conservative estimates suggest that Texas' Hispanic population will grow to comprise more than 50 percent of the state's population by the year 2035,[104] which indicates that the share of the education budget required by existing ESL and bilingual education programs will increase significantly.

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[98]Texas Education Code §29.055(d).
[99]Texas Education Code §29.055(c).
[100]Texas Comptroller of Public Accounts, "Special Report: The Cost of Underpaying Texas Teachers," December 2004 at *www.window.state.tx.us/specialrpt/teachersalary04/*.
[101]Texas Education Agency, "2005-06 Budgeted Financial Data,"; http://www.tea.state.tx.us/school.finance/forecasting/downloads/singlefile.html
[102]Southern Methodist University, "Texas Bilingual Education Facts," at *www.smu.edu/smunews/education/esl.asp*.
[103]University of Texas at Austin, "In a State of Change: The Rapidly Growing and Increasingly Diverse Population of Texas," June 2005, at *http://utopia.utexas.edu/articles/tbr/state_change.html*.
[104] Texas Population Projections 2000–2040, Texas State Data Center and Office of the State Demographer, June 2004; at http://txsdc.utsa.edu/tpepp/2006projections/summary/

The growth of Texas' Hispanic population only goes part of the way towards explaining the increasing cost of bilingual education programs. Another factor is the lack of qualified bilingual education teachers. The Commissioner of Education has designated bilingual education as a "critical shortage area," which allows school districts to offer stipends on top of annual salaries in order to attract qualified bilingual education teachers. In March 2006, the state comptroller reported that:

> "Bilingual education was the area most commonly reported as receiving stipends, with 56 percent (208 districts) offering teachers stipends in this area. It was also the area receiving the largest stipends, averaging $2,253 annually."[105]

This additional cost associated with providing bilingual programs only strengthens the arguments for bringing these programs to an end in Texas.

Enrollment of English-Speaking Students

Section 29.058 of the Texas Education Code declares that "[w]ith the approval of the school district and a student's parents, a student who does not have limited English proficiency may also participate in a bilingual education program." Given the cost of bilingual programs and the assertion of English as the basic language of the state, there can be no logical argument justifying the enrollment of English-speaking students in bilingual programs. English-speaking students should be taught in English in mainstream classes rather than being given the option to enroll in a more costly program. This section of the Texas Education Code should be amended, since it acts only as a loophole though which students whose primary language is not English may remain in bilingual education even when they have become proficient in English.

Recommendations:

Create an English immersion program for public school students.

The positive results in California make a strong case for abolishing bilingual education programs in favor of English immersion. The significant cost of bilingual education also warrants a shift to English immersion.

Enact state education goals that recognize the value of learning the English language.

The Texas Education Code makes at least two references to the importance of learning English. Chapter 29 of the Texas Education Code declares that "English is the basic language of this state." Also, in Texas statute, the number one goal of the state system of public education reads: "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language."

Other states' statutes should give similar weight to the English language.

[105]Texas Comptroller of Public Accounts, "Special Report: The Cost of Underpaying Texas Teachers," Updated March 2006 at *www.window.state.tx.us/specialrpt/teachersalary06/*.

NOTE: Model legislation follows in Appendix 4.

Anticipating and Answering Objections

1. Objection: Forcing children into the English language will limit their learning opportunities.

Response: The experience in California indicates exactly the opposite. Test scores for children went *up* after the state traded bilingual education for English immersion. The American Institutes for Research reported in February 2006 that "[s]ince the passage of Proposition 227, students across all language classifications in all grades have experienced performance gains on state achievement tests."[106]

2. Objection: Should student scores on accountability tests drop, a state would risk losing funding under No Child Left Behind.

The White House describes the relevant portion of the No Child Left Behind Act (NCLB) as follows:

> "States that fail to make adequate yearly progress for their disadvantaged students will be subject to losing a portion of their administrative funds. Sanctions will be based on a state's failure to narrow the achievement gap in meeting adequate yearly progress requirements in math and reading in grades 3 through 8."

Such a decline in student test scores is unlikely since, under NCLB, states that fail to meet standards for one year are given additional assistance. However, the results from California, the national leader in English immersion education, indicate that a loss of NCLB funding would not occur.

Furthermore, the accountability and assessment portion of No Child Left Behind is one of the most permissive sections of the Act. A state that adopts English immersion education could similarly make changes in its state assessment method to reflect that change.

Conclusion

Despite the provision in the Texas Education Code that "English is the basic language of this state," approximately 700,000 students with limited English proficiency are considered eligible for bilingual education, which accounts for 5 percent of all education spending in Texas. Educational attainment results from California suggest that scaling back bilingual education programs can have a positive impact on student achievement. This, coupled with the growing cost of bilingual programs and the shortage of qualified bilingual teachers in Texas, leads to the conclusion that bilingual education programs in Texas public schools should be ended.

[106]American Institutes for Research, "Five Year Study of Proposition 227 Finds No Conclusive Evidence Favoring One Instruction Approach for English Learners."

While public schools may have a role to play providing students with basic English language skills—perhaps following the California model of a one-year immersion course—it is not the role of public schools to teach "limited English proficiency" students in any language other than English.

This is costly and will become increasingly more costly as states' Hispanic populations continue to grow rapidly. Bilingual programs are demonstrably no more beneficial academically than teaching students entirely in English, and they reduce the incentive for students to learn English. If English is truly the basic language our nation and states, it is the language in which all instruction in public schools should be carried out.

State Enforcement of Federal Immigration Laws

Although traditionally a responsibility of the federal government, states can play a legitimate role in providing border security and law enforcement against illegal immigration.

Border crime, by its very nature, is a local issue. Just as the costs of illegal immigration are borne by local governments, the negative impact of crime along the border is felt by real individuals in very specific areas of the nation. Those individuals who reside along the U.S.–Mexico border should not be forced to seek redress solely from the federal government; instead, they should be allowed to seek remedies from local officials.

The crime that is brought on by illegal immigration, however, is not limited to border states. On June 8, 2006, for example, an illegal immigrant killed a young couple in Tennessee in a drunk driving accident. In December 2006, an illegal immigrant killed three members of the Ceran family in Salt Lake City, Utah, in another drunk driving accident. These are but two examples of serious crimes that were committed by individuals who should never have been in the United States in the first place.

All along the border, trafficking in both drugs and people creates a situation of lawlessness that endangers local citizens. Throughout the nation, illegal immigrants commit crimes at an abnormally high rate. State and local authorities have police powers that they employ in combating a wide variety of crimes, ranging from traffic violations to murder. To allow local enforcement officials to uphold federal immigration laws does not stretch these powers beyond what is reasonable and necessary to protect public safety.

Border States' Responses

In August 2005, New Mexico Governor Bill Richardson (the nation's only Hispanic governor) declared a state of emergency in four counties along the international border with Mexico. Citing a region that "has been devastated by the ravages and terror of human smuggling, drug smuggling, kidnapping, murder, destruction of property and the death of livestock," Governor Richardson made $750,000 in emergency state funds available to the four border counties on New Mexico's 180 miles of shared border with Mexico.[107] In addition to those immediate funds, Governor Richardson pledged another $1 million to:

> "support state and local law enforcement efforts, create and fund a field office for the New Mexico Office of Homeland Security to coordinate assistance to the area, and help build a fence to protect a livestock yard near Columbus, along a favorite path for illegal immigration where a number of livestock have been stolen and killed."[108]

[107] "Border Emergency Declared in New Mexico", CNN.com, August 13, 2005 at http://www.cnn.com/2005/US/08/12/newmexico/index.html

[108] State of New Mexico, Office of the Governor, "Governor Bill Richardson Declares State of Emergency Along New Mexico Border With Mexico," News Release, August 12, 2005.

In Arizona—the only state in the nation to require citizenship verification for voting—state leaders have also taken action against illegal immigration and border crime. Pima County Sheriff Clarence Dupnik described the extent of border crime: "The violence associated with the problem of migration and narcotics ... has reached epidemic proportions."[109]

Sheriff Dupnik has laid a framework by which Immigrations and Customs Enforcement (ICE) officials may work with the Border Patrol, National Guard, Phoenix metro area law-enforcement agencies, and the Arizona Department of Public Safety.[110]

The Arizona Department of Public Safety, Arizona Department of Corrections, and the Maricopa County Sheriff's Department have all entered into 287(g) agreements with ICE that allow for local law enforcement officials to be trained and empowered to arrest illegal immigrants.

The Maricopa County Sheriff, Joe Arpaio, maintains an Illegal Immigration Interdiction Strike Force. The Sheriff's Office notes that, to date, state laws have led to the arrest of 523 persons who were illegally transporting individuals or being transporting into Arizona. Under federal laws, Sheriff Arpaio and his deputies have made another 176 arrests.

In Texas, cooperative border security operations between federal, state, and local officials have proven successful in abating border crime. The most recent effort in Texas, Operation Wrangler III, decreased border crime by 30 percent in just 30 days. The El Paso Sheriff's Office documented an 82 percent reduction in aggravated assaults and 43 percent reduction in robberies. The El Paso Police Department reported a 16 percent reduction in robberies and 26 percent reduction in sexual assaults during the period of this operation.

Operations in 13 Texas counties have yielded the following results (comparing January–April 2006 to January–April 2007):

- Criminal Mischief reduced 34 percent;
- Theft reduced 30 percent;
- Burglary reduced 13 percent;
- Aggravated Assault reduced 16 percent;
- Sexual Assault reduced 59 percent; and,
- Murder reduced 15 percent[111]

Operation Laredo and Operation Rio Grande have reduced border crossings and crime along the 1,240 mile border that Texas shares with Mexico. Operation Linebacker, initiated by the Texas Border Sheriff's Coalition, has increased border patrols and

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[109] Faye Bowers, "US Fights a Border Crime 'Epidemic,'" *The Christian Science Monitor*, April 25, 2007 at http://www.csmonitor.com/2007/0425/p02s01-ussc.html.
[110] Ibid.
[111] "Texas Border Security Surge Operations' Continued Success," *Government Technology*, April 25, 2007 at http://www.govtech.com/gt/117907?topic=117680

provided support to local law enforcement in order to reduce crime and enhance border security.

Operation Rio Grande, launched in February 2006 to augment the efforts of Operation Linebacker, pools resources from various local, state, and federal law enforcement agencies, increasing law enforcement's presence on the border. Operation Rio Grande included the sheriffs from Kinney, Maverick, Val Verde, Zavala and Dimmit counties; the police departments of Del Rio and Eagle Pass; U.S. Customs and Border Protection; the Department of Public Safety; the Texas National Guard; the Texas Parks and Wildlife Department; the Civil Air Patrol; and the Governor's Division of Emergency Management. Operation Laredo and Operation Rio Grande have reduced border crime by at least 65 percent.

In stark contrast to the successful state efforts in Arizona, New Mexico, and Texas, a federal wall-building exercise in California has yielded mixed results, at best. The United States Border Patrol put up the first border fence beginning in 1990 in the San Diego area. A report by the Congressional Research Service notes the limited efficacy of border fencing:

> "While the San Diego fence… has proven effective in reducing the number of apprehensions made in that sector, there is considerable evidence that the flow of illegal immigration has adapted to this enforcement posture and has shifted to the more remote areas of the Arizona desert."[112]

The San Diego border fence is admittedly a federal, not state, response to illegal immigration. States, however, should heed the mixed results when considering erecting a border fence.

Responding to proposals to construct a wall along sections of the U.S.–Mexico border in May 2006, Arizona Governor Janet Napolitano took a reasoned approach to border fencing: "show me a 50-foot wall, and I'll show you a 51-foot ladder."[113]

This underscores the principles on which states should act in regards to border security and enforcement of federal immigration laws. States have a legitimate role to play in providing for the safety and well-being of their residents, but fence building is a costly and limited state approach to illegal immigration.

Given the success of Arizona's, New Mexico's and Texas' operations involving federal, state and local officials, states should take on an active role in protecting against border crime and combating illegal immigration.

The actions of border states to secure their international border with Mexico and, in some cases, actively move to arrest illegal immigrants, proves that states are justified in taking border security and law enforcement actions against illegal immigration.

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[112] Blas Nuñez-Neto and Stephen Viña, "Border Security: Barriers Along the U.S. International Border" Congressional Research Service, Library of Congress, September 21, 2006.
[113] "The Great Wall of America," *OpinionJournal.com*, September 24, 2006.at http://www.opinionjournal.com/editorial/feature.html?id=110008985

Although border states, due to geographic proximity, have higher populations of illegal immigrants, illegal immigrants do not reside solely in border states. Every state in the nation could take aggressive steps in enforcing federal immigration laws.

Recommendations

Enter Into 287(g) Agreements to Enable Local Law Enforcement of Federal Immigration Law

Section 287(g) of the Immigration and Nationality Act (INA) authorizes local law enforcement agencies to enter a memorandum of understanding with the U.S. Department of Homeland Security (DHS) so that local peace officers may perform immigration law enforcement functions. Section 287(g) requires that the peace officers undergo training and oversight by ICE.

ICE describes the 287(g) agreements as follows:

> "The cross-designation between ICE and state and local patrol officers, detectives, investigators and correctional officers working in conjunction with ICE allows these local and state officers:
>
> - necessary resources and latitude to pursue investigations relating to violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering; and
> - increased resources and support in more remote geographical locations."[114]

Increase Funding for Border Security

Sheriffs in border states should be provided with increased funding and resources. State-led initiatives in Texas, Arizona, and New Mexico have proven successful. Increasing funding for border security and/or state enforcement of federal immigration laws will further reduce drug trafficking, human trafficking, and other types of crime associated with illegal immigration.

Ban Sanctuary Cities

Texas statute authorizes local law enforcement officers to enforce federal drug laws.[115] Several bills filed in the 80th Texas Legislature (2007) would have given local law enforcement the power to enforce federal immigration laws. Similarly, bills have linked homeland and border security funds to the ban on sanctuary cities so that any sanctuary city will forfeit state funding.

[114] U.S. Immigration and Customs Enforcement Web site: "Partners, Law Enforcement, Delegation of Immigration Authority" at http://www.ice.gov/partners/287g/Section287_g.htm
[115] Texas Local Government Code, Section 370.003.

Section 370.003 of the Texas Local Government Code prohibits municipalities, counties, and other political subdivisions from adopting a policy under which the entity will not fully enforce federal drug laws. In Texas, at least, the statutory framework exists for a similar prohibition on local policies against enforcement of federal immigration laws.

Two communities, Farmer's Branch, Texas, and Hazleton, Pennsylvania, have led the nation in this local approach to abating the costs of illegal immigration with strict ordinances.

Increase Penalties for Human Trafficking

Human trafficking is a deplorable act contrary to the most basic human rights. Individual liberty, fundamentally, is a God-given right that no man can deprive another. However men and women are held, bought and sold against their will not only in foreign nations, but in the United States. Some human trafficking is for the purposes of forced labor; other trafficking is for sexual exploitation, including that of children.

In August of 2006, local officials uncovered a brothel in Austin, Texas, frequented by "undocumented workers," [116] at which Mexican and Central and South American women were held against their will and forced to perform sexual acts for money. This example of sex slavery was discovered only eight miles from the State Capitol.

Worldwide, between 800,000 to 900,000 persons are illegally trafficked across international borders per year, and between 18,000 and 20,000 of those victims are trafficked into the U.S., according to the U.S. Department of State. However the latter figures do not include the trafficking that occurs within the U.S. For example, women held in the Austin, Texas, brothel were sometimes transferred to one in Oklahoma City. While they are included in the estimates of how many people are smuggled *into* the United States, their forced trips from Austin to Oklahoma City would not be reflected in the State Department figures.

A U.S. Department of Justice memo states:

- From FYs 2001- 2006, the Civil Rights Division and U.S. Attorneys' Offices have:
  - Prosecuted 360 defendants compared to 89 defendants charged during the prior six years, representing a more than 300 percent increase;
  - Secured 238 convictions and guilty pleas, a 250 percent increase from the 67obtained in the previous six years;
  - Opened 639 new investigations, approximately 399 percent more than the 128 opened in the previous six years. [117]

To deal with this growing problem, the U.S. Congress passed the Victims of Trafficking and Violence Protection Act of 2000 and, subsequently, the Trafficking Victims

[116] Steven Kreytak, "Immigrant Prostitution Ring Busted," *Austin American-Statesman*, August 2, 2006,
[117] U.S. Department of Justice, Fact Sheet: Civil Rights Division Efforts to Combat Modern-Day Slavery, January 31, 2007 at http://www.usdoj.gov/opa/pr/2007/January/07_crt_061.html.

Protection Reauthorization Act of 2003. Additionally, President Bush dedicated nearly $50 million to the Initiative to Combat Trafficking in Persons, which gave project grants to eight nations during FY 2003 to FY 2005.[118]

Federal efforts have proven insufficient, making state action imperative. State penalties for human trafficking should be severe.

Improve Measures to Combat Document Fraud

Fraudulent documents are a cornerstone of the process by which illegal immigrants apply for, and obtain employment in, the United States:

> "By definition, illegal aliens lack the documentation required by employers, so many resort to document or identity fraud instead. Fraudulent documents vary greatly in quality, depending on price, but they fall into roughly three categories: counterfeit documents, meaning that the entire document is fabricated; genuine documents that are altered; or genuine documents that are fraudulently obtained, either by bribing an official or by using other counterfeit or altered documents."[119]

The scale of this problem was revealed in December 2006, when raids of meatpacking plants in six states uncovered workers with dubious documentation and organized document fraud rings.[120]

In its June 2006 "Fact Sheet on Comprehensive Immigration Reform," the White House pointed out that "[t]oday there is an entire underground industry dedicated to producing fake IDs and fraudulent Social Security Numbers."[121]

By increasing the penalties for those who engage in production of fraudulent documents, states can issue an appropriate response to the growing problems created by the document fraud industry.

Support and Implement the REAL ID Act of 2005

Pursuant to the REAL ID Act of 2005[122] and the rules drafted by the U.S. Department of Homeland Security, the states' driver's license application and issuance processes will change. By 2008 (2009, with a waiver), states' motor vehicle departments will be required to verify the citizenship or legal residency status of all applicants for a driver's license or personal identification card.

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[118] "The President's $50 Million Initiative To Combat Trafficking In Persons," U.S. Department of State Fact Sheet, Office to Monitor and Combat Trafficking in Persons, April 12, 2006.at http://www.state.gov/g/tip/rls/fs/2006/69671.htm

[119] Fred Burton, "Hidden Risk in the Undocumented Workers Debate," STRATFOR, April 19, 2006 at http://www.stratfor.com/products/premium/read_article.php?id=264949&selected=Analyses

[120] "ID thieves targeted in immigration raids" Associated Press/MSNBC, December 12, 2006 at http://www.msnbc.msn.com/id/16169899/

[121] The White House, "Fact Sheet: Comprehensive Immigration Reform: Improving Worksite Enforcement,", June 1, 2006 at http://www.whitehouse.gov/news/releases/2006/06/20060601-3.html

[122] Public Law 109-13, Division B, Title II, at *http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR01268:@@@D&summ2=m&*.

The REAL ID Act gives the states the opportunity to easily verify citizenship for a wide variety of purposes, including voting, provision of public benefits, and general law enforcement. The REAL ID Act does not require state driver's licenses and personal identification cards to list citizenship status; a simple state requirement, however, would empower local law enforcement officers to better enforce federal immigration laws.

NOTE: Model legislation follows in Appendix 5.

Anticipating and Answering Objections

1. Objection: Local governments lack the authority to enforce federal immigration laws.

Response: The authority of states in this regard is clear. In *United States v. Vasquez-Alvarez*, the U.S. Court of Appeals for the Tenth Circuit concluded that there is "a preexisting general authority of state or local police officers to investigate and make arrests for violations of federal law, including immigration laws."[123] Additionally, in *United States vs. Santana-Garcia*, the Tenth Circuit held that federal law "evinces a clear invitation from Congress for state and local agencies to participate in the process of enforcing federal immigration laws."[124]

Allowing state-level law enforcement officials to detain illegal immigrants on the basis of their illegal residency status or illegal entry alone is a vital tool for combating illegal immigration.

A Department of Justice memorandum states that nothing precludes states from enforcing federal immigration laws. The relevant portion of the memo reads:

> "We… do not believe that the authority of state police to make arrests for violation of federal law is limited to those instances in which they are exercising delegated federal power. We instead believe that such arrest authority inheres in the States' status as sovereign entities."[125] [Emphasis added]

The memo continues:

> "[[W]e determine that our 1996 advice was mistaken and we should instead have concluded that federal statutory law posed no obstacle to the authority of state police to arrest aliens on the basis of civil deportability."[126] [Emphasis added]

State and local law enforcement officials have the clear authority to arrest illegal immigrants.

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[123]*United States vs. Vasquez-Alvarez,* United States Court of Appeals, Tenth Circuit. 176 F.3d 1294, 1295 (10th Cir. 1999).
[124]*Unites States vs. Santana-Garcia,* United States Court of Appeals, Tenth Circuit. 264 F.3d 1188, 1193 (10th Cir. 2001)
[125] Jay S. Bybee, Assistant Attorney General, Memorandum for the Attorney General, U.S. Department of Justice, Office of Legal Counsel; April 3, 2002, p. 3; made public July 22, 2005
[126]*Ibid., p. 5*

2. Objection: Implementation of the REAL ID Act will be costly.

Response: The Texas Department of Public Safety, Driver's License Division estimated as of July 2006 that implementation of the REAL ID Act would cost $167.5 million in addition to other state expenditures on issuing driver's licenses.[127]

This estimated price tag, however, is all the more reason for states to mandate that their enhanced driver's license somehow reflect the citizenship and/or immigration status of the holder. Such information empowers poll workers, public benefit eligibility systems, and police officers to quickly verify citizenship. These ends, in addition to the REAL ID Act's homeland security benefits, make the procedures worth the cost.

Conclusion

By entering into 287(g) agreements and actively pursuing enforcement of illegal immigration laws, states can take decisive action against illegal immigration without waiting for federal intervention that may or may not come. Border states have led the nation with ingenuity and creativity in response to illegal immigration. All states can and should take action to enforce the law.

[127]Impact Analysis of the REAL ID Act by the Texas Department of Public Safety, July 24, 2006

Appendix 1:

Model Legislation

Citizenship Verification and Voter Identification:

A BILL TO BE ENTITLED

AN ACT

relating to the procedures for registering to vote and accepting a voter at a polling place.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 13.002, Election Code, is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) A registration application must include:

(1) the applicant's first name, middle name, if any, last name, and former name, if any;

(2) the month, day, and year of the applicant's birth;

(3) a statement that the applicant is a United States citizen;

(4) a statement that the applicant is a resident of the county;

(5) a statement that the applicant has not been determined mentally incompetent by a final judgment of a court;

(6) a statement that the applicant has not been finally convicted of a felony or that the applicant is a felon eligible for registration under Section 13.001;

(7) the applicant's residence address or, if the residence has no address, the address at which the applicant receives mail and a concise description of the location of the applicant's residence;

(8) the following information:

(A) the applicant's Texas driver's license number or the number of a personal identification card issued by the Department of Public Safety or a statement by the applicant that the applicant has not been issued a driver's license or personal identification card; or

(B) if the applicant has not been issued a number described by Paragraph (A), the last four digits of the applicant's social security number or a statement by the applicant that the applicant has not been issued a social security number;

(9) if the application is made by an agent, a statement of the agent's relationship to the applicant; [~~and~~]

(10) the city and county in which the applicant formerly resided; and

(11) a certified copy of a document providing proof that the applicant is a United States citizen.

(e) The following documentation is acceptable as proof of citizenship under Subsection (c)(11):

(1) a birth certificate or other document confirming birth that is admissible in a court of law;

(2) United States citizenship papers issued to the applicant; or

(3) an unexpired United States passport issued to the applicant.

SECTION 2. Section 13.121(a), Election Code, is amended to read as follows:

(a) The officially prescribed application form for registration by mail must be in the form of [~~a~~] business reply mail [~~postcard~~], unless another form or system is used under Subsection (b), with postage paid by the state. The secretary of state shall design the form to enhance the legibility of its contents.

SECTION 3. Section 63.001, Election Code, is amended by amending Subsections (b), (c), (d), and (f) and adding Subsection (g) to read as follows:

(b) On offering to vote, a voter must present to an election officer at the polling place the voter's voter registration certificate and a form of identification that matches a name on the statewide computerized voter registration list maintained by the secretary of state and contains the voter's photograph [~~to an election officer at the polling place~~].

(c) On presentation of the documentation required by Subsection (b) [~~a registration certificate~~], an election officer shall determine whether the voter's name on the registration certificate is on the list of registered voters for the precinct.

(d) If the voter's name is on the precinct list of registered voters and the voter's identity can be verified from the proof presented, the voter shall be accepted for voting.

(f) After determining whether to accept a voter, an election officer shall return the voter's documentation [~~registration certificate~~] to the voter.

(g) If the requirements for identification prescribed by Subsection (b) are not met, the voter shall be accepted for provisional voting only under Section 63.011.

SECTION 4. Section 63.006(a), Election Code, is amended to read as follows:

(a) A voter who, when offering to vote, presents a voter registration certificate indicating that the voter is currently registered in the precinct in which the voter is offering to vote, but whose name is not on the precinct list of registered voters, shall be accepted for voting if the voter's identity can be verified from the proof presented.

SECTION 5. Section 63.007(a), Election Code, is amended to read as follows:

(a) A voter who, when offering to vote, presents a voter registration certificate indicating that the voter is currently registered in a different precinct from the one in which the voter is offering to vote, and whose name is not on the precinct list of

registered voters, shall be accepted for voting if the voter's identity can be verified from the proof presented and the voter executes an affidavit stating that the voter:

(1) is a resident of the precinct in which the voter is offering to vote or is otherwise entitled by law to vote in that precinct;

(2) was a resident of the precinct in which the voter is offering to vote at the time that information on the voter's residence address was last provided to the voter registrar;

(3) did not deliberately provide false information to secure registration in a precinct in which the voter does not reside; and

(4) is voting only once in the election.

SECTION 6. Section 63.008(a), Election Code, is amended to read as follows:

(a) A voter who does not present a voter registration certificate when offering to vote, but whose name is on the list of registered voters for the precinct in which the voter is offering to vote, shall be accepted for voting if the voter executes an affidavit stating that the voter does not have the voter's voter registration certificate in the voter's possession at the polling place at the time of offering to vote and the voter's identity can be verified from the proof presented [~~voter presents proof of identification in a form described by Section 63.0101~~].

SECTION 7. Sections 63.011(a) and (b), Election Code, are amended to read as follows:

(a) A person to whom Section 63.001(g), 63.008(b), or 63.009(a) applies may cast a provisional ballot if the person executes an affidavit stating that the person:

(1) is a registered voter in the precinct in which the person seeks to vote; and

(2) is eligible to vote in the election.

(b) A form for the affidavit shall be printed on an envelope in which the provisional ballot voted by the person may be placed and must include a space for entering the identification number of the provisional ballot voted by the person and a space for an election officer to indicate whether the person presented proof of identification as required by Section 63.001(b). The affidavit form may include space for disclosure of any necessary information to enable the person to register to vote under Chapter 13. The secretary of state shall prescribe the form of the affidavit under this section.

SECTION 8. Section 65.054(b), Election Code, is amended to read as follows:

(b) A provisional ballot may be accepted only if:

(1) the board determines that, from the information in the affidavit or contained in public records, the person is eligible to vote in the election; and

(2) the voter presents proof of identification as required by Section 63.001(b):

(A) at the time the ballot is cast; or

(B) in the period prescribed under Section 65.0541.

SECTION 9. Subchapter B, Chapter 65, Election Code, is amended by adding Section 65.0541 to read as follows:

Sec. 65.0541. PRESENTATION OF IDENTIFICATION FOR CERTAIN PROVISIONAL BALLOTS. (a) A voter who is accepted for provisional voting under Section 63.011 because the voter does not present proof of identification as required by Section 63.001(b) may submit proof of identification to the voter registrar by personal

delivery or by mail for examination by the early voting ballot board not later than the fifth day after the date of the election.

(b) The early voting ballot board shall accept a provisional ballot under Section 65.054 if the voter:

(1) presents proof of identification in the manner required by this section; and

(2) is otherwise eligible to vote in the election.

(c) The office of the voter registrar shall be open on a Saturday that falls within the five-day period described by Subsection (a) for a voter to present identification as provided under this section.

(d) The secretary of state shall prescribe procedures as necessary to implement this section.

SECTION 10. Section 63.0101, Election Code, is repealed.

SECTION 11. The change in law made by this Act to Section 13.002, Election Code, applies only to an application for voter registration that is submitted on or after the effective date of this Act.

SECTION 12. This Act takes effect September 1, 2007.

Appendix 2:

Model Legislation

Denying Benefits to Illegal Immigrants

Challenging the 14th Amendment:

A BILL TO BE ENTITLED

AN ACT

relating to the eligibility of an individual born in this state whose parents are illegal aliens to receive state benefits.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 10, Government Code, is amended by adding Subtitle H to read as follows:

SUBTITLE H. PROVISION OF PUBLIC BENEFITS

CHAPTER 2352. ELIGIBILITY FOR BENEFITS

Sec. 2352.001. DEFINITION. In this chapter, "illegal alien" means an individual who is not a citizen or national of the United States and who has entered the United States without inspection and authorization by an immigration officer.

Sec. 2352.002. APPLICABILITY. This chapter applies only to an individual:

(1) who is born in this state on or after the effective date of this chapter; and

(2) whose parents are illegal aliens at the time the individual is born.

Sec. 2352.003. ELIGIBILITY. An individual to whom this chapter applies is not entitled to and may not receive any benefit provided by this state or a political subdivision of this state, including:

(1) a grant, contract, loan, professional license, or commercial license provided by an agency of this state or a political subdivision of this state or by appropriated funds of this state or a political subdivision of this state;

(2) employment by this state or a political subdivision of this state;

(3) a retirement payment or other benefit received on account of the status of the individual as a former employee or officer of this state or a political subdivision of this state;

(4) public assistance benefits, including welfare payments, food stamps, or food assistance from this state or a political subdivision of this state;

(5) health care or public assistance health benefits;

(6) disability benefits or assistance;

(7) public housing or public housing assistance;

(8) instruction in primary or secondary education;

(9) instruction from a public institution of higher education; and

(10) an unemployment benefit.

Taking a count of the number of illegal immigrants that access state services:

A BILL TO BE ENTITLED

AN ACT

relating to the requirement that state agencies report the cost of services and benefits provided to unlawful immigrants.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2101.0115, Government Code, is amended by amending Subsections (c) and (d) and by adding Subsection (e) to read as follows:

(c) A state agency's annual report must include:

(15) a report of the cost of services and benefits provided to unlawfully present immigrants, with the agency determining the extent to which unlawfully present immigrants are served by the agency by:

(A) asking each recipient of a service or benefit whether the individual is an unlawfully present immigrant, unless prohibited by other law;

(B) considering statements and other information provided by the recipient of a service or benefit that identifies the recipient as an unlawfully present immigrant, including place of birth, registration with the Social Security Administration to the extent that information may be lawfully obtained, and work history; or

(C) using a statistical method developed by the agency if it is not practical for the agency to directly determine whether each recipient of a service or benefit is an unlawfully present immigrant.

(d) In this section:

(1) "Annual report" means the annual report required by this section.

(2) "Appropriated money" means money appropriated by the legislature under the General Appropriations Act or other law.

(3) "Appropriation item" includes an item listed in the General Appropriations Act under an informational listing of appropriated funds.

(4) "Unlawfully present immigrant" means an individual who is not:

(A) a United States citizen;

(B) a legal permanent resident of the United States; or

(C) a qualified alien or nonimmigrant under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) who is legally present in the United States.

(e) A state agency shall also submit the report required under Subsection (c)(15) to the lieutenant governor, speaker of the house of representatives, and members of the legislature.

Appendix 3:

Model Legislation

Employer Sanction:

A BILL TO BE ENTITLED

AN ACT

relating to restrictions on the use of certain public subsidies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2264 to read as follows:

CHAPTER 2264. RESTRICTIONS ON USE OF CERTAIN PUBLIC SUBSIDIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. In this chapter:

(1) "Economic development corporation" means a development corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

(2) "Public agency" means the state or an agency, instrumentality, or political subdivision of this state, including a county, a municipality, a public school district, or a special-purpose district or authority.

(3) "Public subsidy" means a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry, or sector of the state's economy or to create or retain jobs in this state. The term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and

improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates, or tax abatements.

(4) "Undocumented worker" means an individual who, at the time of employment, is not:

(A) lawfully admitted for permanent residence to the United States; or

(B) authorized under law to be employed in that manner in the United States.

[Sections 2264.002-2264.050 reserved for expansion]

SUBCHAPTER B. RESTRICTIONS ON USE OF CERTAIN PUBLIC SUBSIDIES TO EMPLOY UNDOCUMENTED WORKERS

Sec. 2264.051. STATEMENT REQUIRED IN APPLICATION FOR PUBLIC SUBSIDIES. A public agency, state or local taxing jurisdiction, or economic development corporation shall require a business that submits an application to receive a public subsidy to include in the application a statement certifying that the business, or a branch, division, or department of the business, does not and will not employ an undocumented worker.

Sec. 2264.052. CONDITION ON RECEIPT OF PUBLIC SUBSIDIES. The statement required by Section 2264.051 must state that if, after receiving a public subsidy, the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), the business shall repay the amount of the public subsidy with interest, at the rate and according to the other terms provided by an agreement under Section 2264.053, not later than the 120th day after the date the public

agency, state or local taxing jurisdiction, or economic development corporation notifies the business of the violation.

Sec. 2264.053. AGREEMENT REGARDING REPAYMENT OF INTEREST. A public agency, state or local taxing jurisdiction, or economic development corporation, before awarding a public subsidy to a business, shall enter into a written agreement with the business specifying the rate and terms of the payment of interest if the business is required to repay the public subsidy.

[Sections 2264.054-2264.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT

Sec. 2264.101. RECOVERY. (a) A public agency, local taxing jurisdiction, or economic development corporation, or the attorney general on behalf of the state or a state agency, may bring a civil action to recover any amounts owed to the public agency, state or local taxing jurisdiction, or economic development corporation under this chapter.

(b) The public agency, local taxing jurisdiction, economic development corporation, or attorney general, as applicable, shall recover court costs and reasonable attorney's fees incurred in an action brought under Subsection (a).

(c) A business is not liable for a violation of this chapter by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

Banning the Use of Public Funds on Day Laborer Centers:

A BILL TO BE ENTITLED

AN ACT

relating to a prohibition against the construction or operation by a local governmental entity of a day labor center used to facilitate the employment of aliens not lawfully present in the United States.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 7, Local Government Code, is amended by adding Chapter 247 to read as follows:

CHAPTER 247. CERTAIN PROHIBITIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

Sec. 247.001. PROHIBITION AGAINST CONSTRUCTION OR OPERATION BY LOCAL GOVERNMENTAL ENTITY OF DAY LABOR CENTER THAT FACILITATES EMPLOYMENT OF ALIENS NOT LAWFULLY PRESENT. (a) In this section:

(1) "Day laborer" means an individual engaged in or waiting to be engaged in occasional or irregular labor for which an individual is generally employed for a period not longer than that required to complete a specific assignment, and for which wages are paid directly to the individual or indirectly by a person who recruits day laborers or a third-party employer for work undertaken by the individual. The term does not include an individual engaged in or waiting to be engaged in labor of a professional or clerical nature.

(2) "Day labor center" means a central facility or location at which day laborers assemble to find employment. The term does not include:

(A) a temporary skilled labor agency;

(B) a staff leasing service agency;

(C) an employment counselor;

(D) a talent agency;

(E) an employment service or labor training program; or

(F) a labor union hiring hall.

(b) A municipality, county, or other local governmental entity may not use public money to construct or operate a day labor center used in any part to facilitate the knowing employment of any person who is not:

(1) a United States citizen;

(2) a legal permanent resident of the United States; or

(3) a qualified alien or nonimmigrant under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) who is lawfully present in the United States.

Appendix 4:

Model Legislation

Ending Bilingual Education:

A BILL TO BE ENTITLED

AN ACT

relating to the bilingual education and special language programs offered in public schools.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 29.052, Education Code, is amended by adding Subdivision (3) to read as follows:

(3) "Special language program" includes an English language immersion program and a program of instruction in English as a second language.

SECTION 2. Section 29.055(a), Education Code, is amended to read as follows:

(a) A bilingual education program established by a school district shall be a full-time program of dual-language instruction that provides for learning basic skills in the primary language of the students enrolled in the program and for carefully structured and sequenced mastery of English language skills. An English language immersion program established by a school district shall be a program of instruction provided primarily in English. A program of instruction in English as a second language established by a school district shall be a program of intensive instruction in English from teachers trained in recognizing and dealing with language differences.

SECTION 3. Sections 29.053(d) and 29.054, Education Code, are repealed.

Appendix 5:

Model Legislation

Banning Sanctuary Cities:

A BILL TO BE ENTITLED

AN ACT

relating to the enforcement of immigration laws.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 370.003, Local Government Code, is amended to read as follows:

Sec. 370.003. MUNICIPAL OR COUNTY POLICY REGARDING ENFORCEMENT OF STATE AND FEDERAL [~~DRUG~~] LAWS. The governing body of a municipality, the commissioners court of a county, or a sheriff, municipal police department, municipal attorney, county attorney, district attorney, or criminal district attorney may not adopt a policy under which the entity will not fully enforce the laws of this state or federal law relating to:

(1) drugs, including Chapters 481 and 483, Health and Safety Code; or

(2) immigrants or immigration, including the federal Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.)[~~, and federal law~~].

SECTION 2. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.251 to read as follows:

Art. 2.251. IMMIGRATION STATUS INQUIRY BY PEACE OFFICER. (a) A peace officer may inquire into the immigration status of any person under arrest or detained on other grounds if the officer has a reasonable suspicion to believe the person has violated a civil or criminal provision of the federal immigration laws.

(b) If a peace officer has probable cause to believe the person has committed a violation described by Subsection (a), the officer may:

(1) identify and report the person to United States Citizenship and Immigration Services; or

(2) arrest the person for the violation.

(c) A public official or a state statute or local ordinance or regulation may not prohibit a peace officer from exercising the authority granted under this article.

Banning Sanctuary Cities (2):

A BILL TO BE ENTITLED

AN ACT

relating to the duty of a peace officer to verify the citizenship and immigration status of certain persons.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.251 to read as follows:

Art. 2.251. CITIZENSHIP AND IMMIGRATION STATUS VERIFICATION BY PEACE OFFICER. (a) A peace officer shall verify the citizenship and immigration status of any person who is placed under arrest or detained, including an arrest or detention for an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle.

(b) If a peace officer has probable cause to believe the person has committed a violation described by Subsection (a), the officer shall:

(1) identify and report the person to United States Citizenship and Immigration Services; or

(2) arrest the person for the violation.

(c) A local ordinance, regulation, or policy that interferes with the ability of a peace officer to carry out a duty conferred by this article is void.

Increasing Penalties for Document Fraud:

A BILL TO BE ENTITLED

AN ACT

relating to the offense of engaging in organized criminal activity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 32.51, Penal Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses:

(1) identifying information of another person without the other person's consent; or

(2) without legal authorization, information concerning a deceased person that would be identifying information of that person were that person alive [~~and with intent to harm or defraud another~~].

(b-1) For the purposes of Subsection (b), the actor is presumed to have the intent to harm or defraud another if the actor possesses:

(1) the identifying information of three or more other persons;

(2) information described by Subsection (b)(2) concerning three or more deceased persons; or

(3) information described by Subdivision (1) or (2) concerning three or more persons or deceased persons.

SECTION 2. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(13) any offense under Section 37.10.

287(g) Agreement:

Sec. 370.004. PERFORMANCE OF IMMIGRATION OFFICER FUNCTIONS. Notwithstanding any other law, a political subdivision of this state may enter into an agreement under Section 287(g), Immigration and Nationality Act (8 U.S.C. Section 1357(g)), to perform a function of an immigration officer.