

**Challenges to Federal Immigration Regulation: The Possible Consequences of State  
Imposed Employer Sanctions**

**Leya Speasmaker**

**Word Count: 5,403**

# **Challenges to Federal Immigration Regulation: The Possible Consequences of State Imposed Employer Sanctions**

**Leya Speasmaker**  
**Abstract**

The 2006 state legislative season saw record levels of immigrant-related legislation introduced and passed across the nation. As of August 2006, more than 80 of the 560 pieces of legislation introduced in state legislatures concerned various aspects of immigrant employment. Nine states passed a total of seventeen bills regulating different aspects of employment for immigrants. However, many provisions of these state bills are preempted by the federal Immigration Reform and Control Act (IRCA) of 1986, thereby possibly rendering portions of the state legislation unenforceable. This paper will examine the growing trend of symbolic legislation in the states, the effect on the immigrants and employers in states who passed employment-related legislation, and the effect of symbolic state legislation on the United States. My research will fill a current void in policy research regarding the impact of symbolic legislation on the federal-state relationship currently at work in immigration issues.

## **Introduction**

The 2006 state legislative season saw record levels of immigrant-related legislation introduced and passed across the nation. As of August 2006, more than 80 of the 560 pieces of legislation introduced in state legislatures concerned various aspects of immigrant employment. Nine states passed a total of 14 bills regulating different aspects of employment for immigrants, ranging from immigrants' ability to apply for business licenses to employer sanctions for those found hiring undocumented workers.<sup>1</sup>

Many provisions of these state bills are preempted by the federal Immigration Reform and Control Act (IRCA) of 1986, thereby possibly rendering portions of the state legislation unenforceable. While many consider immigration regulation to be a federal responsibility, recent employment-related legislation activity signals an increasing tendency of state legislatures to challenge the existing federal government's power to regulate aspects of this traditionally national issue.<sup>2</sup> Passage of these bills does not signal a dramatic change in the ability of undocumented immigrants to secure employment. Instead, these bills represent an effort by states to express a growing frustration with the federal government's failure to enforce existing legislation and to acknowledge the role of the state in immigration affairs. In short, the passage of employment-related legislation represents a growing federal power versus state power conflict involved in the immigration debate.

Employer sanctions are often included in legislation governing the employment of immigrants. These sanctions generally levy fines against employers found to be purposefully ignoring immigration requirements for immigrant workers and attempt to reduce the appeal of employment in the United States by targeting employers. Historically, employer sanctions have been an ineffective way to address the issue of illegal immigration. However, this type of

immigration legislation is politically feasible, easily un-enforceable, and placates a public clamoring for immigration reform. Employer sanctions instituted by state governments are preempted by existing federal legislation, making the success of this particular policy strategy difficult to predict. However, the possible motivations behind this type of policy and the resulting symbolic purposes of employer sanction legislation are many.

### **Definition of Symbolic Policy**

Immigration policy is often seen as a reflection of the national identity.<sup>3</sup> The nation's identity consists, at least in part, of how it treats foreigners, what jobs are offered to immigrants, and how permissive or restrictive a country is with border crossings and applications for immigration. When examining immigration policy, it is becoming increasingly important to look beyond the nation as a whole and instead, shift the focus to state legislation activity. While the nation represents American interests in a broad sense, individual states, especially in 2006, have been actively challenging this national identity with their own immigration legislation.

In an analysis that can easily be applied to the United States, David Fitzgerald asserts that Mexican states have taken immigration policy into their own hands. Due to poverty and economic downturns, state governments have gone against federal immigration policy by encouraging their citizens to emigrate, thus reducing the pressure that the poor exert on these individual states. Mexican states are developing individual state-wide policy to address immigration issues, possibly conflicting with existing federal plans that may not accurately reflect state needs. This basic concept can be easily extended to the development of state immigration legislation within the United States. The nation as a whole cannot be assumed to be the only "unit of analysis" when evaluating how and why certain immigration policies are

developed in the United States. The states are continually attempting to exert their own influence, provide for themselves, and in the process, potentially undermine federal policies.<sup>4</sup>

Policy that is passed by a governing body often has two sets of objectives: primary goals stated in the piece of legislation and secondary goals accomplished by the passage and level of enforcement of such legislation. Federal immigration policy, even the popular employment-related legislation, is often seen as failing to reduce the prevalence of illegal immigration in the United States. Instead, employment of undocumented immigrants seems to be on the rise, contrary to policies implemented that are supposedly aiming to reduce this trend.<sup>5</sup> Daniel Castles asserts that “policies that claim to exclude undocumented workers may often really be about allowing them in through side doors and back doors, so that they can be more readily exploited.”<sup>6</sup> A reduction of the undocumented workforce may not be the primary goal of the legislation and instead, a steady supply of low-wage labor could be the goal, an objective politically impossible to endorse.<sup>7</sup>

Immigration policies, especially those concerning employment regulations, often go un-enforced. The effort to pass a policy yet not enforce it is in and of itself a policy, albeit a secondary one. Un-enforced employment immigration policy leads to an increased number of undocumented immigrants seeking low-wage jobs in the United States, the very trend employer-related immigration legislation is seeking to curtail. While American immigration policy is generally viewed as a failure, when viewed from the light of primary versus secondary goals, this assertion is rendered incorrect.<sup>8</sup>

The ‘declared objectives’ of policies can be “misleading.”<sup>9</sup> Attempts to implement policies to regulate immigration, such as employment sanction legislation, have been well documented to fail in both the United States and in 19 other countries.<sup>10</sup> In the face of such

outstanding proof that the majority of immigration policy, especially employment-related policy, often fails in its stated purpose, 14 bills passed United States' state legislatures in 2006 reinforcing employment-related legislation. Six of these bills included employer sanctions for those purposefully hiring unauthorized workers.<sup>11</sup> This leads to an assertion that immigration legislation, and specifically employment sanctions for employers hiring undocumented workers, serve as a symbolic gesture rather than as a legitimate way to reduce illegal immigration.

### **Debate over Federal Responsibility**

Historically, political officials and the general public have regarded immigration as a federal responsibility, regardless of party affiliation or political philosophy. Interestingly however, the Constitution does not explicitly state that immigration regulation is the responsibility of only the federal government.<sup>12</sup> To accomplish the preemption of state and local immigration regulation law, federal law must contain preemption language within the body of the legislation, thereby denying states power to govern immigration concerns within their own borders.<sup>13</sup>

Debate over federal responsibility of immigration regulation has raged since the late eighteenth century. Almost two hundred years later, controversy over whether the federal government should have sole responsibility over immigration control was restated during the debates surrounding the passage of IRCA in 1986. Congressmen Newt Gingrich and James Scheuer reminded the nation that to enter the country, immigrants must cross over national, not state, borders. Accordingly, the responsibility to regulate immigration should lie with the federal government.<sup>14</sup> Some state governments are now echoing the same sentiment. Addressing the issue of immigration, Governor Owens of Colorado stated during his January 2006 State of the

State speech, "Regardless of what we do here in Colorado, the ultimate solution lies at the national level."<sup>15</sup>

In contrast, critics of the federal government's ability to effectively regulate immigration assert the logistic impossibility of governing immigration at the national level. First, a limited immigration enforcement budget exists, and the federal government cannot manage the issue with the current low level of resources. Additionally, federal, state, and local law enforcement officials do not currently work together in order to enforce federal immigration laws.<sup>16</sup> Also, the border is too long to prevent people from crossing illegally. Sufficient numbers of Border Patrol agents are not available to properly patrol the complete length of the Mexico/United States border. Finally, and most importantly, there are too many employers who are willing to employ undocumented immigrants for the federal government to successfully discover and fine each and every company breaking federal employment regulations.<sup>17</sup>

### **Challenges to Federal Power**

Increasingly, the idea of absolute federal power over immigration has been challenged through the passage of state legislation. Many states feel that the federal government has abandoned its responsibility to regulate immigration. According to supporters of state power, the only recourse states have in response to this federal failure is to implement policy that governs citizens residing within their own state borders. Proponents for increasing levels of state control believe that through its inaction, the federal government has essentially given the power of immigration regulation back to the states.<sup>18</sup>

The rapid growth of immigrant communities in every state of the nation helps to explain the increasing numbers of state immigration legislation. Whereas earlier in the century, immigrant populations centered in certain states, especially those along the border, immigrant

communities can now be found in almost every state. Federal inability to control immigration no longer has dire consequences for only California and Texas. Consequently, high numbers of immigrants, both documented and undocumented, are becoming the responsibility of the majority of states. The burden to support these new residents falls on the state government's shoulders as federal legislation has not been created in response to this burgeoning population.<sup>19</sup>

While some may argue that undocumented immigration positively affects the federal government, undocumented immigration can also place a heavy burden on state governments.<sup>20</sup> States still operating under the too-lenient or un-enforced federal immigration laws that fail to halt the entry of undocumented immigrants are facing financial difficulties. Insufficient funding for federal mandates to provide health care, law enforcement, and public education for undocumented immigrants is a challenge for increasing numbers of states, especially those with relatively new immigrant populations like North Carolina. As a result, state governments must respond with their own legislation in order to address some of the problems.<sup>21</sup>

Apart from border enforcement issues, the federal government failed to pass new comprehensive immigration policy in 2005 and 2006. In response, the states created individual state identities through the passage of their own immigration policy. Georgia and Colorado take pride in their recently passed legislation, each touting its policies as the "the toughest immigration measures in the nation."<sup>22, 23</sup> States passing more lenient and accepting policies, such as Nebraska, are creating another image. Nebraska's population is getting steadily older, yet their economy is based in meat processing plants and in hospitality and construction opportunities. As the native Nebraska population cannot sustain these industries without outside help, Nebraska is increasingly relying on immigrant labor. Perhaps as a result, Nebraska is passing laws favorable to immigrants, such as in-state tuition privileges for undocumented children and driver's license

eligibility for unauthorized workers.<sup>24</sup> Nebraska is therefore crafting an immigrant-friendly image through its new policies. According to individual needs, states are creating their own identities through their immigration policy, and in some cases, distancing themselves from current federal immigration discourse.

### **Employment for Immigrants**

Immigrant-related legislation covers a wide variety of topics. From health care to education, from driver's licenses to renting policies, legislation introduced in 2006 touches practically every aspect of an immigrant's life in the United States. As stated earlier, more employment-related legislation was introduced and passed in 2006 than any other.<sup>25</sup> Endorsed by several migration theory experts, employment opportunities are typically seen as the major draw for immigrants' arrival to the United States.

The core-periphery migration theory supports the idea that the possibility of employment is one of the most prominent contributors to illegal immigration in the United States. Developed countries such as the United States are core countries in the global market that attract those on the periphery, such as those in Latin America. Periphery countries are dependent on the capitalist powers and possibilities in the core countries. Citizens of periphery countries will continue to migrate to core countries as long as the opportunities for employment in core countries are above those of periphery countries. Again, this reinforces the idea that employment, which is more plentiful and better-paying in core countries, pulls migrants from periphery countries at high rates.<sup>26</sup>

A second prominent migration theory states that migrants move as a result of push-pull factors. Negative factors in the native country, such as low wages or few employment opportunities, push potential immigrants out of the home country to look for work elsewhere.

Meanwhile, pull factors in other countries, such as employment opportunities and higher wages, entice, or pull, potential immigrants to cross borders for work. Employment, both as a push and a pull factor, remains a dominant force in immigrants' choice to migrate.<sup>27</sup>

Migrant networks are an additional reason why immigration for employment reasons flourishes. Migrant networks are groups of immigrants who have created social ties with each other and maintain connections with others in the native country. Word of employment opportunities passes through these networks, and the risk of not finding employment upon arrival is minimized for the new immigrants crossing the border. These networks also pass information about housing and border crossing, further assisting new immigrants. As members of the network still living in the native country here of opportunities available in the target country, increased numbers of people chose to migrate in order to take advantage of higher wages.<sup>28</sup>

### **Employer Sanctions in IRCA**

Because of the appeal of employment opportunities, many people believe that employment restrictions and sanctions are a primary way to curb illegal immigration. As mentioned earlier, immigration policy is often seen as a national identity issue in addition to being an economic and legal issue.<sup>29</sup> The way in which the nation reacts to and treats immigrants is reflected by its policy, and the nation's identity as to how it wants to be seen by others is incorporated into the policy creation. A government does not want to be perceived as racist, nor does it want to threaten existing positive public relations with a border country. For this reason, employment-related legislation, especially employer sanctions, for those hiring undocumented workers is often an appealing measure for a government to be perceived as attempting to control illegal immigration. However, through the ambiguous language included in the bills, employers are still able to hire unauthorized workers by circumventing the rules laid out in the legislation.<sup>30</sup>

Before 1986, employers purposefully hiring undocumented workers did not face penalties.<sup>31</sup> However, with the passage of the Immigration Reform and Control Act (IRCA) in 1986, this practice was rendered illegal through specific language restricting the employment of undocumented immigrants. The law states that the hiring of undocumented immigrants is prohibited and that employers must make reasonable attempts to verify the legal work status of their employees. IRCA also outlines possible sanctions against employers should they be found hiring undocumented workers.<sup>32</sup>

IRCA's employer sanctions have rarely been enforced. In 2004, only 53 employers were fined for authorized work-status violations, and only four were criminally prosecuted. Throughout 2000-2003, the average number of apprehended undocumented workers nationwide was 12. Complicating this lack of enforcement was the problem of financial constraints: only 2 percent of the former Immigration and Naturalization Service (INS) budget was allotted to workplace enforcement.<sup>33</sup>

Concerns over the former INS' ability to regulate the employer sanctions present in IRCA rested on the idea that the INS had no prior experience regulating the employment practices of U.S. employers. Additionally, the INS was understaffed. While studies have found that the INS implemented the employer sanctions satisfactorily during the first three years, studies also found that the INS failed to extend its success rate into the future for a variety of reasons. Primarily, the low level of enforcement in the years immediately following the passage of IRCA led employers to believe that the sanctions were not strictly enforced. Consequently, the potential risk of hiring undocumented workers was and still is lower than the benefit of hiring these workers. In addition, the INS lacked the appropriate resources in the field to determine where undocumented workers were working. Continuing to present day, many firms and

businesses across the country are small and mobile, and government agencies lack effective methods of tracking these businesses.<sup>34</sup>

IRCA's employer sanction provisions are generally thought of as unsuccessful in their attempts to limit the employment of undocumented immigrants. However, the idea of employer sanctions continues to be popular in state legislatures across the country, most likely as a result of the same influences facing the creators of IRCA twenty years ago. According to some, employer sanction legislation was included in IRCA as a response to two conflicting pressures surrounding the employment of immigrants. On one hand, public pressure to regulate the employment of undocumented workers was strong and increasingly being heard across the nation. The public was demanding a decrease of illegal immigration and focused on employment restrictions to accomplish this goal.<sup>35</sup> On the other hand, employers themselves were up in arms over the proposed regulations and pressured Congress to limit the restrictions. In response, IRCA contains employer sanctions, yet through the language used in the bill, employers are generally able to circumvent the legislation.<sup>36</sup> IRCA states:

A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.<sup>37</sup>

The wording of "in good faith" lends an ambiguous tone to the legislation, allowing employers a loophole out of the policy. It is difficult for immigration regulations enforcers to prove that an employer complied or failed the law "in good faith."

While employer sanction legislation appears to be an ineffective way to control immigration, several goals are accomplished through its passage. One, the government appears to be cracking down on illegal immigration. Two, employers are still able to hire low-cost labor. As a result, the economy can still function as it is accustomed to doing. Finally, the American identity of an economic and intellectual powerhouse who protects the rights of its citizens is preserved. The United States cannot be viewed as producing or endorsing jobs that only workers from developing countries are prepared or willing to do since those jobs have been declared illegal.<sup>38</sup>

### **Employer Sanction State Legislation of 2006**

IRCA specifically preempts state or local law instituting employer sanctions:

...the provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.<sup>39</sup>

While the language of the bill is ambiguous, sources generally agree that state laws governing the employment of immigrants may end up being tried in court.<sup>40</sup> Despite this possible threat, nine states passed a total of fourteen bills from January to August 2006 governing varying aspects of immigrant employment, and six of these bills instituted employer sanctions for employers found to be purposefully hiring undocumented workers.<sup>41</sup>

Below is a brief summary of each state bill that specifically relates to employer sanctions on those found to be employing undocumented workers. Sanctions include fines imposed for each employed unauthorized worker to a retraction of government contracts for employers found hiring undocumented workers.

#### *State Employment Legislation*

**Colorado** HB 1001 (signed 7/31/2006) requires that contractors verify the work status of their employees before applying for economic development incentive awards. Contractors receiving awards and later found to employ unauthorized workers must repay the award and will be ineligible for another award for 5 years (section 1).

**Colorado** HB 1017 (signed 7/31/2006) requires that within 20 days of hire, employers examine the work status of each employee and retain proof that the employees have legal work status. The state has the power to audit and verify the proof. Employers hiring unauthorized workers face a penalty of \$5,000 for the first offense of showing “reckless disregard” in submitting requested documents or for submitting falsified documents (section 1).

**Colorado** HB 1343 (signed 6/6/2006) prohibits state agencies from entering into contract agreements with contractors who knowingly employ illegal immigrants and requires a prospective contractor to verify legal work status of all employees. The contractor must verify that the Basic Pilot Program has been used to verify the legal status of all employees. If the contractor discovers that an illegal alien is employed, the contractor must alert the state agency within 3 days (section 1).

**Louisiana** SB 753 (signed 6/23/2006) allows any state agency or department to conduct an investigation of a contractor’s hiring policies if the employment of unauthorized immigrants is suspected. The district attorney can issue an order to fire undocumented workers, and, if the contractor does not comply within ten days of receiving notice, the contractor is subject to penalties of up to \$10,000. This applies only to contractor’s employing more than 10 people (section 1).

**Pennsylvania** HB 2319 (signed 5/11/2006) is known as the Prohibition of Illegal Alien Labor on Assisted Project Act. The bill defines an illegal alien as one who violates federal immigration laws yet is a paid employee within the state. This bill prohibits the use of labor by illegal immigrants on projects financed by grants or loans from the state government. Appropriate federal authorities should be contacted in the event a contractor knowingly employs illegal aliens and continues to accept a state contract (section 3).

**Tennessee** HB 111 (enrolled 6/1/2006) prohibits contractors from contracting with state agencies within one year of the discovery that the contractor employs illegal immigrants (section 1).<sup>1, 42</sup>

### **Symbolic Purposes of Employer Sanction Legislation**

Legislation often serves a symbolic purpose above and beyond the objectives stated in the language of the bill.<sup>43</sup> Murray Edelman, a philosopher known for his examination of symbolic politics, asserts: “every instance of policy formulation involves a “mix” of symbolic effect and rational reflection of interests in resources.”<sup>44</sup> Immigration legislation, especially employment-related legislation, tends to lean more towards the symbolic end of the spectrum for a variety of reasons.

Problems are inherent in employer sanction legislation, putting the policies at risk for un-enforcement. Through myriad requirements of documentation verification, employers are forced to become pseudo-immigration enforcement officials, which, according to many, is outside the bounds of individual employer responsibility. Discrimination of employees is also a risk with too stringent employment legislation. Employers may begin to view all members of a certain ethnic group as undocumented, thereby prohibiting those that are authorized to work in the

---

<sup>1</sup> This information is taken directly from a documented I co-authored in 2006 with Adam Blott and Ann Morse of the National Conference of State Legislators. The entire document can be found at: <http://www.ncsl.org/programs/immig/6ImmigEnactedLegis3.htm>.

United States equal access to the workplace. Strict policy, policy that creates hardships for those forced to implement it, or policy that is not enforced encourages employers to seek out loopholes.<sup>45</sup>

Despite documented problems with employer sanction legislation, state legislatures are introducing and passing increasing numbers of employer sanction legislation. Some analysts explain this action as a politically safe option for states to take in the face of high public demand for action against illegal immigration. While both the federal and state governments may pass legislation that specifically prohibits employment of undocumented workers, these policies typically have a secondary agenda. For instance, a strong conflict of interest exists between the labor needs of employers and the political ability to recognize those needs.<sup>46</sup> While employers in the United States rely heavily on the cheap labor of undocumented immigrants, neither federal nor state governments are politically able to admit this openly. Instead, legislatures create policy that appears, on the surface, to crack down on the employment of undocumented workers, yet through lenient language and un-enforceable stipulations, the employment is allowed to continue.

Employer sanction laws have a lesser political cost than other immigration regulations such as border enforcement policy. Employer sanction policy represents an action taken upon illegal immigration yet an easier response to the issue than more controversial policies such as decreased public benefits for undocumented immigrants or increased border security. For instance, opposition within the country will be less when responding to employer legislation than a proposed policy for building a wall or increased force along the border. In addition, possible international opposition will also be minimized with a well-worded or un-enforced immigration policy that focuses on the employment of undocumented workers.<sup>47</sup> Also, less visible policies

such as employer sanctions can easily go un-enforced, whereas other policies, such as promising additional forces along the border, are much more evident to the public eye.<sup>48</sup> Moreover, politicians wanting to reduce illegal immigration can create less political turmoil if focusing on employment legislation. Creating legislation that solely focuses on the immigrant population can seem racist and discriminatory. Targeting employers versus employees keeps the state clear of appearing to target the immigrant community.<sup>49</sup>

Certain policies are passed as a result of political sparring, especially during an election year. Georgia and Colorado are both examples of this theory. Colorado passed 12 immigration-related bills this July with 5 regulating the employment of undocumented workers. Policy analysts and state lawmakers alike claim that the passage of the laws was purely driven by politics. Colorado Democrat Governor Bill Owens specifically stated that friction between his political ideals and those of his Republican-majority legislature played a large role in the development of immigrant-related policy this summer during the special session.<sup>50</sup> Interestingly, lawmakers in Georgia, where both houses and the Governor are Republican, assert that politics did not drive the passage of SB 529 in April of this year. The Governor's representative explicitly stated that politics were not a factor in the passage of this bill and instead asserted that the bill passed in response to the state's growing need for stringent immigration policy. However, Democrat members of Georgia state government claim that the passage of SB 529 was purely for political gain and increased votes.<sup>51</sup>

Inter-state migration possibilities can also exert an influence over the development of employment-related policy. State policies oftentimes encourage or discourage interstate migration and are created with this perspective in mind. According to Robert R. Preuhs, people will move from one state to another in order to "maximize their utility derived from public

policies.”<sup>52</sup> While states such as Texas and California are home to millions of immigrants, many of whom are undocumented yet use health care and education services, several states have smaller populations. These states, such as Rhode Island and Nebraska, tend to have less restrictive policies. States with smaller, aging native populations may also seek ways to increase their workforce. Nebraska, for instance, passed an in-state tuition provision for undocumented residents. While not concerning employment, it does display an effort by the state to accommodate their undocumented population and work to include them into the state’s economy.<sup>53</sup>

## **Conclusion**

IRCA specifically prohibits states from passing legislation that governs the employment of undocumented immigrants. While federal employment legislation has been clearly documented as an ineffective way to regulate undocumented immigration, state after state continues to introduce and pass employment legislation.<sup>54</sup> One reason behind this failure is that immigration policy generally avoids fixing the root problems of illegal immigration such as economic disparity, unequal work opportunities, and international trade agreements and instead offers superficial solutions to a much deeper problem.<sup>55</sup> Scholars also assert that only when the focus of immigration policy turns to reducing root causes of immigration, such as inequality between countries, will illegal immigration decrease.<sup>56</sup> Regardless of the ineffective nature of employer sanctions, several possible consequences could arise from the passage of this type of employment legislation in the states.

Some suggest that with additional flexibility in immigration regulation taken by state governments in response to federal inactivity, individuals have more choice in moving to where policies best fit their needs. Economic opportunities are a prevailing factor in migration

decisions. Employment legislation directly impacts economic opportunities an immigrant has in a particular state.<sup>57</sup> By passing employment-legislation, states are able to compete for citizens that provide the most benefit for the state and encourage those who do not to move to a different state.<sup>58</sup>

Introducing immigration policy into state legislatures could change the political party powers within states and federal government.<sup>59</sup> While the passage of immigration legislation may not have been at the forefront of many voters' minds, in some states, such as Colorado and Georgia, the treatment of this volatile issue may have influenced voters' election choices.<sup>60</sup>

The fact that employment-related immigration policy debates have generally centered at the federal level instead of at the state level gives this recent trend an even greater impact on the federal versus state power discussion. Philosopher Murray Edelman states that political settings can be as symbolic as the policy itself. He asserts, "The occasional departure from what is appropriate only points up the centrality of setting to the political process."<sup>61</sup> Perhaps states passing immigrant legislation realize that the general setting for these types of discussions typically occur in Washington D.C. with the federal government. By moving the discussions and legislation to states, where the appropriateness of this action is questionable, states bring more attention to the issue. As a result, the citizens of the country realize that decisions that should also be coming from Washington D.C. are not, thereby increasing the pressure that the citizenry places on the federal government to address the issue.

It is possible that employment regulations can be better enforced by states than the federal government. As a result of weak enforcement of IRCA provisions, the high incidence of employment-legislation violations occurs. Employing a cost-benefit analysis of the risks of employing an undocumented worker versus the benefits of such a choice, employers may lean

towards violating the provisions. Employers, especially small business owners, acknowledge the low probability of the federal government investigating their employment practices. Therefore, the low cost of undocumented worker labor outweighs the possible cost of sanctions. Perhaps the state can better regulate employment within its own state, thus making the passage of employer-sanctions at the state level a logical choice.<sup>62</sup>

If the past is any indication of the future, state employment-related legislation will follow the path of IRCA by remaining symbolic and un-enforced. Two early examples of symbolic employment legislation occurred in 1971 with the California Arnett Law and the 1983 Simpson-Mazzoli law (later to become IRCA of 1986), both of which restricted employers from knowingly hiring undocumented workers. In both situations, undocumented laborers were used as scapegoats for larger national problems, mainly for an economic recession and rising unemployment. These pieces of legislation were largely symbolic in the fact that they, on the surface, fixed the problem, but in reality, did nothing to prevent undocumented labor. This past legislation, and likely those passed in state houses this year, address political need but do not address the fundamental issues contributing to illegal immigration.<sup>63</sup> Symbolic legislation can and will have little effect on the employment of undocumented immigrants in the United States. Employers and employees will simply re-adjust their behaviors to skirt around the legislation's rules, but employment of undocumented workers will continue.<sup>64</sup> However, as a result, the federal government may begin to take note that states are willing to regulate employment within their own boundaries and are tired of waiting for federal initiative to address the problem. Additionally, the prevailing idea that responsibility for effective immigration control lies solely within the federal government may begin to shift from purely a federal responsibility to a shared venture between federal and state governments.

---

## Notes

<sup>1</sup> National Conference of State Legislators (NCSL). 2006. 2006 State Legislation Related to Immigration: Enacted, Vetoed, and Pending Gubernatorial Action. (August). Internet. Available from <http://www.ncsl.org/programs/immig/6ImmigEnactedLegis3.htm>; accessed October 22, 2006.

<sup>2</sup> National Conference of State Legislators (NCSL). 2006. Guide to State Employment-Related Immigration Bills. (August). Internet. Available from <http://www.ncsl.org/programs/immig/6ImmigEnactedLegis3.htm>; accessed October 22, 2006.

<sup>3</sup> Castles, Stephen. 2004. Why migration policies fail. *Ethnic and Rational Studies* 27: 215.

<sup>4</sup> Fitzgerald, David. 2006. Inside the sending state: the politics of Mexican emigration control. *International Migration Review* 40(2): 259-93.

<sup>5</sup> Castles, Migration, 205-207.

<sup>6</sup> *Ibid.*, 223.

<sup>7</sup> *Ibid.*, 205-207.

<sup>8</sup> Zolberg, Aristide R. 1999. Chapter 4 in *The Handbook of International Migration*, eds. Charles Hirschman, Philip Kasinitz, and Josh DeWind. New York: Russell Sage Foundation, 81.

<sup>9</sup> Castles, Migration, 223.

<sup>10</sup> Calavita, Kitty. 1990. Employer sanctions violations: toward dialectical model of white collar crime. *Law and Society Review* 24: 1060.

<sup>11</sup> NCSL, State Legislation.

<sup>12</sup> Booth, Daniel. 2006. Federalism on ice: state and local enforcement of federal immigration law. *Harvard Journal of Law & Public Policy* 29: 1067.

<sup>13</sup> Booth, Federalism, 1069.

<sup>14</sup> Skerry, Peter. 1995. Many borders to cross: is immigration the exclusive responsibility of the federal government? *Publius: The Journal of Federalism* 25: 73.

<sup>15</sup> Representative Debbie Benefield, "Proposals get to heart of immigration ills", Rocky Mountain News Online, October 28, 2006, Available from [http://www.rockymountainnews.com/drmn/opinion/article/0,1299,DRMN\\_38\\_5100180,00.html](http://www.rockymountainnews.com/drmn/opinion/article/0,1299,DRMN_38_5100180,00.html); accessed November 24, 2006.

<sup>16</sup> Hill, John K. and Pearce, James E. 1990. The Incidence of Sanctions Against Employers of Illegal Aliens. *The Journal of Political Economy* 98: 29.

<sup>17</sup> Booth, Federalism, 1064-66.

<sup>18</sup> Boulard, Garry. 2006. Immigration- left to the states. *State Legislatures*, October/November: 15.

- 
- <sup>19</sup> Skerry, *Borders*, 73.
- <sup>20</sup> *Ibid.*, 77.
- <sup>21</sup> Boulard, *Immigration*, 17.
- <sup>22</sup> *Ibid.*, 15.
- <sup>22</sup> Benefield, *Proposals*.
- <sup>23</sup> Georgia Immigration Legislation Heads to Governor. 2006. Associated Press, March 28, Available from <http://wsbradio.com/news/032806immifinal.html>; accessed November 24, 2006.
- <sup>24</sup> Boulard, *Immigration*, 14.
- <sup>25</sup> NCSL, *State Legislation*.
- <sup>26</sup> Massey, Douglas S. 1999. Chapter 2 in *The Handbook of International Migration*, eds. Charles Hirschman, Philip Kasinitz, and Josh DeWind. New York: Russell Sage Foundation, 40.
- <sup>27</sup> Massey, *International Migration*, 37.
- <sup>28</sup> Massey, *International Migration*, 44.; Skerry, *Borders*, 82.; Castles, *Migration*, 211.
- <sup>29</sup> Castles, *Migration*, 215.
- <sup>30</sup> Calavita, Kitty. 1983. Employer Sanction Legislation in the United States: Implication for Immigration Policy. In *America's New Immigration Law: Origins, Rationales, and Potential Consequences*, edited by Wayne A. Cornelius and Ricardo Anzaldúa Montoya, 73-81.
- <sup>31</sup> Cornelius, Wayne A. 2005. Controlling 'unwanted' immigration: lessons from the United States 1993-2004. *Journal of Ethnic and Migration Studies* 31: 785.
- <sup>32</sup> Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, § 101, 100 Stat. 3359, 3360-61 (codified at 8 U.S.C. § 1324a(a)(3)), available at <http://www.usdoj.gov/crt/osc/ref/8usc1324a.htm>.
- <sup>33</sup> Cornelius, *Controlling*, 785.
- <sup>34</sup> Fix, Michael and Hill, Paul T. 1990. *Enforcing employer sanctions: challenges and strategies*. California: The RAND Corporation and Washington D.C.: The Urban Institute Press.
- <sup>35</sup> Calavita, Kitty. 1990. Employer sanctions violations: toward dialectical model of white collar crime. *Law and Society Review* 24: 1065.
- <sup>36</sup> Calavita, *White Collar*, 1065.
- <sup>37</sup> IRCA.
- <sup>38</sup> Calavita, *Employer Sanction*, 78.
- <sup>39</sup> IRCA.
- <sup>40</sup> NCSL, *State Legislation*.

- 
- <sup>41</sup> Ibid.
- <sup>42</sup> Ibid.
- <sup>43</sup> Calavita, White Collar, 1042.
- <sup>44</sup> Edelman, Murray. 1964. *The Symbolic Uses of Politics*. Chicago: University of Illinois Press, 42.
- <sup>45</sup> Schwarz, Carl E. 1983. Employer Sanctions Laws: The State Experience as Compared with Federal Proposals. In *America's New Immigration Law: Origins, Rationales, and Potential Consequences*, edited by Wayne A. Cornelius and Ricardo Anzaldúa Montoya, 83-97.
- <sup>46</sup> Calavita, Employer Sanction, 77.
- <sup>47</sup> Garcia y Greigo, Manuel. 1983. Employer Sanctions: Political Appeal, Administrative Dilemmas. In *America's New Immigration Law: Origins, Rationales, and Potential Consequences*, edited by Wayne A. Cornelius and Ricardo Anzaldúa Montoya, 54-55.
- <sup>48</sup> Garcia y Greigo, Employer Sanctions, 56-57.
- <sup>49</sup> Skerry, Borders, 83.
- <sup>50</sup> Frates, Chris. 2006. Politics or policy? How to deal with the influx of illegal immigrant is a top campaign issue this year. *State Legislatures*, October/November: 19-20.
- <sup>51</sup> Frates, Politics of Policy, 20.
- <sup>52</sup> Preuhs, Robert. 1999. State policy components that encourage interstate migration in the United States. *Political Research Quarterly* 52: 527.
- <sup>53</sup> Boulard, Immigration, 14.
- <sup>54</sup> Calavita, Employer Sanctions.
- <sup>55</sup> Castles, Migration, 221.
- <sup>56</sup> Castles, Migration.; Cornelius, Controlling, 785.
- <sup>57</sup> Preuhs, State policy, 530.
- <sup>58</sup> Preuhs. State policy, 528.
- <sup>59</sup> Frates, Politics of Policy, 21.
- <sup>60</sup> VandeHei, Jim and Zachary A Goldfarb, "Immigration Deal at Risk as House GOP Looks to Voters," *Washington Post*, May 28, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/27/AR2006052700802.html>.
- <sup>61</sup> Edelman, *Symbolic*, 95.
- <sup>62</sup> Calavita, White Collar, 1044.
- <sup>63</sup> Calavita, Employer Sanctions, 73.

---

<sup>64</sup> Ibid., 67.

---

## Bibliography

- Booth, Daniel. 2006. Federalism on ice: state and local enforcement of federal immigration law. *Harvard Journal of Law & Public Policy* 29: 1063-83.
- Boulard, Garry. 2006. Immigration- left to the states. *State Legislatures*, October/November: 14-17.
- Briggs Jr., Vernon M. (1984) "Employment Trends and Contemporary Immigration Policy". In *Briggs Volume II*. Cornell University.
- Calavita, Kitty. 1983. Employer Sanction Legislation in the United States: Implication for Immigration Policy. In *America's New Immigration Law: Origins, Rationales, and Potential Consequences*, edited by Wayne A. Cornelius and Ricardo Anzaldúa Montoya, 73-81.
- Calavita, Kitty. 1990. Employer sanctions violations: toward dialectical model of white collar crime. *Law and Society Review* 24: 1041-69.
- Castles, Stephen. 2004. Why migration policies fail. *Ethnic and Rational Studies* 27: 205-227.
- Colorado General Assembly. 2006. An Act: House Bill 06S-1017. (July). Internet. Available from [http://www.leg.state.co.us/Clics2006B/csl.nsf/fsbillcont3/C25514D38E296D99872571A20081A029?Open&file=1017\\_enr.pdf](http://www.leg.state.co.us/Clics2006B/csl.nsf/fsbillcont3/C25514D38E296D99872571A20081A029?Open&file=1017_enr.pdf); accessed October 24, 2006.
- Cornelius, Wayne A. 2005. Controlling 'unwanted' immigration: lessons from the United States 1993-2004. *Journal of Ethnic and Migration Studies* 31: 775-94.
- Edelman, Murray. 1964. *The Symbolic Uses of Politics*. Chicago: University of Illinois Press.
- Fitzgerald, David. 2006. Inside the sending state: the politics of Mexican emigration control. *International Migration Review* 40(2): 259-93.
- Fitzgerald, Keith A. 1996. *The Puzzle of Immigration Policy and Theories of Policymaking. The face of the nation: immigration, the state, and the national identity*. California: Stanford University Press.
- Fix, Michael and Hill, Paul T. 1990. *Enforcing employer sanctions: challenges and strategies*. California: The RAND Corporation and Washington D.C.: The Urban Institute Press.
- Frates, Chris. 2006. Politics or policy? How to deal with the influx of illegal immigrant is a top campaign issue this year. *State Legislatures*, October/November: 18-21.
- Garcia y Greigo, Manuel. 1983. Employer Sanctions: Political Appeal, Administrative Dilemmas. In *America's New Immigration Law: Origins, Rationales, and Potential*

---

*Consequences*, edited by Wayne A. Cornelius and Ricardo Anzaldúa Montoya, 53-71.

Georgia General Assembly. 2006. As Passed: Senate Bill 529. (April). Internet. Available from [http://www.legis.ga.gov/legis/2005\\_06/fulltext/sb529.htm](http://www.legis.ga.gov/legis/2005_06/fulltext/sb529.htm); accessed October 24, 2006.

Hill, John K. and Pearce, James E. 1990. The Incidence of Sanctions Against Employers of Illegal Aliens. *The Journal of Political Economy* 98: 28-44.

Massey, Douglas S. 1999. Chapter 2 in *The Handbook of International Migration*, eds. Charles Hirschman, Philip Kasinitz, and Josh DeWind. New York: Russell Sage Foundation, 34-52.

Mountz, Alison. 2003. Embodying the nation-state: Canada's response to human smuggling. *Political Geography* 23: 232-45.

National Conference of State Legislators (NCSL). 2006. Guide to State Employment Related Immigration Bills. (August). Internet. Available from <http://www.ncsl.org/programs/immig/6ImmigEnactedLegis3.htm>; accessed October 22, 2006.

National Conference of State Legislators (NCSL). 2006. 2006 State Legislation Related to Immigration: Enacted, Vetoed, and Pending Gubernatorial Action. (August). Internet. Available from <http://www.ncsl.org/programs/immig/6ImmigEnactedLegis3.htm>; accessed on October 22, 2006.

Preuhs, Robert. 1999. State policy components that encourage interstate migration in the United States. *Political Research Quarterly* 52: 527-47.

Schwarz, Carl E. 1983. Employer Sanctions Laws: The State Experience as Compared with Federal Proposals. In *America's New Immigration Law: Origins, Rationales, and Potential Consequences*, edited by Wayne A. Cornelius and Ricardo Anzaldúa Montoya, 83-97.

Skerry, Peter. 1995. Many borders to cross: is immigration the exclusive responsibility of the federal government? *Publius: The Journal of Federalism* 25: 71-85.

Urban Institute. 2003. A Profile of the Immigrant Low-Wage Workforce. (November). Internet. Available from <http://www.urban.org/publications/310880.html>; accessed October 14, 2006.

VandeHei, Jim and Zachary A Goldfarb, "Immigration Deal at Risk as House GOP Looks to Voters," *Washington Post*, May 28, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/27/AR2006052700802.html>; accessed December 10, 2006.

Zolberg, Aristide R. 1999. Chapter 4 in *The Handbook of International Migration*, eds. Charles Hirschman, Philip Kasinitz, and Josh DeWind. New York: Russell Sage Foundation, 81.

---