

Immigration Was Key in 2006 State Legislation and Ballot Measures

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■ Introduction

In 2006, the issue of immigration rose to the forefront in many states as a result of Congress's failure to pass a comprehensive immigration reform bill. In the spring, millions of immigrants and immigrants' rights advocates took to the streets to call for protection of immigrants' rights and comprehensive immigration reform, and to protest passage by the House of Representatives in December 2005 of HR 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act. At the same time, 2006 brought massive increases in the number of anti-immigrant bills introduced in many state legislatures.

In 2006, 570 pieces of immigrant and immigration-related legislation were introduced in state legislatures, some favorable to immigrants, but most unfavorable. These bills covered employment, law enforcement, public benefits, education, and identification issues.¹ Of the 570 bills, 90 were passed, 84 were signed into law, and 6 were vetoed, according to the National Conference of State Legislatures. Most either did not move or died in committee, or were defeated on the floor of a legislative chamber, or passed one chamber but stalled or failed in the other.

Most bills that were enacted were restrictive in nature. They limit immigrant access to public benefits and financial aid for higher education; and the greatest number of enacted bills focus on imposing additional barriers to employment of undocumented workers.

¹ "2006 State Legislation Related to Immigration: Enacted and Vetoed," National Conference of State Legislatures, Oct. 31, 2005, www.ncsl.org/programs/immig/6ImmigEnactedLegis3.htm.

Others include measures regarding entering into agreements with the federal government to allow immigration enforcement to be carried out by state law enforcement authorities and requiring employers to use a federal Internet-based employment eligibility verification system.

These bills are in marked contrast to measures taken in Illinois, where Gov. Rod Blagojevich, by executive order, declared that the state "shall create a proactive approach to integrate Illinois immigrants into the state and assist immigrants in overcoming barriers to success." A new state Office of New Americans Policy and Advocacy within the Governor's Office was created to develop policies for more effective service delivery to immigrants. Key leaders across public, private, labor, and religious sectors in Illinois are developing recommendations on how best to direct state resources for accelerated integration of immigrants into life within the state.

■ Ballot Measures and Bills in Selected States

Georgia and Virginia were among the states in which either a significant number of new immigration-related laws were enacted or a large number of bills and ballot measures targeting immigrants were considered. In addition, two referendums spearheaded by anti-immigrant state legislators in Colorado and four such referendums in Arizona were approved by voters on Nov. 7, 2006.² They restrict public benefits, health care, and

² Ballot measure terminology: *Referendums* originate in state legislatures and are voted on by the citizens. *Initiatives* are

in-state tuition for undocumented immigrants and impose additional burdens and punishment on their employers. Arizona also passed a measure making English the state's official language. The two referendums in Colorado passed with just over 50 percent voter approval, and Arizona's four propositions passed by 3 to 1 margins. Immigration restrictionists in California and Washington attempted to place a total of four anti-immigrant initiatives on the states' ballots, but the three California initiatives and the one Washington initiative did not garner enough signatures to qualify.

Georgia

Of state laws targeting immigrants enacted throughout the United States during 2006, the Georgia Security and Immigration Compliance Act (SB 529) was the most comprehensive. It passed despite the fact that, throughout the time the state legislature was debating the bill, constituents mobilized against it at the state capitol, wrote letters opposing it, and conducted rallies denouncing its more restrictive provisions.

SB 529 requires contractors to verify the employment eligibility status of newly hired employees and mandates that public employers register and participate in the federal employment eligibility verification program known as "Basic Pilot."³ SB 529 requires that employers withhold six percent of an employee's income for state income tax if the employee fails to provide a valid tax identification number. The law directs the state Dept. of Public Safety to negotiate a memorandum of understanding between the state and the U.S. Dept. of Homeland Security (DHS) to allow state authorities to enforce federal immigration law. SB 529 requires that applicants for federal, state, and local public benefits (excluding emergency services)

citizen-initiated and need a certain percentage of signatures before they qualify to be voted on by all the state's voters. Arizona's *propositions* were legislature-approved referendums.

³ Basic Pilot is an Internet-based employment eligibility verification program run by the federal government. See "Why States and Localities Should not Require Employer Participation in the Basic Pilot Program," IMMIGRANTS' RIGHTS UPDATE, Oct. 31, 2006, www.nilc.org/immsemplymnt/ircaempverif/eev005.htm (cites Government Accountability Office reports that the Dept. of Homeland Security and Social Security Administration databases used to determine eligibility contain outdated and inaccurate information).

provide proof of their immigration status if lawful immigration status is a condition of eligibility for the benefits.

SB 529 also has language intended to protect immigrants from dishonest "*notarios*" (notary publics offering help filling out immigration forms) and advertisers who engage in fraud by claiming to be legitimate legal advisors on immigration matters. In addition, SB 529 increases the penalties for trafficking a person for labor or sexual servitude.

Finally, the new law requires that a "reasonable effort" be made to determine the nationality of those confined in county, municipal, or regional jails when they are charged with a felony or with driving under the influence (DUI). For any such arrestees who are not U.S. citizens, jail keepers must make a reasonable effort to verify any documents they have relating to their immigration status or check with DHS's Law Enforcement Support Center and notify DHS if the person is determined to be in the U.S. without lawful immigration status.

Virginia

In Virginia, there was also a large amount of debate and activity regarding immigration during the state's 2006 legislative session. One bill that was enacted, HB 1046, requires intake officers who process arrested juveniles to report to U.S. Immigration and Customs Enforcement any juvenile who has been detained based on allegations of violent juvenile felony where there is probable cause to believe that he or she is in the U.S. illegally. Another enacted bill, HB 170, requires the state's Dept. of Motor Vehicles to provide a monthly list of non-U.S. citizen driver's license applicants to the State Board of Elections so that the board can cancel the voter registration of any registered voter found in this way not to be a citizen. Under the bill, the registrar of voters is required to delete from the voter rolls the names of those registered to vote who are noncitizens and keep their names in a separate database for four years.

Thus far in 2007, Virginia legislators have introduced at least 40 bills targeting immigrants.

Colorado

In Colorado, Governor Bill Owens called for a special session of the legislature after the state supreme

court ruled that Initiative 55, an earlier measure aimed at immigrants, violated Colorado's requirement that a ballot measure be limited to a single subject. The ruling disqualified the measure before it could go to the state's voters. Two opposing groups disputed the potential impact of Initiative 55. Defend Colorado Now pushed for Initiative 55's measures that would deny nonemergency services to undocumented immigrants. Keep Colorado Safe, which formed in 2004 to oppose U.S. Representative Tom Tancredo's anti-immigrant agenda, opposed the measures, stating that they were "bad policy that would harm children, jeopardize the health and well-being of our families, cost taxpayers millions, and expose every state public entity to limitless lawsuits."⁴ National, state, and local immigrant advocacy, labor, and civil rights groups stood behind Keep Colorado Safe in opposing the law.

Immediately following Initiative 55's disqualification by the Colorado Supreme Court, however, Defend Colorado Now and Keep Colorado Safe reached a compromise. Under the compromise, lawmakers were asked to pass a series of laws that kept employers from hiring undocumented immigrants and further restricted immigrants' access to services. In turn, Defend Colorado Now agreed to halt its anti-immigrant campaign. As a model to frame the debate, lawmakers in Colorado turned to Georgia, where lawmakers had passed measures aimed at making it harder for undocumented immigrants there to be employed or receive government services.

Ten bills were passed and signed during the special session relating to employer verification of workers' employment eligibility, random audits of employers, and immigrant access to public benefits.⁵ In particular, HB 06S-1017, an employment eligibility verification bill,

requires employers to attest to verifying their employees' employment eligibility status, check for falsifications, and be subject to random audits. Critics asserted that these measures could tempt employers to engage in racial profiling of job applicants and new employees. They argued that imposing an additional burden on employers beyond the federal requirement to verify employees' employment eligibility is unconstitutional because it is the federal government's responsibility, not the states', to enforce the federal prohibition against employing unauthorized noncitizens.⁶ HB 06S-1009 prohibits local governments from issuing licenses, permits, or any other similar authorization to undocumented immigrants. HB 06S-1023 requires persons over 18 to prove lawful presence to receive certain public benefits.

Although the new laws did not alter undocumented immigrants' eligibility for public benefits, since they already were ineligible for any of the major benefits available in Colorado, it imposed strict new documentation requirements. Since their enactment into law, the new requirements have prevented many eligible U.S. citizens and lawfully present immigrants from securing critical services. Recently the *Denver Post* reported that the new laws have cost over \$2 million to implement and have not saved taxpayers a dollar.⁷

In addition to the ten bills it passed, the Colorado legislature approved two referendums during the special session, which were later approved by the voters on Nov. 7, 2006.

Referendum H, which received a 51 percent "yes" vote, provides for punishing Colorado employers who hire unauthorized workers by prohibiting them from deducting wages paid to unauthorized workers as a business expense. Religious groups, immigrant advocacy groups, and others opposed the measure, pointing out that employers would be compelled to meet requirements to verify employees' employment eligibility that are beyond those imposed by federal immigration

⁴ Mike Lawrence, "Lawmakers Back at Work: Gov. Owens Calls for Special Session on Immigration," STEAMBOAT PILOT TODAY, June 28, 2006, [www2.steamboatpilot.com/news/2006/jun/28/lawmakers_ack_at/](http://www2.steamboatpilot.com/news/2006/jun/28/lawmakers_back_at/).

⁵ The bills included a favorable measure for immigrants, SB 06S-005, which makes it a felony to coerce another person to perform labor by threatening to destroy documents relating to a person's immigration status or by threatening to notify law enforcement that a person is in violation of federal immigration law. However, also passed was SB 06S-007, which makes it a class 5 felony to vote if not eligible to do so.

⁶ Federal immigration law expressly preempts any state or local government from imposing employer sanctions on those "who employ, recruit, or refer for a fee unauthorized [non-U.S. citizens]." See 8 USC § 1324a(h)(2).

⁷ Mark P. Couch, "Colorado Immigration Law Falls Short of Goal," DENVER POST, Jan. 25, 2007, www.denverpost.com/ci_5081255.

law, and that the heightened requirements could lead to racial profiling. Many also argued that the measure would have little or no impact on illegal immigration to the U.S. and no impact on businesses that will not voluntarily disclose that they pay wages to unauthorized workers.

Referendum K, which passed on a “yes” vote of 56 percent, requires the state of Colorado to sue the federal government to demand enforcement of existing federal immigration laws. Critics of the referendum pointed out that the state attorney general already is empowered to push the federal government to enforce immigration law, making such lawsuits a waste of time and money. The Colorado Legislative Council estimates such a lawsuit would cost \$190,000 a year until resolved, and that similar lawsuits have not succeeded. In those cases, courts ruled that they have no legal authority to settle what is essentially a political question regarding how much federal funding should go to the states to pay for federal mandates.⁸

Arizona

Nowhere was the immigration debate in 2006 more intense than in Arizona. Arizona had an active legislative session during which Gov. Janet Napolitano vetoed bills relating to police enforcement of federal immigration law, border security measures, requirements that employers use the Basic Pilot employment eligibility verification system, and denial of in-state tuition or financial aid to certain noncitizen students. However, she also declared a state of emergency, freeing up \$1.5 million in state disaster funds to help border counties cope with increasing border crimes and incarceration costs related to illegal immigration. The Nov. 7 elections were preceded by divisive campaigns for four different ballot proposals aimed at immigrants and individuals with limited English proficiency.

⁸ “Up with Ref H, but Down with K,” ROCKY MOUNTAIN NEWS (editorial), Oct. 1, 2006, www.rockymountainnews.com/drmn/editorials/article/0,2777,DRMN_23964_5033139,00.html. See also ANALYSIS OF THE 2006 BALLOT PROPOSALS (Legislative Council of the Colorado General Assembly, Research Pub. No. 554, Sept. 14, 2006), p. 29, www.state.co.us/gov_dir/leg_dir/lcsstaff/Bluebook/BlueBook2006.pdf.

In 2004, Arizona voters had passed Proposition 200, which (1) requires that in order to vote residents must present proof of U.S. citizenship, (2) mandates that applicants for certain public benefits be verified as being lawfully present in the U.S., (3) requires state and local agencies to report to U.S. immigration authorities benefits applicants who fail to prove that they are lawfully present in the U.S., and (4) imposes criminal penalties on individuals who fail to comply with the mandate described in item 3, above. The Arizona attorney general determined that the proposition applied only to five benefit programs for which undocumented immigrants already were ineligible. However, the climate created by this proposition and the subsequent attempts to mimic it in other states have caused significant harm to immigrants, their U.S. citizen family members, and the communities where they live.⁹

Arizona voters passed three additional anti-immigrant propositions and one “English only” proposition on Nov. 7, 2006. The measures passed by a 3 to 1 margin despite an organized campaign of rallies, news conferences, door-to-door flyer drops, and voter registration drives by immigrant rights advocates.

Proposition 100 denies bail for any person charged with a serious felony offense if the person charged entered or remained in the U.S. illegally. Proposition 102 prohibits a person who wins a civil lawsuit from receiving punitive damages if the person is present in the state in violation of federal immigration law. Proposition 103 requires that, “to the greatest extent possible,” official actions, services, programs, publications, documents, and materials be provided in English. Proposition 300 makes anyone without lawful immigration status ineligible to be classified as an in-state student for purposes of tuition, grants, scholarship assistance, and financial aid. The initiative restricts access to family literacy programs, adult education courses, and child care subsidies for undocumented immigrants. It also requires administrators of these programs to report the numbers of applicants denied assistance due to citizenship or immigration status.

⁹ See also Tanya Broder, “Most State Proposals to Restrict Benefits for Immigrants Failed in 2005,” Nov. 21, 2005, www.nilc.org/immspbs/sf_benefits/2005_anti-imm_proposals_article_112105.pdf.

California

California's proposed initiatives — which provided for the establishment of a state border police force and would have erected further barriers to immigrants obtaining public benefits, driver's licenses, and in-state tuition — did not get on the ballot because their proponents did not manage to gather enough signatures. Nonetheless, the debate on these proposals angered members of immigrant communities. Immigrant communities also deplored Gov. Arnold Schwarzenegger's public praise of the Minutemen Project as doing a "terrific job" in stopping illegal immigration.¹⁰ Advocates for immigrants used the proposals as rallying points during the spring 2006 demonstrations. They pointed out that such measures would lead to racial profiling, instill fear, and undermine the ability of local police departments to protect the public.

Assemblyperson Ray Haynes attempted to place on the ballot the California Border Police Act, an initiative that would have created the California Border Police (CBP), a proposed new state law enforcement agency that would have been charged with enforcing federal immigration law. The act would have authorized the CBP to arrest and hold persons without a warrant if the arresting officer had probable cause to believe that they had committed any criminal violation of federal immigration law.

Initiative 1161, proposed by David K. Johnson, aimed to prohibit state funds from being used to pay for medical costs of individuals who are not both U.S. citizens and California residents. Initiative 1166, proposed by Assemblyperson Mark Wyland, would have denied social services or admission to postsecondary institution to persons whose presence in the U.S. is not lawful, and would have provided that state driver's licenses be issued only to lawfully present individuals.

Lastly, Initiative 1229 circulated until February 2007 but failed to qualify for the 2008 ballot by not reaching its target signature requirement. Proposed by members of the California Republican Assembly and former state senator Richard Mountjoy, Initiative 1229 aimed to deny undocumented immigrant access to driver's

licenses, in-state tuition, and any public benefits other than those for which federal law makes them eligible.

Washington

In 2006, Washington State resident Robert D. Baker proposed Initiative 946, a copycat of Arizona's Proposition 200, but it failed to secure enough signatures by the deadline for inclusion on the Nov. 2006 ballot. Initiative 946, dubbed the Washington Taxpayer and Citizen Protection Act, would have required state and local government employees to verify the identity and immigration status of every applicant for public benefits unless receipt of such benefits by undocumented immigrants is federally mandated. Under the proposal, identification cards, including driver's licenses, issued without verification of the applicant's immigration status would not have been accepted to establish identity or eligibility. Failure to report immigration violations to federal officials would have been made a misdemeanor. The proposition would have authorized the bringing of private suits to remedy violations of its other provisions. Health advocacy groups argued that banning undocumented immigrants from health care would be devastating to the state's public health, and advocacy groups rallied successfully to oppose the measure.

■ Conclusion

Many on both sides of the immigration debate are braced for 2007 legislative sessions that are shaping up to be as active and intense as 2006's. Immigrant rights advocates in states where thus far activity on immigration has been relatively less intense than in those states profiled above are preparing for bills that mimic Georgia's SB 529 or Colorado's employment-related legislation. As state legislators and residents grapple with the lack of movement on comprehensive immigration reform in Congress, they will search for their own solutions, however uninformed and potentially counterproductive.

¹⁰ James Sterngold and Mark Martin, "Governor Signals He'd Welcome Minutemen on California Border," SAN FRANCISCO CHRONICLE, Apr. 30, 2005, <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/04/30/GOVERNOR.TMP>.