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## The First to Go: If the Budget Sinks the Ship of State, Will Immigrants Get the Heave-Ho?

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*FEATURE ARTICLE*

**THE FIRST TO GO: IF THE  
BUDGET SINKS THE SHIP OF  
STATE, WILL IMMIGRANTS  
GET THE HEAVE-HO?**

*by* JUSTIN McDEVITT

“Illinois is drowning in a sea of red ink.” - State Rep. Bill Mitchell (R-Decatur)<sup>1</sup>

**I**n 1977, Pete Tijerina sat at his desk in San Antonio, Texas, reviewing recent legislation coming out of the statehouse in Austin.<sup>2</sup> As an attorney for the Mexican-American Legal Defense and Education Fund (MALDEF), his office

kept a lookout for legislation that illegitimately targeted Hispanics.<sup>3</sup> One provision caught Tijerina's attention, and he forwarded it to his supervisor, who wrote a letter to the national office in San Francisco with this question: "What are your feelings on the constitutionality of such a provision?"<sup>4</sup>

Four years later, the man who received that letter stood before the United States Supreme Court and argued that the State of Texas could not permit school districts to deny children a freely bestowed right – an education, in this case – simply because they were undocumented.<sup>5</sup> Five justices agreed, and *Plyler v. Doe* effectively erased Texas's artificial border.<sup>6</sup>

#### IT'S THE ECONOMICS, STUPID

From a strictly economic point of view, Texas's argument has some merit: illegal immigrants pay little to no state taxes – especially in a state like Texas that has no state income tax – yet they have roughly the same access to social services as taxpaying citizens. In an economic downturn, that argument resonates all the more, as states are being forced to make deep cuts in services to stave off crippling budget shortfalls.

One recent study estimates that only *six* states are projected to break even in fiscal year 2012, while those in the red will fall nearly \$112 billion short.<sup>7</sup> Illinois alone accounts for almost \$5 billion of that total, and that is without taking previous debt into account.<sup>8</sup> By some estimates, Illinois is \$9 billion behind on paying bills to vendors<sup>9</sup> and the projected pension gap is upwards of \$80 billion.<sup>10</sup> And though newly elected Gov. Pat Quinn recently signed an income tax hike into law, the state still faces tough choices involving drastic reductions in spending.<sup>11</sup>

Two areas frequently considered to be subject to immediate cuts are human services and education,<sup>12</sup> areas that are particularly important to the immigrant community. The Federation for American Immigration Reform (FAIR), which advocates for lower immigration numbers, recently released a study finding that state services to illegal immigrants – there are an estimated 750,000 illegal immigrants in the state<sup>13</sup> – make Illinois the fifth highest spending state in the country in this area.<sup>14</sup> The bulk of these expenditures are on education and human services.<sup>15</sup> Because only citizens may vote in elections, legislators would

have little to fear at the ballot box if they were to make decisions at the expense of non-citizens, legal or illegal.

Considering the economic situation, one provision in the statute at issue in *Plyler* would have allowed school districts to charge undocumented children for permission to attend public schools.<sup>16</sup> Today, according to some estimates, as many as 65,000 undocumented students graduate from high schools in the U.S. every year.<sup>17</sup> According to FAIR, this is costing states over \$24 billion in education costs alone for immigrants.<sup>18</sup>

#### RESTRICTING ACCESS TO HIGHER EDUCATION

Because *Plyler* applies only to primary and secondary schools, many states have passed legislation to prohibit those same undocumented students from accessing in-state tuition at public colleges and universities.<sup>19</sup> In Nebraska, for example, legislation is currently on the table to limit in-state tuition to citizens.<sup>20</sup> Lawmakers in a handful of other states are keeping a close watch, hoping to bring similar legislation to their own states.<sup>21</sup> Going still further, measures have been proposed in Virginia and Georgia that would refuse admission entirely unless applicants prove their legal status.<sup>22</sup> Illinois, on the other hand, is one of only ten states that does not consider immigration status in determining eligibility for in-state tuition.<sup>23</sup>

One recent study maintains that the average Illinois taxpayer pays over \$2,000 every year to educate undocumented students and the citizen children of illegal immigrants.<sup>24</sup> In the face of Illinois's record budget deficit, it is understandable that some lawmakers are clamoring for tighter restrictions on state money channeled to illegal immigrants.<sup>25</sup> One such restriction may be a repeal of in-state tuition benefits for illegal immigrants.<sup>26</sup> Some proposed bills would even make citizenship – not just legal status – the prerequisite for state financial aid as well.<sup>27</sup> And because any state legislation involving law enforcement would be disproportionately expensive,<sup>28</sup> measures such as these may be the next best option both to those looking to cut spending and those determined to reduce illegal immigration.

Furthermore, although federal law already restricts federal financial aid to citizens and legal immigrants only,<sup>29</sup> groups like FAIR are lobbying Congress to amend the federal Immigration and Nationality Act to expressly prohibit states

from offering in-state tuition to illegal immigrants.<sup>30</sup> They argue that granting state residency status to illegal immigrants takes seats in universities away from citizens and provides an incentive to circumvent the law.<sup>31</sup> In addition, they argue, it means that an illegal immigrant from another country would have a substantial advantage over a U.S. citizen from a neighboring state.<sup>32</sup> One influential congressman has even referred to the recently failed DREAM Act as “an American nightmare.”<sup>33</sup>

There is strong evidence, however, to suggest that such bans would actually do more harm than good, even in economic terms. The College Board, an influential coalition of colleges and universities, recently published a study finding that, far from displacing higher-paying students, the enrollment of illegal immigrants actually increased revenue to universities.<sup>34</sup> Still other research suggests that the chief effect of such lenient policies is to increase enrollment in universities, so that all parties seem to benefit, at least at the most basic level.<sup>35</sup>

The consequences of denying illegal immigrants the right to establish state residency are such that charging them out-of-state tuition would most likely be prohibitive.<sup>36</sup> For example, in-state tuition to the University of Illinois at Urbana-Champaign is roughly \$11,000 per year,<sup>37</sup> while non-resident tuition is almost \$25,000 per year, more than double what Illinois residents pay.<sup>38</sup> In other states, the difference can exceed three-to-one.<sup>39</sup> In practical terms, this means that a child who was brought to Illinois illegally from Mexico when she was young, and who has attended Illinois schools her entire life, would nevertheless have to pay over \$50,000 more to attend the University of Illinois for her undergraduate degree than a U.S. citizen who had only moved to Illinois during high school.

#### CUTTING OFF THE LIFELINE OF HUMAN SERVICES

In addition to education, other social services seen as crucial to the immigrant community are likewise on the chopping block. Of these, the largest is health care, including health care to children under the All Kids health insurance program.<sup>40</sup> The program has come under heavy fire from some Republican state lawmakers, including Rep. Bill Mitchell of Decatur.<sup>41</sup> “We have a \$13 billion deficit and owe our schools, health care providers and social services \$6 billion. Why in the world are we spending hundreds of millions of dollars on health insurance for illegal immigrants? We’ve got to put a stop to this blatant

misuse of taxpayer dollars.”<sup>42</sup> Rep. Mitchell cites a report by a state auditor that suggests that as many as 75 percent of the children on the rolls of the All Kids program were undocumented immigrants ineligible for Medicaid.<sup>43</sup>

A survey of laws passed in 2010 in state legislatures across the country found an increase in laws that affect immigrants, some positively and others negatively.<sup>44</sup> Laws regarding health and public benefits were at the forefront, as well as laws regarding access to driver’s licenses and employment.<sup>45</sup> The report singles out Illinois legislation H 5053 as an example of a positive law in the area of access to health care, ensuring access to mental health services “with particular attention given to underserved populations and designated shortage areas, including migrant health centers.”<sup>46</sup> But for immigrants, political and moral will can be harder to muster during budget crunches like the ones that chronically plague Illinois.

“Most of the legislation creates legal distinctions. It’s hard to square that with democracy,” asserts Rob Paral, a demographic consultant in the Chicago area.<sup>47</sup> “Gov. Quinn’s budget had a very drastic cut in services to immigrants. In response to the immigrant communities organizing, I think most of them have been restored.”<sup>48</sup>

#### THE REALITIES OF THE FUTURE

If recent census numbers showing that the Hispanic population across Illinois has grown by nearly a third in the past ten years are any indication, an ever-increasing segment of the electorate will have a connection with the immigrant experience.<sup>49</sup> In fact, nearly 10 percent of all Illinois voters are immigrants or have at least one parent who is an immigrant.<sup>50</sup> In Illinois alone, nearly 170,000 immigrants have become U.S. citizens since 2006.<sup>51</sup> “The state essentially owes its demographic sustainability to Latinos, Asians, and immigrants,” warns Paral. “They permit the state to overcome a lot of depopulation.”<sup>52</sup> Of course, this also includes illegal immigrants. By some estimates, if every illegal immigrant were removed from Illinois, the state would lose upwards of \$25 billion in potential economic output.<sup>53</sup>

There is no easy answer, as evidenced by the passionate rhetoric on both sides of the issue. Even the Chicago Sun-Times, which often advocates for smaller government, has advised against cuts in either human services or education.<sup>54</sup>

There seems to be less political willpower for state legislation like Arizona's highly controversial SB1070, after it provoked a national outcry and a court challenge from the White House.<sup>55</sup> As one immigrant advocate puts it, "It is very difficult to look at the bill in Arizona objectively when there is little doubt in anyone's mind who the law is meant to target. In many ways, the law is an admission by its proponents that our immigration system is in dire need of comprehensive change."<sup>56</sup>

Whether Illinois's immigrants are invited to ride that wave of change is yet to be seen.

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#### NOTES

1 *In wake of critical state audit, Rep. Mitchell moves to stop illegal immigrants from receiving state benefits*, The Official Website of State Representative Bill Mitchell (May 14, 2010), <http://www.mitchell-b.ilhousegop.org/?p=90>.

2 Michael A. Olivas, *THE STORY OF Plyler v. Doe, the Education of Undocumented Children, and the Polity 4-5*, <http://www.law.uh.edu/ihelg/monograph/05-09.pdf>.

3 *Id.*

4 *Id.* at 5.

5 *See Plyler v. Doe*, 457 U.S. 202 (1982).

6 *Id.*

7 Elizabeth McNichol, Phil Oliff, & Nicholas Johnson, *STATES CONTINUE TO FEEL RECESSION'S IMPACT 1* (Center on Budget and Policy Priorities, 2011), *available at* <http://www.cbpp.org/files/9-8-08sfp.pdf>.

8 *Id.* at 6.

9 Mary Williams Walsh, *State Debt Woes Grow Too Big to Camouflage*, N.Y. TIMES, Mar. 29, 2010, *available at* <http://www.nytimes.com/2010/03/30/business/economy/30states.html>.

10 Peter Barnes, *Illinois Governor Seeks Federal Guarantees of State Debt*, FOXBUSINESS.COM, Feb. 23, 2011, *available at* <http://www.foxbusiness.com/industries/2011/02/23/illinois-governor-seeks-federal-guarantees-state-debt/>.

11 Editorial, *Legislators must find ways to trim budget*, CHI. SUN-TIMES, Mar. 23, 2011, *available at* <http://www.suntimes.com/opinions/4452853-474/legislators-must-find-ways-to-trim-budget.html>.

12 *Id.*

13 Marco Santana, *Candidate: Illinois needs Arizona-style immigration law*, DECATUR HERALD-REVIEW, Oct. 20, 2010, *available at* <http://www.dailyherald.com/article/20101020/news/710219796/print/>.

14 Huey Freeman, *Mitchell, Brown propose illegal immigration bill, say state is ignoring high cost of problem*, DECATUR HERALD-REVIEW, July 9, 2010, *available at* [http://www.herald-review.com/news/local/article\\_af93105d-b28f-5963-b192-33951c3a2ef0.html](http://www.herald-review.com/news/local/article_af93105d-b28f-5963-b192-33951c3a2ef0.html).

15 *Id.*

16 *Plyler*, 457 U.S. at 206 n.2.

17 Alene Russell, *Policy Matters: In-State Tuition for Undocumented Immigrants: States' Rights and Educational Opportunity* 1, American Association of State Colleges and Universities (Aug. 2007), [http://www.aascu.org/media/pm/pdf/in-state\\_tuition07.pdf](http://www.aascu.org/media/pm/pdf/in-state_tuition07.pdf).

18 *Immigration and School Overcrowding*, Federation for American Immigration Reform (October 2002), [http://www.fairus.org/site/News2?page=newsArticle&cid=16935&security=1601&news\\_iv\\_ctrl=1010](http://www.fairus.org/site/News2?page=newsArticle&cid=16935&security=1601&news_iv_ctrl=1010).

19 Russell, *supra* note 17, at 2.

20 See, e.g., Martha Stoddard, *Bill to repeal immigrant tuition likely dead again this year*, INDEPENDENT, (Feb. 7, 2011, 11:33 PM), <http://www.theindependent.com/articles/2011/02/07/news/local/doc4d50d4596f77d565368503.txt>.

21 Julia Preston, *Students in Legal Limbo After Immigration Fight*, N.Y. TIMES, Feb. 8, 2011, available at [http://www.nytimes.com/2011/02/09/us/09immigration.html?\\_r=1&hp=&page\\_wanted=all](http://www.nytimes.com/2011/02/09/us/09immigration.html?_r=1&hp=&page_wanted=all).

22 *Id.*

23 Christine Rogel, *Dueling policies: State immigration laws driven by local concerns*, PHOENIX BUS. J., Mar. 13, 2010, available at <http://www.bizjournals.com/phoenix/stories/2010/03/08/daily50.html>.

24 *Breaking the Piggy Bank: How Illegal Immigration is Sending Schools into the Red*, Federation for American Immigration Reform (October 2002), [http://www.fairus.org/site/News2?page=newsArticle&cid=17193&security=1601&news\\_iv\\_ctrl=1901](http://www.fairus.org/site/News2?page=newsArticle&cid=17193&security=1601&news_iv_ctrl=1901).

25 See, e.g., Freeman, *supra* note 14.

26 *U.S. Legislative Immigration Update January 18, 2011*, RIGHT SIDE NEWS (Jan. 17, 2011, 11:00 PM), <http://www.rightsidenews.com/2011011812600/us/homeland-security/us-legislative-immigration-update-january-17-2011.html>.

27 Angela Caputo, *The Anti-Immigrant Agenda in Springfield*, PROGRESS ILLINOIS, (Mar. 7, 2009, 12:00 PM), <http://progressillinois.com/2009/3/7/anti-immigrant-agenda-springfield>.

28 Lois Romano, *States inspired by Arizona illegal-immigration law face tough fiscal realities*, WASH. POST, Jan. 29, 2011, available at [http://www.washingtonpost.com/wp-dyn/content/article/2011/01/28/AR2011012804042\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2011/01/28/AR2011012804042_pf.html); "A recent report indicates that a state neighboring Illinois, Kentucky, could pay \$40 million a year in court, prison, and foster-care costs associated with its proposed version of the Arizona law [SB1070]." Dawn Mabery, *SB 1070-Style Bill Would Make Illinois' Fiscal Crisis Worse*, NAT'L IMMIGRATION FORUM (Jan. 19, 2011), <http://www.immigrationforum.org/blog/display/sb-1070-style-bill-would-make-illinois-fiscal-crisis-worse/>.

29 Tania Karas, *In Focus: Undocumented at Northwestern*, DAILY NORTHWESTERN, <http://www.dailynorthwestern.com/mobile/campus/in-focus-undocumented-at-northwestern-1.2460851>.

30 *U.S. Legislative Immigration Update*, *supra* note 26.

31 Preston, *supra* note 21.

32 *Id.*

33 *Id.*

34 *College Board wants more help for illegal immigrants*, USA TODAY, July 22, 2009, available at [http://www.usatoday.com/news/washington/2009-04-21-college-board-immigrants\\_N.htm](http://www.usatoday.com/news/washington/2009-04-21-college-board-immigrants_N.htm).

35 *The 25th Anniversary of Plyler v. Doe: Access to Education and Undocumented Children*, BERKELEY LAW (May 7, 2001), <http://www.law.berkeley.edu/2913.htm>.

36 Ann E. Marimow, *At Maryland hearing on tuition bill, young illegal immigrants make emotional appeals*, WASH. POST, Feb. 16, 2011, available at [http://www.washingtonpost.com/wp-dyn/content/article/2011/02/16/AR2011021606279\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2011/02/16/AR2011021606279_pf.html).



- 37 University of Illinois, Office of Financial Aid, "Undergraduate Resident 2011-2012 Cost", [http://www.osfa.uiuc.edu/cost/undergrad/res\\_1112.html](http://www.osfa.uiuc.edu/cost/undergrad/res_1112.html) (last visited Mar. 24, 2011).
- 38 University of Illinois, Office of Financial Aid, "Undergraduate Non-Resident 2011-2012 Cost", [http://www.osfa.uiuc.edu/cost/undergrad/nonres\\_1112.html](http://www.osfa.uiuc.edu/cost/undergrad/nonres_1112.html) (last visited Mar. 24, 2011).
- 39 Marimow, *supra* note 36.
- 40 Adam Doster, *Anti-Immigrant Legislation Coming To Illinois?*, PROGRESS ILLINOIS (July 24, 2010, 2:34 PM), <http://progressillinois.com/posts/content/2010/07/12/anti-immigrant-legislation-coming-illinois>.
- 41 *In wake*, *supra* note 1.
- 42 *Id.*
- 43 *Id.*
- 44 Gillian Johnston & Ann Morse, *2010 Immigration-Related Laws and Resolutions in the States (January 1 - December 31, 2010)*, NAT'L CONF. OF STATE LEG. (Jan. 5, 2001), <http://www.ncsl.org/default.aspx?tabid=21857>.
- 45 *Id.*
- 46 *Id.*
- 47 Interview with Rob Paral, demographic consultant, Rob Paral and Assoc., Mar. 23, 2011.
- 48 *Id.*
- 49 Nathan Ryan, *Proposed 74% Cuts for Immigrant and Refugee Services*, ILL. COALITION OF IMM. AND REFUGEE RIGHTS (Feb. 17, 2011, 8:20 AM), <http://icirr.org/en/proposed-74-cuts-immigrant-and-refugee-services/5273>.
- 50 Rogel, *supra* note 23.
- 51 Joshua Hoyt, *Governor Quinn Celebrates New Americans*, HUFFINGTON POST (Feb. 11, 2011, 12:19 PM), [http://www.huffingtonpost.com/joshua-hoyt/governor-quinn-celebrates\\_b\\_819947.html](http://www.huffingtonpost.com/joshua-hoyt/governor-quinn-celebrates_b_819947.html).
- 52 *Id.*
- 53 Dawn Mabery, *SB 1070-Style Bill Would Make Illinois' Fiscal Crisis Worse*, NAT'L IMMIGRATION FORUM (Jan. 19, 2011), <http://www.immigrationforum.org/blog/display/sb-1070-style-bill-would-make-illinois-fiscal-crisis-worse/>.
- 54 Editorial, *supra* note 11.
- 55 Romano, *supra* note 28.
- 56 Interview with Miguel Keberlein, Supervisory Attorney, Ill. Migrant Legal Assistance Project, Mar. 23, 2011.