To Include or Exclude? A Comparative Study of State Laws on In-State Tuition for Undocumented Students in the U.S.

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Julie Stewart

Thomas Christian Quinn

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Keywords: immigrant law, undocumented students, state law

Abstract

Against the backdrop of a national environment growing increasingly unwelcome to immigrants more generally – and undocumented immigrants in particular – our study seeks to shed light on one immigrant law relevant to between one and two million people: in-state tuition laws for undocumented students. Most of these students came here as young children and grew up American, yet without the rights of citizenship, do not qualify for resident tuition rates at public universities. Across the country, state legislatures are struggling with this issue, some passing laws to facilitate educational access, even as others seek to block these students entirely. To help explain this variation, our study summarizes dominant social science theories of state-level immigrant laws, highlighting the role played by racial/ethnic concentration, partisan pressure and economic influence. Because none of these theories fully explain or predict the adoption or reversal of these laws, we offer an intimate study of this law’s life course in Utah, a new immigration destination and a trailblazer in immigrant policy. Based on this case, we propose that a trinity of factors - demographic flows, political identities and civic coalitions – explain Utah’s somewhat unusual stance on this issue. We then compare this explanation to the case studies of Illinois and South Carolina, two states that, respectively, feature some of the most welcoming – and most hostile – laws toward undocumented students. This article concludes by reminding readers that the uproar over illegal immigration is likely to get worse before it gets better. The activists, attorneys and lawmakers who are better able to understand the formation of immigration policy will almost certainly have the upper hand going forward.
Introduction

Because he came to the United States when he was only two years old, Luís remembers little of his life in Mexico. But his mother has described their life there. “Many days, we didn’t have any food to eat. During several months of the year, our only source of water was the rain we could collect. When we would go for a long time without food, my mom’s sister would sometimes bring us some food. So my mother decided to bring us here so that we could have a better life.”

Gabi’s situation was not so dire, but she nonetheless suffered from poverty and lack of opportunity. She came to the U.S. as a seven-year-old and remembers getting her first new outfit right before the border crossing. Gabi explained, “I remember that just before we left, my mother bought us some new clothes and I was happy because I had never had a new outfit before. But as we started to say good-bye to everyone, I remember my mom was really sad because she was saying good-bye to my grandma and she knew it was the last time she would ever see her. So I remember the happiness and the sadness. But then as we were crossing, the only other thing I remember is that we crossed under a bridge and walked through this dirty water, and I ruined my clothes, the only new thing I had ever owned. Somehow I have never forgotten that.”

Edgar – who came to the U.S. from Argentina when he was eight years old – remembers that in Argentina, they always had food on the table, “But we really struggled, because we lived in a neighborhood that was pretty dangerous; there was a lot of robbery and theft. And then we had reason to worry that my dad’s life might be in danger. So he left first, came to the U.S. and worked three or four jobs at a time until he could bring us up.”

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1 In order to protect their identities, all students we interviewed for this study are identified with a pseudonym. Interview with “Luís” in Salt Lake City, (May 23, 2010).
2 Interview with “Gabi” in Salt Lake City, (June 29, 2010).
3 Interview with “Edgar” in Salt Lake City, (July 2, 2010).
Together, these narratives highlight the range of motivations – poverty, lack of opportunity, danger and crime – that immigrants identify to explain their decision to emigrate to the U.S. While the future is unknown and there are no givens in the emigration trajectory, they share the theme of a family leaving a place filled with problems in hopes of building a better life.

For the children of the adults who make this emigration decision, the landing is often neither easy nor quick, particularly the entrance into the U.S. educational system. Ana – who came to the U.S. from Mexico as a thirteen-year-old – describes a memorable experience from middle school. “I was enrolled in an arts class and I was the only one that spoke Spanish; everybody was *gringito* [a little white person]. Then there was another kid that also spoke Spanish, but she was from here. And for some reason I thought that she was going to be very nice to me because we both spoke Spanish. But she didn't and so I was always by myself in that class. Once I tried to say something and nobody understood me and everybody laughed and so I started crying. I felt horrible. I was very affected by it. After that, I never wanted to express myself or ask questions.”

Mari was much younger when she emigrated and vividly remembers her first day of school in the U.S. “I remember I could not speak to anybody, because everybody spoke English and I didn’t know a word of English. I had only been here a week. The thing I remember the most of that day was that I didn't even know how to go to the restroom and I really had to go. So I just walked out the door and the teacher started yelling at me. I got scared because I didn't know what she was saying or what to say to her. But one girl that was nearby translated for me. She told me what the teacher was saying and I told her that I needed to go to the restroom and the teacher understood and let me go. That experience stayed with me; it was awful.”

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4 Interview with “Ana,” Salt Lake City, (July 3, 2010).
5 Interview with “Mari,” Salt Lake City, (June 23, 2010).
Other students recounted more long-term challenges. Pedro, for example, described how it took him over a year to be comfortable with English. “After a year, I was able to speak and understand some English. Until then I had a lot of difficulty understanding my classes. I actually failed my first trimester just because I didn't understand anything. I didn't know when we had homework due, how to turn anything in, stuff like that. Little by little I started to get the hang of it, and how it works. More importantly, I learned how to communicate with teachers and peers, which till then was the hardest part.”

Rocio experienced a similarly difficult entry into the U.S. school system. “It was just an awful experience. Pretty much they just come and sign you up for school and you’re on your own for the first while. I mean, they do put you into an ESL [English as a Second Language] class, but that is only one class. You still had to go to the other classes. And I mean, I remember the professors were speaking and I was like, what are they saying? So it probably took me a year, a year and a half to get to where I felt confident speaking the language. When I was able to speak English, properly, and be able to sustain a conversation with somebody. That’s when I got the biggest relief and it felt like, like a huge weight was lifted off me.”

The above quotations underscore the disadvantaged backgrounds and difficult early education experiences of many of the students we interviewed for our study. Yet, despite economic disadvantages, language barriers and social exclusion, all of these students beat the odds. They went to college.

Every student experience is unique, but a common factor behind the college student experiences highlighted here is that they are undocumented, brought here to the U.S. as children without legal authorization to be here. Though foreign-born, these children of undocumented

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6 Interview with “Pedro,” Salt Lake City, (June 17, 2010).
7 Interview with “Rocio,” Salt Lake City, (August 19, 2010).
immigrants grow up American. They enroll in public schools, learn to speak English fluently and absorb American values. Yet, they have limited access to many mechanisms that promote upward mobility and social integration, such as education and good employment.

Nationwide, there are approximately 11 million undocumented people living in the U.S.\textsuperscript{8} Between one and two million of them are children, and each year, 50,000 to 65,000 undocumented students like those described above graduate from U.S. high schools.\textsuperscript{9} While many will end their educational trajectories there, those who wish to continue on to college, will face a series of obstacles. Primary amongst them is the cost of paying for higher education. As a partial remedy to this problem, twelve states currently have laws on the books that allow undocumented students to pay in-state tuition rather than the much more expensive out-of-state tuition. As advocates have explained, policymakers, educators, labor, and business groups in California, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, and Washington have all recognized the benefits of this type of law.\textsuperscript{10}

This article seeks to shed further light on the immigration debate and the laws that surround this contentious issue. Against the backdrop of a national environment growing increasingly unwelcome to immigrants more generally – and undocumented residents in particular – we offer a study of one immigrant policy relevant to between one and two million people: in-state tuition laws for undocumented students.\textsuperscript{11}

In-state tuition laws have been hotly debated in every region of the country, in both traditional and new immigration destination states. This article closely analyzes the policy


trajectory of the in-state tuition law in Utah, a new destination state with relatively little experience with immigration. This article argues that while the social science literature provides a useful framework to understand the politics of immigration more generally, we need more nuanced understandings of specific laws and the particular contexts in which they emerge, are challenged, and sometimes transform. To translate this into social science language, we will argue that nomothetic explanations of immigration law are bound to “founder on the rock of inevitable particularities and the ever-changing character of human conduct.”12 Instead, given the wide array of state-level immigration laws across the country, we argue in favor of idiographic explanations of immigration law, those that closely study the origin, intent and expected outcome of a particular law before positing an explanation. After doing this in the case of Utah, we highlight a trinity of factors – demographic flows, political identities and civic coalitions – that help explain its somewhat unusual support for the extension of in-state tuition benefits for undocumented students.

Before delving into the Utah case, part I outlines the national context – and the key changes in the migration milieu – in which policy makers have fashioned state-level laws around immigration. It then reviews the prominent social science explanations of state-level policy variation, with a particular focus on immigration. Part II explores the history and current status of Utah’s House Bill 144 Exemption from Nonresident Tuition (HB 144),13 explaining who has defended it, who has opposed it and why. Part III places HB 144 in a national context, outlining the spectrum of in-state tuition laws across the nation and highlighting the policy status of the three most welcoming – and the three most punitive – states on this issue. To provide further

context, part III also provides more in-depth case studies of two states, Illinois – one of the nation’s most welcoming states for undocumented students hoping to access higher education – and South Carolina. With its 2008 passage of House Bill 4400 (HB 4400), South Carolina became the first state in the nation to effectively bar undocumented students from accessing any public institution of higher education, thus becoming one of the most restrictive states in the nation regarding immigration and education.\textsuperscript{14} Part IV turns the legislative focus to the federal arena and discusses the history and current legislative reality of the federal DREAM Act, a bill that would provide qualified adult children of undocumented residents the possibility of working legally and an eventual path toward citizenship. We close by summarizing some of the main policy findings from this analysis that help us to better understand HB 144 in Utah and perhaps in-state tuition laws in other U.S. states. Our summary contention is that public understandings of the politics of immigration – and the state-level laws that govern official practices around immigration – have not paid sufficient attention to specific laws in particular contexts. Generalizations about immigration politics may satisfy some social scientists, but they do little to serve the people practicing immigration law on the ground. Accordingly, anyone hoping to advance a social justice agenda around immigration – or who may hope to defend a particular policy aimed toward immigrant integration – must not overlook the specifics of a law and the particulars of its state context.

I

State-level Immigration Politics in a National Context

Few other issues inspire such passion and controversy as immigration. Because it influences so many facets of life – jobs and the economy, language instruction in schools, the provision of public services, crime and law enforcement – everyone has an opinion on immigration. And the opinions diverge dramatically, both across and within political parties. Some groups favor more open borders and integrative immigration policies while others advocate the removal of undocumented immigrants and the closure of national borders. Policymakers are challenged to represent this diversity of views, such that one scholar terms immigration policy as the most “politically perilous” policy domain to date.15

Three recent immigration trends complicate the already complex job of fashioning immigration policy. First, the United States witnessed a surge in immigration in the last decade of the 20th century, largely in response to the nation’s growing prosperity. Annual immigration grew throughout the 1990’s and peaked in 1999-2000.16 Immigration accounted for one-third of the U.S. population increase during the 1990s, as foreign born residents increased from 20 million to over 31 million.17

The second trend involves the changing geography of immigration destinations. While past migrants mostly settled in six states – California, New York, New Jersey, Illinois, Texas, and Florida – newer migrants have dispersed more widely to regions with little recent experience of foreign in-migration. These “new destinations” or “new gateways” include areas in the South,
the Mid-West and the Inter-Mountain region. Finally, there is a change in who migrates, with undocumented or illegal migrants now outnumbering authorized migrants. Between 1992 and 1997, the level of annual unauthorized immigration was just over three-quarters of legal immigration. By 2000, it exceeded legal immigration by two percent, and by 2004, it was seven percent greater.

While immigration has historically been under the purview of the federal government, its failure to pass comprehensive immigration reform has pushed policy to individual states, which have crafted new laws to grapple with the promise and problem of immigration. In recent years, state governments have displayed an unprecedented level of activity around immigration. Between 2005 and 2011, the number of proposed state-level immigration laws increased from 300 to 1,592 bills annually, representing more than a five-fold increase in state-level activity on immigration, as table one illustrates.

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19 See supra note 2, 2.
Table One: State-level Immigrant Bills Proposed, 2005-2011

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Immigrant Bills Proposed</th>
<th>Education Related Bills Enacted</th>
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</thead>
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<td>300</td>
<td>3</td>
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<tr>
<td>2006</td>
<td>570</td>
<td>3</td>
</tr>
<tr>
<td>2007</td>
<td>1,562</td>
<td>22</td>
</tr>
<tr>
<td>2008</td>
<td>1,305</td>
<td>12</td>
</tr>
<tr>
<td>2009</td>
<td>1,500</td>
<td>27</td>
</tr>
<tr>
<td>2010</td>
<td>1,400</td>
<td>17</td>
</tr>
<tr>
<td>2011</td>
<td>1,592</td>
<td>13</td>
</tr>
</tbody>
</table>

These bills range from the welcoming – such as education-related legislation providing in-state tuition benefits to the children of undocumented residents – to the repressive. Laws that deputize local law enforcement personnel to act as immigration agents, restrict the movement or housing of undocumented residents, require public officials to collect data on the citizenship status of students in public school, or mandate that employers ensure the employment eligibility of all workers, are examples of the latter.\(^{21}\) Unfortunately for new migrants, the trend across states is toward repressive policies.\(^{22}\) Three examples of this trend are the 2008 passage of Utah’s


Senate Bill 81, Arizona’s 2010 passage of Senate Bill 1070 and Alabama’s recent upholding of House Bill 56, which was passed in 2011. While they differ in their degree of severity, they represent variations on an anti-immigrant theme.

A. Social Science Theories of State-level Legislation

Political scientists, policy analysts and political sociologists have created an arsenal of concepts and theories to explain why some states welcome, protect and integrate immigrants, while others seek to restrict or even expel them. The range of resulting theories revolves around racial/ethnic, political, economic and social factors. In this section, we summarize prominent theories, apply them to the case of in-state tuition benefits for undocumented immigrants and seek to identify particular factors that help explain this variation across the states.

The broadest application of racial and ethnic explanations of policy variation around immigration is the so-called conflict and threat hypothesis, which essentially views immigration policy as a function of the amount of time an immigrant population has been a part of a community and the degree to which immigrants challenge the racial or ethnic composition of the receiving community. Accordingly, research suggests that the homogeneity of a given state’s population will affect state-level immigration policy. States with long traditions of ethnic and cultural diversity will favor inclusive immigration policies. As Boushey and Luedtke succinctly explain, “the contact theory argues that increased and longer-term exposure to ‘foreign’ populations reduces threat perception and facilitates peaceful coexistence.”

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In contrast, Boushey and Luedtke found that a sudden, rapid influx of immigrants to a given area contributes to the perception of a threat to the existing culture and/or way of life. In these states, the authors argue, “a large subset of voters may react to immigration as a political or cultural ‘threat.’” Interestingly, the authors argue that the “threat” posed by immigrants need not be “objective” (i.e. realistic) to tap into the fears of exclusion-minded residents. Nevertheless, they find that inflows of recent immigrant populations lead to more restrictive – or as they term it – “control laws.”

In contrast, other prominent scholarship working under the same theoretical framework finds that the sudden influx of immigrants alone does not predict the direction that immigration policy will take. Instead, Hopkins finds that salient national rhetoric must reinforce the “threat” posed by new immigrants in order to see restrictive policies passed.

Additional empirical support for the threat and conflict hypotheses is somewhat mixed and tends to vary from one part of the country to the next. Fernandez and Neiman, for example, argue that findings from one region are unlikely to be applicable to other areas and that “contextual effects cannot be understood without a better understanding of the larger environments in which these contexts are operating.” In other words, the relevance of the conflict and threat hypotheses to immigration policy depends on many additional variables and so single predictive explanations tend to have minimal explanatory power. For example, in the case of in-state tuition, we find that ethnically diverse states like California and Illinois have adopted in-state tuition laws, but so have relatively monochromatic states like Kansas and

25 Ibid
Washington. In the case of Utah – as we will develop shortly – there is clear evidence of an immigrant influx, yet the policy direction went in favor of immigrants, rather than the reverse, which is what many would have predicted. Clearly, racial threat and conflict theories alone neither explain nor predict state-level variation in this policy. Other considerations must play a role.

An oft-cited explanation for why some states welcome immigrants even as others seek to repel them revolves around partisan concentration and influence. A cursory survey of recent state-level immigration policy suggests that heavily Republican states such as Arizona, South Carolina, Alabama and Georgia are less friendly to immigrants than are their liberal counterparts, i.e., California, New York and Illinois.

But evidence supporting this thesis is somewhat mixed. On the one hand, studies have shown that Republican state legislators are more likely to sponsor bills designed to restrict immigration than are Democrats. Similarly, recent research suggests that Democrats are more likely to resist public pressure to enact immigration control policies. Finally, some researchers argue that Democrats often promote immigrant integration as a means of increasing their base, as minorities tend to vote left.

Other studies have shown, however, that explanations of policy adoption may be more complex than the red state/blue state dichotomy suggests. While Republicans tend to be more vocal in their opposition to immigration, research has shown that many Democrats are similarly

concerned about the potentially negative consequences of unchecked immigration.\textsuperscript{32} Furthermore, existing policy does not always follow the pattern outlined above. Texas, Kansas and Utah, for example, are all traditionally red states that nevertheless allow undocumented students to pay in-state tuition at public universities. Finally, some immigration-centric bills have received strong bipartisan support, a fact that further underscores the inadequacy of partisanship as a stand-alone explanation.

Economic explanations of state-level variation on immigration policy are as controversial as political explanations are incomplete. In one vein, policy decisions come down to an economic cost-benefit analysis of immigration. For immigration issues, this generally encompasses three questions. First, how much does a given policy cost to implement or, conversely, how much revenue will it potentially generate? Second, how much does the presence of immigrants within a host state boost its economy through filling needed jobs, buying goods and services and paying taxes? Third, how much do immigrants detract from a state’s economy through receiving services, utilizing public infrastructure and receiving entitlements or other material assistance?

There are two main ways to answer the first question. As Boushey and Luedtke have noted, one of the advantages of states’ leaving immigration issues to the federal government is that taxpayers need only pay for one administrative apparatus and one enforcement agency.\textsuperscript{33} Were each state to create and enforce its own immigration policy, 50 such agencies would be required. However, this logic clearly does not explain in-state tuition policies, as twelve states currently uphold them and in the past legislative session, an additional twelve states proposed


\textsuperscript{33} See Boushey and Luedtke, supra note 23.
them. The other main way of answering this question is by examining the actual costs and benefits connected to in-state tuition policies. One would have to know how much it costs a state to offer reduced tuition to these students and conversely, how much a state benefits from those students acquiring a higher education and entering the labor-force as more highly qualified workers. However, it is doubtful that this would explain the variation in this policy, as it would be hard to imagine how the policy would benefit Utah but not Colorado, Illinois but not Indiana.

In answer to the second question, some research suggests that recent waves of immigrants tend to offer fewer marketable skills than did those who arrived in the post-World War II era. As a result, their wages are likely to remain lower than those of native workers, and the presence of a large number of immigrant laborers may even encourage wage stagnation and/or decline in some sectors of the economy. While attributing the problem less to skill base and more to the contemporary decline of labor unions and the regulation of employment, Schlosser similarly argues that the growth of a pool of undocumented laborers in meatpacking, construction and garment manufacturing – amongst many other economic sectors – has lowered wages, eliminated benefits and reduced job security in those industries.

Other evidence, however, suggests that immigrants are essential to the growth of the American labor market. Immigrants often take jobs that native-born Americans are unable or unwilling to perform, and the combination of declining birth rates and an aging populace will force the American economy to rely increasingly on an immigrant labor force. More recent research suggests that this changing composition of the labor force confers general economic

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benefits. A new study of 50 years of data finds that for each percentage increase in the foreign-born proportion of the workforce, average statewide wages increase by 0.5%.  

There is also considerable evidence that immigrants contribute significantly to local economies through their consumer and tax-paying behaviors. While a full examination of this issue is beyond the scope of this article, a few summary points may illuminate this issue. First, even non-citizens working under the table pay property taxes, user fees and sales taxes. Second, many immigrants use forged social security cards to acquire work. As a result, immigrants have contributed approximately $7 billion into the social security system each year that they will never receive back. These findings may help explain why in a recent survey of prominent economists, 74 percent polled said that it had a positive effect, while 11 percent said it was neutral. Finally, in the only in-depth study of the economic impact of undocumented immigrants on a state’s budget and economy, a report commissioned by the Texas Comptroller of Public Accounts found that undocumented immigrants produced $1.58 billion in state revenue, which exceeded the $1.16 billion in state services that they received.

Despite these compelling data, claims that immigration is an economic drain – and capable of producing a fiscal drought – continue, as evidenced by the recent publication of FAIR’s (Federation for American Immigration Reform) 2010 report entitled *The Fiscal Burden of Illegal Immigrants*.

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Immigration on United States Taxpayers. Jack Martin, the report’s lead author, contends that illegal immigration costs U.S. taxpayers about $113 billion a year at the federal, state and local level. The bulk of the costs – just over $84 billion – are absorbed by state and local governments. The report also argues that the federal government recoups about one-third of this outlay through tax collection, while state and local governments recoup an average of less than five percent. The single greatest expense connected to these expenditures is educating the children of undocumented immigrants, most of whom are born in the U.S., are citizens and legally entitled to a k-12 public education. Though the report acknowledges this, it still claims that these students would not be here were it not for their parents, so the cost of their education should be included in the overall tally of the fiscal damage inflicted by illegal immigrants to U.S. taxpayers. As this discussion has made clear, the facts around the economic impacts of illegal immigration are often clouded by opinion and even prejudice, thus forging policy around these issues becomes all the more vulnerable to social pressures.

Accordingly, the final main explanation of state-level variation in immigration policy highlights social factors in shaping policy outcomes. One dominant approach revolves around issue framing, or the extent to which supporters or opponents are able to shape and contextualize the issue in accordance with their preferred narrative of the issue at which the legislation is directed. Issue framing, per Reich and Mendoza, refers to “how conditions or events in society come to be understood by the public and political elites” and involves “the selective use of aspects of a perceived reality by actors in order to promote a particular problem definition, causal

44 Ibid/Id?
understanding and moral evaluation.”

Smith demonstrated that legislators’ decisions are less the result of objective assessments of the consequences of a given policy than they are the legislators’ interpretations of said consequences. With neither the time nor the expertise necessary to empirically analyze potential outcomes, policy makers instead rely on issue frames to inform their opinions.

One particularly relevant example of issue framing is the study of Kansas House Bill 2008, the 2004 law that allowed certain undocumented students to pay in-state tuition at Kansas universities. The authors argue that proponents of the bill were able to secure its passage in a traditionally anti-immigrant state by framing the debate in terms of educational access and fiscal responsibility, both of which appeal to the values of legislators and their constituents.

Related to issue framing are explanations based on social movement organizations and the political environments in which they operate. Theorists focusing on the intersection of social movements and public policy posit that “the strength of supportive social movement organizations can affect policy decisions at the state, local and national level.” The “access influence” model is a logical extension of this theory, essentially postulating that social movements can impact policy by using institutionalized tactics and acting within appropriate political channels. Such movements are thus able to exercise influence beyond merely rallying supporters. Work focusing on how different political climates shape social movement trajectories builds on this perspective and highlights the importance of elites in helping secure

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47 See supra note 36.
the resources and political access for movement activists to pursue their policy objectives. In other words, as far as policy outcomes are concerned, some political opportunity theorists argues that the role of political elites – and their resources – is as important to a policy outcome as the social movement itself.

This review of prominent social science explanations of state-level variation on immigration-related policies suggests that no singular approach is adequate to explain why some states welcome immigrants even as others seek to remove them. Neither demographic, political nor economic factors can predict the general position a state may take, let alone a specific policy outcome. Clearly, broader social factors are key. But as we will argue, specific policies catalyze unique constituencies and the particular context in which the policy debate takes place matters a great deal. Against the backdrop of a general social science framework, in the following case study we engage in an inductive process that will highlight the key social factors that explain the case of Utah. Accordingly, we provide an idiographic account of the battle around extending in-state tuition benefits to undocumented students in Utah that may not apply to the universe of U.S. states, but may well help explain the policy trajectories of other new immigration destination states.

II

Utah: A Classic New Immigration Destination

Before turning to the case of HB144 and Utah, one might justifiably ask why this case is significant. Are immigration trends in Utah representative of larger national trends? In what ways is immigration politics in Utah similar to other states? What lessons learned about

immigration policy in Utah might apply beyond the state’s borders? In partial answer to these questions, we outline four reasons why Utah is an appropriate state to study immigration politics.

The first reason is that Utah – like Alabama, North Carolina, Minnesota and Nebraska – qualifies as a new immigration destination. This designation is a result of the growth of ethnic diversity in the state. While outsiders continue to think of Utah as homogenous in nearly every way, demographers have documented the state’s growing migration flows and pockets of ethnic diversity. For example, the foreign-born population of the state’s largest metropolitan area grew by 174 percent during the 1990s.\footnote{See Singer, supra note 4, 21.} Nationally, Utah had the sixth highest increase in the rate of foreign born residents in the 1990s.\footnote{Rakesh Kochhar, Growth in the Foreign-Born Workforce and Employment of the Native-Born, Pew Hispanic Center, http://pewhispanic.org/files/reports/69.pdf.} And, up to 50 percent of these migrants were undocumented.\footnote{See Passel & Suro, supra note 8.} Accordingly, Utah mirrors prominent national immigration trends, as documented in table two.\footnote{Information on the numbers of undocumented residents living in the U.S. (both Utah and nationally) between 1990 and 2010 comes from Jeffrey Passel & D’Vera Cohn, Unauthorized Immigrant Population: National and State Trends, 2010, Pew Hispanic Center, available at http://www.pewhispanic.org/files/reports/133.pdf (last visited Feb. 28, 2012); data on the numbers and percentages of Latinos residing in Utah and the U.S. come from the U.S. Census Bureau and are available at http://quickfacts.census.gov/qfd/states/49000.html for 2010 (last visited Feb. 28, 2012); http://www.census.gov/prod/2002pubs/c2kprof00-ut.pdf for 2000 (last visited Feb. 28, 2012) ; and http://www.governor.utah.gov/dea/census/census%20briefs/minorities.pdf for 1990 (last visited Feb. 28, 2012).}
Table Two: Immigrant and Latino Population Dynamics, Utah & the U.S., 1990 - 2010

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<th>UT Latino</th>
<th>UT Population</th>
<th>UT % Latino</th>
<th>U.S. Undoc’d (millions)</th>
<th>U.S. Latino (millions)</th>
<th>U.S. % Latino</th>
<th>U.S. Pop (millions)</th>
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<td>2,233,169</td>
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<td>308.7</td>
</tr>
</tbody>
</table>

Utah also exemplifies broader state-level immigration policy trends, both the tremendous increase in legislation and the direction of its change. Between 1999 – when the first state-level immigrant bill was passed – and the close of the 2011 legislative session, policy makers have discussed no fewer than 103 bills related to immigration.\(^{55}\) Policy makers have debated – and sometimes passed – legislation to either facilitate immigrant integration or strengthen anti-illegal immigration measures.

Examples of legislation aiming to help immigrants integrate into society include House Bill 36 Driver License Identification (HB 36), which in 1999 allowed undocumented residents to acquire a legal driver license, provided they resided in Utah and could provide a legal, individual tax identification number, or ITIN.\(^{56}\) The previously discussed House Bill 144 – which in 2002 permitted the children of undocumented residents to attend college and pay in-state tuition rates,


provided they had graduated from a Utah high school – is another example of this type of legislation.\textsuperscript{57}

On the other side of the spectrum, we find measures such as Senate Bill 81 on \textit{Illegal Immigration} (SB 81), passed in 2008. As discussed earlier, SB 81 is considered one of the most punitive state-level laws on immigration, as it increases the requirements for many employers to verify the legal status of their workers, enlists state and local law enforcement officers to carry out immigration law, and makes it a criminal offense to transport an undocumented immigrant more than 100 miles.\textsuperscript{58} In 2011, the Utah legislature passed House Bill 497 \textit{Utah Illegal Immigration Enforcement Act} (HB 497) – often referred to as Utah’s Arizona-light bill – which requires that law enforcement personnel investigate a person's status after an arrest for a felony or misdemeanor.\textsuperscript{59}

As table three indicates, more punitive policies have grown over this period, became numerically dominant in 2008, dropped precipitously in 2009 and reached parity with immigrant-friendly bills in 2011.\textsuperscript{60} Even as Utah has become increasingly hostile toward immigrants, it still maintains a more welcoming stance toward immigrants than many states. This is particularly true when it comes to the issue of how the state educates immigrants.

\textsuperscript{57} See \textit{supra} note 10.
\textsuperscript{58} See \textit{supra} note 8.
\textsuperscript{60} The authors constructed a database of all immigrant-related legislation discussed in Utah between 1999 and 2011. By accessing the public records of all bills proposed in the Utah Legislature – available at http://le.utah.gov/ - we conducted an investigation using such search terms as immigrant and immigration. This resulted in the identification of 103 immigrant-related bills. More information on the individual bills is on file and available from the authors.
Nationwide, there are approximately 11 million undocumented people living in the U.S. Approximately 2 million of them are children. As these national statistics pertain to Utah, there are about 110,000 undocumented residents, of which about 23,000 are students. Until recently, a vibrant economy and high demand for labor, along with immigrant friendly policies and growing immigrant networks have attracted people to the state, many of whom are undocumented. These residents often bring their young children with them or are later reunited with them once they have jobs and places to live. While in most ways, the children of undocumented immigrants grow up American – enrolling in public schools, learning English and absorbing American values – they still have limited access to the mechanisms that promote social mobility and integration. Education and good employment are two key mechanisms that often elude these

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young adults. In 2002 Utah enacted HB 144, a measure designed to make college more affordable to this sub-group of the state.

The remainder of the Utah case study seeks to answer the following questions:

- What does HB 144 substantively do?
- Why does HB 144 inspire such passion?
- Which people – or institutions – take sides on the issue of extending in-state tuition rates to undocumented youth and why?
- How do people and institutions make their views public and attempt to influence policy outcomes?

To answer these questions, this policy paper draws on a range of data and research methods, including primary data such as state-level legislation, census data, and semi-structured, in-depth interviews with members of the Utah Legislature, immigration activists, and undocumented students. It also incorporates a range of secondary data including policy papers, newspaper articles, and academic articles. Discussion now turns to HB 144.

A. Utah’s HB 144: A Unique History and an Uncertain Future

In 2002, Utah became the fourth state (after Texas, California and New York) in the U.S. to pass legislation allowing undocumented students to pay resident tuition rates in public colleges and universities. Utah’s in-state tuition law – like those of other states – is legally based on an important Supreme Court case, *Plyler vs. Doe*. In 1982, the Supreme Court deliberated a Texas State law that denied the children of illegal aliens the right to enroll in public schools at the K-12 level. By a vote of 5-4, it ruled that this law violated the Equal Protection Clause of the 14th
Amendment.\textsuperscript{62} This ruling effectively nullified Texas state law and guaranteed a free public school education to undocumented youth across the nation, at least up to the end of high school. Carrying this logic forward, states began to pass laws to remove certain obstacles blocking these same protected students from pursuing a college education around the beginning of the 21\textsuperscript{st} century. Utah soon followed. Its bill, House Bill 144 \textit{Exemption from Nonresident Tuition} (HB 144) permits these students to qualify for in-state tuition rates if they meet four key requirements:\textsuperscript{63}

- Attend high school in Utah for three or more years
- Graduate from a Utah high school or receive the equivalent of a high school diploma from the state
- Register as an entering student at an institution of higher education no earlier than the fall of the 2002/2003 academic year
- File an affidavit with the institution of higher education stating that they have filed an application to legalize their status or will file an application as soon as they are eligible to do so

Representative David Ure (R-Kamas) sponsored HB144, while Senator Howard Stephenson (R-Draper) served as the Senate co-sponsor. After emerging from committee with a vote of seven in favor, two opposed and four abstaining or absent for the vote, the bill went to the full House of Representatives. It narrowly passed the House, with a vote of 39 in favor, 35 opposed and one absent or abstaining. HB 144 more easily passed the Senate, with 20 senators voting for

\textsuperscript{63} See \textit{supra} note 10.
the bill, six opposed and three abstaining or absent. On March 26, 2002 Governor Mike Leavitt signed HB 144 into law and it went into effect the next year.

From a fiscal perspective, the difference between paying in-state versus out-of-state tuition is significant. For example, for students attending the University of Utah – the state’s flagship university – the tuition charged during the 2011/2012 academic year was $6,772.74 for residents versus $22,530 for nonresidents – more than triple the cost. For other public colleges and universities in the state, the in-state versus out-of-state tuition differential is between $2,472 at the lower end and $10,712 at the higher end. Table four provides tuition information for all nine public colleges and universities in the state for the 2011/2012 academic year.

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Table Four: Resident vs. Non-resident Tuition Rates in Utah, 2011/2012

<table>
<thead>
<tr>
<th>School</th>
<th>Resident</th>
<th>Non-resident</th>
</tr>
</thead>
<tbody>
<tr>
<td>University of Utah</td>
<td>$6,772.74</td>
<td>$22,530.00</td>
</tr>
<tr>
<td>Utah State University</td>
<td>$5,563.08</td>
<td>$16,078.42</td>
</tr>
<tr>
<td>Southern Utah University</td>
<td>$5,198.00</td>
<td>$15,910.00</td>
</tr>
<tr>
<td>Weber State University</td>
<td>$5,192.17</td>
<td>$9,433.47</td>
</tr>
<tr>
<td>Utah Valley University</td>
<td>$4,288.00</td>
<td>$12,246.00</td>
</tr>
<tr>
<td>Salt Lake Community College</td>
<td>$3,052.00</td>
<td>$9,604.00</td>
</tr>
<tr>
<td>Dixie State College of Utah</td>
<td>$3,888.00</td>
<td>$13,560.00</td>
</tr>
<tr>
<td>College of Eastern Utah</td>
<td>$2,922.00</td>
<td>$5,394.00</td>
</tr>
<tr>
<td>Snow College</td>
<td>$2,910.00</td>
<td>$9,586.00</td>
</tr>
</tbody>
</table>

** The above reflects the costs of tuition and fees based upon 15 credit hours per semester for two semesters for the 2011/2012 academic year.65

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Since its implementation in the 2003/2004 academic year, the Utah System of Higher Education estimates that 3,548 students have benefitted from HB144, beginning with 87 students who enrolled the first year and ending with the 716 students who enrolled in the 2010/2011 academic year. As table five highlights, there was a doubling of the number of students enrolled between 2005 and 2007, followed by a small decline. According to the most recent available data, the 2010/2011 enrollments were the highest on record.66

Table Five: Enrollment of HB 144 students in Utah public institutions of higher education

<table>
<thead>
<tr>
<th>School</th>
<th>03-04</th>
<th>04-05</th>
<th>05-06</th>
<th>06-07</th>
<th>07-08</th>
<th>08-09</th>
<th>09-10</th>
<th>10-11</th>
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</thead>
<tbody>
<tr>
<td>DSC</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>U of U</td>
<td>14</td>
<td>34</td>
<td>51</td>
<td>64</td>
<td>89</td>
<td>115</td>
<td>132</td>
<td>155</td>
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<tr>
<td>CEU</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>USU</td>
<td>3</td>
<td>5</td>
<td>40</td>
<td>114</td>
<td>59</td>
<td>53</td>
<td>21</td>
<td>26</td>
</tr>
<tr>
<td>SUU</td>
<td>2</td>
<td>5</td>
<td>6</td>
<td>15</td>
<td>11</td>
<td>11</td>
<td>3</td>
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<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>WSU</td>
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<td>11</td>
<td>30</td>
<td>127</td>
<td>52</td>
<td>52</td>
<td>90</td>
<td>104</td>
</tr>
<tr>
<td>UVU</td>
<td>30</td>
<td>41</td>
<td>62</td>
<td>159</td>
<td>211</td>
<td>224</td>
<td>157</td>
<td>162</td>
</tr>
<tr>
<td>SLCC</td>
<td>31</td>
<td>62</td>
<td>112</td>
<td>142</td>
<td>157</td>
<td>185</td>
<td>238</td>
<td>257</td>
</tr>
<tr>
<td>SLCC-SC</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
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</tr>
<tr>
<td>Total</td>
<td>87</td>
<td>160</td>
<td>305</td>
<td>625</td>
<td>587</td>
<td>643</td>
<td>643</td>
<td>716</td>
</tr>
</tbody>
</table>

66 E-mail from Joseph A. Curtin, Director, Institutional Research & Analysis, Utah System of Higher Education (March 31, 2011) (on file with author).
For these students, the benefits of being able to apply for college and pay the much more affordable resident tuition has often meant the difference between attending and not attending college. As one HB144 recipient explained,

_When I first started at SLCC, I didn’t understand the difference between in-state and out-of-state tuition. I grew up here and Utah was the only home that I knew. But when I got my first statement, I knew something was wrong. There was no way I could pay it. I thought I would have to drop out of college in my first semester. But I talked to one of the counselors and explained my situation and she helped me do the paperwork to apply as a resident. That made college possible. Without it, there was no way I could go._

~ Manuel, HB144 student

Manuel’s experience is not unusual. Most undocumented students come from lower-income households, and their families can rarely afford to contribute significantly to the costs of going to college. Instead, some of these students rely on private financial aid – and much more commonly – working nearly full-time to pay their tuition costs. Thus, the difference between residential and out-of-state tuition enormously impacts their ability to go to college. Simply put, HB144 makes higher education affordable for undocumented students.

In addition to making college affordable for undocumented students, there are three reasons frequently cited in support of in-state tuition laws.

First, many who advocate for undocumented students have explained that without college as a goal to work toward, they are afraid these students would have to defer their educational dreams and settle for a place in society that is far below their capacity.

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67 Interview with “Manuel,” in Salt Lake City, UT (May 24, 2010).
68 Leisy Janet Abrego, _‘I Can’t Go To College Because I Don’t Have Papers’: Incorporation Patterns of Latino Undocumented Youth_, 4 Latino Studies 212 (2006).
Rep. David Ure cited this primary reason for sponsoring HB144 when he outlined the genesis of this legislation:

*I was approached by people from the University of Utah. The statistics in the state of Utah were that Latinos were dropping out of school after their freshman year in high school. Many of these people were very smart. As a matter of fact, the four or five from Park City that I met were extremely bright young people, but they were not citizens of the U.S. because they had come across the border with their parents when they were two, three, four, five, or six years old. They all spoke very good English. They all had good grades. They just realized it was a dead end for them here in this state or anywhere else in the U.S. They might as well go get a job and go to work, because they couldn’t go to college without paying the out-of-state tuition, which was very expensive. So they were dropping out very rapidly. So I agreed to introduce the legislation because it has always been my belief that you can’t go wrong educating people, whether they’re undocumented or what the story is. If you can educate people, society is better off.*

~ David Ure (R, Kamas)

Research on undocumented students who attend college – and insights shared by educators who personally know these students – highlights a trinity of traits shared by these students: higher than average intelligence, a dedication to long-term goals and a high degree of perseverance. As one university educator commented:

*Undocumented students are much more successful than many of their peers, in terms of retention rates and grades. This is partially because to get where they are, they have already had to overcome a great number of obstacles. They are probably low-income,*

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70 Telephone Interview with David Ure, Congressman, Utah Legislature (Aug. 5, 2010).
71 See *supra* note 29.
chances are their parents do not speak English fluently, they probably did not benefit from college-prep classes, and they don’t qualify for most scholarships. So that means that they have to be better than their peers. They have to work harder. And for the most part, they do.

~ University administrator

Students who have attended a Utah college or university through HB144 mirror the assertion that they are more oriented toward long-term goals than the average college student, as the following two quotes illustrate:

Ever since I was little, I wanted to be an elementary school teacher. I love everything about learning and I wanted to do that for my entire life. So I knew that if I wanted to be a teacher, I had to get a higher education. I knew I had to go to college and I have always wanted to go. I can’t remember a time when I didn’t think about going to college.

~ Victoria, HB144 student

Well, education has always interested me. I have always been fascinated by what you can learn from books. From an early age, I would always just get home and start reading. My mom never had to make me. I’ve always been a good student. I got really good grades in elementary and high school and I always knew that I wanted to go to college. It has always been my goal.

~ Sara, HB 144 student

Perhaps one reason why these undocumented students typically display such a high level of commitment to education is because often their close family members have little education and

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72 Interview with University of Utah administrator in Salt Lake City, UT. (July 16, 2010). In order to protect the interviewee’s identity, we use only a general position as identification.

73 Interview with “Victoria,” HB 144 student, in Salt Lake City, UT (June 17, 2010).

74 Interview with “Diego,” HB 144 student, in West Valley City, UT (June 8, 2010).
struggle financially. Our interviews identified that for many students, the desire to escape a negative fate was a primary motivation behind their desire to go to college, as we illustrate in the following interview excerpts:

Well, I looked at my parents. They work too much and just live paycheck to paycheck. And it was a life I didn’t want. I also saw my cousins – many of whom are in jail for drug charges and other stuff – and I just looked at that and thought, I didn’t want that for me. I knew that through education things could be better.

~ Ramón, HB 144 student

It [going to college] didn’t even cross my mind until I couple of years after graduating from school….. It was off the radar because it seemed too expensive of an idea and my family couldn’t afford something like that. But two years after graduating from high school, I worked in a construction job and it was very heavy work; it was very demanding. And so it just hit me that I needed to go to college, that there’s got to be something better than this.

~ Cesar, HB 144 student

As these excerpts – and a larger body of research – suggest, undocumented students who qualify to go to college have much to offer society. In-state tuition laws help make it possible for these students to develop their capabilities and then apply that potential to society. But there

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75 Interview with “Ramón,” in West Valley City, UT (August 2, 2010).
76 Interview with “Cesar,” Salt Lake City, UT (May 26, 2010).
are also economic reasons for states to pass and implement in-state tuition laws. The research suggests that these students contribute to the fiscal health of the state through paying tuition, eventually getting better jobs – and thus paying higher taxes – and by reducing the likelihood that they will become a burden to the state down the road.

For states that feature in-state tuition laws, it has become clear that the cost of implementation has been negligible.\(^{78}\) Resident tuition is a reduced tuition, but it is not free. Because most undocumented students would simply be unable to pay the considerably higher non-resident tuition rates, the tuition they do pay is revenue that would otherwise not be there. Thus, it increases a school’s bottom line. And while current law bars many of these students from legal employment, there are many routes to achieving legal permanent residence and working status. For example, for students who entered the U.S. with a visa but then over-stayed it, they can apply for an “adjustment of status,” provided they have a sponsor – usually a citizen spouse or citizen employer – that can act on their behalf.\(^{79}\) Alternatively, there is a visa family connected to law enforcement – including the so-called U-visa, T-visa and S-visa – that provide a path to legal permanent residency and the right to work for qualified immigrants who can contribute to the legal justice system.\(^{80}\) Having followed one of these paths, on average, adults with bachelor’s degrees earn more than 50 percent more than their counterparts with only a high school education.\(^{81}\) Because of this, one could suggest that it is in the interests of states to support this higher-paying job trajectory, as this translates into higher tax revenue in the form of


\(^{80}\) There is considerable variation between these three visa types in terms of the role the undocumented resident must play in providing information on a crime and who can initiate the visa petition. See Anna Hanson, The U-visa: Immigration Law’s Best Kept Secret 63 Arkansas Law Review 177-203 (2010).

\(^{81}\) Baum & Flores, supra note 35, 184; Alejandro Portes & Patricia Fernández-Kelly, No Margin for Error: Educational and Occupational Achievement among Disadvantaged Children of Immigrants, 620 ANNALS of the American Academy of Political and Social Science 12, 17 (2008).
taxes on wages, property and sales. Finally, jobs with higher wages and/or salaries tend to permit people to save more money for retirement or health emergencies – not to mention the higher probability of carrying some type of pension or retirement benefit – so there is a reduced likelihood that they will become dependents of state services.

Finally, advocates of undocumented students highlight that in-state tuition laws fully comply with federal law. Although immigration restrictionists suggest that states are violating immigration law with the passage and implementation of bills like HB144, advocates for this constituency argue that federal law does not prohibit states from providing in-state tuition to undocumented students. Rather, the oft-cited section 505 of the Illegal Immigrant Reform and Immigrant Reconciliation Act of 1996 (IIRIRA) prohibits states from providing any higher education benefit linked to residence to undocumented students unless they provide the same benefit to U.S. citizens in the same circumstance, regardless of their residence. Utah – like the eleven other states that have implemented tuition in-state tuition laws – have fully complied with this provision.\footnote{See supra note 36.} Together, supporters of these laws suggest that they make college affordable for a high-achieving segment of society, thus benefitting the students and the larger society in which they live without violating any laws.

However, despite these compelling reasons favoring HB 144 and laws like it in other states, in Utah – as elsewhere – stringent objections have developed around it. There are three frequently cited objections. The first is that HB 144 – and in-state tuition laws like it across the country – provide false hope. Rep. Glenn Donnelson (R, North Ogden) – who six times sponsored legislation to appeal HB 144 – explained his perspective in an interview:

\textit{What is really sad is that I feel for these people. My heart breaks for them because you give them an education and when they get their degree, they can’t legally work. Unless}
they forge documents and now they are committing a felony. We give them an education, they participate in a dream and then we drop the ball and can’t produce the dream. That’s totally wrong, wrong, wrong, wrong for these people. So I’m saying, don’t give them that dream if you can’t produce that dream.

~ Glenn Donnelson 83

The second major objection to in-state tuition laws is that they encourage further illegality by acting as a magnet for more undocumented people to come to the state or encouraging more laws to be broken, as argued by Rep. Chris Herrod (R, Provo).

Utah, by all definitions, is a sanctuary state. We are the only state in the West that gives driver privilege cards [to illegal immigrants]. There are only four states in the nation that do that. There are only 11 states in the nation that give in-state tuition and we do that. We have the fastest growing illegal alien population in the U.S. simply because there is a perception that we are soft on illegal immigration. Laws like our in-state tuition bill, or our driver license law, act like invitations saying, ‘Come to Utah! We are open for business.’ I’d like to see those things repealed. I’d like to see us join AZ and say, ‘Hey, we are serious about cracking down on illegal immigration. We view it as a problem.’ Everybody sees it as a victimless crime, but it’s not. First, it is a crime to come here without legal authorization. And once you are here, to work, to live, often requires committing felonies. Identity theft, falsification of documents, it can even lead to human trafficking, which I think we can all agree is a very serious crime.

~ Chris Herrod 84

83 Interview with Glenn Donnelson, Representative, Utah State Legislature, in Ogden, UT (July 20, 2010).
84 Telephone interview with Chris Herrod, Congressman, Utah State Legislature (July 16, 2010).
Further, opponents to these laws – and any laws that might help the undocumented legally integrate into society – explain that these laws hurt citizens and those here legally by draining the public purse or displacing citizens. Again, we turn to an explanation provided by Rep. Donnelson.

Many of us believe that passing legislation that helps illegal immigrants really hurts the legal immigrant. Let’s take education, for example. The law says that if you are here on a work visa, you have to pay out-of-state tuition. Illegal or undocumented aliens don’t have to do that. Who gets hurt? The one who is keeping the law on a legalized visa. You can go through this example with so many other areas of public benefits. I’m sure we would find similar problems with Medicare and the provision of healthcare. We’re in a society where we take care of people. So now the undocumented go to emergency rooms more than anything else to get treated. Why? Because they don’t have insurance and we don’t turn them away. Somebody who is here legally, where do they go? They go to a clinic where they can use their insurance. So does it hurt them? Does it hurt us? Yes, it hurts them very much. Because who do you think pays for all of this? It is the tax-paying citizens.

~ Glenn Donnelson 85

Similarly, staunch immigration restrictionists such as Chris Herrod highlight the costs of educating the children of undocumented resident from kindergarten through high school. Given this, he is even more opposed to providing tuition benefits for these students once they reach college.

We have to consider the costs that are being incurred by trying to educate these ESL [English as a Second Language] students. If you look at the budget, ESL students are

85See supra note 39.
50% more expensive than regular students. We have budget woes. We are going to have these woes for at least the next two years. How are we going to afford it? You have to look at the practical parts of this. You have to bow to the budget.

~ Chris Herrod

Finally, one of the newer proponents of tough immigration legislation – Representative Carl Wimmer (R, Herriman) – explains why he has taken up Donnelson’s mantle in opposing in-state tuition laws. In his explanation, he merges the explanations that HB144 drain the public purse while displacing citizens.

Can you justify in your own minds redistributing $4.4 million from the taxpayers ... and give it to illegal immigrants to get discounted college tuition when you know that the majority of them [Utah taxpayers] don’t support it? And is it fair that a citizen from another state – say Idaho – an actual citizen of this country, pays more to go to our universities than an illegal immigrant? Is that fair? I don’t believe it is.

~ Carl Wimmer

Together, these arguments suggest that in-state tuition laws are unfair, inefficient and exceedingly costly. Further, opponents argue that they promote illegality. While it is beyond the scope of this analysis to adjudicate all of these claims, it is important to point out how much time and energy has been devoted to either celebrating or denigrating a law that in the 2009/2010 academic year, applied to only 590 students out of a state enrollment of 164,862 students. This

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86See supra note 40.
constituted less than four-tenths of one percent of students enrolled in Utah’s higher education system at that time. But such is the passion that surrounds the politics of immigration.

Over the years, legislators have channeled that passion by supporting or opposing HB 144. As table six elaborates, between its passage in 2002 and the 2011 legislative session, policy makers have introduced legislation on in-state tuition eleven times (including substitute bills). Between 2004 and 2008, Rep. Glenn Donnelson introduced legislation to repeal this bill six times. Some years, for example in 2004 and 2005, the legislation never made it out of committee. In 2006, the repeal effort never received a committee vote. In 2007 and 2008, the bill made it to a full House vote but never advanced to the Senate. In 2008, Donnelson lost his bid for re-election, but Richard A. Greenwood (R, Roy) took up Donnelson’s mantle and in 2009 proposed HB 209, legislation requiring that students eligible to pay in-state tuition based on HB144 sign an affidavit asserting they are not working during the year they are in college. It passed committee and passed in the House with a comfortable margin, but never made it to a Senate vote. In 2010, Greenwood supported a bill to again repeal HB144, but the bill never made it out of committee. Finally, last year Carl Wimmer sponsored a bill (and an additional substitute bill) to again repeal HB144. The original bill only made it out of committee, but the substitute bill went to a House vote but never advanced to the Senate.


Data on the Utah Legislature votes are publicly available at: http://le.utah.gov/.
<table>
<thead>
<tr>
<th>Year</th>
<th>Bill</th>
<th>Summary</th>
<th>Votes</th>
<th>Final Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>HB 144</td>
<td>Allows qualified undocumented students to pay resident tuition</td>
<td>39-35-1; 20-6-3</td>
<td>Governor signed</td>
</tr>
<tr>
<td>2004</td>
<td>HB 366</td>
<td>Would have repealed HB 144</td>
<td>8-3-4</td>
<td>Enacting clause struck</td>
</tr>
<tr>
<td>2005</td>
<td>HB 239</td>
<td>Would have repealed HB 144</td>
<td>8-6-1</td>
<td>Substituted</td>
</tr>
<tr>
<td>2005</td>
<td>HB 230</td>
<td>Would have repealed HB 144</td>
<td>8-6-1; 5-2-8</td>
<td>Enacting clause struck</td>
</tr>
<tr>
<td>2006</td>
<td>HB 007</td>
<td>Would have repealed HB 144</td>
<td>N/A</td>
<td>Substitute recommended</td>
</tr>
<tr>
<td>2007</td>
<td>HB 224</td>
<td>Would have repealed HB 144</td>
<td>37-37-1; 36-38-1</td>
<td>Died in House</td>
</tr>
<tr>
<td>2008</td>
<td>HB 241</td>
<td>Would have nullified HB 144 for those enrolling after 5/1/08</td>
<td>40-35-0; 8-5-2</td>
<td>Died in Senate Committee</td>
</tr>
<tr>
<td>2009</td>
<td>HB 208</td>
<td>Would require HB 144 students to sign an affidavit saying that they’re not working</td>
<td>34-40-1</td>
<td>House Filed</td>
</tr>
<tr>
<td>2010</td>
<td>HB 428</td>
<td>Would have repealed HB 144</td>
<td>N/A</td>
<td>Enacting clause struck</td>
</tr>
<tr>
<td>2011</td>
<td>HB 191</td>
<td>Would have repealed HB 144</td>
<td>10-5-1</td>
<td>Substituted</td>
</tr>
<tr>
<td>2011</td>
<td>HB 191 S-01</td>
<td>Would require proof that parents have paid taxes for 3 years in order to be eligible for HB 144</td>
<td>10-5-1</td>
<td>Enacting clause struck</td>
</tr>
</tbody>
</table>

The civic participation around HB 144 provides another glimpse of how pro-immigration advocates and immigration restrictionists have battled over the terrain of immigration. This
struggle has involved some of the most influential members of Utah society, including two presidents of the University of Utah, members of the U.S. Congress, and leaders of prominent civic organizations such as the Utah Eagle Forum and the United Way. However, our analysis of who has gone beyond merely expressing an opinion on this issues to actually acting on it – in the form of speaking at a public hearing, forming a coalition around the issue or issuing a public statement on it – reveals stark differences between those advocating for in-state tuition for undocumented student and those opposing it.

During most years of HB 144’s legislative lifespan, the Utah Legislature has permitted citizens to speak to the bill, usually during committee hearings. The public records of these hearings indicate a broad and diverse spectrum of supporters for HB 144. Even more importantly, the vast majority of individuals (approximately 86%) are affiliated with some type of institution. Educational institutions have played a prominent role, with individuals representing every level of education, from primary through post-secondary, including the Commission of Higher Education and the State Board of Regents. Partisan political groups, organized business, and an array of non-profit service delivery and advocacy organizations have also been well represented. Finally, there were a couple of institutions devoted to defending the interests of children in general – and undocumented children in particular – amongst the list of people who went on public record to support HB 144. In sum, of the 37 individuals who contributed to the public hearings, only 14 percent (N=5) of them did so representing solely their own views, without an institutional affiliation.

In contrast, a much smaller number of opponents – 23 individuals – went on record against HB 144 over this same time period. But there was a much larger number – relative to the universe of opponents – who did so simply as citizens, not necessarily representing a larger,
institutional viewpoint or interest. These accounts amounted to approximately 35 percent (N=8) of the HB144 public comments. The remaining 65 percent (N=15) were affiliated with some broader interest or institution. By far the most dominant institution was a constellation of anti-illegal immigrant organizations such as the Utah Minutemen Project (UMP) or Utahans For Immigration Reform and Enforcement (UFIRE). Partisan political groups also produced a showing, along with conservative political organizations and emerging tea party or 9/12 groups.

In summary comparison, the ratio between institutional affiliations and independent voices is 6:1 for HB 144 supporters. In contrast, the ratio is 2:1 for HB144 opponents. This suggests that HB 144 enjoys broad support across many sub-sectors of Utah society, but perhaps that support is somewhat diffuse. It appears that opponents of HB 144 – smaller in numbers and often lacking institutional ties - are relatively more focused on this particular issue or dedicated to the cause of restricting illegal immigration. See table seven in the appendix for a full listing of all who publicly provided comments on HB144 to members of the Utah Legislature between 2002 and 2011.\textsuperscript{90}

Moving beyond an analysis of participation in public hearings to other ways that individuals and institutions have sought to influence the in-state tuition debate, we can examine coalition formation and public statements on this issue. What is often referred to as Utah’s Dream Act has been a rallying point for two broad coalitions: the \textit{Alliance for Unity} and the \textit{Utah Compact}. The Alliance is a coalition of business, political, social and religious elites who support policies to promote racial and ethnic harmony.\textsuperscript{91} It explicitly endorsed HB 144 in 2008.\textsuperscript{92}

\footnotesize{\textsuperscript{90} For each bill that reaches debate in either the House of the Senate of the Utah Legislature, there is frequently an opportunity for public comment. Records of public comments are available at http://le.utah.gov/, and can easily be obtained by utilizing the ‘quick bill search’ function of the website and identifying the bill of interest by number. \textsuperscript{91} Alliance for Unity members include Robert “Archie” Archuleta, Community Activist; Pamela J. Atkinson, Community Activist; Elder M. Russell Ballard, Church of Jesus Christ of Latter-day Saints; Cynthia Buckingham, Executive Director, Utah Humanities Council; Rev. France A. Davis, Calvary Baptist Church; Spencer F. Eccles, Chairman Emeritus, Wells Fargo Bank; Jon M. Huntsman, Chairman, Huntsman Corp.; Donna Land Maldonado,}
The more recent *Utah Compact*, issued in 2010, is a statement of principles around immigration which emphasizes empathy, highlights the economic contributions made by undocumented workers, criticizes the separation of families and urges the federal government to create policy around immigration.\(^9\) It has been endorsed by a broad coalition of business leaders, community advocates, law enforcement officials, church leaders of every faith and politicians from both parties.\(^9\) After its release, it received an official endorsement from the L.D.S. Church, the state’s dominant faith and known to have considerable influence in state politics.\(^9\) In the year after its unveiling, approximately 4,500 people had signed the compact.\(^9\) It also provided a template for

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General Mgr., KRCL Community Radio’ Norma Matheson, Former First Lady of Utah; Alexander B. Morrison, Executive Director Alliance for Unity; Karen Suzuki Okabe, Deputy Mayor, S.L. County; Dinesh Patel, vSpring Capital; Rabbi Tracee Rosen, Congregation Kol Ami; Harris H. Simmons, President, Zions Bancorporation; Dean Singleton, President, MediaNews Group, Inc.; Jim Wall, Deseret Morning News; Most Reverend John C. Wester, Bishop, Catholic Diocese of Salt Lake; Michael K. Young, President, University of Utah; Kilo Zamora, Executive Director Inclusion Center, Voices for Utah Children, *In-State Tuition for Undocumented Students and the DREAM Act* (2009).

\(^9\)http://www.aecf.org/~/media/Pubs/Topics/Special%20Interest%20Areas/Immigrants%20and%20Refugees/InStateTuitionforUndocumentedStudentsandtheDREAMAct.pdf.


\(^9\)Initial signatories included, but were not limited to; Governor Norm Bangerter; Deborah Bayle, United Way of Salt Lake; Lane R. Beattie, Salt Lake Chamber; Mayor Ralph Becker, Salt Lake City; Kenneth Bullock, Utah League of Cities and Towns; Mayor Wilford W. Clyde, Springville City; Mayor Peter Corroon, Salt Lake County Karen Crompton, Voices for Utah Children; Wes Curtis, Utah Center for Rural Life.; Southern Utah University; Jeff Edwards, Economic Development Corporation of Utah; U.S. Senator Jake Gann; Mayor Matthew R. Godfrey, Ogden City; U.S. Congressman James Hansen; The Right Rev. Bishop Scott Hayashi, Episcopal Church in Utah; Rev. Steven Klemz, Pastor, Zion Evangelical Lutheran; Paul Mero, Sutherland Institute; Mark Shurtleff, Attorney General; Dean Singleton, Publisher, The Salt Lake Tribune; Governor Olene S. Walker; The Most Rev. John C. Wester, Bishop of the Salt Lake City Catholic Diocese; Mark H. Willes, CEO/President, Deseret Management Corp. For more information on full listing, see voices for Utah Children *supra* note 46. Later it was endorsed by a wider group of individuals and institutions, including the L.D.S. Church. Church of Jesus Christ of Latter-Day Saints News Release, *Church Supports Principles of Utah Compact on Immigration*, (2010), http://newsroom.lds.org/article/church-supports-principles-of-utah-compact-on-immigration (last visited on Oct. 12, 2011).

other states to utilize as they sought to pursue alternatives to enforcement-only policies. Since its release, it has inspired discussions in Arizona, Georgia, Indiana and Maine to reject enforcement-only immigration policies in favor of more moderate and inclusive positions.

While Indiana and Maine developed their own state compacts on immigration, Arizona recently followed suit but went one step further. In an unprecedented vote, Arizona Senate President Russell Pearce – and chief architect of SB 1070 – lost a recall election to Jerry Lewis. This is the first time in Arizona’s electoral history that a standing candidate has lost a recall election. His opponent attributed his victory – and Pearce’s defeat – to the fact that people in Arizona are looking for “real solutions” to the problem of immigration that do “not just focus on law enforcement.”

In contrast, while organized anti-illegal immigration groups have opposed HB 144 and other legislation that seeks to integrate immigrants into Utah society, there is little evidence of successful coalition-building beyond these groups within the state. Further, these groups have produced no similarly influential policy positions that have inspired action in other states. This is not to say that there has not been a diffusion of enforcement-focused, immigration-related policies across the states – there has been.

But there is little evidence that there is widespread, inter-organizational support behind this legislative activity.

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98 For example, the Indiana Compact was signed three months after The Utah Compact and has attracted 3,900 signatures since its launch. See David Montero, Utah Compact had big impact on Immigration debate, Salt Lake Tribune, Nov. 9, 2011 at http://www.sltrib.com/csp/cms/sites/sltrib/pages/printfriendly.csp?id=52880133 (last visited Nov. 11, 2011).


100 According to the National Conference of State Legislatures, four states – in addition to Utah – have followed the model put forth by Arizona’s SB1070 and have passed enforcement-oriented bills. They include Alabama, Georgia,
The policy milieu of every state is unique and nuanced, and Utah is no exception. This becomes even more apparent when considering the combustible issue of immigration. What factors describing its policy on in-state tuition for undocumented residents might apply to other states? And considering those factors, what future predictions might we offer for in-state tuition here, and across the nation?

There are three factors that played an important role in Utah and may prove consequential in other states. The first factor is a demographic one. As demonstrated in table two, Utah experienced a tremendous surge in immigration flows in the 1990s and the first part of the 21st century. We argue that a sizeable immigrant population is necessary for citizens and legislators to take notice and take up legislative action. In Utah’s case, this demographic trend was multifaceted. First, in a twenty-year time span, Utah’s undocumented population increased more than sevenfold, from about 15,000 to 110,000. Second, because the majority of these immigrants are from Latin America – combined with the natural growth of resident Latinos – in that same time period this ethnic group went from comprising approximately 4.9 percent of the population to 13 percent. This change in the state’s profile made many take notice, supporters and opponents alike.

The second factor highlights the interests and identities of the legislators themselves. We argue that a direct and compelling interest in immigration issues is necessary to move from supporting or opposing legislation to actually sponsoring legislation. In the case of Rep. Ure, for example, his family livelihood has long revolved around dairy farming. He has frequently noted that if not for immigrant labor, there would be no one to milk his cows. When speaking about people who oppose integrative immigration policies, he asked rhetorically in an interview:

Are you guys willing to come and milk my cows? Are you willing to go to California and pick the lettuce that they pick there so people can really eat? They’ll tell you, no I’m not. There are other people who will do it, though. I know why you gripe and complain about the people who are willing to do it. They just say you are taking jobs from my kids. I say, ‘Send your kids up to my dairy at 4 in the morning and see if your kids are really willing to do the work.’ I have yet to have any of them show up, I’ll tell you that.

~ David Ure

In contrast, legislators that have sponsored anti-illegal immigrant legislation – such as Rep. Herrod – have spent considerable time abroad and in some cases are married – or have other close ties – to legal immigrants. They argue that a large part of their passion around this issue stems from the fact that they personally know legal immigrants whose prospects are being damaged by illegal immigration. As Rep. Herrod explained:

I think tolerating illegal immigration is fundamentally unfair for the tens of millions of people who are around the world that are trying to come here legally. You know my business partner has lost three of his siblings. Most recently his sister and brother-in-law were assassinated on their front door step in Ethiopia. And if you want to talk with someone with a strong opinion on illegal immigration, talk to my wife about illegal immigration. She is from the Ukraine. We were actually married there. I’ve been outside the embassies around Moscow and have seen all of the parents who only wanted a better

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101 Telephone Interview with David Ure, Congressman, Utah State Legislature (August 5, 2010).
Finally, the third factor that is fundamentally important to understanding the
disappointments and victories around immigration legislation revolves around the composition
and strength of civic coalitions. In-state tuition legislation in Utah has typically enjoyed broad
and diffuse support. Nearly every prominent sector of society – religious, business, educational
and non-profit – has had some involvement in supporting this legislation. In contrast, in-state
tuition opponents represent a narrower sector of society, but they are vigilant, well-organized and
focused. The small – but dense – sector opposing HB 144 has helped facilitate motions to repeal
it on a nearly annual basis, while the broad – but diffuse – sector supporting it has kept HB 144
in place.

In conclusion, this detailed study of the battles around HB 144 in Utah suggest a triad of
factors – demographic flows, political identities and civic coalitions – may help us understand its
rather unusual policy trajectory around extending in-state tuition to the undocumented students.
Discussion now moves from Utah and considers the recent national trends on this issue.

III

In-state Tuition Laws in a National Context

The policy terrain around tuition agreements for undocumented students is an ever-shifting one.
The map below highlights that as of October 2011, nine states had introduced bills to improve
access to higher education in 2011, while three states had enacted similar legislation to enhance
access for undocumented students. Meanwhile, in one state – Maryland – an in-state tuition law

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102 See supra note 40.
was enacted, but was later threatened with a referendum. Also in one state – Montana – a referendum was placed on the 2012 docket to ban enrollment in institutions for higher education for all undocumented students. Twelve states across the country saw legislation introduced to restrict access to higher education, while in three states bills were enacted to restrict access to higher education in 2011. In sum, the country appears to be evenly divided on the issue of providing access to higher education for undocumented students. Some states outright bar these students from access to public colleges and universities, while others not only permit access, but are pursuing measures to provide additional support for these students to pursue a college education.

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To provide a more detailed snapshot of the legislative status of bills directed toward efforts to either facilitate or block access to higher education for undocumented students, Table Seven highlights the legislation of the three most “welcoming” and the three most restrictive states in the country, as of 2011.
Table Seven: State variation on in-state tuition benefits, 2011

<table>
<thead>
<tr>
<th>State</th>
<th>Bill Name</th>
<th>Description</th>
<th>Overheard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illinois</td>
<td>SB 2185</td>
<td>Illinois DREAM Act, encourages undocumented students to pursue higher education and establishes DREAM Fund, a privately funded scholarship fund for undocumented students. ¹⁰⁴</td>
<td>Governor Pat Quinn: “All children have the right to a first-class education. [This law] creates more opportunities for the children of immigrants to achieve a fulfilling career, brighter future and better life.” ¹⁰⁵</td>
</tr>
<tr>
<td>Connecticut</td>
<td>HB 6390</td>
<td>Extends in-state tuition benefits to postsecondary students without legal immigration status who reside in Connecticut and meet certain criteria. ¹⁰⁶</td>
<td>Sen. John Fonfara: “This bill is for the students who are not content with a high school diploma alone, who would rather make their own way than take a handout. They deserve every opportunity to attend college, pay tuition, and live successful, productive lives.” ¹⁰⁷</td>
</tr>
<tr>
<td>Maryland</td>
<td>SB 167</td>
<td>Permits certain undocumented students to pay in-state tuition. ¹⁰⁸</td>
<td>Suspended pending the outcome of a statewide referendum</td>
</tr>
<tr>
<td>Alabama</td>
<td>HB 56</td>
<td>Not only requires schools to verify the immigration status of their students, but also requires that schools file periodic reports detailing the number of “unlawfully present” students enrolled. ¹⁰⁹</td>
<td>Rep. Micky Hammon (Sponsor): “This is a jobs-creation bill for Americans. We really want to prevent illegal immigrants from coming to Alabama and to prevent those who are here from putting down roots.” ¹¹⁰</td>
</tr>
<tr>
<td>Indiana</td>
<td>HB 1402</td>
<td>Provides that an individual who is not lawfully in the United States is not eligible to pay the resident tuition rate that is determined by the state educational institution. ¹¹¹</td>
<td>Sen. Mike Delph (Sponsor): “The totality of the bill is to try to encourage self-deportation. Hoosier taxpayers didn’t ask to import illegal immigrants, nor should they subsidize through tax dollars their being here.” ¹¹²</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Act 32</td>
<td>Part of Scott Walker’s “Budget Repair Bill,” eliminates nonresident tuition exemption for “aliens.” ¹¹³</td>
<td>Rep. Don Pridemore: “It’s not a question of how much money it’ll save us. It’s a question of principle. We shouldn’t be giving any taxpayer-funded benefits to people who have come to this country illegally.” ¹¹⁴</td>
</tr>
</tbody>
</table>

¹⁰⁸ Full text available at http://mlis.state.md.us/2011rs/bills/sb/sb0167f.pdf
¹⁰⁹ Full text available at http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011rs/bills/hb56.htm
¹¹¹ Full text available at http://www.in.gov/legislative/bills/2011/IN/IN1402.1.html
This table hints at the range of social motivations behind in-state tuition policies across the country and the different constituencies policy-makers are targeting with these laws. For example, proponents of in-state tuition laws highlight the basic human rights of children as motivation behind their legislation, or the ideal that people should be able to support themselves rather than rely on public hand-outs. In contrast, opponents strategically identify job creation as the motivation behind their bill, or a desire to remove tax subsidies to an undeserving population. Embedded within these motivations are different constituencies, undocumented immigrants, citizens seeking jobs and the tax-paying public.

As is becoming clear, there is a great deal of variation on state-level immigration laws; even when examining only one immigration-related law, we find a complex spectrum of approaches. Each law reflects a delicate balance of demographic, political and social forces. The following two case studies illustrate this dynamic and were chosen because they reflect this spectrum of state-level policies toward undocumented students and higher education. We first highlight the state of Illinois, which currently has one of the most pro-active, pro-immigrant set of higher education policies. We then explore the immigrant policies of South Carolina, a state which exhibits one of the more punitive positions toward immigrants in the U.S.

A. The Case of Illinois

With the passage of an innovative new law designed to make higher education more accessible to undocumented students, Illinois effectively positioned itself as the most progressive voice in what has become an increasingly hostile national immigration debate. On August 1, 2011, Governor Pat Quinn signed Senate Bill 2185 *The Dream Fund Commission* (SB 2185), popularly
known as the Illinois Dream Act.\(^ {115} \) This legislation creates a private scholarship fund to be utilized exclusively by the estimated 95,000 undocumented students currently living in Illinois.\(^ {116} \) While its effectiveness is yet to be determined, its passage nonetheless represents a novel means of addressing the prohibitive cost of a college education.

Illinois has a history of pro-immigrant policies, a fact that has earned it the title of “most pro-illegal immigration state in the country” from NumbersUSA, a Virginia-based, nativist organization.\(^ {117} \) Undocumented students have been eligible to pay in-state tuition in Illinois since 2003. Depending on where they enroll, this annually saves students between $3,609 and $14,142, or an average of over $9,000 per year, as table seven illustrates.\(^ {118} \)

Illinois has long been proud of its immigrant heritage. In 1902, George Murray McConnell proudly claimed of Illinois, “in no State in the Union…is the population of so variously composite a character,”\(^ {119} \) a claim that may still be justifiable. Although the flow of immigrants to Illinois has slowed somewhat in recent years—the state added less than half as many immigrants from 2000-2009 as it did from 1990-1999—Illinois is nevertheless home to the sixth-largest foreign-born population in the United States. While a plurality (47.6 percent) of immigrants hail from Latin America, Asia and Europe are also well represented, comprising 25.8 percent and 22.7 percent of the foreign-born, respectively.\(^ {120} \)

\(^ {118} \)Data available at http://nces.ed.gov/collegenavigator/
\(^ {119} \)Illinois State Historical Society, Papers in Illinois History and Transactions (1913)
\(^ {120} \)Migration Policy Institute, 2010 American Community Survey and Census Data on Foreign Born by State, available at http://www.migrationinformation.org/datahub/state.cfm?ID=IL (Last visited 2/15/12).
Table Seven: Resident vs. Non-resident Tuition Rates in Illinois, 2011/2012

<table>
<thead>
<tr>
<th>School</th>
<th>Resident</th>
<th>Nonresident</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chicago State</td>
<td>$8,752</td>
<td>$15,160</td>
</tr>
<tr>
<td>Eastern Illinois</td>
<td>$9,987</td>
<td>$25,227</td>
</tr>
<tr>
<td>Governor’s State</td>
<td>$6,688</td>
<td>$14,220</td>
</tr>
<tr>
<td>Illinois State</td>
<td>$11,417</td>
<td>$17,957</td>
</tr>
<tr>
<td>Northeastern Ill.</td>
<td>$7,492</td>
<td>$13,732</td>
</tr>
<tr>
<td>Northern Illinois</td>
<td>$11,676</td>
<td>$20,156</td>
</tr>
<tr>
<td>SIU-Carbondale</td>
<td>$10,468</td>
<td>$21,403</td>
</tr>
<tr>
<td>SIU-Edwardsville</td>
<td>$8,401</td>
<td>$17,703</td>
</tr>
<tr>
<td>UI-Chicago</td>
<td>$12,056</td>
<td>$24,446</td>
</tr>
<tr>
<td>UI-Springfield</td>
<td>$8,101</td>
<td>$15,421</td>
</tr>
<tr>
<td>UI-Champaign</td>
<td>$13,096</td>
<td>$27,238</td>
</tr>
<tr>
<td>Western Illinois</td>
<td>$10,149</td>
<td>$13,758</td>
</tr>
</tbody>
</table>

Such diversity has doubtlessly shaped the course of local politics. In addition to championing the rights of undocumented students to access higher education, Illinois was among the first states to withdraw from Secure Communities, the Obama Administration’s nationwide
immigration enforcement program.122 The state’s status as an obvious outlier in terms of immigration policy provides an exceptional opportunity to analyze the social and political conditions that contribute to pro-immigration attitudes and legislation. In this section, we explore the argument that Illinois’ pro-immigrant policies are a function of an immigrant-friendly political climate, a politically active immigrant population and vocal representation in state government.

Many political observers would not be surprised by Illinois’ stance on immigration given Democrats’ control of virtually every statewide office. Partisan concentration, however, is not in itself a satisfactory explanation, especially when one considers that the Dream Act enjoyed strong bipartisan support, passing the House and Senate by 61-53 and 45-11, respectively.123 One possible contributing factor has to do with popular opinion. Illinois as a whole prides itself on its rich immigrant heritage, and a 2007 study by the University of Notre Dame found that better than 70 percent of Chicago-area residents view immigration in a positive light.124 Republicans are thus able—and perhaps even required—to take a more pro-immigrant stance than their counterparts in other states. Furthermore, the fact that the privately funded Dream Act has no effect on the state’s bottom line doubtlessly made it more attractive to the state’s fiscal conservatives.

While Illinois has not been immune to pro-enforcement proposals—14 such measures were introduced in the first half of this year alone—the sources of said proposals and the way in which they were received merit consideration.125 In contrast to states like Arizona and South

125 Stephen Di Benedetto, Lawmaker targets illegal immigrants; Carol Stream rep’s legislation would be similar to Arizona’s, Chicago Sun-Times, March 12, 2011, at News p. 9.
Carolina, where Senate Presidents Russell Pearce and Glenn McConnell have been heavily involved in drafting and promoting omnibus immigration legislation, Illinois’ enforcement-only measures tend to come from less influential Republicans.\textsuperscript{126} The most recent such proposal, House Bill 1969, \textit{The Taxpayers Protection Act} (HB 1969) came from Rep. Randy Ramey (R-Carol Stream), a small-government conservative whose most recent legislative success was a 2008 update to the Illinois Township Code. In contrast, Sen. Bill Brady (R-Bloomington), is both a high-profile Republican and a supporter of the Illinois Dream Act,\textsuperscript{127} a position that might have angered Republican voters in a more conservative state.

In addition to the moderate political climate, undocumented immigrants in Illinois benefit from the state’s politically active immigrant population. One of the most vocal pro-immigration groups is the Chicago-based Immigrant Youth Justice League, a collection of social media-savvy protesters who originally organized in support of the federal DREAM Act in November of 2010. Their national “Undocumented, Unafraid and Unapologetic” campaign, which encourages undocumented youth to come forward and tell their stories, generated considerable media attention nationwide.\textsuperscript{128} The groups’ representatives went so far as to meet with state lawmakers in May to personally lobby for the passage of the Illinois Dream Act.\textsuperscript{129}

Another key player in the local immigration debate is the Illinois Coalition for Immigrant and Refugee Rights, a large group of approximately 80 neighborhood community organizations dedicated to promoting immigrants’ “full and equal participation in the civic, cultural, social, and political life of our diverse society.”\textsuperscript{130} In addition to promoting the Illinois Dream Act, the ICIRR has partnered with local churches and law firms to set up the nation’s first 24-hour hotline.

\textsuperscript{126} Ibid
\textsuperscript{128} Information available at http://www.iyjl.org/
\textsuperscript{129} Esther Cepeda, \textit{Dream Act can help students get over the top}, Chicago Sun-Times, May 9, 2011, at Commentary p. 26
\textsuperscript{130} Information available at http://icirr.org/about-icirr
for families facing deportation.\textsuperscript{131} Organizations like these are what help Illinois set the standard for pro-immigrant policy in the United States. Conversely, there is little evidence that national and well-known enforcement-oriented organizations – such as the American Immigration Control Foundation (AICF) or the Federation for American Immigration Reform (FAIR) – had successfully established local influence in state-level politics.

Instead, it appears that activists groups like the ICIRR intersect directly with state politics in the form of the Illinois Legislative Latino Caucus. The ILLC not only serves to represent the interests of Latinos in the state legislature, but also works with community and business leaders to distribute scholarships and promote Latino interests via the Illinois Legislative Latino Caucus Foundation (ILLCF). To see the influence of the ILLC, one need look no farther than Rep. Edward Acevedo (D-Chicago), a member of the Board of Directors and the chief house sponsor of the Illinois Dream Act.\textsuperscript{132}

When one reflects on why Illinois’ policy positions on immigrants have garnered so much admiration and condemnation, it is surely because it stands out – amongst a small handful of other states – as one of the most progressive states for immigrants. While many factors have contributed to this, we argue that its rich immigrant history has translated into a current immigrant-friendly reality, where the vast majority of Illinois residents see immigration as a source of state strength rather than weakness. Further, its immigrant population is politically active and this has directly contributed to a growing group of activist legislators who are willing to propose and defend legislation what welcomes and integrates immigrants into their state.

\textsuperscript{131} Antonio Olivo, \textit{New hotline a clearinghouse for advice for immigrants facing deportation}, Chicago Tribune, September 19, 2011, available at ProQuest Newsstand 890627918

B. The Case of South Carolina

In stark contrast to the state of Illinois, South Carolina recently rejoined the increasingly hostile debate over the propriety of state-level immigration enforcement with the passage of Senate Bill 20 Immigration Status and Enforcement Bill (SB 20), an immigration omnibus bill that Governor Nikki Hailey signed into law on June 27, 2011. In addition to requiring police to verify the immigration status of any individuals who have been stopped or detained, this Arizona-style enforcement measure bars undocumented immigrants from receiving any public benefits beyond emergency medical care. Furthermore, SB 20 prohibits undocumented immigrants from applying for work, requires employers to use the Federal E-Verify system, and criminalizes the harboring or otherwise assisting of known undocumented immigrants.

Although the issues surrounding state-level immigration reform have only recently risen to national prominence, South Carolina has been searching for ways to slow the influx of undocumented immigrants for several years. House Bill 4400, the Immigration Reform Act (HB 4400), which former Governor Mark Sanford signed in 2008, made South Carolina the first state to bar undocumented students from enrolling at any of its public colleges and universities. The law also established draconian penalties for employers who fail to verify the immigration status of job applicants.

That a non-border state with a relatively small—and declining—undocumented population should spend so much time and energy dealing with immigration suggests that such laws are less a matter of need than they are a function of the recent arrival of South Carolina’s immigrant population and the state’s enforcement-minded legislature. Also of note are South

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Carolina’s prominent Tea Party activists, many of whom are eager to assert the state’s right to address illegal immigration without interference from the federal government.

While research by the Pew Hispanic Center shows South Carolina’s undocumented population has declined by as much as 21 percent since its peak in 2007,\textsuperscript{136} census estimates show that the state’s Latino population—legal and otherwise—has been among the fastest growing in the United States over the last 10 years.\textsuperscript{137} According to an analysis by the University of South Carolina’s Consortium for Latino Immigration Studies, South Carolina’s Latino population increased from approximately 30,000 in 1990 to somewhere between 400,000 and 500,000 in 2010.\textsuperscript{138} This inrush of new arrivals peaked from 2006 to 2007, when South Carolina’s migrant populace grew faster than that of any other state.\textsuperscript{139}

Concerned over what it saw as a mounting problem, the state legislature debated dozens of immigration-centric bills, including Senate President Pro Tem Glenn McConnell’s call for a national constitutional convention on the topic.\textsuperscript{140} While McConnell admitted at the time that such a radical proposal was unlikely to elicit much national support, he felt that the state had no other options. “I don’t know where else to go,” McConnell told the \textit{Post Courier} in 2008. “It's really an act of frustration. The state is bearing the burden because of the power failure in Washington.”\textsuperscript{141}

Although McConnell failed in his attempt to spur the federal government to action, HB 4400 nevertheless represented a bold attempt to address immigration at the local level. Such a measure, however, would not have gotten off the ground were it not for the members of South

\textsuperscript{137} All data is provided by the University of South Carolina’s Consortium for Immigration Studies, available at http://www.sph.sc.edu/cli/SCdatafacts.htm
\textsuperscript{138} Ibid
\textsuperscript{139} Ibid
\textsuperscript{140} Yvonne Wenger, \textit{S.C. Senate aims to spur Congress to act on immigration}, The Post and Courier, January 31, 2008 at B3.
\textsuperscript{141} Ibid
Carolina’s staunchly conservative Republican Party, an organization that has been known to support positions that are more enforcement-oriented than those of its national counterpart. Consider, for example, Buddy Witherspoon, the former Executive Committeeman of South Carolina’s Republican Party who challenged incumbent Lindsey Graham in the 2008 senate primary. Witherspoon made immigration the central issue of his campaign, essentially arguing that Graham, a well-known and nationally respected conservative, was too soft on so-called “illegals.”

“There’s a lot of unrest in South Carolina,” Witherspoon told the New Yorker in 2008. “And people are concerned that the Senator no longer represents the views of mainstream South Carolinians in a lot of ways. Immigration is the number one issue, no question there.”

Two years later, the rest of the local leadership very much agrees with Witherspoon. Prior to the 2011 legislative session, the House Republican Caucus issued a press release in which it promised to use its expanded majority to “build on the successes of our 2008 legislation” and “push through an Arizona-style immigration bill.” Considering the GOP’s pro-enforcement stance and numerical advantage, it’s little wonder that the 2011 bill breezed through the House and Senate by votes of 69-43 and 34-9, respectively.

South Carolina’s status as a Tea Party stronghold is also significant, as at least a portion of the state’s anti-immigrant sentiment seems to be tied to a general wariness of federal government overreach. The Charleston Tea Party devoted considerable effort to promoting the 2011 bill, and backers of enforcement measures frequently cite the ineffectiveness of federal immigration policy to justify their support for state-level legislation. Given the fact that the

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143 Ibid.
state legislature recently came out in support of a “Repeal Amendment” that would have given states the ability to overturn unpopular federal legislation with a two-thirds vote,\(^{148}\) it stands to reason that at least some politicians have rallied behind the immigration banner in part because of the chance it affords them to limit Washington’s influence in what is seen as a local matter. According to Rep. Jim Harrison, a Columbia Republican and chairman of the House Judiciary Committee, Congress’ failure to address immigration on the national level has forced states to act on their own. “Until the federal government does what it should do and takes action, I think that the states have got to protect their interest,” Harrison told the *Post and Courier*.\(^{149}\)

Conspicuously absent from the immigration debate in South Carolina are vocal pro-immigration activists often seen in other parts of the country. While the odd activist association pops up occasionally in media coverage of immigration-centric issues, such organizations lack both the high profiles and the deep pockets of their counterparts in other states. The Latino Association of Charleston,\(^{150}\) for example, is frequently mentioned by the *Post and Courier* as a foil for the state legislature, yet it lacks any online presence beyond a Yahoo group that hasn’t been updated since 2009. The Church World Service and A United South Carolina have taken up the cause to an extent, but the former is primarily concerned with national matters,\(^{151}\) and the latter has only managed to collect 51 signatures on its five-month-old online petition.\(^{152}\) With no significant organizations to lobby on behalf of immigrants, it stands to reason that South Carolina’s policies should fall on the pro-enforcement side of the spectrum. At the same time, our research did not uncover extensive organizing on behalf of pro-enforcement organizations. FAIR ran some promotional ads in South Carolina in 1994 but there is little evidence of more

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\(^{149}\) Yvonne Wenger, *Activists push immigration bill*, The Post and Courier, May 12, 2011 at B1

\(^{150}\) Information available at http://groups.yahoo.com/group/AL-Charleston/

\(^{151}\) Information available at http://www.churchworldservice.org/site/PageServer?pagename=action_who_main

\(^{152}\) Petition available at http://www.thepetitionsite.com/1/a-united-south-carolina-believes/
recent activity. The South Carolina Minutemen exists, but nearly a year has passed with no updates posted on its website, so its presence does not seem that powerful.

With little evidence of popular organizations coming together to either support or oppose immigrants in their state, South Carolina’s approach to illegal immigration seems to be a function of three separate but related factors: a recent spike in the flow of immigrants to the state, a right-leaning state legislature and a widespread belief that the federal government has failed to address the problem. While the rise of the Tea Party has helped energize pro-enforcement sentiment, organized opposition to – or defense of – immigrants’ rights seems to be less important in this state than in either Utah or Illinois.

Taken together, the cases of Illinois and South Carolina – against a national backdrop of wide variation on the issue of extending in-state tuition benefits to undocumented students – suggest that broad and general explanations of immigration policy give us little traction. While not arguing that we should discount the importance of economic and partisan influences, we have also uncovered the specific roles that civic coalitions, political identities and demographic flows have played in the policy trajectories described here. We also suggest that place-specific explanations are crucial to a full understanding of this policy milieu. This is certainly true for anyone hoping to influence the political process – or advocate for a particular law – in a given state.

IV

The Federal DREAM Act

There is little doubt that until there is comprehensive immigration reform, these passionate, state-level legislative battles will continue. Another avenue would be less comprehensive, but still federal, the U.S. DREAM Act.
On August 1, 2001, Utah Senator Orrin Hatch (R) and Illinois Senator Richard Durbin (D) introduced S. 1291, the Development, Relief and Education for Alien Minors Act, popularly known as the DREAM Act. This bill would have amended Section 505 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) to permit states to determine State residency for higher education purposes and would permit college-bound students who had long-term residency in the U.S. an eventual path to citizenship. The DREAM Act failed to pass during the 107th Congress and was re-introduced with only minor variations during the 108th, 109th, and the 110th Congresses. While Senator Hatch remained as the bill’s co-sponsor during the 2003-2004 legislative session, he subsequently stopped sponsoring the bill. In contrast, Illinois Senator Durbin has remained a staunch supporter and sponsor of the bill. For the first three legislative sessions, the DREAM Act never reached a full vote, but it nearly reached passage in 2007 during the 110th Congress. That year, S. 2205 – a revised Dream Act – fell eight votes short of bypassing a filibuster.153

On March 26, 2009, during the 111th Congress, Senator Durbin re-introduced the DREAM Act – under the legislation S. 729 – while Representative Howard L. Berman (D-CA) introduced its sister legislation in the House, under the title H.R.1751. This year, the DREAM Act enjoyed a wide range of sponsorship throughout the states and across the partisan divide, as the Senate bill had 40 co-sponsors while the House will had 139 co-sponsors. Despite this, neither bill made it out of committee, respectively the Senate Committee on the Judiciary and the House Subcommittee on Higher Education, Lifelong Learning, and Competitiveness.154

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Those committed to either passing or blocking the DREAM Act anticipated the end of the 111th Congress with either great enthusiasm or great dread, for by 2010 the legislation received key endorsements from President Obama, members of his Cabinet, many leaders within the business community, organized labor and educators, amongst many other groups. At this point, it was estimated that as many as two million people would have benefitted from the DREAM Act’s passage. In December 2010, H.R. 6497 passed in the U.S. House of Representatives by a vote of 216 to 198. H.R. 6497’s main legislative intent was to protect these students from deportation and allow them access to lawful work. More specifically, it would provide a path to citizenship for the adult children of undocumented immigrants if they met the following criteria:

- Entered the country before his or her 16th birthday
- Graduated from high school or received a GED diploma
- Passed a criminal background check
- Must be no older than 29 years at the time of application
- Attended either two years of college or served two years in the military

On December 18, 2010, a group of Senators blocked the DREAM Act from being considered in the Senate, by rejecting a motion to end a filibuster, by a vote of 55 to 41. Because 60 votes were needed to prevent a filibuster, this action ended the DREAM Act’s legislative trajectory for

As one of his last legislative acts, Senator Bob Bennett (R-UT) voted to end the filibuster, while Senator Orrin Hatch (R-UT) was absent for the vote.157 There is a substantial group of elected officials within the U.S. Congress who are committed to protecting the futures of undocumented students. On May 11, 2011, the newest version of the DREAM Act was introduced in both chambers of Congress, respectively as bills S. 952 in the Senate and H.R. 1842 in the House. Currently joining Durbin in the Senate are 32 co-sponsors, while in the House, Berman has lined up 58 co-sponsors.158 It remains to be seen if this year’s legislative effort will mature into enacted legislation, given the tremendous passion and energy devoted to derailing the federal DREAM Act.

Undoubtedly, we will see the battles continue around policies granting access to post-secondary education for undocumented students. Until a more comprehensive solution emerges, skirmishes will take place in state legislatures and within the U.S. Congress.

**Conclusions**

The debate around whether to provide in-state tuition benefits to the children of undocumented residents recently reached a political apex. In the Republican debates to choose the next presidential candidate to run against Barack Obama in 2012, Texas Governor Rick Perry came out firmly in favor of this state law. In contrast, top contenders for the nomination such as Mitt

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Romney and Rick Santorum have pilloried Perry as someone willing to let immigrants destroy our higher education system, and by extension, the American Dream.159

This article has aimed to better understand the passion and politics behind state laws providing in-state tuition rates to foreign-born students, by exploring this law on the national and local level. We considered several explanations for the national variation around this law, including the potential role played by racial contact or threat, partisan concentration, and economic influence. While all three theoretical frameworks offer parsimonious explanations for the generation of state-level immigration policy, no single theory is sufficient to explain the diversity of policy outcomes exemplified by our three case studies. As we have shown, policy results from a complex interaction of population demographics, narratives and targeted advocacy, all of which are subject to the opportunities and constraints of a specific place and time. Accordingly, we urge those individuals and organizations that are interested in influencing policy to remember the limitations of nomothetic legal explanations. Instead, we find that idiographic explanations of policy struggles provide more traction in understanding the origin and evolution of laws. The uproar over illegal immigration is likely to get worse before it gets better, and the activists, attorneys and lawmakers who are better able to understand the formation of immigration policy will almost certainly have the upper hand going forward.

Appendix 1 – A Comparison of Institutional Affiliation of HB 144 Supporters and Opponents

<table>
<thead>
<tr>
<th>HB144 SUPPORTERS (Individuals &amp; Institutions)</th>
<th>HB144 OPPONENTS (Individuals &amp; Institutions)</th>
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</thead>
<tbody>
<tr>
<td>Bernie Machen, President, University of Utah</td>
<td>Danny Soderholm</td>
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<tr>
<td>Ashley Maak, Park City School District</td>
<td>Mike Sizer, Utah County, UFIRE (Utahns for Immigration Reform &amp; Enforcements)</td>
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<tr>
<td>Kristen Schaub, ESL teacher, Park City High School</td>
<td>Darren Davis, Highland Resident, UFIRE</td>
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<tr>
<td>Jose, student</td>
<td>Matt Throckmorton, UFIRE</td>
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<tr>
<td>Suzanne Espinosa, Director of Student Recruiting, University of Utah</td>
<td>Anna Jane Arroyo, Image de Utah-NUCHAC</td>
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<tr>
<td>Richard Kendall, Commissioner of Higher Education</td>
<td>Kris Kobach, Professor of Law, University of Missouri</td>
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<td>Mark O. Diaz, Utah Chair, Hispanic Assembly</td>
<td>Alex Segura, UMP (Utah Minuteman Project)</td>
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<tr>
<td>Brad Mortenson, Office of the Commissioner of Higher Education (Informational)</td>
<td>Congressman Merrill Cook, US House of Representatives</td>
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<tr>
<td>Fred Esplin, Vice President of University Relations, University of Utah (Informational)</td>
<td>Dr. Ronald Mortensen, CCII (Citizens Council on Illegal Immigration)</td>
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<tr>
<td>Robert Gallegos, RAZ/PAC</td>
<td>Michelle Seegmiller, citizen</td>
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<tr>
<td>Rich Kendall, Commission of Higher Education (Informational)</td>
<td>Gayle Reizecka &amp; Karianne Lisonbee, Utah Eagle Forum</td>
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<tr>
<td>William Evans, Attorney General's Office (Informational)</td>
<td>Eli Cawley, UMP</td>
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<tr>
<td>Mr. Patrick Reimherr, President, Associated Students of The University of Utah</td>
<td>Dave Morgan, citizen</td>
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<tr>
<td>Mr. Jonathon Hayes, Vice President, Associated Students of The University of Utah</td>
<td>Barry Hatch, citizen</td>
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<tr>
<td>Jose Rodriguez, citizen</td>
<td>Rep. Chris Herrod, Utah House of Representatives</td>
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<tr>
<td>Ryan Prows, Salt Lake Chamber of Commerce</td>
<td>Nellie Morgan, citizen</td>
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<tr>
<td>Dr. David Doty, Utah State Board of Regents</td>
<td>Spencer Hatch, citizen</td>
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<tr>
<td>Dr. Theresa Martinez, Professor, University of Utah</td>
<td>Barbara Whitely, citizen</td>
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<tr>
<td>Michael Clara, State Chairman, Utah Republican Hispanic Assembly</td>
<td>Betty Watkin, parent</td>
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<tr>
<td>Lee Gardner, Salt Lake County Assessor</td>
<td>Charlene Booth, Citizen Construction Coordinator</td>
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<tr>
<td>Tony Yapias, Proyecto Latino</td>
<td>Keith Kuder, Utah Young Republicans</td>
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<td>Dr. Octavio Villalpando, Chief Diversity Officer, University of Utah</td>
<td>Dan Deuel, Weber County 9/12 Organization</td>
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<tr>
<td>Pat Shea, citizen</td>
<td>Clark Turner, Citizen</td>
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<tr>
<td>John Spillman, <em>Utah Organization of Chinese Americans</em></td>
<td>Robert Wren, Chairman, UFire</td>
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<tr>
<td>Sandra Carpio &amp; Julia Valenzuela, students, <em>University of Utah</em></td>
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<td>Chris Gambroulas, <em>Ivory Homes</em></td>
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<tr>
<td>Jennifer Smith, <em>United Way</em></td>
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<tr>
<td>Amanda Covington, <em>Utah State Higher Education</em></td>
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<tr>
<td>Denise Castaneda, <em>Utahns for the American Dream</em></td>
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<tr>
<td>Wesley Smith, <em>Salt Lake Chamber of Commerce</em></td>
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<tr>
<td>Marina Lowe, <em>American Civil Liberties Union</em></td>
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<tr>
<td>Steven Harper, <em>Granite School Teacher</em></td>
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<tr>
<td>Paula Green Johnson, <em>United Way of Salt Lake</em></td>
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<tr>
<td>Jennifer Sanchez, <em>United Way of Salt Lake</em> (distributed written comments)</td>
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<tr>
<td>Daniel Reyna, Citizen</td>
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<tr>
<td>Karen Crompton, Director, <em>Voices for Utah Children</em></td>
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<tr>
<td>Yamila Martinez, Citizen</td>
<td></td>
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