

States React to the Immigration Debate

THE TEXAS LEGISLATURE CONSIDERS IMMIGRATION BILLS IN THE 80TH SESSION

By Maria Luisa “Lulu” Flores and Thomas Esparza, Jr.

Texas is blessed with a shared border with our neighbor Mexico. Those of us raised in families that settled Texas while it was still a part of Mexico understand intuitively the richness and complexity of our border culture. An artificial border created by the Texas revolution did not change border life. Families and businesses are intertwined and the two languages are used interchangeably in an ebb and flow as easy and natural as that of the waters of the Rio Grande.

Mostly, Texas has had a warm and cordial relationship with Mexico because of our shared border, culture and people, but peaceful coexistence also has its challenges including sharing a natural resource — water, illegal commerce and drug trafficking, and the influx of people in search of the American dream, to name a few. The longer these challenges go unanswered, the more difficult they are to resolve.

The estimated number of unauthorized immigrants in the U.S. varies widely from 7 to almost 12 million. Violence along the border due to increased people and drug trafficking has reached an all time high. While many immigrants come to the United States in search of economic opportunity, a significant number are employed in lower-skilled and lower-wage occupations.¹ Others come for malevolent purposes. The events of 9/11 have focused our attention on who enters our country, how they enter and how they behave once they arrive. Today, in addition to workers, drug smugglers and terrorists cross our borders. The increasing societal frustration in dealing with these challenges is palpable at every level.

Texas’ response to these challenges can be determinative of the nation’s response because of our long-standing close relationship with Mexico. If Texans lose patience and understanding, then our nation’s attitude will likely follow and our relationship with Mexico will surely sour. Texas prides itself in its relationship with Mexico as compared with other border

states like California and Arizona. (Recall President George H.W. Bush’s 1988 speech touting his Hispanic grandchildren).

Ask yourself: Do we want Texas to become reactionary, passing anti-immigrant measures, i.e. the Californization of Texas? Do we want the Arizona experience — with its Minutemen Militia — to define our country’s relationship with Mexico? The answer is “no.” We think that Texas should lead the nation by example in the treatment of our neighbor. Though some Texans have taken reactionary steps by forming and deploying Minutemen Militia at the border, those movements have not taken hold as most Texans have resisted and ignored them.

Reacting to the frustration of the mounting pressure of the immigration issue, and perhaps following the recommendations of the Texas Conservative Coalition Research Institute (TCCRI), some members of the Texas House of Representatives have pre-filed legislation to limit services to immigrants and, in some cases, to U.S. citizens born to illegal immigrants. These bills will be debated in the 80th Regular Session of the Texas Legislature, which convened Jan 9, 2007.

House Bill 28 by Leo Berman (R-Tyler), relating to the eligibility of an individual born in this state whose parents are illegal aliens to receive state benefits, would deny U.S. citizen children of undocumented foreign nationals any benefit provided by Texas or a political subdivision of this state. This would include, but not be limited to, public school education, employment, public assistance such as welfare or food stamps, health care, and disability or public housing.² The bill raises serious equal protection issues.

A measure co-authored by Rep. Berman and Rep. Joe Crabb (R-Atascocita), H.B. 29, relating to the imposition of a fee for money transfers sent to certain destinations outside the United States, an 8 percent fee would be placed on all out-

of-country money transfers.³ It was projected that workers from Mexico and Central America sent more than \$18 billion to family members in remittances in 2003.⁴ Whether Texas can constitutionally tax money transfers to foreign countries is questionable. Opposition is also developing in the banking sector. Sen. Royce West (D-Dallas) requested an attorney general’s opinion on Oct. 3, 2006 on the issue.⁵

Rep. Burt Solomons (R-Carrollton) filed House Concurrent Resolution 11, directing the Texas attorney general to sue to recover costs incurred by the state from illegal immigration. The bill demands that the federal government enforce federal immigration laws.⁶ “Texas bears a disproportionate burden from illegal immigration because we share a 1,254-mile border with Mexico,” Solomons said. “These undocumented illegals put a burden on our health care system, our judicial and criminal system, and law enforcement, all of which is ultimately paid for by the citizens of Texas. This is not fair.”⁷

The Comptroller of Public Accounts released a report in December 2006 that is the first comprehensive effort by the state government to calculate the benefits and costs of having 1.4 to 1.6 million illegal immigrants in Texas. Overall, the survey found that illegal immigrants pay more in taxes than they receive in state services. The total cost for state services was \$1.15 billion, but illegal immigrants, through sales and property taxes, provided \$1.58 billion in taxes for the state. That was a net positive impact to state finances of \$424.7 million, former Comptroller Carole Keeton Strayhorn said.⁸

H.B. 40 by Rep. Ken Paxton (R-McKinney) would require certain applicants for, and recipients of, medical assistance to provide proof of citizenship or nationality and of identity. Senate Bill 47 by Sen. Jane Nelson (R-Lewisville), would require a person who is applying

for a marriage license to make a signed statement that they are not marrying to circumvent immigration laws or receive immigration benefits. H.B. 128 by Rep. Diane Delisi (R-Temple) would require state agencies to report the costs of services provided to unlawful immigrants.⁹

The bills raise constitutional questions that have already been through the courts. For example, in 1982, the U.S. Supreme Court ruled in *Plyler v. Doe*, 457 U.S. 202 (1982), that public schools were prohibited from denying immigrant students access to a public education. The Court stated that undocumented children have the same right to a free public education as U.S. citizens and permanent residents. Undocumented immigrant students are obligated, as are all other students, to attend school until they reach the age mandated by state law. Public schools and school personnel are prohibited under *Plyler* from adopting policies or taking actions that would deny students access to education based on their immigration status.¹⁰

Whether any of these measures are considered or have a chance for passage will depend on the legislative process. Bills filed will be referred to a committee where they may or may not be set for hearing by the committee chair. If a bill is heard in committee and is passed, it must then pass the full House or Senate and then go through the same process in the other chamber. After passage, it would need to gain the governor's approval. There is the likelihood that these bills will run into strong opposition in the Texas Legislature. Members of the Mexican American Legislative Caucus have expressed concern over legislation that targets immigrants.¹¹ Gov. Rick Perry said that he opposes legislation that creates division in society. "We need to look at ways to be bringing people together rather than driving wedges between them," Perry told reporters, after giving a speech at the Texas Border Coalition's Legislative Conference on Dec. 6, 2006.¹²

The question remains whether the Texas Legislature should even be delving into the area of immigration legislation or

whether this is the exclusive province of our federal government. The end result could be that immigration is dealt with on a state-by-state basis leading to chaos. John Colyandro, director of the Texas Conservative Coalition, told *TIME* that he expects "quite a bit of legislation" on illegal immigration to pop up in 2007 — and not just in Texas. "Because Congress did not pass a comprehensive reform bill on immigration, more and more states are going to step in like Arizona," he says. Arizona voters last month passed measures denying illegal immigrants access to state-subsidized benefits like child care as well as the right to bail and punitive damages in lawsuits. In the Texas Legislature, Colyandro expects a broad array of legislation targeting benefits to illegals, as well as voter verification of citizenship, employer sanctions for hiring illegal aliens, and additional funding for border security. He says the two extremes of the current immigration debate — deporting all illegals or granting amnesty to all — are "unworkable and frankly intolerable." He adds: "Somewhere between the two are workable solutions and that's where our focus will be in the Texas Legislature in January."¹³

The extremist solutions are not the answer. The reality is that we need a comprehensive national policy on immigration; providing for better border and coastline security and a resolution of the status of the millions already here unlawfully. Piecemeal state-by-state legislation will result in unimaginable chaos and hardships. An earned immigration status would allow undocumented people in the United States to obtain a status that is not permanent resident status. First, they would have to come out of the shadows and identify themselves. Second, they would have to pass background and health screenings. Then they would just have a status rather than a "green card." With their status, they could pay income and social security taxes, travel, and work legally. People with this status would not get put in front of the line for permanent residency or citizenship. They would not

get their green card until they had "put in their dues," so to speak. After a reasonable period of time, say 10 years, they could apply to become permanent residents. Then they would have a path to citizenship without getting in front of the millions who have waited to immigrate under the current system. We must also secure our borders, perhaps before any person is allowed to apply for their status.

We simply cannot afford, either as Texans or Americans, to allow the current situation to continue. Congress should lead and pass immigration legislation that is comprehensive, compassionate, protective and fair.

Notes

1. Capps & Foruny, 2006.
2. Texas Legislature Online, www.capitol.state.tx.us
3. *Id.*
4. Suro, 2005.
5. Christine DeLoma and William Lutz/LSR, Oct. 27, 2006, <http://www.easttexasreview.com/story.html>.
6. Texas Legislature Online, www.capitol.state.tx.us
7. Associated Press, Nov. 13, 2006.
8. R.G. Ratcliffe, *Houston Chronicle*, Austin Bureau, Dec. 8, 2006.
9. Texas Legislature Online, www.capitol.state.tx.us
10. <http://www.americanpatrol.com/REFERENCE/PlylerVDoeSummary.html>.
11. Rep. Norma Chávez, D-El Paso, told the 10th Annual Summit of the States in Washington, D.C., that House Bill 28 is "un-American." The bill, filed by Rep. Leo Berman, R-Tyler, denies state benefits to the children of undocumented immigrants. Source: *Rio Grande Guardian*, Dec. 6, 2006.
12. *Rio Grande Guardian*, Dec. 5, 2006.
13. Cathy Booth Thomas/Dallas, Friday, Nov. 17, 2006, <http://www.time.com/time/nation/printout/0,8816,1560643,00.html>.

Maria Luisa "Lulu" Flores

is of counsel to HenderLaw, P.C., legislative director for the Mexican American Bar Association of Texas, and a former legislative director for the State Bar of Texas.

Thomas Esparza, Jr.

is board certified in immigration and nationality law, is the chairman of the Austin Commission on Immigrant Affairs, and past Chairman of the Texas Chapter of the American Immigration Lawyers Association with 29 years experience in the field. He can be reached at tome@tomesparza.com.