

STATE-LEVEL IMMIGRANT-RELATED LEGISLATION: WHAT IT MEANS FOR THE IMMIGRATION POLICY DEBATE

*Robert Donnelly**

Introduction

In the face of perceived federal inaction, the U.S. states are more aggressively debating and enacting immigrant-related legislation. Thematically, bills may be grouped in two main camps: 1) pro-enforcement legislation aimed at making life harder for unauthorized migrants through enhanced criminal sanctions and the denial of social services, and 2) pro-integration legislation intended to help legal immigrants through integration, citizenship, and education policy. As explained in greater detail in a subsequent section, this research found that pro-enforcement bills were enacted at more than twice the rate of pro-integration bills. Geographically, legislation was introduced in almost every state, with the most conspicuous growth in the South; in the first half of 2010, all 46 assemblies then in session recorded the introduction of immigrant-related bills, and 44 legislatures passed legislation. Politically, support for immigrant-related legislation appeared bi-partisan, and the most efficient combination for passage of pro-enforcement legislation appeared to be the duo of a Republican governor and a Republican legislature (ImmigrationWorks USA 2011).

The increase in immigrant-related legislation —throughout the country, mostly to enhance enforcement, and with the support of both parties— calls for a research plan to better understand its influences and effects. What does the rise in legislation tell us —if anything— about “xenophobia,” “nativism,” or anti-immigrant sentiment in the United States? And, what does it augur for comprehensive immigration reform at the federal level? This chapter will address these and other questions through an analysis of the immigrant-related legislation passed at the state level in the first half of 2010.

A principal objective of this research is to better understand the motivations behind the legislation. Is it, on balance, disposed against or for immigrant families? What share of bills can be qualified as restrictive/punitive and what share as beneficial to immigrant and refugee households? Have the media overemphasized the punitive/restrictive aspects of high-profile legislation, such as Arizona’s SB1070, while giving less coverage to other bills that might help immigrant families quiet-

* Program associate for the Mexico Institute of the Woodrow Wilson International Center for Scholars in Washington, D.C. robert.donnelly@wilsoncenter.org, <http://www.wilsoncenter.org/staff/robert-donnelly>.

ly and non-controversially? In numbers, does legislation in support of immigrant integration, citizenship, and English-language education outweigh legislation that denies social services, enhances criminal sanctions, and creates new barriers to lawful employment? Which bills straddle the line and overlap both categories? And finally, how does immigrant-related legislation divide geographically and break down by party?

Another interest of the research is to better understand the political factors contributing to the increase of such legislation in this decade. The refrain that the federal government's ineffectiveness at controlling the southern border explains the growth of state-level initiatives may be true. However, there are also other factors at play, e.g., the emergence of the Tea Party movement, the staying power of border vigilante groups in local immigration politics, etc., and these will be discussed over the succeeding pages. The chapter additionally examines the impact that the state-level legislation as well as the political circumstances shaping it are having on the national comprehensive immigration reform (CIR) debate, as well as on prospects for CIR passage in the short term. Finally, it examines the overlapping issues of "nativism," "xenophobia," and anti-immigrant sentiment, and discusses their role in shaping legislation.

State-Level Immigrant-Related Legislation: Why Now?

A frequent argument to explain the expansion in state-level legislation faults the federal government for failing to either secure the southern border or pass comprehensive immigration reform. The argument goes that these shortcomings have forced state assemblies to step in to meet constituents' demands for action on immigration. "The federal government's failure to enforce our border has functionally turned every state into a border state... The states are stepping in and filling the void left by the federal government," said Randy Terrill, a Republican lawmaker in Oklahoma, one of the half-dozen or so states in 2011 pursuing SB1070-like legislation (Preston 2010). The U.S. Congress is famously seemingly paralyzed on a range of policy issues and not just immigration, but the argument has validity given the high salience that "undocumented immigration" obtains across the country. In fact, national and state polls show that respondents rate "undocumented immigration" as a pressing concern, even in locations far from the southern border with small foreign-born populations. This is still the case even as the unauthorized migrant population declines in many parts of the United States and falls from its 2007 peak (Pew Hispanic Center 2011). Moreover, the enhanced roles that state and local authorities are now playing in federal immigration enforcement also suggests that constituents may be expecting state officials to step forward more vigorously on these matters. Meanwhile, in immigrant-friendly locales with large foreign-born populations, such as San Jose, California, the failure of CIR and the absence of strong federal leadership have forced local governments to compensate with their own integration, citizen-

ship, and education efforts in order to meet growing demand.¹ Another recent catalyst for pro-integration legislation at the state level was the U.S. Senate's inability to bring to a vote the DREAM Act in December 2010, considered the last best chance for such a vote in the foreseeable future. Nevertheless, what constituted a failure for the bill's backers has helped to fuel support for state-specific DREAM Acts, such as those being talked about in Massachusetts and Maryland (Vedantam 2010).

Anti-immigrant politics have contributed to the rapid growth in state legislative activism. In the run-up to the November 2010 midterms, candidates for assembly offices throughout the country scored points with voters by pronouncing in favor of copycat laws to Arizona's SB1070 and by voicing support for the revision of state and federal birthright citizenship laws. Turning campaigns into referendums on undocumented immigration proved a smart strategy for some politicians, as the politics surrounding the passage of Arizona's SB1070 showed in April 2010. Facing a tough reelection bid, incumbent Governor Jan Brewer used her support of the bill as a shield, strongly deflecting a tough primary challenge from the right and forcing her main rival to drop out. In the general election, Brewer easily trounced the Democratic candidate, former state Attorney General Terry Goddard, winning by 12 percentage points. Even though the main provisions of the controversial bill have been suspended following a federal judge's injunction in July, the mere signing of the bill into law proved a boon for Brewer (Donnelly 2010).

Beyond Arizona, candidates in 2010 blasted opponents with anti-immigrant rhetoric. Nevada Republican Senate candidate Sharron Angle called her opponent, Sen. Harry Reid, "the best friend an illegal alien ever had," while Louisiana Sen. David Vittier made a similar accusation against his opponent (Chishti and Bergeron 2010). Elsewhere, candidates from California, Colorado, and Kansas lined up for endorsements from Maricopa County, Arizona, Sheriff Joe Arpaio, a leading proponent of "get tough" enforcement measures against unauthorized persons (Chishti and Bergeron 2010). Media coverage also appeared to affect the timing and sequence of legislative activity. The widely publicized March 2010 slaying of Cochise County rancher Robert Krentz fueled support for SB1070 in the month before it was eventually voted —although initial suspicions of an unauthorized border-crossing killer have so far gone unproven. In Virginia, news reporting on the August 2010 death of nun Denise Mosier, killed in a car crash caused by a drunken undocumented immigrant with two prior drunk-driving convictions, probably contributed to pro-enforcement public opinion (Archibold 2010; Buske and Duggan 2010).

Trends hint that pro-enforcement state legislative activism will continue in the short term. The presence of border vigilante groups as a kind of semi-permanent backdrop in the media and the appeal of the politically influential Tea Party movement are two such forces, shaping local immigration politics at the border and elsewhere. In her book, *The Law into Their Own Hands* (2009), Roxanne Lynn Doty suggests that border vigilante groups help socially construct undocumented immi-

¹ For the specific case of San Jose, see Bada et al. 2010.

grants as dangers to the social order that require extraordinary controls. Though unsupported by the existing data, the assertion that undocumented immigrants are would-be terrorists and violent criminals undeserving of social, political, and economic rights operates as a powerful rallying tool for some politicians, she says. Furthermore, she argues, constituting migrant populations as “enemies” and defining non-migrant U.S.-born populations as “friends” advances a simple yet effective dichotomy, which, in an increasingly diverse society, helps to unambiguously define American essentialism and national identity.

Another trend-shaping force is the politically influential Tea Party movement. At the 2010 midterms, contenders endorsed by the conservative Tea Party won several key Republican Senate primary contests, in Alaska, Delaware, Kentucky, and Colorado; and some Tea Party candidates won general elections, such as the senatorial and gubernatorial races in Florida, among others. Heading into the 2012 elections, the movement is expected to exert influence over the selection of Republican candidates in many different races, amplifying the importance of its members’ views on immigration.²

Nativist and Xenophobic Impulses

What are the consequences of such legislative activism at the state level? Do the bills passed by the different assemblies reflect a pervasive nationwide disgust with undocumented immigrants and, possibly even, with the legal foreign-born? Could this sentiment culminate in tough enforcement laws like SB1070 or repeal of the Fourteenth Amendment and its birthright citizenship provisions? To what extent is such legislative activism properly classified as xenophobic or nativist? Or is this cycle’s wave of punitive/restrictive legislation more consonant with the anti-welfare discourse of the mid-1990s, reflected in the immigration and welfare reform laws Congress passed in 1996?

This analysis found that most recent state-level legislation can be classified as punitive/restrictive. Yet, it also found that the long arm of these laws appears to extend only to undocumented immigrants. Legal foreign-born residents, such as asylum seekers, refugees, legal permanent residents, etc., see no similar degradation of rights. They do not face the same punishments that undocumented persons face, and, in fact, this analysis found that support for pro-enforcement legislation did not necessarily preclude a legislature’s passage of pro-integration bills to help legal immigrants. What is more, several states have made provisions for citizenship promotion, English-language education, and refugee services—efforts to help the legal foreign-born— while promoting heavier restrictions and penalties against the undocumented foreign-born.

² At rates above those of moderate voters, Tea Party sympathizers assert that immigration should be decreased and that it causes the displacement of U.S. workers, according to a poll conducted by the University of Washington Institute for the Study of Ethnicity, Race, and Sexuality (2010).

Rather than manifest outright xenophobia, the state-level legislation signals a bifurcated and ambivalent approach to the management of foreign-born populations. On the one hand, undocumented foreigners face new restrictions brought on by the recent legislative changes, as well as by the “devolution of enforcement” trend that has beefed up interior enforcement. They may now face pressures from local officials deputized to enforce federal immigration law under 287(g) agreements or who are partners in the government’s Secure Communities program, requiring participating local police to check the fingerprints of all arrested individuals against a Department of Homeland Security (DHS) database. In addition to the stress of possible deportation should they be arrested—though not necessarily convicted—for committing a traffic violation, undocumented migrants must also now contend with the prospect of new state criminal penalties for lacking papers, the central thrust behind the SB1070 law being imitated nationwide.

By these comparisons, legal foreign-born residents enjoy many more rights and face many fewer restrictions than the undocumented. But this characterization is challenged, too, after taking into account the hardships that punitive/restrictive legislation places on mixed-status households and the heightened discrimination and racism that such laws—and the adverse political climate surrounding their passage—places on all Latino co-ethnics, whether “legal or “illegal.”

What can the latest wave of punitive/restrictive legislation tell us about anti-immigrant sentiment in the United States? Is this sentiment a matter for concern, but not too much concern? Is it a blip on a progress chart that in time will culminate in the gradual integration of today’s immigrant population, following the trajectory of prior generations? Does the principal benefit of today’s punitive/restrictive legislation lie in its theatrical political-symbolic import and its effectiveness as a rallying message at election time?

While state and local initiatives are limited in immediate scope to their respective jurisdictions, they can have national repercussions. On the one hand, state and local politics affect the positions that national-level politicians are willing to stake their reelection bids on, while political rhetoric can “move the goalposts” closer to or farther from policy objectives. Comprehensive immigration reform (CIR) is arguably one such goal, whose achievement has become even more remote because of the tone of the immigration debate at the local level. And some prognostications suggest that a serious debate on CIR is impossible until, at the earliest, January 2013 and then only if the Republicans lose control of the House of Representatives and President Barack Obama is reelected. Local and state immigration politics can also have a tangible effect on federal enforcement policy and strategy. For example, local politics conditions support at the ground level for the continuation of “devolution of enforcement” measures such as the 287(g) and Secure Communities programs. As noted in the recent edited volume *Taking Local Control* (Varsanyi 2010), which compiles studies of recent immigrant-related legislative activism in the United States, federal enforcement policy has historically relied on the sometimes tacit and sometimes more overt support of local authorities. But today’s enforcement policies appear to take a qualitative step further, explicitly forging binding partnerships.

Analysis of 2010 State-Level Immigrant-Related Legislation

This study analyzed data collected by the National Conference of State Legislatures (NCSL) of state-level immigrant-related legislation passed in the first half of 2010. The objective was to determine what share of the bills conformed to a “punitive/restrictive” definition and what percentage fit, rather, in an “integrative/beneficial” category. The purpose was to provide a definitive breakdown between these two important categories, in order to determine the aggregate direction of immigrant-related legislation at the state level. Is most of it “punitive/restrictive” or “integrative/beneficial”? In what cases does legislation straddle both categories? Although the NCSL data do sub-divide the bills into five or so categories, these topical fields avoid judgment on the essential question of whether a particular bill is designed to make life easier or harder for a foreign-born person. At the same time, another objective of the study was to better pinpoint the geographic distribution of the legislation and to identify trends in party composition and legislative outcome.

Methodology

Each bill was evaluated using its NCSL-drafted summary and in consultation with the actual legislation as published on the respective state legislature’s website. After initial evaluation, bills were organized into one of three categories. Group A included “punitive/restrictive” legislation, such as bills dealing with enhanced local enforcement, denial of social services and benefits, higher barriers to employment and licensing, and the like. Group B encompassed “integrative/beneficial” legislation, such as bills related to refugee resettlement, funding for English-language classes, and citizenship acquisition. Bills fitting both groups, such as appropriations, were placed in Group C.

Some of the NCSL-collected legislation was disregarded for this study. Resolutions like a successful motion to institute a Louisiana Irish Week were thrown out. Entries whose summaries were ambiguously or vaguely worded and legislation that was only obliquely “immigration-related” were also discarded after consulting the actual law. Dilemmas arose in the study; the greatest involved the inadequacy of the monolithic categories to enable sufficient nuance for the different kinds of legislation being passed. For example, Arizona’s SB1070, the strongest pro-enforcement bill passed at the state level in 2010, was given the same weight in Group A as Florida House Bill 971, which placed a licensing restriction on tow truck operators who contract with the state. (In fact, a spectrum may enable a more nuanced visual representation of the different forms of legislation, especially of the enforcement-related kind, the category with greatest variation.) The original NCSL data compiled 195 pieces of legislation, which this analysis reduced to 116, also lowering the number of corresponding states from 43 to 37.

The analysis found that 67 (about 58 percent) of all bills belonged to Category A, with the remaining 49 evenly split between Group B (24 bills) and Group C (25).

The geographic distribution found that the Northeast accounted for the fewest bills, with only 8, compared with the Midwest (34), the South (43), and the West (31). The geographic quadrant with the most Category A (pro-enforcement) bills was the South, with 32, followed by the Midwest and West with 17 and 16, respectively. The Northeast posted only two pro-enforcement bills in the first half of the year. For Category B (pro-integration), the Midwest and the West posted the highest number of bills, with nine and eight respectively, while the South posted only five, and the Northeast, two. Southern states passed six times as many Group A bills as they passed Group B bills. In comparison, the other three quadrants reported greater parity between the two dominant categories. Group A bills led Group B bills by only a 2:1 rate in both the Midwest and the West, while in the Northeast both categories had the same number of bills (two). After considering the 116 bills, the analysis came to the following conclusions:

- Most bills favor enhanced enforcement and/or denial of social services to undocumented immigrants.

Approximately 58 percent of the bills passed at the state level in the first half of 2010 conformed to Group A, the category for bills related to enhanced enforcement, denial of social services, and higher barriers for employment and licensing. About 21 percent of all bills fit Group B, the “integrative/beneficial” category, and an equal number belonged in Group C.

Geographic Distribution

- Southern states account for just under half of all pro-enforcement bills in the first half of 2010.

The states of the South, as defined by the U.S. Census, accounted for 32 of the total 67 Group A bills passed in the period studied. In that same period, the southern states passed six times as many Group A bills as Group B bills (32 versus 5).³

³ According to the census, the South is made up of Delaware; Maryland; Washington, D.C.; Virginia; West Virginia; North Carolina; South Carolina; Georgia; Florida; Kentucky; Tennessee; Alabama; Mississippi; Arkansas; Louisiana; Oklahoma; and Texas. However, the following states were excluded from the study either because they were not in session in first half of 2010 (Texas) or because their legislatures passed no immigrant-related legislation in that period, according to the NCSL data: Delaware, North Carolina, and Arkansas. Washington, D.C., is not a state and does not have a state legislature, so it was not captured in the NCSL data.

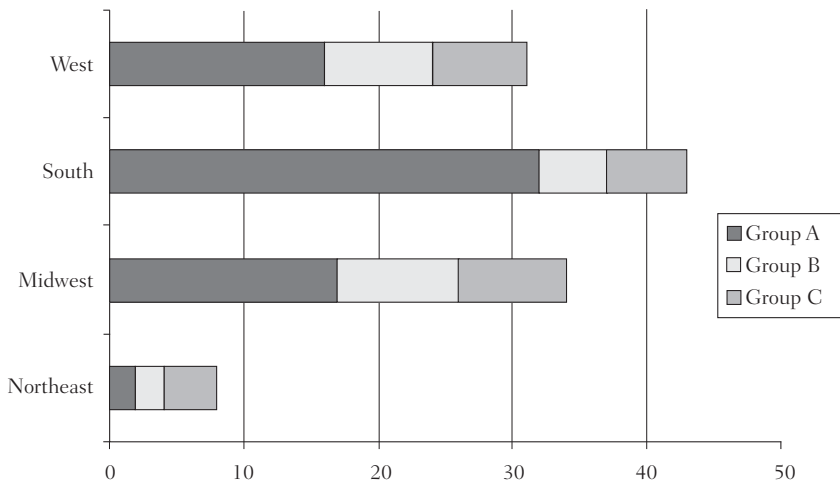
- In mid-western and western states, Group A bills outpace Group B bills 2-to-1.

Group A bills surpassed Group B bills by 2-to-1 in both the Midwest and the West.⁴

- The Northeast reports the fewest bills passed in the time period.⁵

The northeastern states passed as many Group A as Group B bills in the time period, two for each category.

CHART 1
GEOGRAPHIC DISTRIBUTION OF STATE-LEVEL IMMIGRANT-RELATED LEGISLATION (FIRST HALF OF 2010)*



* Passed legislation.

SOURCE: Developed by the author using data from the National Conference of State Legislatures (n.d.).

⁴ The census defines the Midwest as Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas. Of these 12 states, only Ohio and North Dakota (because it was not in session) did not record the passage of any piece of immigrant-related legislation in the period. The western states are Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, California, Alaska, and Hawaii. Of these, neither Montana nor Nevada recorded immigrant-related legislation in the time period as they were out of session, and the legislation passed in Wyoming, New Mexico, and Alaska was excluded from this analysis.

⁵ The Northeast, by Census Bureau definition, encompasses Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania. Immigrant-related legislation was passed in all of these states in the first half of 2010 except for New Jersey, while the New Hampshire legislation was omitted from this analysis.

Partisan Distribution

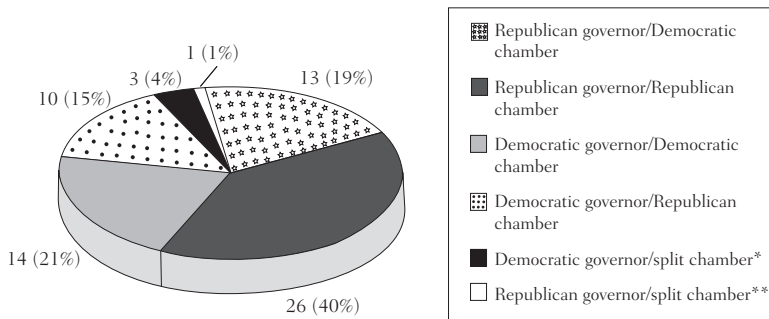
- Support for pro-enforcement legislation appears to be bi-partisan.

Support for pro-enforcement legislation appeared significantly bi-partisan. Twenty-seven pro-enforcement bills were passed and signed into law by divided governments, where the legislature and the governor were from different parties or where the legislature was evenly split. Where Democrats controlled both the governorship and the legislature, 14 pro-enforcement bills were passed, but, as of the date of this study, only 10 had been formally enacted, with four awaiting the governor’s signature, all in Illinois.

- Republican governors signed 12 more Group A bills into law than their Democratic counterparts: 39 to 27.

The most activist legislatures for immigrant-related legislation appeared to be those in which Republicans controlled the legislature and the governor was a Republican. A large percentage of Group A legislation (26 of 67) and a large share of all legislation (39 of 116) met both of the following two criteria: 1) the originating chamber had a Republican majority; and, 2) the governor was a Republican. Of the 26 pro-enforcement bills that passed, all but one was enacted, and the vetoed bill, Georgia Senate Bill 291, which placed permit restrictions on immigrant gun owners, went unsigned for a reason unrelated to immigration policy.⁶

CHART 2
GROUP A (PRO-ENFORCEMENT): LEGISLATIVE-EXECUTIVE
COMPOSITION AND BILLS PASSED



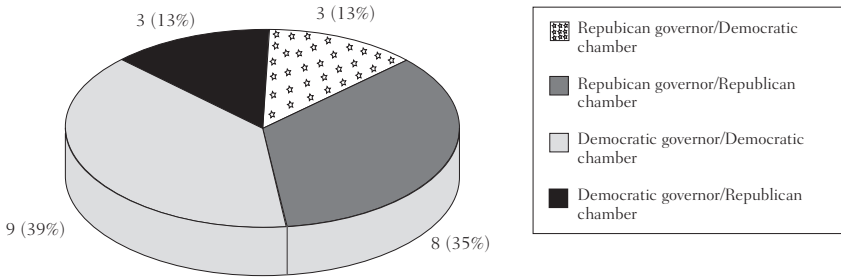
*Tennessee state Senate.

**Mississippi state Senate and Louisiana House of Representatives.

SOURCE: Developed by the author using data from the National Conference of State Legislatures (n.d.).

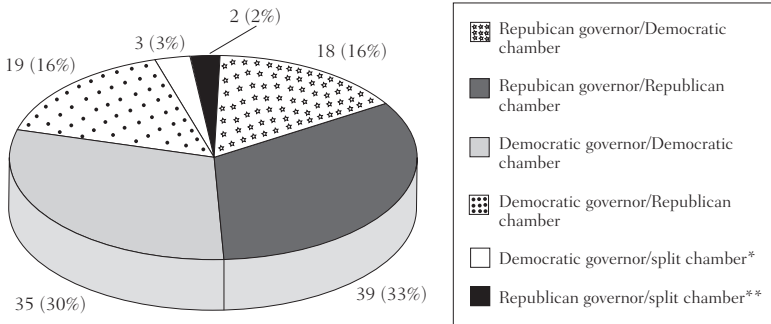
⁶ In a news release, the pro-immigration reform group National Immigration Forum offers seven characteristics for states considering SB1070-like legislation, including the following: 1) A re-elected

CHART 3
 GROUP B (INTEGRATIVE/BENEFICIAL: LEGISLATIVE-EXECUTIVE COMPOSITION
 AND BILLS PASSED



SOURCE: Chart developed by the author using data from the National Conference of State Legislatures (n.d.).

CHART 4
 TOTALS: LEGISLATIVE-EXECUTIVE COMPOSITION AND BILLS PASSED



*Tennessee state Senate.

**Mississippi state Senate and Louisiana House of Representatives.

SOURCE: Chart developed by the author using data from the National Conference of State Legislatures (n.d.).

highly motivated potential bill sponsor; 2) A legislature where a similar bill has already been introduced or that has passed a supportive resolution; 3) A conservative governor and conservative majority in the legislature (Vargas 2010).

Post-2010 Legislation

Although far from exhaustive, this analysis does show the basic patterns and trends that shaped immigrant-related legislation at the state level in the first half of 2010. The policy thrust for the majority of the legislation was on enhanced enforcement through “attrition” and the denial of social services and/or through tougher criminal penalties similar to SB1070. Geographically, the center of pro-enforcement legislative activism was located closer to the South than to any other region, with the Midwest and the West in not-too-distant second place. And, politically, support for pro-enforcement policies was bi-partisan, although the most efficient combination for successful passage appeared to be the duo of a Republican governor and a Republican-controlled legislature. While trends can change, in the short term, it appears that these basic characteristics will hold or even harden in 2011 and beyond. Take the following most recent trends in immigrant-related legislation and debate at the state level:

SB1070 COPYCAT BILLS

Lawmakers in several states are expected to introduce bills modeled on Arizona’s SB1070, in spite of the fact that in July a federal court enjoined the bill’s core enforcement provisions. States where the legislation is popular include those located in politically conservative regions of the country, such as the South, and where long-term immigrant settlement is still considered a recent phenomenon dating to the 1990s. Among states where the legislation is expected to be discussed are Georgia, Mississippi, Nebraska, Kansas, Pennsylvania, South Carolina, and Oklahoma. Emboldening legislators to take up bills may be the political bonus to be gained from publicly supporting “get tough” measures on undocumented immigrants. And the absence of a conclusive ruling on the constitutionality of SB1070 by the U.S. federal judiciary, as well as support by the executive for “devolution of enforcement” policies, may have opened the door wider ideologically for the consideration of such laws. “States will push ahead regardless of the 9th Circuit [court decision upholding the injunction against SB1070’s core enforcement provisions],” Kansas’s new Secretary of State Kris Kobach was quoted as saying in a *New York Times* article (Preston 2010). As of January 2011, Mississippi’s state Senate had passed an SB1070-like bill, while Colorado lawmakers planned to introduce similar legislation, though with some important differences (La Plaza 2011a).

BIRTHRIGHT CITIZENSHIP REPEAL

Assertions that undocumented immigrants are motivated to give birth to “anchor babies” and exploit the U.S. birthright citizenship tradition have fueled a movement to repeal the Fourteenth Amendment. Additionally, efforts are afoot to make

statutory changes at the state level that would deny “state citizenship” to the children of undocumented immigrants, blocking access to state social services, education benefits, and licensing privileges (driver’s licenses). Such efforts could symbolize a final race to the bottom for “attrition through enforcement” advocates, considering that many states already have sharply curtailed social services for non-U.S. citizens. Anti-immigrant sentiment appears to inform the positions of some supporters of these measures. One backer of a coordinated movement to repeal citizenship in Oklahoma, Missouri, Pennsylvania, and Arizona said that the goal of the project was to eliminate “an anchor baby status, in which an illegal alien invader comes into our country and has a child on our soil that is granted citizenship automatically,” he was quoted as saying in *The New York Times* (Preston 2010).

Conclusion

Underlying the intense legislative activity of 2010 have been concerns deeper than dissatisfaction with the government’s perceived failure to control the southern border or to implement comprehensive immigration reform. Immigration can alter the social fabric quickly. It can introduce new “foreign” elements into the society. And it can wreak a kind of unexpected creative destruction. At the same time, it can also constructively transform communities; it can renew and revitalize the city and the suburb; and it regenerates America’s national self, culturally, politically, and economically.

These are the two very distinct visions of immigration that are playing out at the state and local levels in the United States. On the one hand, states with high legal permanent resident populations with long histories of immigrant settlement and where present-day political leaders may themselves be the sons and daughters of immigrants may have more sanguine outlooks on immigration and greater local demand to implement pro-integration measures. On the other hand, so-called non-traditional immigrant-receiving states, where Latino settlement is new, and those in historically conservative regions, may be more intensely focused on the question of “illegality,” responding with measures designed to shun immigrants (denying social services) or sanction them (through new criminal justice penalties). This dichotomy is complicated by differences between certain states and certain local governments, as well as within local governments themselves, such as the conflicts that exist between cities and counties on the merits of enhanced immigration-enforcement powers.

Attitudes toward immigration are highly varied in the United States and differ not only from state to state but from state to county and from county to city. Across the country, as this analysis of state legislation has shown, immigration politics are a variegated patchwork, reflecting the diversity of opinion that this controversial subject inspires, but also showing the way that it can inhibit the basic issue consensus needed to foster federal-level policy reform. While the growth in state legislation is commonly blamed on federal inaction, it may be as much a cause of this inaction as an effect.

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