

# WAITING FOR THE SUPREME COURT

IMMIGRATION LAWMAKING IN THE STATES 2012





## ABOUT THE AUTHORS

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ImmigrationWorks USA is a national organization advancing immigration reform that works for all Americans – employers, workers and citizens. Its twin goals: to educate the public about the benefits of immigration and build a mainstream grassroots constituency in favor of an overhaul – business owners and others from across America willing to speak out and demand that it gets done. The organization links 25 state-based business coalitions: employers and trade associations from Florida to Oregon and from every sector of the economy that relies on immigrant workers. For more information, visit [www.ImmigrationWorksUSA.org](http://www.ImmigrationWorksUSA.org) or contact us at [info@immigrationworksusa.org](mailto:info@immigrationworksusa.org).



## ALL EXPECTATIONS OFF IN THE STATES THIS YEAR

Call it the year of upended expectations. Nothing happened as anticipated in this year's state legislative sessions, as recent trends in immigration lawmaking – the seemingly ineluctable straight-line tendencies of the past six years – waived, flagged or abruptly reversed, at least for this year.

Not a single state took advantage of the opening created by the U.S. Supreme Court last June when it ruled in the *Whiting v. U.S. Chamber of Commerce* case that states may require employers to enroll in the federal E-Verify program, validating the identities and work authorization of employees. Between 2006 and 2011, when it wasn't clear if such mandates were legal, a full one-third of the states passed laws requiring some employers to use the program, and nine enacted statutes requiring it of all but the smallest businesses. This year, despite the Supreme Court's express permission, no state in the nation passed a law mandating E-Verify for any new employers.

State lawmakers' appetite for tackling immigration, legal and illegal, declined precipitously this year. The number of immigration bills considered and passed in the states had risen every year since 2006: a steep and steady climb. This year, for the first time, the number went down substantially. According to the National Conference of State Legislatures, 865 bills mentioning immigration were introduced in the first quarter of 2012 – a 44 percent decrease from the 1,538 measures introduced by the same period last year. And the number of statutes enacted – always a much smaller number – will surely decline proportionately.

Lawmakers determined to crack down on illegal immigration also appeared to be running out of ideas. Over the past six years, every new legislative session brought an evolution in enforcement tactics, each more cunning and legally sophisticated than those introduced in years before: first laws barring illegal immigrants from receiving state benefits, then laws penalizing employers who hire illegal immigrants, then laws requiring local police and schools to inquire about immigration status, then laws invalidating contracts with illegal immigrants, and more. This year, there were few new stratagems and no wildfire trends.

Indeed, only one state in the nation enacted a significant immigration enforcement law this year: Alabama. And Alabama lawmakers weren't trying to break new ground. On the contrary. Republican Gov.

Robert Bentley, backed by Republican Attorney General Luther Strange, initiated this year's legislative debate in the hope that lawmakers would backtrack from the omnibus bill enacted in Alabama last year. Considered the toughest state immigration law in the country, HB 56 was thought to be vulnerable to legal challenges and endangering outside investment in the state.

In the end, enforcement-minded Alabama lawmakers defied the governor. The legislature didn't backtrack as anticipated, and the law enacted this year, HB 658, includes one novel tactic: the state Department of Homeland Security will now post an online list, with photographs, of every unauthorized immigrant who appears in a state court. (*For more on what happened in Alabama, please see page 6.*) But if anything, the Alabama legislation is the exception that proves the rule.

This year, no state in the nation enacted law modeled on Arizona's SB 1070, which requires local police to inquire about the immigration status of people they stop for other reasons who they suspect are in the country illegally. No state rescinded birthright citizenship, as has been threatened in several states in recent years. No additional state mandated a school census of the kind included in the 2011 Alabama law, requiring K-12 administrators to count the unauthorized immigrants among their students. No state that currently allows unauthorized immigrants to get driver's licenses repealed the privilege. And no state that grants in-state tuition to unauthorized college students will stop doing so.

## POURING OIL ON A SPUTTERING FIRE?

None of this year's broken trends undo the transformation of the last six years: a dramatic rethinking of who should be making immigration law, Washington or the states. With Congress paralyzed and unable to overhaul the federal immigration system, state lawmakers – once thought to have no legitimate role in regulating immigration – took matters into their own hands. Every state in the nation considered immigration proposals. More than half enacted law between 2006 and 2011. The Supreme Court legitimized the spreading revolt. And the outcome was a historic shift in the balance of power between Washington and the states – a shift likely to tilt further still when the court rules in coming weeks on its second immigration federalism case in two years, *Arizona v. United States*.

But it's unclear what will happen after that. Is this the end of the state push to take over immigration lawmaking? A pause? The lull before the storm?

This year, not a single state took advantage of the opening created by last year's Supreme Court decision that states can require employers to use E-Verify. And no state enacted law modeled on Arizona's SB 1070.

At issue in the Supreme Court are four provisions of Arizona's controversial 2010 policing law, SB 1070. Most court-watchers expect the justices to uphold at least one or two of those provisions, sending an amber if not green light to enforcement-minded lawmak-

ers in the states. But what effect exactly will that have in the current climate? How many states will walk through the door the court is opening? Is the fire in the states sputtering out? Or will next year see a new explosion of state lawmaking as pent-up demand and voter anger generate yet another wave of tough immigration enforcement law?

A closer look at what happened in the states this year offers a few clues. Some lawmakers said they were waiting for guidance from the high court. Others were pressed for time in short election-year sessions or preoccupied with budgets and redistricting. But in many states, the reasons went beyond timing and logistics. The appetite for cracking down on illegal immigration appeared to be ebbing – at least temporarily.

With the economy still skittish and unemployment stuck above 8 percent, voters in many states seemed to have more important things on their minds. Opposition to what some see as excessive enforcement is on the rise in many states – from immigrant rights and Latino groups, but also employers, local governments, law enforcement and school officials. And lawmakers are wary of legal challenges of the kind brought against Arizona and other states pioneering new enforcement tactics.

Even Republican lawmakers seemed divided this year: split between those determined to press ahead with the strategy known as “attrition through enforcement” – making life so miserable for unauthorized immigrants that they voluntarily leave the state – and those concerned about the economic consequences of attrition. Business-minded Republicans across the country are following what’s happening in Arizona, Alabama and Georgia, where attrition is driving out needed workers and alienating potential investors concerned about putting money into a state that’s inhospitable to foreigners. Attrition advocates are as intent as ever and often popular with voters. But this year, they failed to get traction where they needed it, as legislative leaders in several states allowed attrition proposals to die on the vine – languishing in committee, referred to a commission or otherwise tabled as the state got on with other business. (*See page 5 for more.*)

## A NEW TREND: TRY SOMETHING CONSTRUCTIVE

Meanwhile, another trend that confounded expectations this year: a crop of bills proposing to give work permits to unauthorized immigrants living and working in the states.

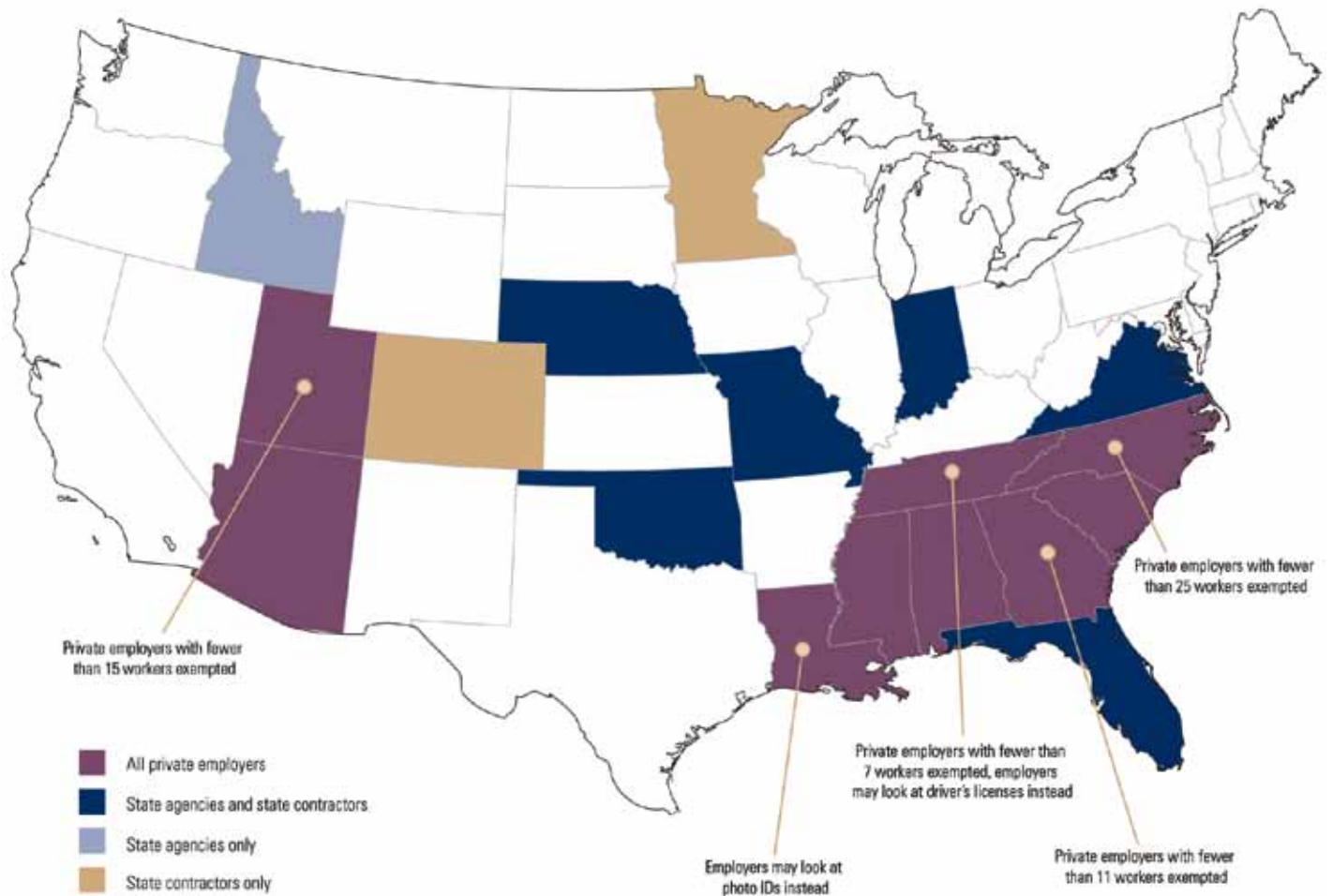
The overwhelming majority of state laws passed in the last six years have been enforcement measures: lawmakers responding to voter demand that they get control of illegal immigration. Then in 2011, Utah broke the mold, passing a three-part package that combined a tough policing measure with a guest worker program – bringing legal immigrant workers from Mexico – plus work permits for unauthorized immigrants living and working in Utah.

The Utah worker authorization bill has not been implemented. Doing so would require federal cooperation, and no cooperation has been forthcoming. But that hasn’t stopped lawmakers in five other states – Kansas, Oklahoma, New Mexico, California and Vermont – from floating worker authorization bills of their own. None made it across the finish line in this year’s sessions. And federal officials – at the Department of Homeland Security, the Department of Justice and elsewhere – still show no interest in cooperating. But lawmakers in California and New Mexico say debate on their bills will continue next year – as will pressure on federal authorities to open the way to constructive experiments in the states. (*For more on this trend, please see page 11.*)

As the sessions end, all eyes are on the Supreme Court. But it’s unclear exactly what effect a Supreme Court green light will have in the states. Was this year the beginning of the end or merely a lull in the federalist revolution on immigration? It’s too soon to tell.



# THE MAP THAT DIDN'T CHANGE – E-VERIFY IN THE STATES



STATE	MEASURE	YEAR	APPLIES TO
Alabama	HB 56	2011	employers, public and private
Arizona	HB 2779	2007	employers, public and private
Colorado	HB 1343	2006	state contractors
Florida	Executive order	2011	state agencies, state contractors and subcontractors
Georgia	SB 529 / HB 87	2006 / 2011	public employers and private employers with more than 10 workers
Idaho	Executive order	2009	state agencies
Indiana	SB 590	2011	state agencies, state contractors
Louisiana	HB 342 / HB 646	2011	all employers (employers may look at photo IDs instead)
Minnesota	11-3590	2011	state contractors and subcontractors with contracts over \$50,000
Mississippi	SB 2988	2008	employers, public and private
Missouri	HB 1549	2008	public employers, state contractors and subcontractors
Nebraska	LB 403	2009	public employers, public contractors
North Carolina	SB 1523 / HB 36	2006 / 2011	state agencies, private employers with more than 24 workers
Oklahoma	HB 1804	2007	public employers, state contractors and subcontractors
South Carolina	HB 4400 / SB 20	2008 / 2011	employers, public and private
Tennessee	HB 1378	2011	public employers and private employers with more than six workers (employers may look at driver's licenses instead)
Utah	SB 81 / HB 116	2008 / 2010	public employers, state contractors and subcontractors, private employers with more than 14 workers
Virginia	HB 737 / HB 1859	2010 / 2011	state agencies, public contractors and subcontractors with more than 50 employees and contracts over \$50,000

# RUNNING OUT OF STEAM?



## STATES HOLD OFF ON NEW ENFORCEMENT – FOR NOW

The year began as it always begins now – with state lawmakers across the country promising constituents they will crack down on illegal immigration. In some states, the focus was on E-Verify. In others, it was on measures modeled on Arizona’s controversial SB 1070 that require local police to inquire about the immigration status of people they stop for other reasons who they suspect are in the country illegally. But something unexpected happened this year. In state after state, the threat fizzled, and few if any legislatures enacted new immigration enforcement law.

What’s responsible for the change? Lawmakers in many states were preoccupied with budgets and redistricting. Others were pressed for time in short election-year legislative sessions. Still others were reluctant to act before the U.S. Supreme Court ruled on the Arizona policing law – a decision expected before the end of June. But in many states, the reasons went beyond timing and logistics. The appetite for clamping down on illegal immigration appears to be ebbing – at least temporarily.

Opposition to what some see as excessive enforcement is on the rise in many states – from immigrant rights and Latino groups, but also employers, local governments, law enforcement and school officials. Many enforcement bills got no traction this year. Others were defeated – in Mississippi, Kansas and Missouri, among other states. For the time being at least, more sensible voices are prevailing. Of course, anything may happen after the Supreme Court rules this month.

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## MISSISSIPPI

At the start of this year’s sessions, Mississippi was poised to pass the hardest-hitting state immigration law in the country. Mississippi was the second state in the nation to mandate E-Verify for all employers, in 2008. But in recent years, several of the state’s southeastern neighbors had swept past it with still tougher policing and other measures, and many Mississippi lawmakers seemed to be feeling pressure to catch up. For the first time in 140 years, Republicans controlled both branches of the legislature, and

newly elected Republican Gov. Phil Bryant, a tea party favorite, was on record in favor of getting tough.

HB 488, introduced in the House in February, would have given police authority to check the immigration status of people they stop for minor offenses who they believe are in the country illegally. It would also have required school officials to count the unauthorized children in their student bodies. But as the measure moved through committee lawmakers concerned about legal challenges of the kind brought in Arizona and Alabama in recent years removed some of the bill's toughest provisions, including the school census. They also modified the policing provision. Under the new version, the requirement to check a suspect's immigration status would kick in only if he were actually brought into custody. The measure passed overwhelmingly in the House, with unanimous GOP support.



## ALABAMA

There was no doubt in anyone's mind: Alabama lawmakers were going to revisit HB 56 this year. Passed in June 2011 and recognized as the toughest immigration law in the country, the Alabama statute drew a firestorm of criticism – from candlelight vigils in cities across America to disapproving editorials linking present-day Alabama to its Jim Crow past. Driven by this negative publicity and concerns that the law could discourage outside investment in Alabama, Republican Gov. Robert Bentley and business-minded Republicans made clear last December that they intended to revisit the measure in this year's legislative session.

The 2011 law under the microscope combined an array of provisions borrowed from other states. Employer sanctions included mandatory E-Verify for all Alabama businesses and severe penalties, including the revocation of business licenses, for knowingly hiring unauthorized immigrants. As in Arizona, police were empowered to inquire about the immigration status of people they stopped for other reasons who they suspected were in the country illegally. New in Alabama and among the bill's most controversial elements was a provision requiring K-12 school officials to inquire about students' immigration status.

What wasn't clear: what exactly "revisit" would mean and how much of the old bill lawmakers were willing to modify. Civil rights groups and immigrant activists demanded total repeal. Some legislators argued for taking no action until the U.S. Supreme Court ruled on Arizona's 2010 policing law. Attorney General Luther Strange proposed modifications designed to help the act withstand legal challenges. Gov. Bentley, originally a strong supporter, seemed open to reconsidering some of the statute's toughest measures.

Alabama business interests were pleased by the amending bill, HB 658, introduced in the House in April by Republican Rep. Micky Hammon. HB 658 still called for tough, wide-ranging immigration enforcement: it did nothing to soften the HB 56 provision requiring E-Verify for all employers or the severe penalties for worksite violations. But under the new House measure, not all businesses found to have knowingly hired unauthorized workers would have their licenses automatically suspended or revoked – penalties would be left to a judge's discretion. It would no longer be a crime to knowingly rent housing to unauthorized immigrants. And the new act dropped the provision requiring schools to inquire about students' immigration status. ImmigrationWorks and other national groups applauded the House bill as an improvement over HB 56. Gov. Bentley expressed approval, and the measure seemed poised to pass.



Most political insiders expected the proposal to sail through the Senate. Then, at the eleventh hour, a surprisingly broad cross-section of Mississippians emerged to voice their opposition. A coalition of business owners – the powerful Mississippi Farm Bureau, along with several smaller agricultural groups and a builders’ association – wrote a letter to lawmakers warning of damage to the state economy. A second coalition of local government officials and police expressed concerns about unfunded mandates. The two coalitions held a joint press conference. And the Mississippi Economic Council, a state chamber of commerce, sent a letter to senators maintaining that immigration enforcement is a matter best left to the federal government.

The turning point came when Republican Lt. Gov. Tate Reeves referred the bill to the Senate. Noting that he had heard concerns from the agricultural industry, the broader business community, law enforcement and local governments, Reeves delayed two weeks before assigning the measure, then sent it to the Senate’s Judiciary B Committee, chaired by Democrat Hob Bryan. The deadline for consideration in committee came and went. No action was taken, and the bill died in the Senate. The Mississippi legislature adjourned in May without enacting law on immigration.

But things took a different turn in the Senate, where Republican Scott Beason, an original sponsor of HB 56, made clear that he opposed the House changes and if anything wanted to make existing law tougher. His alternative measure retained mandatory penalties – including the mandatory revocation of business licenses – for firms that hire unauthorized immigrants. It also added a provision requiring the Alabama Department of Homeland Security to post an online list of unauthorized immigrants who appear in court for violating state law.

Sen. Beason’s tougher bill moved quickly through the Senate and over to the House, where Republican Speaker Mike Hubbard strong-armed a vote. The Business Council of Alabama, an umbrella group with ties to the manufacturing sector, advocated passage, and no one in the business community publicly denounced the legislation. An array of associations representing smaller employers – restaurant, construction and poultry groups, plus the Alabama Farmers Federation – worked behind the scenes to modify some sections, including the business penalties, school census and online DHS list, that they felt could discourage investors hesitant to do business in a state where foreign workers are not welcome. But all to no avail: all of these provisions remained in the bill.

The last battle over HB 658 pitted Speaker Hubbard and Sen. Beason against Gov. Bentley, who refused to sign the measure that the legislature sent up to him. The governor called both houses into special session and proposed revisions.

But lawmakers ignored his suggestions, filing new bills virtually identical to the one he had declined to sign. The stand-off lasted two days before Gov. Bentley threw in the towel and signed the Beason bill.

The new statute contains some improvements for contractors doing business with the state who are found to have hired unauthorized workers. Contractors working at multiple locations are cut some slack. For the first two offenses, business licenses will be suspended only at the site where the violations take place. The penalty for a second violation will not be harsher than the penalty for a first violation if the infractions occur more than ten years apart. And contractors will be tried not in district courts, but circuit courts, which are expected to be more lenient.

Still, overall, after a year of protests, media scrutiny and damage to the state’s reputation, not much has changed for business owners in Alabama. None of the new fixes apply to other employers – only government contractors. All employers in the state are still required to enroll in E-Verify. And all face mandatory suspension of their business licenses if they are found three times to have knowingly hired unauthorized workers.

In a year when most states backed off immigration enforcement, Alabama looked poised to relent, but changed its mind. For better or worse, the state can still boast it has the toughest immigration enforcement law in the country.

# KANSAS

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In Kansas, too, the climate seemed ripe this year for passage of a stern state enforcement measure. Attorney Kris Kobach, architect of controversial immigration enforcement laws in Arizona, Alabama and elsewhere, was elected in 2010 as Kansas Secretary of State. He and his allies have been pushing for tougher law in Kansas for years without success. And with nearby states like Oklahoma and Missouri considering stringent new laws, Kobach warned that Kansas would become a destination for unauthorized immigrants across the Midwest.

Kobach worked with members of a House committee to introduce a package of bills in January. Several would have mandated E-Verify for Kansas employers. Another was an Arizona-like policing law that authorized Kansas police to check the immigration status of people they “stop, detain or arrest” who they suspect are in the country illegally. Still another bill would have mandated criminal penalties for knowingly harboring unauthorized immigrants. It also required proof of legal residence from people applying for state health and welfare benefits.

Religious groups voiced strong opposition to the Kobach package. Several Democratic legislators expressed concern. And the business community countered with a measure of its own: a proposal to meet labor shortages in the cattle industry and other sectors by registering and granting work permits to qualifying unauthorized workers. Agricultural groups and other business interests,

including the influential Kansas Chamber of Commerce, came out strongly in support of the alternative measure. *(For more on this bill, see page 13.)*

Having two approaches on the table divided Kansas Republicans, with some arguing that enforcement should come first, others siding with the business community. GOP Gov. Sam Brownback did nothing to move the legislature in either direction, telling a group of business owners that decisions about unauthorized immigration were best left to the federal government. Republican Speaker Mike O’Neal made clear he would do nothing to advance legislation that could leave the state vulnerable to legal challenges. As Republican divisions intensified, O’Neal declined to schedule debate on any proposals that did not have broad GOP support. The result: no bill made it out of committee.

Lawmakers continued to press for consideration of both approaches – Kobach’s and the business community’s – through the rest of the session. But O’Neal held the line, preventing discussion of even modest E-Verify bills – one requiring state contractors to enroll in the program and a second mandating it for state agencies – because he feared this would open the door to other, broader, more divisive immigration proposals. The Kansas legislature adjourned on June 1 without enacting immigration law.

# AZ ARIZONA

For more than eight years now, the state of Arizona has spearheaded immigration lawmaking in the states. The federalist revolution began in Arizona, and as it progressed, then Senate president Russell Pearce pioneered every national trend – from barring unauthorized immigrants from receiving state benefits to employer sanctions to the controversial 2010 policing law. But the steam is going out the movement in Arizona – lawmakers have less and less appetite to get out ahead of other states.

The tide began to turn last year. Workers were fleeing Arizona in droves. According to one estimate, 17 percent of the state’s unauthorized Hispanics left in the wake of the state’s 2007 employer sanctions

law. Other calculations put the number much higher, perhaps close to a third of the state's unauthorized workforce. Boycotts triggered by the 2010 policing law have cost the state hundreds of millions of dollars in lost tourism and convention business. And last year, when Sen. Pearce introduced yet another package of measures – including one denying citizenship to children of unauthorized immigrants and another requiring doctors and nurses to inquire about immigration status – the business community came together in unprecedented opposition. Citing lost tourism revenue and growing damage to the state's reputation, an array of businesses large and small agreed that Arizona should no longer be in the forefront of the push to crack down on illegal immigration.

This year, there was even less enthusiasm for getting tough. In January, Republican Sen. Steve Smith reintroduced two of the five bills tabled last year – measures requiring public schools and hospitals to check people's immigration status. But neither proposal gained traction. Senate leadership signaled its lack of support by assigning each bill to two committees – creating that many more obstacles to passage. The business community voiced its opposition early on, indicating that it would put up a public fight if either measure were to move forward. And that was enough – no further advocacy was necessary. Neither bill was scheduled for a hearing, and both died in committee before the Arizona legislature adjourned in May.



## MISSOURI

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Missouri passed a package of employer sanctions in 2008, and this year several lawmakers seemed to feel it was time to build on that foundation, catching up with tougher laws passed in recent years in nearby southeastern states. Republican Rep. Rick Brattin introduced a measure that would mandate E-Verify for all state employers. And Republican Sen. Will Kraus floated a proposal that combined an Arizona-like policing measure with a school census.

But in Missouri too, the appetite to take action on immigration seems to be waning. A House committee held a hearing on Brattin's E-Verify bill, but the measure went nowhere. Meanwhile, opposition from immigrant rights groups derailed the Kraus package – it was never scheduled for debate.

Having two approaches on the table divided Kansas Republicans, with some arguing that enforcement should come first, others siding with the business community. The result: no bill made it out of committee.

## FADING INTEREST NATIONWIDE

So too in an array of other states, including North Carolina, Florida, Colorado and Oregon.

Lawmakers in **NORTH CAROLINA** considered an Arizona-like policing measure in 2011 but did not pass it. This year, instead of taking up a bill, leadership created a bipartisan select committee to consider the state's immigration policy. The committee met four times. It heard testimony from an array of constituents: faith leaders, agriculture and the broader business community, including ImmigrationWorks president Tamar Jacoby. But the committee came to no conclusions and recommended no bills. The legislature is scheduled to adjourn this month.

This year, instead of taking up a bill, the North Carolina legislature created a select committee to consider state immigration policy. The committee came to no conclusions and recommended no bills.

After a contentious decision not to mandate E-Verify in 2011, **FLORIDA** lawmakers appeared likely to return to the issue this year. But when a bill was introduced in January, it garnered virtually no interest – including from Republican Gov. Rick Scott who had campaigned in 2010 on a promise to crack down on illegal immigration. The measure, which mandated E-Verify for all employers and created a private right of action for U.S. workers who believed they were displaced by unauthorized immigrants, died in committee without a hearing.

Legislators in **COLORADO** floated a bill in February that would have required all employers in the state to enroll in E-Verify. But leadership sent the measure to the House Agriculture Committee, all but assuring an early death.

An **OREGON** proposal to require all state agencies to participate in E-Verify met a similar end. Thanks to stiff business opposition, mostly behind the scenes, the bill languished in committee and received no hearing before the legislature adjourned in early May.



# PART OF THE SOLUTION?



## FIVE STATES CONSIDER WORK PERMIT PROGRAMS

The overwhelming majority of state immigration laws enacted in the past six years have been enforcement measures: laws barring immigrants from receiving state benefits, laws regulating landlords who rent to immigrants, laws sanctioning employers who hire immigrants and laws empowering local police and public schools to inquire about immigration status, among other measures. But legislators in a number of states are beginning to think beyond enforcement.

One of this year's most surprising trends: a crop of bills that would give work permits to unauthorized immigrants already living and working in the U.S.

Many of these proposals are labeled "guest worker programs." In fact, they're nothing of the kind – at least not in the traditional sense. None create new legal channels for foreigners to enter the U.S. to work. Still, all aim to provide employers with a legal immigrant workforce – by granting work authorization to foreigners already here.

Utah pioneered this approach in 2011 with what it called a guest worker bill granting work permits to unauthorized immigrants living and working in Utah. Though the measure acknowledged federal authority over immigration and authorized state officials to seek a "waiver" from the federal government, no waiver or other permission has been forthcoming, and the Utah law has not been implemented. But that hasn't stopped lawmakers in five other states – Kansas, Oklahoma, New Mexico, California and Vermont – from floating worker authorization bills of their own.

What the measures have in common: all recognize that even in the downturn, some employers cannot find enough U.S. workers to fill jobs. All aim to address these shortages by looking to unauthorized workers already in the state rather than bringing in legal workers from south of the border. Instead of using their enforcement powers to try to expel foreign workers, sponsors acknowledge the critical role that immigrants play in the state economy. Many also recognize that unless and until the federal government finds an answer for the unauthorized millions living in the shadows across the U.S., the states will have to deal with them – and it would pay to know who they are and give them documents.

Some of these bills advanced further than others, and none were enacted as law this year. It didn't help that the federal government showed no interest in cooperating with the state experiments. And lawmakers in many places hesitated to act on immigration until the U.S. Supreme Court decides this year's immigration federalism case, *Arizona v. United States* – a decision expected before the Fourth of July.

Still, there's no mistaking this year's new trend or the ferment that drove it. Lawmakers – and voters – in the states want a better answer on immigration. And if the feds won't provide one, the laboratories of democracy are going to experiment with their own.



## UT UTAH

Utah is the state that charted the course, enacting the first stand-alone state “guest worker” program in May 2011. More than a year later, lawmakers in Salt Lake City are still waiting for federal authorization to implement the law.

The Utah bill was an idea born of necessity. In August 2010, Republican Rep. Stephen Sandstrom introduced a measure similar to those recently enacted in Arizona and Alabama, mandating that local police check the immigration status of people they stop for other reasons who they suspect are in the country illegally. Even in 2010, near the bottom of the recession, unemployment in Utah hovered below 8 percent. Employers argued that immigrant workers were an essential component of the state's future economic growth. And a coalition of business, community and faith leaders came together to argue for legislation that balanced enforcement with an answer for the state's labor needs and respect for its traditional family values. The result that emerged in the next year's session: a triple-barreled package that combined a tough policing measure with a bona fide guest worker program – bringing legal immigrant workers from Mexico – plus work permits for unauthorized immigrants living and working in Utah before May 11, 2011.

Unauthorized immigrants applying for permits would be required to live in Utah, pay a fee of \$2500 and prove they are holding down a job in the state. Applicants would undergo background checks and show they are in good health or have health insurance. Work permits would not confer permanent residence status or citizenship, and they would expire after two years. Permit holders who lost their jobs would be ineligible for unemployment benefits.

Trying to balance the state's desire to experiment with respect for federal authority to make immigration law, the Utah statute directed state officials to seek a federal waiver for the worker authorization program. But the law also stipulates that the initiative go into effect, waiver or no waiver, on July 1, 2013. So far, no waiver has been forthcoming. And while the Justice Department has not sued to block the Utah program, federal officials have stated in no uncertain terms that they believe it is “preempted by federal law.” Barring permission from Washington, which looks increasingly unlikely, Utah lawmakers are expected to repeal the language that mandates implementation of the program in May 2013.

Still, Utah's unsuccessful negotiation with federal authorities has not stopped other states from following in its footsteps and considering their own worker authorization bills.

## KANSAS

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The Kansas measure too was a product of political necessity. Kansas is a heavily agricultural state: one in five Kansans, rural and urban, work in jobs related to agriculture and food production. It's also a state dominated by Republicans – the governor and large majorities in both the House and Senate hail from the GOP. Like Utah, Kansas has experienced unusually low unemployment in recent years: less

## A TALE OF TWO ELECTIONS

Utah Republican state Sen. Curt Bramble has been worrying for more than a year that he “had a target on his back.” What he feared: that Utah conservatives unhappy with the immigration package he helped pass in the state legislature in April 2011 would mount a campaign to oust him and Republican Gov. Gary Herbert, also a strong supporter of the Utah legislation.

It's every lawmaker's fear, particularly Republican lawmakers who support anything more complicated than cracking down on illegal immigration. The Utah package, which Bramble helped craft, included a tough enforcement measure modeled on Arizona's 2010 policing law, SB 1070. But it also created a guest worker program to bring legal workers from Mexico and granted work permits to unauthorized immigrants living and working in Utah.

Opponents made their intentions clear even as the governor prepared to sign the bills. Several dozen delegates to the state Republican convention – the body that nominates most GOP candidates in Utah – asked for a meeting in the statehouse. Their message: if you sign the compromise, we'll run you out of office. This spring, conservative delegates headed to the convention determined to unseat Bramble and Herbert.

How the Utah convention works: delegates – often committed, conservative Republicans – are chosen once a year at intimate neighborhood caucuses across the state. Some 4000 of them convene each spring to consider would-be candidates for state and federal office. Contenders who earn 60-percent support can skip a June primary and head straight to the general election in November. In Utah, the GOP nominee is usually the winner in the fall.

This spring, conservative delegates mounted well-organized campaigns against Herbert and Bramble, running strong restrictionist candidates against both men.

What these delegates didn't take into account: how much support proponents of the immigration package had built up across the state in the 18 months before. The Utah Compact, signed by 4000 business, faith and law enforcement leaders, had created a statewide constituency for a balanced, common-sense approach. And it didn't hurt that the Mormon church had come out in favor of the compromise, going so far as to speak at the ceremony where Gov. Herbert signed the controversial bills.

Both Bramble and Herbert were confident going into the run-up to the convention. Neither backed away from immigration on the campaign trail – on the contrary, both defended what they called “the Utah Solution.”

Local media supported them – to the point that the opposition could hardly get its message out in the press. And when delegates convened in Sandy, Utah, in late April, both Bramble and Herbert received more than 60 percent of the vote.

It's an anomaly, you say? Things are different in Utah – Republicans anywhere else would have made short work of Bramble and Herbert. Maybe so – but it didn't happen that way in the past year in Arizona either. Gov. Herbert and Sen. Bramble are still in office, making decisions about the future of Utah. Meanwhile, former Arizona Senate president Russell Pearce is making a living as an official of the Arizona Republican Party and spending his spare time scheming about how to get back into the Arizona Senate.

than 4 percent in some western counties dependent on dairy farming and livestock. And both dairy and livestock rely heavily on immigrant workers, many of them unauthorized. So when Kansas secretary of state, Kris Kobach, author of controversial immigration enforcement laws in Arizona, Alabama and elsewhere, proposed a package of tough enforcement measures in Kansas this year, business interests responded with a worker authorization bill.

The coalition that proposed the innovative measure included cattle interests, construction, landscapers and ethanol producers, among others. Some supporters saw the bill as a tool to counter Kobach's package in the legislature – there's

One of this year's most surprising trends: a crop of bills that would give work permits to unauthorized immigrants. The Kansas measure authorized the state to identify industries with worker shortages, then match unauthorized workers with employers in those sectors.

no better defense than a good, aggressive offense. Others hoped the measure would protect their immigrant labor force in the event that Kobach's bill passed and unauthorized workers began to flee the state, as they have in Arizona and Alabama.

Sponsors sought to learn from Utah's experience dealing with federal immigration authorities. The Kansas measure contained no default date – no threat to implement the program without permission from Washington. Backers met several times with federal officials before introducing legislation, and the program they proposed was structured as a collaboration between Kansas and the federal government. Still, as in Utah's case, federal authorities expressed little interest in facilitating the program.

The Kansas measure authorized the state labor department to identify industries experiencing worker shortages, then match unauthorized workers with employers in those sectors. Workers applying to participate in the program would have to have lived and worked in Kansas for at least five years. Those found to have committed more than one misdemeanor would not be eligible. Participants would have to commit to becoming proficient in English. Workers fired while enrolled in the program would not be eligible for unemployment benefits.

Employers would pay to participate: fees starting at \$1,000 plus \$200 per worker. They would also be required to pay federal and state employment taxes and provide the same benefits to immigrant workers as to other employees.

Despite scant interest from federal authorities, the Kansas program was structured as a collaboration. State officials would certify worker shortages, screen workers and match employers and employees. The Department of Homeland Security would grant approval on a case-by-case basis and issue proof that the program's participants were authorized to work in the U.S.

Kobach's enforcement package and the business-backed worker authorization bill came up for consideration at the same time, early in the Kansas legislative session. There were several days of emotional committee hearings that pitted employer, faith and immigrant rights groups against proponents of enforcement alone. Kris Kobach testified, as did ImmigrationWorks president Tamar Jacoby.

Republican lawmakers appeared divided, some committed to enforcement alone, others supportive of the business community. Republican Gov. Sam Brownback said nothing publicly about either measure.

Republican House Speaker Mike O'Neal explained his party's dilemma to reporters: "I've made it pretty clear that my preference this year, like the governor's, would be that we not address immigration. What may work in eastern Kansas may not work in western Kansas, and I want the entire state to be on the same page on this and not pick winners and losers in our economy. I don't want to do something just out of political expediency or just so we can have a good vote."



In the end, neither Kobach's package nor the worker authorization bill advanced. A measure requiring state agencies to enroll in E-Verify came up late in the session but did not pass either.

## NEW MEXICO

NM

New Mexico is a heavily Democratic state with a large agricultural sector – chiles are to New Mexico what oranges are to Florida – and the worker authorization bill introduced in January was authored by a Democrat, state Sen. Stephen Fischmann of Las Cruces. Still, the New Mexico proposal was among the toughest of the five state “guest worker” bills considered this year. While granting work permits to unauthorized immigrants living and working in New Mexico, it also required all employers in the state to participate in E-Verify.

The New Mexico legislative session opened with an announcement by Republican Gov. Susana Martinez that she would push to repeal existing law allowing unauthorized immigrants to obtain driver's licenses. Sen. Fischmann countered with an op-ed piece arguing that the problem went beyond driver's licenses. “Farmers who can scarcely find anyone but undocumented workers to harvest their crops are turned into lawbreakers for hiring much-needed labor,” he wrote. And according to Sen. Fischmann, this in turn depresses wages, undermines American workers and siphons money out of the U.S. to Mexico. His remedy: a combination of worksite enforcement and a worker authorization bill.

## A MATTER OF PRINCIPLE

### FOUR NEW COMPACTS

Utah paved the way in 2011. This year, four additional states followed in its footsteps. Elected officials, faith leaders, influential businessmen and others came together to back statements of principle, or compacts, urging lawmakers to temper immigration enforcement with other considerations, including the state's economic interests and humanitarian values.

The four states that produced new compacts: Arizona, Colorado, Iowa and Oklahoma.

Like the Utah Compact, which garnered more than 4000 signatories over four months in 2011, the new state covenants rest on five pillars. (Several are copied verbatim from the Utah Compact.)

**The economic contributions of immigrants as workers and taxpayers.** The Colorado Compact: “Colorado's immigration policies must reaffirm our global reputation as a welcoming and business-friendly state.”

**Setting law enforcement priorities.** Law enforcement should focus on criminal activity, not civil violations of the immigration code. As the Iowa Compact explains, “Smart immigration policy is the opportunity to restore law and order by directing enforcement to real security threats and serious criminal activity.”

**The importance of families.** The Arizona Accord: “Strong families are the foundation of successful communities.” All the compacts oppose breaking up families with immigration enforcement.

**Humanitarian values.** The Colorado Compact: “We must adopt a humane approach . . . reflecting our unique culture, history and spirit of inclusion.”

**Federal preeminence in immigration lawmaking.** As the Arizona Accord puts it, “Immigration is a federal policy issue between the U.S. government and other countries – not Arizona and other countries.”

In Utah, the compact set the stage for months of legislative maneuvering, eventually producing law that set a new standard for immigration policy in the states. What's next in Arizona, Colorado, Iowa and Oklahoma? It's too soon to tell, but sometimes no news is good news in the states – and it's probably no coincidence that none of these four states passed enforcement-only immigration legislation this year.

Under Sen. Fischmann's proposal, unauthorized immigrants applying for work permits would have to have lived or worked in New Mexico before January 1, 2012. The number of visas issued each year would be determined by a task force of state elected officials. The number could not exceed 6 percent of New Mexico's population – the estimated percentage of the New Mexico workforce currently made up of unauthorized immigrants. The program could not go into effect without express permission from the federal government.

The measure would require all New Mexico employers, public and private, to enroll in E-Verify. It would also create a New Mexico-Verify program, substantially similar to E-Verify, that would enable employers

# IN THEIR OWN WORDS

## THE SUPREME COURT HEARS *ARIZONA V. UNITED STATES*

*For the second time in two years, the U.S. Supreme Court is considering who should make immigration law, Washington or the states. At issue: Arizona's controversial 2010 policing law, SB 1070, which allows police to ask about the immigration status of people they stop for other reasons who they suspect are in the country illegally. In 2010, the U.S. Department of Justice sued Arizona, claiming the measure was preempted by federal law. Four provisions of the statute were struck down in federal court. The Supreme Court responded to Arizona's appeal and heard oral arguments on April 25. What follows are excerpts from that discussion. Paul Clement is the attorney for Arizona; Solicitor General Donald Verrilli argued the administration's case. A decision is expected before the Fourth of July.*

### ARIZONA'S CASE

**MR. CLEMENT:** Mr. Chief Justice, and may it please the Court: The State of Arizona bears a disproportionate share of the costs of illegal immigration. In addressing those costs, Arizona borrowed the Federal standards as its own and attempted to enlist state resources in the enforcement of the uniform Federal immigration laws . . . .

. . . There are multiple provisions of the Federal immigration law that go out of their way to try to facilitate state and local efforts to communicate with Federal immigration officials, in order to ascertain the immigration status of individuals . . . .

### THE UNITED STATES' CASE

**GENERAL VERRILLI:** Mr. Clement is working hard this morning to portray SB 1070 as an aid to Federal immigration enforcement. But the very first provision of the statute declares that Arizona is pursuing its own policy of attrition through enforcement and that the provisions of this law are designed to work together to drive unlawfully present aliens out of the state . . . .

. . . It is our position [that] the Constitution vests exclusive authority over immigration matters with the national government.

### PROFILING

**CHIEF JUSTICE ROBERTS (to General Verrilli):** Before you get into what the case is about, I'd like to clear up at the outset what it's not about. No part of your argument has to do with racial or ethnic profiling, does it? I saw none of that in your brief.

**GENERAL VERRILLI:** That's correct . . . . We're not making any allegation about racial or ethnic profiling in the case.

to confirm the identities of unauthorized employees who had been granted New Mexico work permits.

The Fischmann bill made no progress in New Mexico's short legislative session. Lawmakers met for 31 days and considered only the budget and other essential bills. House and Senate bills addressing the driver's license issue also failed to pass. Sen. Fischmann is retiring this year. But New Mexico agricultural employers, who were cautiously supportive of his proposal, believe this is only the first round of debate. "We need a guest worker program," said Gene Baca, senior vice president of Bueno Foods. "It's critical for our agricultural sector and our struggling economy."

## COOPERATION BETWEEN WASHINGTON AND THE STATES

*CHIEF JUSTICE ROBERTS:* What could possibly be wrong, if Arizona arrests someone, let's say for drunk driving, and their policy is you're going to stay in jail overnight, no matter what . . . . What's wrong, during that period, by having the Arizona arresting officer say, I'm going to call the Federal agency and find out if this person is here illegally because the Federal law says the Federal agency has to answer my question. It seems an odd argument to say the Federal agency has to answer the state's question, but the state can't ask it.

## STATES ENFORCING FEDERAL LAW

*JUSTICE SCALIA:* What's wrong about the states enforcing Federal law? There is a Federal law against robbing Federal banks. Can it be made a state crime to rob those banks? I think it is.

## THE STATES' LEEWAY TO ACT

*JUSTICE KENNEDY:* Assume these are two hypothetical . . . instances. First, the Federal government has said, we simply don't have the money or the resources to enforce our immigration laws the way we wish. We wish we could do so, but we don't have the money or the resources. That's the first – just hypothetical . . . . Also hypothetical is that the state of Arizona has . . . a massive emergency with social disruption, economic disruption, residents leaving the state because of flood of immigrants. Let's just assume those two things. Does that give the state of Arizona any powers or authority or legitimate concerns that any other state wouldn't have?

*GENERAL VERRILLI:* Of course, they have legitimate concerns in that situation . . . .

*JUSTICE KENNEDY:* And can they go to their legislature and say, we're concerned about this, and ask the legislature to enact laws to correct this problem?

## IS IT ILLEGAL TO SEEK WORK?

*CHIEF JUSTICE ROBERTS:* Section 5(C) [criminalizing any effort by unauthorized immigrants to seek work] . . . does seem to expand beyond the Federal government's determination about the types of sanctions that should govern the employment relationship . . . . The Federal government, of course, prohibits the employment [of unauthorized immigrants. But] the state of Arizona, in this case, is imposing some significantly greater sanctions . . . .

*JUSTICE SOTOMAYOR:* For those of us for whom legislative history has some importance, there seems to be quite a bit of legislative history . . . the idea of punishing employees was raised, discussed, and explicitly rejected.

## POLICE STOPS

*JUSTICE SOTOMAYOR (to Mr. Clement):* Presumably . . . your argument is that under any circumstance, a police officer would have the discretion to [question someone who has been stopped for another infraction. Still, it] seems to me, [the more important] issue is . . . how long you detain the individual . . . .

## OKLAHOMA

OK

Oklahoma was one of the first states in the nation to take immigration into its own hands, enacting what was then considered a draconian enforcement law in November 2007. But then the economic consequences of the statute began kicking in, and before long, pragmatic lawmakers were looking for a remedy. Republican Sen. Harry Coates believed he found one in December 2011: a bill to grant work permits to unauthorized immigrants holding down a job in Oklahoma.

House Bill 1804, enacted into law in 2007, included an array of provisions intended to make it difficult for illegal immigrants to work, rent apartments and apply for state or local public benefits in Oklahoma. Among the statute's most disruptive measures was the requirement that state agencies and companies doing business with the state enroll in E-Verify. The result: tens of thousands of unauthorized immigrants left Oklahoma at a time when the energy industry was booming and construction workers were in high demand. And Oklahoma contractors soon found themselves in a competition they couldn't win with out-of-state contractors not required to run employees through E-Verify.

Sen. Coates said he hoped his worker authorization bill would "level the playing field for Oklahoma and keep our state's construction companies in business."

Under Coates' proposal, an unauthorized immigrant seeking a work permit would be required to have a job offer, pass a background check and pay a one-time fee of \$2,000. Applicants would be asked to provide residential addresses and telephone numbers so authorities could contact them at any time. Employers would be responsible for ensuring that workers have health insurance. Workers who lost their jobs would have 30 days to find another – with another employer enrolled in the program. And the program could not be implemented without a waiver from the federal government. Sen. Coates has said he is uncertain how the state would seek a waiver and that it would be up to the state Department of Labor to determine the process.

The Coates measure got two readings in the Oklahoma Senate and was referred to the Senate Judiciary Committee. But no further progress was made before the legislature adjourned in late May.



CA

## CALIFORNIA

As in many of the states where lawmakers have floated worker authorization bills, agriculture is a pillar of the California economy. The world's fifth largest food supplier, in 2010 California agriculture generated \$37 billion in revenue and \$100 billion in related economic activity. A heavily Democratic state – the governor is a Democrat and the legislature is controlled by Democrats – California is home to an estimated 1.8 million unauthorized workers, and without them the state's agricultural sector would all but collapse.

California's worker authorization bill is the brainchild of two lawmakers, one Democrat, one Republican, looking for a middle way between mass deportation and what they describe as "amnesty." "We're tired of waiting for a federal solution," Republican Linda Halderman and Democrat V. Manuel Pérez wrote in the

*Sacramento Bee* in late March. “We’re tired of politics as usual and so we are taking a risk.”

Their proposed solution, the California Agriculture Jobs and Industry Stabilization Program, would grant work permits to unauthorized immigrants who have worked in California agriculture and its service sector, defined as food preparation, maintenance services, housekeeping and janitorial firms with 25 or more employees. Before permits could be issued, the state Employment Development Department would have to certify that there are not enough legal California residents to fill open jobs in either industry.

Applicants would be required to prove they had lived and worked in California before January 25, 2012. They would undergo background checks and have to be proficient in or learning English. Workers convicted of any but the smallest misdemeanors would be ineligible to participate. Participants would pay a fee that would go toward covering the costs of the program. Members of a worker’s immediate family could also be granted permits to remain in California.

The measure requires federal permission before state authorities can launch the program.

The proposal worked its way through the California legislature during the spring and into early summer. The Assembly Labor and Employment Committee approved the bill in mid-April. It was then referred to the Assembly Committee on Appropriations. California Citrus Mutual, the California Association of Nurseries and Garden Centers, the California Grape and Tree Fruit League and the United Farm Workers endorsed the legislation, and no one filed a formal letter of opposition.

The bill would grant work permits to unauthorized immigrants who have worked in the California agriculture and service sectors. “I believe this bill will help revitalize the national discourse,” said cosponsor Assemblyman Manuel Pérez.

Sponsors knew they were facing two uphill battles – in California, where unemployment was hovering around 11 percent, and in Washington, where authorities have expressed no willingness to work with states considering worker authorization measures. Backers worked until the last possible minute to iron out disagreements between growers and farm workers. But finally in late May, facing a state deadline to advance bills from one house to the other, sponsoring Assemblyman Pérez chose not to bring the measure up for a vote. Still, he explained, “I think it spurs a worthwhile discussion. I believe this bill will help revitalize and reinvigorate the national discourse.” Pérez says he hopes to introduce the bill again next year.

## VERMONT



Dairy farming is synonymous with Vermont, for more than a hundred years the centerpiece of the state’s economy. Even today, despite many changes, sales of Vermont dairy products generate \$1.2 billion a year and, according to industry analysts, put \$1 million back into the state economy every day. But Vermont dairy is in crisis. The causes are varied, from falling milk prices to rising costs. But high on the list of problems are labor shortages: fewer and fewer young Vermonters want to spend their lives or build their careers on a small dairy farm. And dairy farmers, in Vermont and elsewhere, cannot use the federal H-2A and H-2B temporary worker programs. Dairy work is year-round, not seasonal, and the federal programs provide visas for seasonal workers only.

The worker authorization bill floated in Vermont in January was designed to address this problem. Introduced by Democratic Sen. Jeanette White, it created a program to register and issue ID cards to unauthorized immigrants working in Vermont agriculture.

Applicants would register with the Agency of Agriculture and establish Vermont residency. The Department of Motor Vehicles would issue them Vermont ID cards that could not be used to drive but would give them access to other state benefits and allow them to work legally in agriculture. Although the program was to be open to all farm hands, it was anticipated that most participants would be dairy workers. And Sen. White acknowledged that it might make sense to cap the number of IDs available, correlating the size of the program to the dairy industry's labor needs.

But supporters were skeptical the bill could pass, and it was modified dramatically in committee. The version that emerged from the Transportation Committee in March eliminated any mention of work authorization, focusing instead on driver's licenses for unauthorized immigrants. And instead of a program, the amended measure created a committee to look into the issue. Immigrant rights advocates, dairy farmers and a farm worker organization worked together to advance the new narrower measure, which passed in the legislature in April and was signed into law by Democratic Gov. Peter Shumlin. The statute establishes a Study Committee on Migrant Workers' Access to Driver's Licenses and Non-Driver Identification Cards, which will

submit findings and recommendations to several House and Senate committees on or before January 15, 2013.

For now, in Vermont as elsewhere, a state-run worker-visa program is no more than a dream – and in most states it will

The program will remain a dream as long as federal immigration authorities decline to cooperate with constructive state experiments. Might that change after a Supreme Court ruling endorsing more state involvement in immigration lawmaking?

remain a dream as long as federal immigration authorities decline to cooperate with constructive state experiments. Might that change in the wake of a Supreme Court ruling opening the way to yet more immigration enforcement by the states? It's too soon to tell.

But meanwhile lawmakers across the country are doing what they can to highlight their state's labor needs. As the Vermont measure's sponsor, Sen. Jeanette White, explained this spring: "At least this bill will start a conversation." It's a conversation we as a nation desperately need to have – for the sake of U.S. employers and the U.S. economy.



# IRREPARABLE DAMAGE



## THE ECONOMIC COST OF ATTRITION THROUGH ENFORCEMENT

The evidence continues to mount, and it isn't pretty. Much of the immigration legislation passed in the states in recent years aims to go beyond simply enforcing the law. The goal, sometimes stated, sometimes not, is "attrition through enforcement" – making life so miserable for unauthorized immigrants that they voluntarily pack up and leave the state. Legislators acting on this doctrine aim to use any and all means at their disposal – withholding state benefits, regulating landlords, sanctioning employers, requiring local police and public schools to inquire about people's immigration status – to make their states as inhospitable and unfriendly as possible.

The only problem: it often works. The more effective attrition policies are, the higher the cost, as needed workers, legal and illegal, flee en masse and potential investors in the U.S. and abroad reconsider putting money into the state.

These costs aren't new – there were danger signals almost immediately in Arizona, Alabama and Georgia, the three states that have gone the furthest in implementing attrition policies. But the costs have only grown clearer with time, as fresh reporting reveals new damage and anecdotal evidence is buttressed by economic data.

## A BUMPER CROP OF NEW EVIDENCE

**FLEEING WORKERS.** In January, a report by the University of Alabama found that as many as 80,000 of the 120,000 unauthorized immigrants in Alabama had left the state. The study estimated that an exodus of this size would eliminate the need for 60,000 additional jobs up and downstream in the Alabama economy – for a total loss of 140,000 jobs and 6 percent of state GDP. And that figure doesn't include what immigrants contribute to the economy as consumers. Fewer immigrants mean fewer

people buying food, clothes, cars, appliances and other goods and services. According to the report, this decreased consumption could cost Alabama \$260 million in annual sales and income tax revenue – 3 percent of the state’s total tax revenue.<sup>i</sup>

As time goes on, more and more Alabama employers are feeling the effects of worker shortages. In January, the *Associated Press* reported 2000 jobs going unfilled at Alabama nurseries, forcing employers to cut back on buying seed and equipment.

The stories coming out of Georgia are similar. This winter, Georgia farmers reported they were cutting back on the number of acres under cultivation because there are not enough workers available to plant and harvest labor-intensive crops. According to the Vidalia Onion Business Council, onion production could drop by 10 percent this year.<sup>ii</sup>

The state of Georgia responded by creating a program to connect farmers in need of workers with inmates preparing to leave the state prison system. But Georgia lawmakers should know from experience – this isn’t likely to work. Who can forget the news story broken by the *Associated Press* in June 2011 about Georgia’s first, failed effort to connect farmers with unemployed probationers? Reporters observing probationers during their first week in the cucumber fields heard nothing but complaints about the hard work, long hours and blistering heat. After two days, all of the probationers had quit.<sup>iii</sup>

Halfway through a second growing season since the Georgia and Alabama laws were enacted, farmers across the Southeast are experiencing worker shortages, planting fewer acres and moving away from labor-intensive crops.



**Tomatoes.** This spring, Darryl Copeland, a tomato farmer in Blount County, Alabama, planted only 20 acres of his 30-acre farm. His neighbor Tim Battles, also a tomato farmer, planted only 12 of his 25 acres. And fewer tomatoes mean higher prices – good for farmers but not so good for consumers. Robert Miller, who owns a local produce stand in Ozark, Alabama, said tomato prices have increased as much as \$5 a case.<sup>iv</sup>

**Fruit and vegetables.** Jimmy Miller of Chandler Mountain, Alabama, is moving away from labor-intensive crops altogether. Instead of planting fruit and vegetables, this year he’s focusing on cotton and peanuts: crops that can be harvested by machine.<sup>v</sup>

**Onions.** Aries Haygood, an onion farmer in Lyons, Georgia, planted 15 percent fewer acres this spring. R.T. Stanley, who also grows onions in Lyons, needs 40 workers to harvest his crop. At harvest time this April, only 15 were available.<sup>vi</sup>



**CANCELED CONFERENCES.** This too is an old story – all too familiar to the hospitality industry in Arizona, where passage of the controversial 2010 policing law SB 1070 led to an estimated \$400 million in lost tourism and convention business.<sup>vii</sup> Predictably enough, the boycotts are now spreading to the Southeast.

In March, two national associations canceled conventions in Alabama and Georgia. The reasons given: concern that their members, particularly Latinos and others with international backgrounds, would be subject to ill treatment under the new immigration laws. The Association of Departments of Family Medicine’s annual meeting, scheduled for winter 2013 in Alabama, had been projected to reap \$100,000 for the convention hotel and \$700,000 in additional revenue for the city of Mobile. The American Educational Research Association’s convention, scheduled for April in Atlanta, had been projected to bring 14,000 attendees to the city.<sup>viii</sup>

The costs have only grown clearer with time, as anecdotal evidence is buttressed by data. Farmers across the Southeast are experiencing worker shortages, planting fewer acres and abandoning labor-intensive crops.

In early June, a coalition of labor and civil rights groups announced plans for a national campaign aimed at discouraging tourism in Alabama. “Our

message is simple,” said Wade Henderson, president and CEO of the Leadership Conference on Civil and Human Rights. “If we can’t appeal to your humanity, then we will appeal to your pocketbooks.”<sup>ix</sup>

**AUTOMAKERS UNDER THE GUN.** Meanwhile, something new happened in Alabama this year – not seen before in other states that have passed tough immigration enforcement laws. Opponents of Alabama’s 2011 omnibus statute, HB 56, targeted several brand-name corporations – not because the companies supported the law, but because they failed to oppose it.

It’s no accident that the companies in the crosshairs are automakers. In the past 15 years, Alabama has had considerable success persuading foreign car manufacturers to open assembly plants in the right-to-work state. In 2010, cars accounted for 30 percent of Alabama’s total exports and 16 percent of its manufacturing GDP. In the past decade, the automotive industry has created 35,000 jobs in Alabama.<sup>x</sup>

When HB 56 came up for reconsideration in the legislature this year, opponents took their case to the car companies. Activists attended a Hyundai shareholders’ meeting in Seoul, South Korea, and a Daimler Motor Company shareholders’ meeting in Berlin, Germany – demanding that the automakers come out in opposition to the Alabama statute.

Daimler, which makes Mercedes among other brands, said it was watching the implementation of the Alabama law and discussing it with stakeholders, including Alabama business groups and members of the U.S. House of Representatives. But the company has taken no action and declined to comment during the debate this spring about revising the statute, now tagged with a new number, HB 658.<sup>xi</sup>

In June, a coalition of civil rights and labor groups launched a campaign against Hyundai, which operates a plant outside Montgomery. Activists will display banners and distribute leaflets at 73 Hyundai dealerships, not just in Alabama but across the U.S., with a heavy focus on Michigan, one of the states where the sponsoring United Auto Workers is strongest. The message on the banners and leaflets: “Stand up against hate.”<sup>xii</sup>

# ACCUMULATING COSTS

This new damage comes on top of economic costs that have been accumulating for more than five years in states pursuing policies based on attrition through enforcement. Among the most devastating costs:

- The Public Policy Institute of California calculates that 17 percent of Arizona's noncitizen Hispanics left the state after passage of the 2007 employer sanctions law, the Legal Arizona Workers Act.<sup>xiii</sup>
- A 2010 study conducted by BBVA Bancomer Research estimated that 100,000 Hispanics fled Arizona after passage of the state's 2010 policing law, SB 1070.<sup>xiv</sup>
- Georgia's \$11 billion agricultural industry lost \$75 million worth of crops in 2011. Blackberries, blueberries, squash and onions were left to rot in the fields because there were not enough workers available to harvest them.<sup>xv</sup>
- In Georgia as elsewhere, agricultural jobs support many other jobs up and downstream in the local economy. According to an October survey by the University of Georgia, worker shortages experienced by specialty crop farmers shrank overall state output by \$181 million in 2011.<sup>xvi</sup>
- A survey of Georgia farmers, conducted in December 2011 by the Georgia Department of Agriculture, found that 56 percent of those surveyed were having difficulty finding workers.<sup>xvii</sup>
- A Georgia Restaurant Association survey conducted in July 2011 found 49 percent of surveyed restaurants reporting labor shortages, and 88 percent of respondents were concerned about shortages in the future.<sup>xviii</sup>



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