



TESTIMONY

SENATE BILL 399

Kansas Senate
Committee on Federal and State Affairs
Sen. Pete Brungardt, Chair

Tamar Jacoby
President, ImmigrationWorks USA
February 15, 2012

Thank you, Chairman Brungardt, for this opportunity to submit testimony regarding SB 399.

I'm Tamar Jacoby, president of ImmigrationWorks USA, a national federation of employers working to advance better immigration law. Our national network links major corporations, national trade associations and 25 state-based coalitions of small to medium-sized business owners concerned that the broken immigration system is holding back the growth of the U.S. economy. Their common aim: legislation that brings America's annual legal intake of foreign workers more realistically into line with the country's labor needs.

Our members include employers and trade associations from Florida to Oregon and from every sector of the economy that relies on immigrant workers. The Kansas Business Coalition is one of our 25 affiliates in the states – pro-immigration business coalitions working to educate the public and advocate for better law. And I'm here today to talk about how what's happening in Kansas fits into a larger national picture.

Among the questions I will address: is SB 399 unique? (The answer is no.) What is the national context that is giving rise to SB 399 and other measures like it? Why are employers in Kansas and other states working to advance legislation of this kind? And what contribution can these state debates make to the national conversation about immigration?

As recently as five years ago, most lawmakers and constitutional scholars agreed that crafting and enforcing immigration law was the responsibility of the federal government. A hundred years of precedent, the Constitution, case law and common sense all pointed the same direction and left the job to Washington. But this consensus began to crumble in 2006 and 2007, when Congress tried and failed to pass comprehensive immigration reform – a grand compromise that combined enforcement with fixes to the legal immigration system and an answer for unauthorized workers already living in the U.S.

In the wake of that failure, states across the country have stepped into the vacuum left by Congress. Virtually every state has considered an array of immigration bills. Most have passed one or more. The U.S. Supreme Court has visited the issue not once but twice, first upholding a disputed employer sanctions bill out of Arizona, then returning to the matter this year with a second, entirely different Arizona case concerning the scope of action for local police to combat illegal immigration. A decision in that case, *U.S. v. Arizona*, is expected before the Fourth of July.

Bottom line: whatever the Court decides, the old consensus – that immigration law is a federal prerogative – has been shattered, probably forever. The question on the table now: how can and should states be using their newfound leeway – merely to enforce the law, or also to experiment with potential fixes to the broken immigration system? And this is what is so interesting about SB 399. It's a thoughtful, carefully crafted proposal for making the best of that broken system – making immigration work for Kansas in the intervening years until Congress finds the political will to proceed with broader reforms.

Kansas is not the only state in the nation to go beyond enforcement alone – and for good reason. Even with today's high unemployment, employers in many sectors – agriculture, high-tech, the seasonal economy – continue to need immigrants to keep their businesses open and contributing to the economy. Businesses that have made every effort to hire qualified Americans continue to face labor shortages that hold back their growth and slow the pace of economic recovery. In Arizona, Alabama and Georgia, enforcement alone has only exacerbated these shortages, driving tens of thousands of legal and illegal immigrants out of the state. Of course, better enforcement has to be part of any solution, but it isn't the whole answer. The overwhelming majority of employers want to be on the right side of the law, and they need a way to hire foreign workers legally – to work alongside Americans and contribute to the local economy.

States across the nation have approached this labor need in two ways. Some have crafted programs that would bring in workers legally from Mexico and other countries. Others, like Kansas, have looked to the unauthorized workers already in the state – workers currently a burden on the public fisc who could be working legally, paying taxes and helping balance the state budget. As one Republican lawmaker in Utah put it: "The states bear the burden of dealing with these people. We're responsible for educating, medicating and incarcerating them – but we can't allow them to work and some don't pay taxes. This makes no sense. Illegal immigration is the biggest unfunded mandate in history – and states need to be doing something about it."

All in all, in the past five years some dozen states have considered programs to provide employers with legal foreign workers. Only Colorado and Utah have passed bills, and only Utah's (HB 116, passed in March 2011) addresses the issue of unauthorized workers already in the state. But this year, five additional states, including Kansas, are considering measures that would allow qualified unauthorized immigrants to remain in the state and work. (Other measures are under discussion in Oklahoma, New Mexico, California and Vermont.)

All of these bills are different. Each state approaches the problem in its own unique way. What the measures have in common: all look to unauthorized workers already in the state rather than bringing in new workers. All recognize that even in the downturn, some employers are experiencing worker shortages. And all attempt to solve the problem by working in cooperation with the federal government, asking for federal waivers or federal work authorization or some other form of federal approval before state programs begin to operate or immigrants are allowed to work legally.

In our view at ImmigrationWorks, SB 399 is one of the most thoughtful and well-crafted of the six proposals of its kind to be considered in the states in the past two years. Among the features we find appealing: the link to the Department of Homeland Security's DEFERRED ACTION initiative, the specific request for federal work authorization (as opposed to merely residence permits or legal status), the requirement that the state certify a sector-wide worker shortage before an employer can participate in the program and the carefully considered criteria for employers and employees applying to participate.

ImmigrationWorks USA applauds the creative thinking behind SB 399. This is just the sort of experimentation we need in the states – the laboratories of democracy. The Kansas proposal would be good for Kansas, and it's good for the national immigration debate – a badly needed reminder of an unsolved problem that Congress has left to fester for far too long.

There's a precedent for this. In the late 1980s, a national consensus emerged that welfare as we knew it was broken. Democrats and Republicans differed sharply about what reform should look like, and the debate stalled. Then, in 1987, Republican Gov. Tommy Thompson of Wisconsin stepped into the breach, requesting a waiver from federal law to conduct a state experiment. He was granted a waiver, and within a few years, Congress was debating a bill modeled on Wisconsin's approach. In 1996, President Clinton signed federal welfare reform into law.

Wisconsin then, Kansas today? This is an opportunity for the state of Kansas to take the lead on one of the most vexing problems we face as a nation. The status quo is intolerable, and we need a way out of the box. SB 399 is one of the most promising state experiments on the table today.