

Fall 2006 Immigration Update 3

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Immigration in the Election

The two immigration-related measures that the General Assembly referred to the voters passed on Tuesday. Both are amendments to Colorado statutes and both can be considered "messages" sent to the federal government from the state.

Referendum H, which passed by a 51 percent to 49 percent margin, will require Colorado corporations to report salaries to unauthorized migrants that they took as deductions on their federal income tax returns. Those deductions will be disallowed on their Colorado returns, thus increasing their Colorado tax liability. **Referendum K**, which passed with a slightly larger margin—56 to 44 percent, will require the Colorado Attorney General to sue the federal government to demand that it enforce existing immigration laws.

These two results suggest that Colorado voters were looking for action on illegal immigration. Interpreting results from individual races in terms of what they suggest about voters' views on immigration is more difficult. Candidates who argued for stronger enforcement and a more secure border won, but so did candidates who argued for immigrant rights—and these differences were not entirely along party lines. It may well be other issues were simply more important to voters in making their decisions. When (and if) we find good analyses of what the election indicates about immigration and future possibilities for immigration policy, we will pass them along.

President Signs Secure Fence Act

Twelve days before the election, on October 26, President Bush signed the Secure Fence Act of 2006, which calls for construction of a fence on 700 miles of the U.S.-Mexico border, approximately one-third of the entire expanse. The bill also provides for use of advanced technologies to increase border security. The legislation does not provide for funding of the fence. While another bill signed by the president in October did appropriate \$1.2 billion for the fence, lighting, vehicle barriers, and high-tech equipment, estimates indicate that the fence may cost twice that amount.

At the signing ceremony, the president stressed a number of other actions being taken in addition to building the fence. These measures include increasing funding for border security (from \$4.6 billion in 2001 to \$10.4 billion in 2006), adding 3,000 new Border Patrol agents, and increasing beds in detention facilities to support ending "catch-and-release" policies.

The day before President Bush signed the Secure Fence Act, CNN released a poll indicating that only 45 percent of Americans favor the 700-mile fence, while 74 percent favor increasing the number of Border Patrol agents. The fence bill was roundly

criticized by Mexican leaders and the Organization of American States. The head of the National Border Patrol Council, T.J. Bonner, was less than enthusiastic as well: "A fence will slow people down by a minute or two, but if you don't have the agents to stop them it does no good. We're not talking about some impenetrable barrier."

Americans in Waiting: New Book on Immigration and Citizenship

Former University of Colorado law professor (now at the University of North Carolina Law School), Hiroshi Motomura has released a new book on immigration. Titled, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States* (Oxford University Press, 2006), Motomura's book reviews the history of immigration law in the United States, laying out three conceptions of immigration: immigration as contract, immigration as affiliation, and immigration as transition. Motomura argues that, by viewing immigration as transition and immigrants as "citizens in waiting," the United States can "assure that American remains faithful to its tradition as a nation of immigrants—as welcoming immigrants while still remaining one nation."

The special status of "citizens in waiting" would only be available to those lawful immigrants who declare their intention to become naturalized citizens. This special status might include the right to vote in some elections, as well as access to services now denied to immigrants. Motomura argues that conceiving of immigration in this way would encourage immigrants to become citizens (40 percent of those now eligible for naturalization choose not to) and help them more quickly integrate into American society.

While the idea may seem radical, Motomura points out that until 1952 immigrants who wanted to become naturalized citizens had to file an intent to naturalize three years before naturalization. He also notes that noncitizens could vote in many states in the 19th century, a fact that proved important in the Civil War:

During the Civil War, noncitizen voting in some states served Northern interests by expanding the political influence of immigrants, especially on the slavery issue. The practice of noncitizen voting also helped to justify the drafting of noncitizens into the Union Army, which was almost a quarter foreign-born. And after Appomattox, expanding noncitizen voting was a way to recognize noncitizens who had served (Motomura 2006, p. 117).

This proposal, quite different from many being discussed, could be an interesting topic for student consideration.

First Look at Welfare Numbers Shows Little Effect of "Toughest Law in Nation"

Following the special legislative session on immigration this summer, one of the bills passed and signed into law was described as the "toughest in the nation." The new law

requires all adults applying for nonemergency services such as retirement, welfare, disability, public housing, food assistance, and similar payments to provide proof of citizenship or legal residence.

According to an October 19 article (http://www.denverpost.com/search/ci_4513835) in the *Denver Post*, this new law had little effect on the number of people receiving public assistance in the first 11 weeks following its passage. The number of public aid recipients was essentially unchanged from the same time in 2005. However, because welfare recipients' eligibility is only confirmed once per year, future changes due to the new law could still occur. The executive director of La Raza, Sherie Calvillo, does not think that will happen: "Undocumented individuals prefer not to rely on public assistance since they are resourceful and wish to work."

Where the impact of the new law has been seen is in the number of people applying for state identification cards—27,000 between August 1 and October 19, up 20 percent from last year and 50 percent above official projections for this year. In addition, a number of people have applied for an identification card and then walked away when officials questioned their documents.