



PHILADELPHIA BAR ASSOCIATION

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Representative Daryl Metcalfe
Chair, House State Government Committee
45 East Wing, Capitol Building
Harrisburg, PA 17120

Re: Immigration Bills

Dear Representative Metcalfe:

I am writing on behalf of the Philadelphia Bar Association in opposition to the group of Bills currently pending before the House State Government Committee as the “National Security Begins at Home” package of legislation, including House Bills 41, 355, 439, 474, 738, 798, 799, 801, 809, 810, 856, 857, 858 and 865, and Senate Bill 9.

The Philadelphia Bar Association is the oldest association of lawyers in the United States. For centuries, we have promoted justice, professional excellence and respect for the Rule of Law. As Chancellor, I am the primary spokesperson for approximately 13,000 Philadelphia lawyers and judges.

First, let me be clear that we do not condone unlawful immigration. For us, the issue is how best to regulate immigration, not whether our existing or future regulations should be followed.

When properly regulated, immigration can be a very positive force. After all, this country was founded by immigrants who sailed here from England. Since then, many others have joined us from all over the world, including most of our population’s parents or grandparents. Indeed, only Native Americans can say they are not descended from immigrants.

We are a very diverse society precisely because we have welcomed so many people from foreign lands. This diversity of our people is one of our greatest strengths, because it gives us access to the best that all cultures have to offer. Just imagine an America without the likes of Albert Einstein, Irving Berlin, Andrew Carnegie, Levi Strauss and Harry Houdini, to name just a few. Immigration has been beneficial in the past and is equally important to our future. It just needs to be kept to a desirable level and mix.

We believe the best approach to a sensible immigration policy is comprehensive regulation and enforcement at the federal level. It is far easier to control immigration at our borders than to sift through our entire population to determine which of us are rightfully here.

The latter approach is like adding salt to your food, then trying to remove it again one grain at a time. Yet that is the method proposed by the current package of legislation. And while attempting the find each grain, the bills would inconvenience and impair the rights of many people who are citizens or lawful residents, based solely on how they look or sound. That is a very inefficient, costly and discriminatory approach. Thus, if the federal government is not doing enough to secure our borders, we should pressure Congress to act, not adopt a patchwork of inconsistent state laws that will probably do more harm than good.

It would be especially sad to see Pennsylvania impair our individual liberties over this issue. Pennsylvania is the birthplace of our nation. We declared our independence here in 1776, and our Constitution was written here in 1787.

Our founding fathers would have been horrified if they knew we would one day consider requiring our police to ask everyone who looks “foreign” for “papers” and throw them in jail if they aren’t carrying the “proper” identification. That is antithetical to our core national values and, frankly, it sounds more like Nazi Germany than the America we cherish.

House Bill 738 is an example of this problem. Known as the “Support Our Law Enforcement and Safe Neighborhoods Act,” House Bill 738 accomplishes neither goal. This bill compels law enforcement officers who lawfully stop, detain or arrest an individual “who is or should reasonably be suspected of being unlawfully present in the United States” to demand that the individual produce a government issued identification card to prove lawful presence within the United States.

A 2006 study by the Brennan Center for Justice at the New York University School of Law revealed that as many as 11 percent of United States adult citizens—more than 21 million individuals—do not possess such government issued photo identification.

Under House Bill 738, law enforcement officers will be asked to guess whether a person stopped may be in the country illegally. Given that House Bill 738 provides for civil sanctions for failure to fully enforce Federal immigration laws, police officers will need to demand inspection of government issued identification whenever they stop anyone with an accent or from a minority community. It is obvious that a citizen of this country who was born and raised in India is far more likely to be subjected to such demands than a blond haired blue-eyed man who is an undocumented immigrant. Essentially, this not only condones, but requires, racial discrimination.

We the people are white, black, brown, yellow, red and every shade in between. If this package of legislation is enacted, people of color will be subjected to increased scrutiny and indignities by law enforcement personnel.

The liability risk for municipalities and their police departments is enormous, both from those who claim that law enforcement is not doing enough and from those who claim it is doing too much.

Indeed, how this added duty, with the requisite time, paperwork and expenditure of funds for temporary incarceration “supports our law enforcement” is not explained. Nor is it evident how occupying the time of law enforcement officials with such activities rather than allowing them to prevent or solve violent crimes results in “safe neighborhoods.”

In addition, many of the assumptions underlying these bills are unsupported and demonstrably incorrect.

For example, House Bill 738, in Section 2, “Legislative Intent,” states in part, “The General Assembly finds and declares as follows: (1) Illegal immigration is causing economic hardship and lawlessness in this Commonwealth.” No evidence is cited in support of those conclusions, and the facts are to the contrary.

The Institute for Taxation and Economic Policy estimates that in 2010, households headed by unauthorized immigrants paid a combined total of \$134,967,366 in Pennsylvania state and local income, property and sales taxes.

It is also untrue that illegal immigration is associated with higher crime rates. From 1990 to 2008, the number of illegal immigrants residing in the United States has tripled to nearly 11 million. During the same period of time, the crime rate in the United States has declined sharply. Data from the Bureau of Justice Statistics shows that nationwide, the rate of violent crime is down 37.7%, while the incidence of property crimes is down 36.7%. Cities such as New York, Chicago, Miami, San Diego and El Paso, which are home to many illegal immigrants, have witnessed significant drops in their crime rates.

Instead of solving such non-existent economic hardship and lawlessness, House Bill 738, would destroy Pennsylvania’s economic recovery by increasing government costs, reducing tax revenues, diverting vital law enforcement resources away from preventing and solving crime, and discouraging talented, law-abiding, authorized workers from residing in our Commonwealth. This is evident from the actual consequences of similar legislation enacted elsewhere.

The primary author of Arizona SB 1070, which is the model for Pennsylvania’s proposed House Bill 738, and several local anti-immigrant ordinances in towns such as Hazleton, Pennsylvania and Fremont, Nebraska is Kris Kobach, former chief counsel of the Immigration Reform Law Institute, the legal arm of the Federation for American

Immigration Reform. A 2011 report issued by the Southern Poverty Law Center states that Kobach has left a “trail of tears” in Arizona and the towns he has advised.

Arizona’s experience with SB 1070 is instructive. Since its enactment, the state has lost a substantial volume of business. Organizations, cities and businesses are boycotting Arizona in reaction to that state’s passage of SB 1070. Just seven months after enactment of SB 1070, the Center for American Progress estimated that Arizona had already lost \$141 million in direct spending due to canceled conventions.

Hispanic residents—both legal and illegal—are leaving Arizona. The Pew Hispanic Center reports that the Hispanic population of Arizona is in decline, which is helping drag down the entire state economy. University of Arizona economist Marshall Vest, in his latest economic forecast, has downgraded prospects for his state. Vest’s previous report estimated that Arizona’s population would grow to 8.4 million in 2020. He recently revised that figure to 7.5 million. Vest also revised downward predicted job growth next year from 3.3 percent to 1.3 percent, and reduced projected income growth for the same period from 5 percent to 2.9 percent.

Even before SB 1070 went into effect, Maricopa County (Arizona) Sheriff Joe Arpaio had developed a nationwide reputation for using local law enforcement resources for enforcement of federal immigration laws. That activity has given both Arizonans and residents on other states where similar legislation is pending a preview of what will happen once such legislation goes into effect. “Reasonable Doubt,” a series of articles in the East Valley (Arizona) Tribune which won the 2009 Pulitzer Prize for local reporting, found that as Sheriff Arpaio diverted resources of his department to immigration enforcement, response times to 911 calls increased, arrest rates dropped and thousands of felony warrants were not served.

The Arizona Association of Chiefs of Police opposed to SB 1070, releasing this statement shortly before the law was enacted:

The provisions of the bill remain problematic and will negatively affect the ability of law enforcement agencies across the state to fulfill their many responsibilities in a timely manner. While AACOP recognizes immigration as a significant issue in Arizona, we remain strong in our belief that it is an issue most appropriately addressed at the federal level.

Recognizing the negative impact that SB 1070 has had on his city’s governmental resources, economy and social fabric, Phoenix Mayor Phil Gordon said:

What good has this divisive law accomplished? I’ve seen firsthand the way it’s torn apart our state, the way it’s hurt us economically and hurt us in terms of security by diverting valuable resources away from catching real criminals. The only people better off for Kobach’s efforts are people like him—political

opportunists who want to use stereotypes and distortions to make a name for themselves.

SB 1070 also has been condemned in no uncertain terms by the National Council of Churches. At its 2010 convention, the Council passed a resolution opposing the legislation. “Our immigrant brothers and sisters—citizens, green card holders, and undocumented immigrants—live in a state of fear—fear of exploitation, discrimination, apprehension, detention, and deportation from their families,” the resolution said. “While a federal judge blocked the most controversial parts of SB 1070, it sparked a nation-wide conversation which has led to more than 22 states considering similar types of legislation.”

The package of legislation also would impair our economic recovery in other ways. House Bill 858 encourages local governments to enact ordinances “prohibiting the employment of unauthorized aliens or other unlawful workers” and “restricting the rental of housing to an alien unlawfully present in the United States.” Mr. Kobach has written such ordinances for the city of Hazleton, as well as for other municipalities around the United States. The results speak for themselves.

In Hazleton, the ordinances have increased tensions between the ethnic communities, have resulted in Hispanic residents—legal and illegal—leaving the city, and have led to the closure of Hispanic owned businesses. The city’s unemployment rate, which in June 2011 stood at 13.8%, is among the highest in the state. All of this has occurred while the city’s bills for lawyers to defend the ordinance have mounted.

The ongoing litigation over the ordinances has also revealed the extent of the tensions the ordinances have engendered in the community. According to testimony cited by the Third Circuit Court of Appeals in its decision to block most aspects of the ordinances, one Latino landlord plaintiff received frightening hate mail on three occasions. One of the mailings included the phrases “If it’s brown, flush it down,” “Subhuman spic scum” and also a link to the website of the neo-Nazi National Socialist Movement. In addition, the appeals court cited the case of the publisher of a Spanish-language newspaper in Hazleton who, while covering a pro-ordinance rally, was surrounded by an angry mob who yelled, “Get out of the country!” and “Traitor!”

In Fremont, Nebraska, a once-peaceful town of 25,000 people which passed a similar ordinance last year, a local advocacy group has collected 65 reports of racial harassment of Latinos—none of whom, given the racial tensions, would give their names. They reported threats to set their businesses on fire, BB guns being fired at them and their children, and being subjected to racial taunts. Deputy Police Chief Jeff Elliott reports that Latinos will not talk to the police anymore because of tensions over the ordinances. The former mayor and city council president, who opposed the ordinances, received threatening emails. Local anti-ordinance activist Kristin Ostrom received a threatening note that read, “We shed blood to build this country and we will shed blood again to take

it back.” That was about the same time that someone hurled a large rock through her window.

Racial epithets. Fear. Broken glass. Our society stands at a crossroads in the way we treat not only the minorities in our communities, but also those who would speak out on their behalf and defend their rights. Too often in history, we have witnessed societies come to the same crossroads and choose the wrong path, resulting in untold misery for millions of our fellow human beings. Indeed, the echoes of the past in the words, “Papers please” should give us all pause. Members of the House, I urge you to please consider these points carefully when deciding which path to choose for our Commonwealth of Pennsylvania.

These bills will also promote discrimination in the workplace.

We the people speak with many different accents. However, if this package of bills is enacted, many residents of this Commonwealth who are citizens of the country or here lawfully and who are qualified to work under federal law will face discrimination in the workplace simply because of their accents.

For example, House Bill 856 requires employers to determine eligibility for employment through the inaccurate E-verify system. In a 2007 study conducted by Westat for the Department of Homeland Security, researchers found that E-verify incorrectly cleared illegal workers 54 percent of the time. Importantly, the same study showed that 10% of naturalized citizens were erroneously categorized as ineligible in the system.

Thus, requiring E-verify will needlessly expose employers to costly civil litigation and criminal investigations. To avoid such a fate, some employers will immediately identify otherwise qualified people who have accents as “foreign” and not hire them. Other employers will decide that the atmosphere for doing business in Pennsylvania is too caustic, and will decide to relocate elsewhere. At a time when this Commonwealth is trying to recover from the recession, we can ill afford to drive businesses, jobs and talented people away from our communities.

In addition, a Social Security Administration study has determined that mandating E-verify would contribute significantly to unemployment because erroneously classified employees would be forced to find a way to correct their records or lose their jobs.

The bills would also have a disproportionately detrimental impact on many of our poorest citizens.

House Bills 738 and 41 require all adult applicants for federal, state or local public benefits to produce photo identification in order to receive such benefits. Studies show that poor people—both citizens of this country and those lawfully present in the United States—are far less likely than middle income or wealthy people to have photo ID. They

often do not drive, have never traveled to need a passport, and are not active duty military personnel. Consequently, when people facing sudden economic hardship need help the most, House Bills 738 and 41 place barriers in their path.

Poor people in desperate need of immediate assistance will face delays in getting benefits, as they try to find a way to get an acceptable photo ID. In the rural areas of our Commonwealth, drivers licensing centers may be far from an individual's home and there may not be public transportation available to access the licensing center. Ultimately, some will become discouraged and turn away—increasing the risk of hunger and homelessness in both rural and urban communities.

The bills will also impair the public safety of our communities.

House Bills 810 and 865, which punish so-called “sanctuary cities,” along with several other bills under consideration, would create an atmosphere of fear among all minority communities. If these bills are passed, people of color, people with accents and people who wear garb specific to minority religions can expect to be regularly questioned about their status in this country. The result will be a decline in respect for and cooperation with governmental authorities. While House Bills 810 and 865 purport to carve out an exception for law enforcement, the level of distrust created by the entire package of legislation will increase the reluctance of individuals to come forward to report a crime when it has been committed or to cooperate with law enforcement in the investigation of crimes.

Of course, these bills will also place onerous burdens on our law enforcement personnel, create strains on our prison system and dramatically increase the cost of policing and incarceration. Dallas County (Texas) Sheriff Lupe Valdez, testifying before a committee of the Texas State Senate on a similar sanctuary cities bill, noted that the bill comes with a price tag for local communities. “The undocumented will stay longer in our jails than the others so therefore it's going to give us more costs. . . . Who do I decide to put out when a hundred more a month come in? Who do I let out? We're already stressed and we're trying to hold as many people as we can,” Valdez said. “And who's going to make that decision on what are the categories of who we put out? I honestly believe the jails should have room for people we are afraid of, not that we are upset with.”

The bills would also impair our federalist form of government.

We are all citizens of one nation—the United States of America. We are not citizens of individual states, with definitions of “citizenship” that vary from state to state. House Bill 857 attempts to create a new classification of citizenship, which would exclude certain individuals who are otherwise citizens of the United States. This is both offensive and at odds with the Fourteenth Amendment.

The long-established tenet of U.S. citizenship, codified in the Citizenship Clause of the Fourteenth Amendment of the U.S. Constitution and § 301(a) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1401(a)), is that a person who is born in the United States, subject to its jurisdiction, is a citizen of the United States regardless of the race, ethnicity, or alienage of the parents. This tenet has its basis in English common law, which follows the doctrine of *jus soli*, under which persons born within the dominions of and with allegiance to the English sovereign were subjects of the sovereign regardless of the alienage status of their parents.

When the Fourteenth Amendment was debated in the 39th Congress, opponents shamefully argued, among other things, that birthright citizenship would result in the taking over of Pennsylvania by gypsies. This lesson from history shows that unwarranted fear of immigrants is nothing new.

Thankfully, opponents of birthright citizenship lost that debate, and the Fourteenth Amendment passed. Since then, courts have interpreted the Fourteenth Amendment to include birthright citizenship. The United States Supreme Court held long ago in *U.S. v. Wong Kim Ark*, 169 U.S. 649 (1898), that:

[T]he Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens. . . . The Amendment, in clear words and in manifest intent, includes the children born, within the territory of the United States, of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States.

At its 2010 convention, the National Council of Churches, condemned legislation such as House Bill 857, in the same resolution which criticized Arizona Senate Bill 1070. Even more alarming (than SB 1070), the resolution said,

are proposals calling for the revocation of the 14th amendment to the U.S. Constitution, which has defined citizenship and the rights of citizens since the Civil War. Such proposals have garnered media attention and support, despite the fact that should they be enacted, children of undocumented immigrants born in the U.S. would be stateless persons.

Just as citizenship is a federal concern, not a subject for state lawmaking, so too are immigration matters, as no people in this country should have to face inconsistent laws with regard to status or citizenship as they move across state boundaries.

Indeed, the only reasonable solution for all of the issues raised in the package of legislation before this Committee is comprehensive immigration reform at the federal

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level, not through a patchwork of conflicting, intrusive, discriminatory and confusing laws and ordinances at the state and local level. We need to control our borders in a sensible manner with one set of laws, applied consistently throughout the country.

Accordingly, on behalf of the members of the Philadelphia Bar Association, I urge all members of the House State Government Committee to oppose this package of legislation in its entirety.

Thank you for the opportunity to provide written testimony to the Committee on these issues.

Respectfully yours,



Rudolph Garcia
Chancellor, Philadelphia Bar Association