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**Undocumented Immigrant Students in
American Higher Education
Policy and Discourse**

**IHELG Monograph
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Undocumented Immigrant Students in American Higher Education Policy and Discourse

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Abstract

This study provides critical analyses of one of the most controversial policy mechanisms across America today—In-State Resident Tuition (ISRT) policy for undocumented immigrant students. Drawing on the policy texts of 11 state statutes that extend in-state resident tuition to undocumented students, this paper presents critical and policy discourse analyses of ISRT policy in order to deconstruct the policy problems as produced through ISRT policy discourse. At stake in this inquiry are the ideologies that these seemingly benevolent policies carry with them as they produce new discursive effects and material consequences in the everyday lives of undocumented immigrant students. These effects and consequences raise new concerns and insights into social and educational concerns related to immigration and the role of democracy in higher education.

Undocumented Immigrant Students in American Higher Education Policy and Discourse

This study provides critical analyses of one of the most controversial policy mechanisms across America today. In-State Resident Tuition (ISRT) policy for undocumented immigrant students has emerged within the frontlines of a hostile national debate about immigration reform and higher education opportunity. The recent passing of Arizona's SB 1070 and its subsequent popular response both in favor and opposition provide evidence for the hostile climate and the timeliness of such concerns. Additionally, as the US Congress resurrects immigration reform and the federal Development and Relief for Alien Minors (DREAM) Act precariously has been enveloped into comprehensive immigration reform, understanding the politics, ideology, and consequences of state-based and federal policy reforms becomes even more prescient for higher education researchers and policy makers. Passions run high in this debate, and rhetoric is profuse. Cutting through the extant noise and fostering a deep understanding of how higher education, immigration, policy, and discourse are creating new and reifying old ideologies of opportunity can be difficult, but remains necessary if the education community wants to participate responsively rather than reactively.

In order to contribute to education responsiveness and raise important questions about the relationship between higher education, democracy, and educational opportunity, this study seeks to understand the underlying assumptions that drive these policies, as enacted in their discourse. Drawing from Critical Discourse Analysis (Fairclough, 2006) and Policy Discourse Analysis (Allan, Iverson, & Ropers-Huilman, 2010), this paper takes the text from 11 states' statutes that extend in-state resident tuition to undocumented students

as its primary data and examines them for their ambiguities and contradictions as they produce the policy problem at stake in these on-going debates.

As such, this study orients itself around the question: “What problem does ISRT policy try to solve?” Responding to this question inevitably requires an understanding of how the policy problem is constructed in ISRT policy. Yet, in order to understand the politics, ideologies, and consequences of ISRT policy, a deconstructive analysis must be undertaken, exposing how problems are produced through ISRT policy. At stake in each of these questions are the discursive opportunities made available for enabling and/or constraining educational opportunity, particularly for undocumented immigrant students. To these ends, we present both critical renderings of how policy problems are constructed, as well as poststructural renderings of how policy problems are produced in state-based ISRT statutes.

It is estimated that there are approximately 11.9 million undocumented immigrants within the United States (Pew Hispanic Center, 2008). Roughly 50,000 – 65,000 undocumented immigrant students graduate from U.S. high schools each year (Oliverez, 2006). Undocumented immigrant students struggle for opportunity through complex webs of social, cultural, political, and policy contexts (Gildersleeve, Rumann, & Mondragón, 2010; Gonzales, 2007; Perez, 2009). They face discrimination across divisive lines of racialization, geography, social class, and most pointedly, citizenship (Gildersleeve, 2010a; Perez, 2010). Additionally, undocumented immigrant students often come from families that participate in labor contexts (e.g., migrant farmworking), that can constrain normative college-going development (Gildersleeve, 2010b). The artifact of many undocumented immigrants’ socio-

economic status presents a pressing problem for students, similar to their documented counterparts: the ability to pay for higher education.

However, unlike students with US citizenship, undocumented immigrant students' access to financial aid is extremely limited. As will be discussed further in later sections, undocumented immigrant students are ineligible for federal aid, and most states and many private foundations restrict aid to students with legal residency or US citizenship (Flores, 2010; Gildersleeve, Rumann, & Mondragón, 2010). Further, higher education costs can be exacerbated for undocumented immigrant students when states refuse to consider them residents for tuition purposes. Partly in response to this inequity, 11 states have passed legislation that effectively extends in-state resident tuition benefits to undocumented immigrant students. Meanwhile, some states (e.g., Arizona) have passed legislation explicitly denying undocumented immigrants in-state tuition benefits. Still others remain policy-ambivalent and leave individual institutions to determine their own practices.

Research on ISRTs has relied heavily on legal arguments about undocumented immigrants' rights to higher education as well as quantitative analyses of policy outcomes related to undocumented students. For example, Olivas (2004) provided syntheses of the legal landscape related to immigration and education, while Lipman (2006) argued for more equitable tuition policies based on legal-economic analyses that showed how undocumented immigrants are excessively taxed for higher education without benefitting from these private contributions to the public good. Meanwhile, scholars such as Flores (2010, 2007) and Kaushal (2008) have used enrollment, financial aid, and census data to demonstrate the overall benefit of ISRT policies for undocumented immigrants, as well as the negligible impact of these policies on local higher education systems and economies.

Some qualitative work has taken up ISRT policy and explores the affective consequences of ISRT policy in undocumented immigrants' everyday lives (Morales, Herrera, & Murry, 2009; Perez-Huber & Malagon, 2007).

Despite a growing literature related to undocumented immigrants in higher education, and ISRT policy in particular, these policies have remained largely unexamined in terms of their discursive effects and material consequences. Thus, this study begins to address this gap in the literature by providing critical policy discourse analyses of current ISRT statutes. Understanding the politics, ideology, and consequences of such policy discourse addresses significant concerns for higher education and society. Most prominently on our agenda is the struggle for social and educational equity for undocumented immigrant communities. Also at stake are concerns about higher education and its relationship to the American economy as well as the relationship between federal and state governments in regulating social opportunities for the body politic. All three of these concerns inform the relationship between democracy and higher education as a social institution.

In this paper, we attempt a critical mapping of undocumented students' higher education opportunity, as related to ISRT policy. We begin with reviews of the participation and policy contexts of undocumented immigrant students in higher education as synthesized from the research literature. We then review and describe the research literature and significance of ISRT policy itself. We briefly discuss Gildersleeve's (2010) College-going Literacy Development Model of college access as it serves as our conceptual model for understanding higher education opportunity. We connect Gildersleeve's model to poststructural theories of power and discourse, and consequently connect these theories

to critical discourse analysis and policy discourse analysis as our theoretical and methodological frameworks for the study. After briefly discussing our data and methods, we provide renderings of our critical discourse analysis of how the policy problem is constructed in ISRT policy. We counter these critical renderings with postructural renderings from our policy discourse analysis of how the policy problem is produced through ISRT policy. After discussing plausible material consequences from these discursive effects, we offer conclusions and recommendations for the continued interrogation, both in practice and research, of ISRT and related policy discourses.

Participation context: Undocumented immigrant students in higher education

Approximately 15% of the nation's 11.9 million undocumented immigrants are under the age of 18 (Passel, 2006). This estimate suggests that the immigrant population living in the United States is relatively young and comprise an integral part of the American primary and secondary educational system. Estimates suggest that 65,000 undocumented immigrant students graduate from high school every year (Passel, 2003), and anywhere from 7,000-13,000 undocumented immigrant students enter postsecondary education of some sort annually (Gonzales, 2007).

In their review of college access as a field of inquiry, McDonough and Gildersleeve (2006) identified a set of five known mediators of college-going over which scholars have generally reached consensus. These mediators include: academic preparation and counseling; schooling involvement with families, first generation status and family familiarity with college, college admission policies, and higher education cost and financial aid. College barriers to undocumented students are similar to those faced by other students. However, their status as undocumented immigrants informs these mediators

creating particularized constraints for students to navigate and negotiate (Gildersleeve, 2010a).

Many immigrant communities, and undocumented immigrant students in particular, attend underperforming schools (Arzubiaga & Nogueron, 2009; Rumbaut, 1995), exacerbating the ways that college-going mediators can become college access barriers. The schooling contexts for undocumented immigrant students may not support adequate college information or counselors who are well informed on how to adequately advise undocumented students (Arzubiaga & Nogueron, 2009). Furthermore, many immigrant students may not know they are undocumented given that many enter the US as children. Undocumented students are likely to be the first in their family to pursue American higher education and must navigate the college admission process from novice perspectives, making them increasingly reliant on schools and admission offices for assistance.

Undocumented immigrants are concentrated in six states in the United States: California, Texas, Florida, New York, Illinois, and New Jersey (Pew Hispanic Center, 2008). However, there is greater dispersion of immigrant groups into new settlement regions that are not familiar with their presence, such as Midwestern states like Iowa (Flores & Chapa, 2009). As underrepresented students, they are more likely to be enrolled at community colleges, the most common point of entry for low-income, and many communities of color (Erisman & Looney, 2007). Overall, the participation context in higher education for undocumented immigrant students is marked by struggle to institutionalized resources and educational trajectories tied into the broader social stratification of American higher education.

Undocumented immigrant students in law and policy

Undocumented immigrant students' participation in higher education is located in a dynamic nexus of federal, state, local, and institutional authority. Immigration policy in the United States is under the purview of the federal government while education generally, and state residency in particular, is legislated and determined by each state. As demonstrated by the sociopolitical contexts of opportunity, undocumented immigrant students are affected by policies that are hotly politicized and are often legislated under hostile circumstances.

Federal policy context

One of the most important cases related to undocumented immigrants' access to education is the US Supreme Court case *Plyler v. Doe* (1982). The court held that the state of Texas could not deny undocumented immigrants access to a free primary and secondary education. In a five-to-four decision, the court found that there was no significant financial burden to the state imposed by undocumented immigrants and denying undocumented immigrants an education would not deter future illegal immigration (Frum, 2007; Olivas, 2004). The court also found that denying a K-12 education to children would create a "lifetime of hardship" and create a permanent "underclass" of individuals (Frum, 2007). This is particularly important given that at the time, a high school diploma provided opportunity for social and economic mobility.

Another important federal statute influencing undocumented immigrant students' persistence is the Illegal Immigration Reform & Immigration Responsibility Act (IIRIRA) of 1996. Section 505 of IIRIRA is most often cited and debated concerning undocumented students access to higher education (Olivas, 2004). Section 505 states:

an alien who is not lawfully present in the United States is not eligible for any postsecondary education benefit on the basis of residence unless a citizen of the United States is eligible for the same benefit (in no less an amount, duration, and scope) of whether or not the citizen is a resident.

Olivas (2004) interprets IIRIRA as granting the state with the authority to determine state residency for tuition purposes. The statute does not prohibit states from providing in state resident tuition as long as qualified out of state U.S. citizen students are eligible for a similar benefit (Ruge & Iza, 2005). The vagueness of the statute however, has led to significant differences concerning the intent of the stipulation (Frum, 2007).

A closely related statute is the Personal Responsibility & Work Opportunity Reconciliation Act (PRWORA) of 1996. The statute states that unqualified aliens are not eligible for any federal public benefit including postsecondary education or any other benefit in which payment or assistance is provided. While the intent behind these two statutes are interpreted in different and controversial ways, it is important to note that these statutes do not preclude institutions from enrolling or admitting undocumented immigrant students (Ruge & Iza, 2005). Further, in the decentralized and diverse system of American higher education, *federal* postsecondary benefits are generally limited to federal financial aid, such as student loans and the Pell Grant.

The Development, Relief, & Education for Alien Minor's Act (DREAM Act), is proposed federal legislation that was first introduced in 2001. Among other objectives, the DREAM Act could provide a pathway to citizenship for undocumented immigrants pursuing higher education. The DREAM Act was incorporated into the National Defense and Authorization Act and on September 21, 2010, was presented for a procedural vote. The

Senate, reached a 56-43 vote, falling four votes short to move the bill into a Senate floor discussion. The latest version of the DREAM Act could provide students with conditional permanent residency contingent upon postsecondary enrollment or military service, as well a provision for “good moral character” (H.R. 1751, 2009). However, even if the DREAM Act were passed, it is estimated that only 38% of undocumented students would be eligible for its benefits based on the college-readiness and preparedness of undocumented students generally (Betanova & McHugh, 2010). Furthermore, increasingly vocal voices of dissent from within the immigrant rights movement have withdrawn support for the DREAM Act, claiming it has been bastardized into a primarily military recruitment tool that undercuts systemic immigration and/or educational opportunity reforms (see for example Ochoa, R., 2010).

State policy context

Undocumented immigrants are comprised of many countries of origin, however, Latinos make up a greater majority of the undocumented immigrant population (Pew Hispanic Center, 2007). According to the Pew Hispanic Center, 80 percent of the undocumented immigrant population living in the United States is Latino. The state policy context for undocumented immigrants and education varies widely by state. However, across states, higher education policy contexts cannot be disconnected from policies that target underrepresented groups, and Latinos in particular.

For example, a number of states, such as California, Washington, and Michigan, have adopted anti-affirmative action policies that constrain educational opportunity for students of color. Similarly, legislation like California’s Proposition 187 and Arizona’s Proposition 300 dismantle bilingual education, disenfranchising many undocumented immigrant

families. These are but a few examples of how undocumented immigrant students' educational opportunity is mired in a state policy context that some scholars, such as Nuñez and Jaramillo (2005) have called a hostile policy environment for immigrant families.

In addition, some states have adopted particular financial aid policies and programs that reward strict constructions of academic achievement (i.e., merit). Programs such as the Georgia HOPE scholarship and the West Virginia PROMISE scholarship help make college affordable. However, as a growing body of research into merit-based financial aid policies and programs has shown, these types of programs tend to benefit less-needy families and further disenfranchise first-generation and high-financial-need families (Heller, 2006; Perna, Rowan-Kenyon, Bell, Thomas, & Li, 2008; St. John, Paulsen, & Carter, 2005). Furthermore, the generous resources provided to these programs that generally perpetuate the status-quo in college admissions often accompany a dearth of resources dedicated to serving the human service and educational needs of immigrant families (Suarez-Orozco, Suarez-Orozco, & Todorova, 2008).

Particular to higher education admissions, a national standard does not exist for undocumented immigrant students' access and admission to postsecondary education. Regulations vary from state to state, and in some cases, within state systems and across institutions of higher education. Ten states currently have active legislative policies that extend in-state resident tuition benefits to undocumented students (Olivas, 2009). While federal legislation does not prohibit undocumented students from attending public colleges and universities, five states have adopted policies through legislation or popular referenda to effectively deny undocumented immigrant students in-state resident tuition (Dougherty,

Nienhuser, & Vega, 2010; Gildersleeve, Rumann, & Modragon, 2010). Moreover, some states (e.g., Georgia), as well as some individual institutions (e.g., Rutgers University), have adopted policies to restrict undocumented immigrants from even attending public colleges and universities (Hebel, 2010).

Institutional policy context

Caught somewhere in between, most public colleges and universities find themselves in policy ambivalent states. These are states where there is neither an ISRT that extends, nor any legislation that restricts in-state resident tuition benefits. Flores & Oseguera (2010) suggest that institutions in policy ambivalent states have significant responsibilities to assume in the absence of federal or state legislation. These institutions are left to interpret ambiguous state and federal regulations and determine their own institutional practices in enrolling and assessing tuition for undocumented immigrant students.

College admission policies vary by and within each state. Undocumented immigrant students must navigate particular admission policies that are often complex and not easily accessible particularly for undocumented immigrant students whose admission and residency requirements vary by state. Undocumented immigrant students must not only navigate varying college admission policies but also are challenged to fund their higher education since they are not eligible for state or federal financial aid. Higher education costs are rising every year and undocumented immigrant students are not able to subsidize their college tuition compared to their peers. In her study of undocumented immigrant students in California, Perez (2010) found that higher education cost was the single most

important factor involved in the college choice process. Students most often selected community colleges given that it was the most affordable postsecondary education option.

Across these policy contexts, it is imperative to recognize that the federal government generally is ascribed responsibility for concerns of immigration, while state governments generally are ascribed responsibility for concerns of education, including higher education. Individual institutions mediate opportunity at the organizational level by crafting policies and enacting practices that can constrain/enable student access and success. At stake in this study is a policy context that rests at a complicated nexus of these federal, state, and institutional responsibilities: in-state resident tuition policy for undocumented immigrant students.

ISRT policy as a context for inquiry

Amid the tensions between federal, state, and institutional interests and across the social concerns of immigration, education, and social opportunity, ISRT policy emerges with complicated socio-historical, political, and cultural ramifications. This policy context draws broad audiences and constituents from across any political spectrum and commands attention from those working toward equity in educational opportunity. ISRT policy, as a context for inquiry, is ripe for examination as its consequences affect real people's lives and change the way organizations and institutions reflect democratic ideals in American society. Research to date has focused primarily on policy outcomes, legal analyses and affective consequences of ISRT policy in the everyday lives of undocumented immigrant students. There is a gap in the literature wherein the fundamental assumptions, ideologies, and politics of ISRT policy has gone unquestioned.

Policy outcomes

Flores (2010) conducted a quantitative study to investigate whether Latino students likely to be undocumented living in states with ISRT policies were more likely to enroll in colleges than other undocumented students who lived in states without similar state legislations. She applies an econometric methodology to investigate the impact of IRST policies. Her research questions investigate whether the introduction of ISRT policies in Texas, California, Utah, New Mexico, Washington, Oklahoma, Illinois, Kansas, and New Mexico, have an impact on their college enrollment rates, compared to states without ISRT policies. Using the Current Population Survey, a nationally represented sample administered by the U.S. Census and the U.S. Bureau of Labor statistics, from 1998-2005, Flores adopted a cost-benefit framework to theorize the effect of a price reduction on college enrollment behavior. Using a logistic regression model, she finds that tuition policies have a positive and significant effect on the college-enrollment rates of undocumented Latino students living in states with ISRT policies.

Kaushal (2008) examines the effects of providing in state resident tuition to undocumented students on their college enrollment and educational attainment in states that extend in state resident tuition. Her work estimates the effect on a group of noncitizen Mexican young adults, who arrived to the United States after 1987, have lived in the US for more than three years, and would be eligible for in state tuition. Her analysis is based on the Current Population Survey from 1997-2005. Her empirical analysis finds that ISRT policies are associated with a 2.5% increase in college enrollment, a 3.7% increase in the proportion of students who have some level of college education, and a 1.3% increase in the proportion of students with an associate degree. Her analysis further supports that

access to subsidized tuition rates increases college enrollment of noncitizen Mexican youth living in states that extend in state resident tuition.

Flores & Chapa (2009) examined the political context for foreign-born noncitizen immigrants in the United States. They determined that there is an increase in state legislative action around issues of college access for undocumented immigrants whereas federal activity related to this issue remains unresolved. They also document the dispersion of Latino immigrant populations into new settlement regions where in many cases the state is policy ambivalent. These contexts present new challenges to higher education and political systems that are not familiar with new immigrant communities.

Flores & Oseguera (2009) acknowledge that higher education institutions are guided by state and institutional policies, or lack there of, in providing educational opportunities for students and in particular, undocumented students. They provide two case studies, California and North Carolina, as illustrations of states with and without ISRT policies, and investigate the availability of educational opportunity for undocumented students at the community college within the two states. They also use data from the American Community College Survey and the National Center for Education Statistics' Integrated Postsecondary Education, and system wide data from California and North Carolina. They examine fall enrollment data from 2000 to 2007 and identified all undergraduate students enrolled during that time period. Their study highlights the significant responsibility institutions assume and take on in the absence of state and/or federal policies and legislation directly affecting undocumented students.

Political and legal analyses

The politics from which ISRT policies are created and contested have more recently been examined. Dougherty, Nienhuser, and Vega (2010) investigated the dichotomous responses of Arizona and Texas toward undocumented immigrants generally, and their relationship to higher education. Their study provides a close examination of the political contexts in which Texas afforded in state resident tuition to undocumented students through TX House Bill 1403, while Arizona constrained college access for their undocumented student population through the passage of AZ Proposition 300. The state of Texas extended in-state tuition with a nearly unanimous bipartisan vote in the legislature as well as with little public opposition. In sharp contrast, Arizona denied in state tuition with strong public and legislative votes across partisan lines. The authors argue the main reasons that the politics of in-state resident tuition varied across the two states lies in the speed in which the undocumented immigrant population was growing during the time the policies were introduced and considered, the racial political cultures of the states, the political power of the Latino population, the constitutional power of citizens' initiative, and the timing of in-state resident tuition legislation. The authors emphasize the importance of policy windows in shaping government and policy agendas as well as how policy subsystems are shaped by the social and political structure within the state.

Olivas (2004) examined how socio-political contexts influence policy and how the rise in interest in residency tuition as a result of increase and/or decrease of tuition fees. He particularly examines IIRIRA and how the provisions of this statute do not preclude states from enacting residency benefits to undocumented immigrant students. In state residency for tuition purposes is a state determined status and he provides a series of

litigation that the federal courts have left the interpretation and determination of state benefits for the states to determine. Additionally, Olivas (2010; 2009; 2005) has closely examined the Dream Act and provides litigation and legal developments concerning this federal legislation along with other state initiatives dealing with state residency generally and affecting undocumented immigrant students particularly.

Salsbury (2003) examined the seven ISRT policies that existed during the early part of the 21st century. She analyzed the seven state laws in the context of IIRIRA and found that ISRT policies take one of two approaches in order to remain congruent with Section 505 of IIRIRA. Some policies *define* residency for tuition purposes, incorporating qualifications that will include some undocumented students. Other policies create *exemptions* from residency for tuition purposes, providing eligibility for some undocumented students. Salsbury argues that the states whose ISRT defines residency inclusively will more successfully stand up to scrutiny under federal regulations like IIRIRA and PWRORA. She concludes that the process of determining who is or who is not a resident is filled with inconsistencies.

Affective consequences of ISRT policy

There is growing literature documenting the experiences of undocumented immigrant students. Gildersleeve (2010a) ethnographically depicted the life history of undocumented students' as they approached the college admission process. His findings noted that the experience of migration continued to shape the meanings available to students throughout their educational trajectory. Put simply, immigration is a lens that permeates undocumented students' worldview. In addressing ISRT policy, the students in

Gildersleeve's ethnographic life history seized the opportunity that ISRT policy provided as a continuation of their family's migration history-in-process.

Abrego (2008) examined the instrumental and constitutive effect of the ISRT policy in California, AB 540. She examines the legal consciousness of twenty-seven undocumented immigrant students in California to understand the intended and unintended consequences of the ISRT policy. One of the effects of AB540 in the day-to-day lives of the students is the new socially acceptable label and identity as an AB540 student. Students in her study used the ISRT name to identify as an undocumented student and to help conceal their migratory status. Despite their unchanged migratory status, the AB540 status provided a legally produced label to demand privileges for themselves and for other students in similar circumstances.

Perez (2010) examines the college choice process of 14 undocumented Latino students particularly focusing on why students decided to attend the institution they selected. Her study comprised of Latino, first-generation, low socio-economic status, and undocumented students attending a California community college or a public four-year university. Students accounted cost and affordability as the single most important factor in making their college choice. Students chose community college with the intention of transferring to a four-year institution as an affordable option for obtaining a bachelor's degree. Students also discussed the need to seek out information in order to create opportunities for themselves. Perez seeks to understand the barriers between undocumented students and four-year college attendance and identifies familial, peer, and school networks playing an important role in the college choice process for Latino undocumented students.

Perez-Huber & Malagon (2007) critically examine the experiences of 6 Latino undocumented students in California. The authors were guided by a Latino critical race theory framework, and identify several factors that were critical to students' successful transition throughout higher education: social support, financial aid and campus climate. Students expressed social support as a critical transition factor. Students identified peers, student organizations, or family members who were able to provide guidance and resources specifically related to their undocumented student status. Similar to Perez (2010), students identified financial support as the greatest obstacle in their college experience. Undocumented students ineligibility for federal and state financial aid, coupled with their inability for legal employment, further challenges their ability to fund their schooling. Students expressed feelings of isolation, fear, and invisibility in describing the feelings they experienced as a result of their immigration status. The authors argue Latino undocumented students experience additional barriers different and beyond the general Latino student population.

While there is a growing literature on the experiences of undocumented immigrant students and ISRT policies, the policies themselves remain largely unexamined in terms of their discursive effects and material consequences. This study attempts to address this gap in the literature by providing critical and policy discourse analyses of state-based ISRT policy. As demonstrated from the reviews of related literatures, ISRT policy discourse as a context for inquiry has significance across political and moral dimensions. These policies exist and emerge from controversial and hotly politicized nexes of contemporary American social concerns. They affect real people and change real conditions. They create and constrain opportunity while producing new imaginings of education and society.

Theoretical Framework

This study uses Gildersleeve's (2010b) College-going Literacy Model for understanding college access and brings post-structural theories of power and discourse to bear on understanding the formations of the subject and the policy problem in ISRT policies. According to Gildersleeve, college-going literacies are the sense- and meaning-making skills students use to navigate and negotiate the complex and dynamic pathways toward higher education opportunity (2010). Part of students' development of a college-going literacy relies on coming to know the object of college access itself. Within the College-going Literacy Model, college access – as an object – is mediated by external and internal forces in dynamic ways. That is, college access keeps changing as it is constantly reconstructed through policy and practice. In order for students to successfully navigate their educational trajectories toward the goal of higher education, they must understand the ideologies and politics that drive these on-going changes in the construction of college access. Finally, an operating assumption of the College-going Literacy Model is that the construction of the subject (i.e., the student) and the problem (i.e., college access), are inextricably linked and tied to struggles of power, agency, and identity.

In the framework of Gildersleeve's College-going Literacy Model, this study seeks to understand the underlying ideologies and politics of ISRT policy in relation to the production of higher education opportunity via assumptions of the the object (college access). In order to address the ways these concepts are tied to struggles of power, agency, and identity embedded within ISRT policy, this study draws from post-structural theory to help explain how these policies mediate the (re)construction of college access. We do so primarily by deconstructing how ISRT policy produces the policy problem(s) at stake within

ISRT policy discourse. Within poststructural theory, discourse and power are recursively interlocked (Allen, 2010). Indeed, power operates discursively and discourse relies on power to produce meanings in everyday lives. Thus, the discursive effects of ISRT policy are exercises of power that produce meanings and afford particular, plausible material consequences in the everyday lives of undocumented immigrant students.

Discourse

Post-structural theories assert that the life or meaning of any text relies upon its interplay with other texts, broader contexts, and the readers of those texts. This interplay, and the action/meanings that carry forth from it can be understood as discourse. In short, discourse is the talk (or language) and action of a text. As Baxter (2003) writes, discourse is a “site for the construction and contestation of social meanings” (p. 6). As such, the meanings within texts are not lying in wait to be found, but rather meanings are constructed by the contingencies and pressures betwixt and between talk and action (i.e., discourse).

Power

From a post-structural perspective, power is understood “as a *productive* force, rather than a primarily *repressive* one” (Allen, 2010, p. 16). Drawing largely from Foucault (1978; 1980), power is not a possession, but rather an exercise; power circulates by way of discourse between and across social relations. Power operates at local levels and change happens from a multitude of diverse power negotiations across (inter)related discourses.

Importantly, power and knowledge cannot be separated and are interdependent with discourse. Foucault (1978) instructs: “it is in discourse that power and knowledge are joined together” (p. 100). Power/knowledge then, are negotiations across complex

discourses that lead to an understanding of reality. Hence, truth, in post-structural thinking is “an effect of power/knowledge operating through discourse” (Allen, 2010, p. 17). Power disperses as certain ways of knowing and being in the world are made possible.

This possibility is a site wherein Gildersleeve’s College-going Literacy Model and post-structural theory meet to disrupt and re-imagine higher education opportunity for undocumented immigrant students. As power/knowledge produces possible selves and worlds, both the subject (student) and object (college access) of higher education opportunity can be remade in more equitable and just formations. Applied to this study, we seek to understand (and disrupt) how power/knowledge circulates through ISRT policy discourse, forming objects by the ways the policy problem is produced.

Methodology and methods

Critical discourse analysis is a methodology that assumes human realities are made possible through talk and action (Fairclough, 2006). We cannot come to understand a reality – conceptualize it, intellectualize it – without first being able to imagine it. As our imaginations are bound by language (albeit in a recursive relationship), *discourse* is assumed to be an interlocuter to reality. That is to say that different concepts of the world become discursively available for use through our talk and action—the text of our everyday lives. These are processes laden with power and ideological formation. As such, critical discourse analysis seeks to understand the underlying assumptions that co-construct the discursive availability of our available understandings of the world.

Policy discourse analysis draws from critical discourse analysis, but focuses in on the talk and action within policy: the text of policy and its meanings, its discourse (Allen, Iverson, & Huilman, 2010). Of interest in policy discourse analysis are the ambiguities and

contradictions within and across policy discourses. These ambiguities and contradictions are assumed to be the lair for material formations of oppression and/or opportunity (or hope). These spaces are fissures within and across policy discourses that might afford possibility for social change.

Critical discourse analysis and policy discourse analysis are appropriate methods of analysis to investigate the production of the problem in ISRT policy initiatives. Institutions of higher education act as a result of policies and this study interrogates the 11 current ISRT policies that impact undocumented immigrant students. Through a critical discourse analysis particular attention will be paid to the text used in ISRT policies and the language that text uses in order to form (new) understandings of students and the problem of access from the interplay between the text and its context (discourse).

Policy discourse analysis will help reveal further the fissures within ISRT discourse, showing how ambiguities and contradictions afford spaces to constrain and/or enable opportunity for undocumented immigrant students. These fissures can also be home to potential unintended consequences of ISRT policies, thus again reshaping the object of college access that underrepresented students (and undocumented immigrants particularly) struggle to come to know. By focusing on the text of ISRT policies themselves, these analyses will show the discursive junctures wherein policy ideologically and politically mediates the production of college access as an object.

Data

This study uses the text of 11 states' statutes that operate as ISRT policy. These 11 states have all enacted ISRT policies within the last 10 years, with Texas being the first in 2001 and Wisconsin being the latest in 2010. (It is important to note that while Oklahoma

passed legislation that enacted an ISRT policy in 2003, voters overturned this legislation in 2009.) While the implementation of ISRT policies varies across states and institutions, we chose to focus on the actual language of state-based ISRT policies to determine how they produce possible subjects for higher education and how they produce the policy problem that ISRTs seek to address.

[INSERT TABLE 1 HERE: State-based in-state resident tuition policies]

Discursive effects of ISRT policy

What follows are the findings from our preliminary analysis of ISRT policy discourse. First, we divide these findings into two primary sections, organized by our orienting question around the policy problem(s) at stake in ISRT policy: 1) critical analyses of how the problem is constructed, and 2) poststructural analyses of how the problem is produced. Although interrelated, we choose to present the discursive effects produced by ISRT policy in these two broad categories in order to afford a basic level of clarity. In this vein, we first present a critical rendering of the constructed meanings about the policy problem. We then provide a poststructural deconstruction of ISRT policy, unmasking discourses that illustrate meanings produced through the action of the policy texts *in context* of undocumented students' sociopolitical locations, participation struggles, and legal/policy conditions. Following the presentation of these findings—the discursive effects of ISRT policy—we return to complicate and complexify them further through our analysis of their plausible material consequences in a later section.

Constructions of the policy problem: Critical renderings

Across all 11 states, ISRT policies constructed the policy problem as one having to deal with higher or postsecondary education. At stake in these policies are issues

pertaining to higher education alone. For example, Illinois' HB60, explicitly and simply states the legislation is "an act concerning higher education." While, Kansas' HB2145 is put forward as "an act concerning public postsecondary education." The Kansas bill continues to detail two particular issues within the policy problem: residency and tuition. It states, "concerning certain persons deemed to be residents for purposes of tuition and other fees at postsecondary educational institutions." Texas' HB1403 set a precedent for this language in 2001. It claims to be a law "relating to the eligibility of certain persons to qualify as residents of this state for purposes of higher education tuition or to pay tuition at the rate provided to residents of this state." Expressly stating residency and tuition as the two core issues at stake in policy related to higher education position these policies squarely within the purview of states' rights and within the traditional education related legislative discourse. Effectively, the policy problem in ISRT is within the parameters of IIRIRA and PWRORA, outside the legislative authority of the federal government.

Still, there are other constructions of the policy problem that appear in some states' ISRT legislation. These discourses operate side-by-side the higher education/states' rights discourse described above. One of the stronger constructions stems from an economic discourse related to both the revenue generated from tuition and the role of higher education in the state's economy. Tuition revenue is the primary way that most public institutions generate income. Constructing the policy problem within this economic discourse connects the policy to institutions' economic status and dependency, again emphasizing the states' rights to govern their local institutions. California's AB540 proclaims that the policy supports "a fair tuition policy ... [that] ensures access to our state's colleges and universities, and thereby increases the states collective productivity

and economic growth.” Important to note here is that California’s ISRT policy also constructs itself within the equity discourse, as constructed through the language of “a fair tuition policy” and the assumption that it “ensures access.” Yet, it conflates this equity discourse by using equity to promote the economic livelihood of the state via higher education.

In sum, ISRT policy constructs its problem as primarily dealing with higher and/or postsecondary education, with some emphasis on the economic roles of tuition within the institution and the role of the institution within the broader state’s economy. One state, California, also drew upon an equity discourse to construct the policy problem as addressing some form of inequity. Overall, each of these frames contributes to an overall discourse of higher education legislation within the purview of states’ rights.

Productions of the policy problem: Poststructural renderings

When these ISRT policies are examined from a poststructural perspective, resisting a stable or unified understanding of the policy problem, and further incorporating the context of the text—seeking to find what is masked or hidden from the *constructed* policy problems, we then find the *produced* meanings of the policy problems within ISRT discourse. Whereas most of the constructed meanings were found explicitly in ISRT policy texts, these produced meanings require deeper analysis and closer attention to exercises of power, the production of unstable identities, and opportunities for agency in order to be unmasked from the policy. Our preliminary analysis into the production of the policy problem has found three competing discourses within the broader discourse of ISRT policy. We have named these discourses of security, economy, and legitimacy.

Discourse of security

In effect, the problem that ISRT policy attempts to address is produced as one of national security. Each state's policy consistently includes an affidavit to be signed by any individual without legal immigration status (i.e., undocumented immigrant students). The affidavit is generally expected to serve as a promise that the student will pursue legal immigration status (e.g., a green card or citizenship) if and when she/he becomes eligible. These affidavits are supposed to be administered by individual institutions of higher education and kept confidential.

There are two dimensions to the language and context of the affidavit that allow it to produce a national security discourse within ISRT policy. First, the text that puts the affidavit into effect within ISRT policy often alludes to federal immigration policy, obscuring the states' rights domain of the policy as a strict concern of higher education. For example, Washington's HB1079 states:

a student who is not a citizen of the United States of America shall submit an affidavit to the institution stating he or she has filed or will file an application for permanent residency in the United States at the earliest opportunity he or she is eligible to do so.

The state legislation invokes federal law that requires immigrants to seek particular residential and/or citizenship statuses available only through federal legislative and executive exercise. Bakhtin (1981; 1986) theorized that discourse is a series of citations—every speech act is in allusion (and collusion) with another. In this sense, the reference to federal immigration law made by the mechanism of the affidavit in ISRT policy is also a *deference* to federal law, excusing the state from encroachment on federal purview. Yet, by

acknowledging the existence of federal law amidst the policy problem, the ISRT punctuates the problem as complicit with the way federal immigration law is written. Taken in context of the sociopolitical dimensions to federal immigration law, particularly as partisan political rhetoric has shaped it in contemporary debate, the discourse of security comes to the fore.

Second, the affidavit does not support any pieces of the institution's core mission related to knowledge production and dissemination through teaching, research, and service. The affidavit does not assist faculty in achieving student learning outcomes. It does not assist administration in meeting students' social and interpersonal needs. It does not assist students in succeeding academically or socially. However, the affidavit does provide a marking of students—particularly undocumented immigrant students. The affidavit marks undocumented immigrant students as needing to be tracked and held accountable for their immigration status. The affidavit might be presented, and even argued, as a low-risk and probably harmless measure in its direct material effect. However, when taken in context of its allusion to federal legislation discourse and the context of the policy contexts described earlier, the affidavit effectively produces a discourse of security in relation to undocumented immigrant students.

Discourse of economy

Simultaneously, ISRT policy produces a policy problem based in a discourse of a competitive economy. We previously established that ISRT policy explicitly constructs the problem as an economic concern for both the state and the institution. In this poststructural turn, the economy discourse emerges as a potentially divisive measure across higher education institutional types and it conflates the politics of higher education

funding. Across the 11 ISRT policies, many of them explicitly guarantee that undocumented immigrant students should be counted in official head-counts of students enrolled in the institution. This practice can have dramatic financial effects for different institutions, particularly those whose public support is configured in relation to the numbers of students they serve. It is important to recognize that the texts of policies did not explicitly name these economic concerns as the problem to be addressed by the policy, and yet, there are economic measures and mechanisms within the policy that discursively produce the competitive economy of higher education (particularly funding) as a policy problem under the purview of the legislation.

Discourse of legitimacy

Another policy problem produced through the discourse of ISRT policy is the crisis of legitimacy in the battle over legislative autonomy between the states and the federal government. This discourse was in some ways foreshadowed by Salsbury's (2004) legal analysis of ISRT legal argument. She concluded that ISRTs take one of two types of legal arguments: they either define residency as inclusive of undocumented immigrant students, or they describe exceptions to residency policy. As a reminder, Salsbury argues that the former is perhaps more effective in withstanding scrutiny under federal regulations such as IRIIRA and PWRORA. Here we identify three discursive actions that produce a legitimacy crisis discourse that can be found from deconstructing mechanisms/technologies within the ISRT policies themselves. Most of the individual states' policies include a clause that explicitly directs specific entities or agencies as responsible for putting the policy into practice. In California's AB540, this responsibility lies with the California State University Board of Directors, the University of California's Board of Regents, and the California

Community Colleges' local district offices. Effectively, these directives, which can be found across different states' ISRT policies, reinforce the legitimacy of the policy, as it directs local—not federal—officials to put the policy into practice.

Yet, simultaneously, nearly every state ISRT draws on federal immigration legislation discourse to make its point that these are not policies under federal responsibility. For example, Utah's HB144 states, "If allowed under federal law" and California's AB540 goes so far as to declare, "This act ... does not confer postsecondary education benefits on the basis of residence within the meaning of Section 1623 of Title 8 of the United States Code." Clearly, these statements are intended to separate the state action from any federal action, but in doing, they generate a discourse that allows the contestation of legitimacy over the social opportunities of undocumented immigrant students.

Returning to the affidavit, which previously we argued supports a discourse of national security, we now argue dually supports a discourse of legitimacy crisis. The affidavit, having no educational value whatsoever, essentially acknowledges that states and institutions recognize a federal interest is at stake (i.e., immigration), but they wish to obfuscate the need for federal intrusion on their campuses by gathering a good-faith promise from students that they will become compliant with federal regulations. When the affidavit, the allusion to federal immigration legislation, and the directives of authority are examined in context of each other, the crisis of legitimacy becomes clearer. The mechanisms of the affidavit and the authorizing directive serve to abscond the federal immigration interests at stake in the policy, supposedly securing the legitimate right of the state to enact such *education* legislation. Ironically, these very mechanisms simultaneously

call the legitimacy of this right into question by invoking the federal discourses of immigration, effectively acknowledging that the federal government has a stake in the consequences of the policy. Hence, the policy problem is one of a legitimacy crisis around the right to legislate opportunity for undocumented immigrant students.

These discursively produced policy problems emerge from looking behind the text of the policy itself. Explicitly, ISRT policy is about higher education, its economic contribution to society, and equity in higher education opportunity. Beneath this socially benevolent exterior, however, we find interior logics of ISRT policy operating from discourses of security, competitive economy, and legitimacy.

Plausible material consequences

Recognizing interior logics of ISRT policy do little beyond inciting conflict across and between ideological stances of administrators, faculty, policymakers, and other constituents. In order to foster responsiveness from higher education, as a social institution, it is important to analyze the plausible material consequences of these discursive effects. From there, new questions can be found about the relationship between democracy and higher education, and new pragmatic concerns can be developed to improve the practice of democracy in higher education. Here, we present plausible material consequences of the discursive effects (i.e., the production of the policy problem) within ISRT policy. We focus our discussion on embodied consequences of the aforementioned discursive effects, because one of our goals is to ground the consequences of discourse in the lived experiences of those who might be targeted by it (i.e., undocumented immigrant students). This follows a call made by Gildersleeve and Kuntz (*forthcoming in 2011*) for more embodied analyses that illustrate how the material world is made known and

practiced across different spatialized contexts. Furthermore, by understanding plausible material consequences from an embodied perspective, we can map their discursive circulation in the college-going literacy development of undocumented immigrant students in our concluding section of this paper.

Surveillance technology

Directly related to the discourse of security, we argue that the mechanism of the affidavit, found in every single ISRT policy across all 11 states, operates as a surveillance technology. By this, we mean that it marks and tracks undocumented immigrant bodies while they pursue higher education, thus influencing their social comportment. Put simply, the affidavit *others* undocumented immigrant students and provides an ongoing impression that they are being watched, *because they represent a security risk*. We draw from Foucault's (1977) notion of the panopticon to help explain how the discourse of security affords the mechanism of the affidavit to operate as a surveillance technology. Foucault theorized that surveillance was more effective in producing particular bodies (i.e., human subjects that behaved in certain ways), when the surveillance technology itself was indirect and/or masqueraded under a façade of direct-action. Foucault drew upon analogies of prison guard towers that were placed at the center of a prison yard, effectively positioned in view of prison cells surrounding it. Using mirror-paned glass on the exterior of the tower's windows, guards could see out, but prisoners could not see in. Known as the "panopticon," (i.e., all seeing) Foucault argued its genius in effect was that guards need not even be in the tower for prisoners to fear consequences, as it was enough to even suggest that at any given time, prisoners could be under observation. With the two-way mirror as the windows of the tower, prisoners were effectively under constant surveillance. Foucault

extended the surveillance technology of the panopticon to social surveillance effects of various social policies and institutions.

In the case of ISRT policy, within the discourse of security, the affidavit is a Foucauldian panopticon. It effectively marks undocumented immigrant students, tracks them, yet no one really knows how these affidavits are used in the service of higher education for undocumented immigrant students. As mentioned earlier, they do not support teaching and learning outcomes, nor the production of new knowledge for society. However, they do put undocumented immigrant students under surveillance, passively reminding them that they are exceptions, noncitizens, and effectively benevolently guests of higher education rather than full participants. There is a long history of research to show how a material consequence, such as surveillance and/or othering, can be destructive to students' success (Rendón, 1992; Perez-Huber & Malagon, 2007; Solorzano, Villalpando, & Oseguera, 2005). Furthermore, it raises the question of how undocumented immigrant students' can participate as democratic subjects within higher education, if they are subject to surveillance in ways that other students are not. In context of the discourse of security, which draws upon federal legislative language and uses the mechanism of the affidavit-as-panopticon, the surveillance of undocumented immigrant students marks them as a security risk within higher education, thus diminishing and questioning their value of knowledge producers and consumers within the academy.

Economic objects rather than educational subjects

The discourse of the economy in ISRT policy produced the policy problem as one of a competitive economy. This discourse, in context of the ways that higher education can be funded differently across institutional types, and in context of undocumented immigrant

students' preference for community colleges due to affordability concerns, consequently produces students as economic objects rather than educational subjects. As objects of the competitive economy of higher education, undocumented immigrant students, despite being afforded in-state resident tuition benefits, will most likely be devalued in comparison to their citizenship-holding counterparts.

For example, community colleges, which are generally more reliant on state appropriations than other types of institutions, are far more invested in counting every single student who enrolls in their courses when these numbers become tied to a percentage of the state's higher education budget. Community colleges are also more likely to serve undocumented immigrant students, as an artifact of the socioeconomic background and the schooling contexts from which many undocumented students come (Gonzales, 2007; McDonough & Gildersleeve, 2006). Put another way, because undocumented students are more likely to be poor and attend lower-performing K-12 schools, they are more likely to attend community colleges in greater numbers than flagship research universities (Perez, 2010).

Further complicating this equation is the fact that most flagship research universities receive a more reliable and substantial flat-dollar amount of state support, largely related to their capacity to charge higher tuition and generate external income. When played out in the politics of access, there is greater incentive for community colleges to support undocumented immigrant students than flagship research universities. This inevitably could influence the translation of policy into practice, prompting community colleges to be far more responsive to undocumented students' broader needs, while public research universities, with more secure and more plentiful funding sources and less reliant

on student body head-counts, are afforded a privilege of being less-committed to educating undocumented immigrant students. The social stratification that could easily be imagined to follow simply exacerbates the inequality that undocumented immigrant students face.

Politicizing immigrant bodies

The legitimacy discourse that produces the policy problem as one of a crisis over who has the right and responsibility to manage and/or construct higher education opportunity (particularly for undocumented immigrant students), consequently politicizes the immigrant body. As seen in the conflict between the ways that ISRT policy constructs the problem as one of higher education, residency, tuition, and perhaps equity, and the ways that ISRT policy produces a problem as the struggle for legitimacy in regulating these concerns, immigrant bodies become the theater whereupon states and the federal government battle for control over the shape, conditioning, and morality of American democracy. Higher education, as a democratic and social institution, is implicated deeply in this battle, yet the bodies of immigrant families and their social opportunity are used as characters, scenery, and plot in the theater of federal and state political entanglement.

This struggle does little to improve the social opportunity for immigrant communities, nor does it directly address the inequity of educational opportunity experienced by undocumented immigrant students. Moreover, if the goal of ISRT policy were isolated to higher education, residency, tuition, and perhaps equity, states could enact far simpler statutes. For example, states could establish a resident simply as someone who graduated from a high school located within the state, and/or someone who lived primarily within the state for an established period of time (e.g., three years). References to federal legislation could be avoided altogether. Indeed, the policy outcomes analyses done by

Flores (2010) and Kaushaul (2008) has already shown that leveling tuition assessments with in-state resident pricing positively affects undocumented immigrant student college attendance.

Empowerment

Our critique of ISRT policy should not be interpreted as a persuasive essay in favor or in opposition to the extension of benefits to undocumented immigrant students. Rather, we seek to interrogate the underlying logics of such policy, as our review of the literature demonstrated how they have been adopted wholesale without much ideological scrutiny. However, we would be remiss if we did not acknowledge how ISRT policy discourse could indeed have empowering material consequences. Building on the work of Flores, noted above, one effective action of the language in these policies is to afford undocumented immigrant students' the right to be assessed in-state resident tuition. This action levels a significant part of the playing field for undocumented immigrant students' educational opportunity. As a material consequence, bringing tuition assessments in line with other residents of their home state has symbolic as well as economic relevance for undocumented immigrant students in higher education. Further, as referenced earlier, there is emerging evidence that ISRT policy discourse might afford new identities that could empower undocumented immigrant students. In particular, Abrego's (2008) work suggests that ISRT policy discourse can afford the discursive production of an "I'm AB540" identity, in the case of her research on the affective consequences of California's ISRT.

Conclusions and Recommendations

The discourses circulating through ISRT policy effectively produce policy problems that then discursively afford unintended and/or hidden material consequences to plausibly

emerge in the struggle for educational equity and undocumented immigrant students' educational opportunity. To review, these material consequences include the surveillance, objectification, and politicization of undocumented immigrant students apart from the broader body politic of the academy. Within the academy, it is plausible that discourses circulating through ISRT policy effectively empower undocumented immigrant students by adjusting the material conditions of their costs to attend higher education. These consequences prompt several tentative and unstable conclusions about the individual, organizational, and societal stakes in undocumented immigrant student educational opportunity. Of particular practical interest to us is how these material consequences inform the mediation of college access as the object of students' learning in the social practice of higher education opportunity.

As mentioned before, placing undocumented immigrant students under targeted surveillance does not support college access nor college success. Nor does objectifying them within the competitive economies of higher education finance. Politicizing their bodies could seem exceptionally dehumanizing and potentially unfulfilling in the struggle for educational equity. These consequences do, however, mediate how undocumented immigrant students can come to know higher education opportunity. They position undocumented immigrant students in opposition to the practice of participating in higher education. As such, undocumented immigrant students' college access inherently reifies an oppositional cultural technique; it forces students to approach higher education as if they are at odds with the institution. The object of college access then, in the College-going Literacy Model's language, is mediated as a battle between student and institution.

Whereas the institutionalization of college-going in students' lives has shown overtime to

be the most effective way to ensure college access and success for underrepresented and historically marginalized students.

To mitigate these destructive material consequences, we encourage individuals, organizational leadership, and policy makers to engage with undocumented immigrant students as college-going pedagogues (Gildersleeve & Ranero, 2010). College-going pedagogues take the teaching and learning of college access and opportunity as a primary focus of their work—seeking to ease and institutionalize the practice of college-going in students' lives. Assumed to be a critical pedagogical endeavor, working as a college-going pedagogue in the context of ISRT policy requires that individual administrators, organizational leadership, and policy makers make explicit the material consequences to the discursive effects of ISRT policy. From this step of critical consciousness, pedagogues can then assess how best to pursue college success with undocumented immigrant students by establishing trust and supporting students' interrogations of these discursive effects and attendant material consequences. This last move could potentially enable students to exercise agency, as oppositional subjects, and discursively render new effects of identity that challenge the latent ideologies in ISRT policy.

The plausible material consequences also suggest new concerns in the politics and policy of higher education, with particular attention to the role of democracy in the social institution of higher education. We turn now to the struggle between institutions, states, and the federal government in managing, cultivating, and structuring social opportunity. Whilst the states and federal government battle over the purview of opportunity, opportunities are lost. These divisive measures ensure disappointing outcomes. Students

lose opportunity. Institutions lose talent. Communities lose human, social, cultural, and educational capital. A set of core questions emerge:

- To what extent do individual states have the right to structure opportunities for students ensnared in federal discourses of citizenship?
- To what extent does a federal government have the right to structure opportunities for students participating in a state-sponsored social institution?
- What role does higher education play in American society, writ large, if, as a social institution, it cannot determine how expansive its reach for opportunity can be?

These are fundamental questions of democracy that emerge from examining the discursive effects and material consequences of ISRT policy. They go to the foundations of democratic participation, asking who can participate, how, and under what circumstances? The answers to these questions are direct reflections of the expansion and/or contraction of democracy in American life as revealed in its social institutions (i.e., higher education).

Finally, our inquiry into the discursive effects and material consequences of ISRT policy provides a rich context from which to direct future research. As noted, the analyses in this paper come from the 11 ISRT policies that have been enacted, which effectively extend in-state resident tuition benefits to undocumented immigrant students. There are five ISRT policies that have been enacted, which effectively restrict undocumented immigrant students from receiving these benefits. If the discourse of these 11 extending ISRTs is any indication, further complications and complexity into the educational opportunity for undocumented immigrant students and the relationship between higher

education and democracy can be found by examining the five policies that restrict benefits. Recognizing that most colleges and universities exist in policy-ambivalent contexts, we call for policy discourse analysis of institutional discourses that shape undocumented immigrant students' opportunity. For example, neither North Carolina nor New Jersey has ISRT policies at the state level. However, both states have public institutions of higher education that have had to take action and develop institutional-level policy and practices to address some of the very issues illustrated in this paper.

Additionally, we call for discursive analysis of proposed legislation at the federal level, namely the DREAM Act. Examining existing and enacted policy, such as the statutes under scrutiny in this paper, provides opportunity for reform. Examining legislation as it develops in congress provides an opportunity to effect material changes that might anticipate and therefore mitigate later reform. Analysis of the popular, policy, and official discourses that produce these policy responses should be undertaken and placed within the broader context of opportunity, democracy, and higher education that this paper seeks to open.

In addition to the research into policy discourses outlined above, we direct future research to seek deeper understandings into how the plausible material consequences play out in students', faculty, administrators', and policy makers' daily lives. Critical ethnographic projects are necessary to understand human engagement with discourse/power/knowledge at the local level. All of which can be augmented with more traditional policy work, such as the outcomes-based analysis undertaken by Flores and the political development of policy by scholars such as Brian Pusser (2003) and Eric Ness (2008). Cumulatively, interrogating social opportunity, immigration, and higher education

from these multiple vantage points will provide the evidence necessary to make synthetic understandings more concrete and provide higher education a stronger foundation from which to make informed decisions about its role in democratic society.

In-State Resident Tuition policy exists at a complex nexus of societal, institutional, organizational, and individual interests over a dynamic and diverse set of concerns. These concerns range from pragmatic implications for higher education access and success to political considerations about the role of citizenship and migration in the human experience to the role of democracy in higher education and the role of higher education in democracy. Our examination of the hidden ideologies circulating in the discourse of ISRT policy, their effects and plausible material consequences opens a new context from which to explore these concerns. Particular to the struggle for equity and opportunity for undocumented immigrant students, we offer the college-going pedagogue. To a deeper and clearer reflection of democracy in higher education, we offer our core democratic questions. To the quest for understanding and explaining how the world as it is can become the world as it could be, we offer our future directions of social research. ISRT policy discourse signifies the importance of such considerations.

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TABLE 1: State-based in-state resident tuition policies

State	Statute	Year
<i>Texas</i>	HB 1403	2001
<i>California</i>	AB 540	2001
<i>New York</i>	SB 7784	2002
<i>Utah</i>	HB 144	2002
<i>Washington</i>	HB 1079	2003
<i>Oklahoma*</i>	SB 596	2003
<i>Illinois</i>	HB 60	2003
<i>Kansas</i>	HB 2145	2003
<i>Nebraska</i>	LB 239	2005
<i>New Mexico</i>	SB 582	2005
<i>Wisconsin</i>	AB 75	2009