Professor Geoffrey Hoffman wrote an op-ed piece in today's Houston Chronicle regarding the negative effect a new Texas bill will have on immigrant workers.


**Homeowner bill exploits immigrant workers**
By GEOFFREY A. HOFFMAN

A bill authored by state Rep. Debbie Riddle, R-Tomball, would make it a state jail felony to knowingly hire undocumented workers in Texas.

Even if the bill, HB 1202, were not violative of the U.S. Constitution and not pre-empted by the federal immigration power — which it is - there would be a further problem. It creates an exception for people who hire "for the purpose of obtaining labor or other work to be performed exclusively or primarily at a single-family residence," even if the homeowner-employer "intentionally, knowingly, or recklessly" hired the worker without employment authorization.

The exception, not the rule, is the interesting issue for a number of reasons. As the political philosopher Hannah Arendt recognized, many distinctions in politics and in the law are made based upon the divide between the private and public spheres. This bill carves out an exception specifically for homeowners, in the private sphere, which would not apply more generally to members of the public at large, such as business owners and non-landowners.

Such distinctions between public and private must be justified in some way. In the Fourth Amendment context, for example, it makes sense that one would have a great expectation of privacy in one's own home, and therefore more protection, but less reasonable expectation of privacy in a car, and even less in a public place. In the First Amendment context, the courts have drawn distinctions between the protection afforded speech about certain persons, depending on whether they are public figures versus private citizens. For public figures our jurisprudence has provided less protection than for private figures. Recently, we saw the Supreme Court in Snyder v. Phelps, the Westboro Church case, apply the public-private dichotomy in protecting hateful and outright ugly speech made by church protesters at a family's funeral based principally on the rationale that the speech was on public issues occurring in a public setting.

In the context of the state immigration bill, however, the private-public distinction has now been collapsed unilaterally and by legislative fiat. Bills such as the present one actually weaken efforts aimed at immigration reform because they propose restrictions and penalties that appear to be based on arbitrary distinctions and class privilege. Under the federal immigration laws, there are of course exceptions which may apply under certain circumstances, but they have a basis either in promoting family unity, hardship or other humanitarian factors. For example, a person may be
entitled to a waiver on a ground of inadmissibility or even relief from deportability, but the waiver or relief in question has to be based on some showing of extreme hardship to a qualifying relative, and the immigration adjudicator or agency official must weigh both negative and positive equities in specific cases.

The immigration bill, on the other hand, makes an exception to the regulation of the immigration laws without a reasonable justification. It has been reported that a possible justification for the exception might be to protect home-owners who use lawn-care companies who hire unauthorized workers. It has also been reported that the exception might be needed to avoid "stifling the economic engine" in Texas.

Such justifications are insufficient. There should be no question that the economic engine of our entire country is driven - unfortunately - by the exploitation of unauthorized immigrant workers, but that is not a reason to cloak such exploitation in the guise of law. The alleged justifications actually mask the real reason for the legislators' decision to carve out this particular exception: To protect the privileged class from criminal and/or civil liability in the face of intentional, knowing or reckless conduct in violation of the law. Such protections based solely on class distinctions, whether premised on home ownership, income or other indicia of class status, have no place in the law, and no place in real immigration reform. Reform must come from the federal level, from a place of respect for immigrant rights, in the form of the recently proposed Dream Act or other appropriate legislation that aims to improve the plight of immigrants. It cannot and should not be borne out of an effort, whether intentional or not, to exploit them by reinforcing and further entrenching their status as a political and economic subclass.

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