the development of medical science in a liability free environment or the protection of the patients into whose bodies these devices are being implanted? Hopefully, Congress will recognize the injustices and dangers to patients in allowing such an interpretation of pre-emption. If it does not, the possibility of more people in the position of Dorothy Marie Reeves, innocent, injured, and uncompensated, will loom larger than ever.

INTRODUCTION

This comment will focus on the July 2001 Texas Attorney General advisory decision that barred Texas county hospital districts from providing preventive health services to undocumented immigrants. Although illegal immigrants can still receive medical care for emergency conditions, immunizations, and communicable diseases, the Attorney General’s decision precludes unqualified immigrants from receiving other government-provided medical benefits.

The author advocates that this decision is a technically correct interpretation of state and federal regulations. Under current law, illegal immigrants are not entitled to preventive health care services provided by the government. The current law, however, also gives states the opportunity to circumvent this limitation of benefits. State legislatures can pass affirmative legislation providing state funded (not federally funded) services to illegal immigrants. The Texas Legislature should utilize this capability to fund limited preventive health care services to illegal immigrants in Texas. The issue of providing health care to illegal immigrants is clearly one for the legislature to grapple with — not the court system or the Attorney General. The legislature can more appropriately weigh the ethical and economic consequences of an ill immigrant population.

Part II of this comment will focus on the background of the Texas Attorney General’s advisory opinion regarding illegal immigrant health care. In particular, this section will discuss Title IV of the Personal Responsibility and Work Opportunity Reconciliation...
Act of 1996 (PRWORA). This act is the federal law upon which the Attorney General’s opinion is based. Title IV limits immigrant access to state and federal government benefits. In addition, it grants the power to offer illegal immigrants governmental benefits.

Part II will also discuss previous United States Supreme Court cases dealing with immigrant access to government benefits. Although these cases have triggered “equal protection” challenges in the past, PRWORA’s Title IV should not be vulnerable to this Fourteenth Amendment argument. The author advances that Title IV of PRWORA will be viewed as immigration legislation, not equal rights legislation. Therefore, PRWORA and any state initiatives stemming from it will be upheld under a national relationship standard.

Part III will discuss the Texas Attorney General’s advisory opinion itself, while Part IV will take a close look at the opinion’s legal analysis and basis. Part V will focus on the public policy implications of the Attorney General’s interpretation of PRWORA and address the ethical and economical consequences of denying illegal immigrants health care. Part VI will be a comparison study, delving into how New York and California have dealt with the PRWORA and state-provided medical care to undocumented immigrants. This section will also suggest how Texas should approach illegal immigrant health care.

The author advocates that this Texas Attorney General case was interpreted correctly. Current federal law does not allow Texas to provide prophylactic health care services to illegal immigrants. However, given the ethical and economical consequences of denying basic health care to sick immigrants, the state legislature should pass legislation that provides for limited preventive care.

I. THE BACKGROUND

A. The Personal Responsibility and Work Opportunity Reconciliation Act

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) provided the legal backbone for the Texas Attorney General’s advisory opinion regarding immigrant health care in 1999.

PRWORA was passed by the 104th Congress of the United States and signed into law in 1996. This welfare reform legislation was designed to “end welfare as we know it.” In passing this bill, Congress announced its position regarding the nexus between welfare, immigration, and U.S. domestic policy.

The Congress makes the following statements concerning national policy with respect to welfare and immigration:

1. Self-sufficiency has been a basic principle of United States immigration law since this country’s earliest immigration statutes.
2. It continues to be the immigration policy of the United States that—
   (a) aliens within the Nation’s borders not depend on public resources to meet their needs, but rather rely on their sponsors, and private organizations, and
   (b) the availability of public benefits not constitute an incentive for immigration to the United States.
3. Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates.
4. Current eligibility rules for public assistance and enforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system.
5. It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy.
6. It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.
7. With respect to the state authority to make determinations concerning the eligibility of qualified aliens for public benefits in this chapter, a State that chooses to follow the Federal classification in determining the eligibility of such aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be

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self-reliant in accordance with national immigration policy.\textsuperscript{11}

Title IV of the PRWORA set forth regulations that addressed immigrant access to state and federal agency benefits.\textsuperscript{12} Title IV terminated illegal immigrants' eligibility for Temporary Assistance for Needy Families (TANF, formerly Aid to Families with Dependent Children (AFDC)), food stamps, Supplemental Security Income (SSI), or Medicaid.\textsuperscript{13}

One of Title IV's most notable characteristics was that it distinguished the immigration population into two categories: "qualified" and "unqualified" immigrants.\textsuperscript{14} Section 1621 provides that:

(a) In general.
   Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, an alien who is not—
   (1) a qualified alien (as defined in section 1641 of this title),
   (2) a nonimmigrant under the Immigration and Nationality Act [internal citation omitted], or
   (3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(a)(5)] for less than one year,
   is not eligible for any State or local public benefit (as defined in subsection (c) of this section).\textsuperscript{15}

"Qualified" immigrants are lawful, permanent residents, refugees/asylees, persons paroled into the U.S. for at least one year, and battered spouses and children with a pending or approved spousal visa or a petition for relief under the Violence Against Women Act.\textsuperscript{16} "Unqualified" immigrants include undocumented immigrants, students with foreign visas, foreign visitors, asylum applicants, people applying for an adjustment of immigrant status, and those for whom deportation has been suspended or withheld.\textsuperscript{17} Unqualified immigrants lost their eligibility for social services after the

15 \textsuperscript{8} U.S.C. § 1621(a) (2000).
16 \textsuperscript{8} U.S.C. § 1641(b) (2000).
19 Zimmerman, supra note 13, at 3 (noting that nearly half of states have implemented a substitute method of assistance to immigrants to provide benefits even when federal funds prescribe a distinct

B. The PRWORA's Constitutionality

The PRWORA has left a heavy political stamp on national immigration policy: states now have broad authority to determine immigrant benefits.\textsuperscript{21} Until the PRWORA's passage, the federal government had authority over "which immigrants [were] admitted and how they [were] treated once here."\textsuperscript{22} This right was specifically established in Article I of the United States Constitution, which granted Congress the right "to establish a uniform Rule of Naturalization . . . ."\textsuperscript{23}

I. The Importance of Uniformity

Alexander Hamilton, in The Federalist No. 32, explained the necessity for Congress to create uniformity in immigration policy.\textsuperscript{24} He expressed that power over naturalization must "necessarily be exclusive, because if each State had the power to prescribe a distinct

18 Id.
20 Zimmerman, supra note 13, at 3 (noting that nearly half of states have implemented a substitute method of assistance to immigrants to provide benefits even when federal funds prescribe a distinct
21 Zimmerman, supra note 13, at 3 (noting that nearly half of states have implemented a substitute method of assistance to immigrants to provide benefits even when federal funds prescribe a distinct
22 Id. at 1-2 (referring to the power of the states to set eligibility requirements for federal benefits which followed). See discussion of seminal cases infra Part III(B)(ii).
23 Id. at 19 (alluding to two Supreme Court decisions in 1876 and the federal legislation which followed).
24 U.S. Const. art. I, § 8, cl. 4 (providing, in full, that Congress shall have the power "to establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies . . . .")
rule, there could not be a uniform rule. Scholars have suggested that this quote illustrates the founders’ desire to establish a practically and politically sound immigration policy that strengthened both domestic and foreign relations. Both Congress and the courts have supported this position by requiring uniformity in the area of naturalization.

Congress has exercised its plenary power through passing legislation which reaffirmed the idea of uniform immigration law. For example, the very first federal immigration law in 1882 included a “head tax” of 50 cents per immigrant in response to the growing influx of immigrants entering the country at the time and the federal government’s inability to provide for them. The law also mandated that immigrants who were “convicts, lunatics, idiots,” or other persons likely to become wards of the state were not allowed to be accepted for citizenship purposes. Later legislation provided that any alien lawfully admitted shall be deported who “has within five years after entry become a public charge from causes not affirmatively shown to have arisen after entry.” The most recent immigration legislation, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, buttresses this idea of uniform immigration policy.

25 Id. (explaining the rationale behind the clause which gives Congress power to prescribe a uniform rule for naturalization that binds all states).

26 Cristol-Deman, supra note 12, at 144.

27 Id. (referring to the lead case interpreting the uniformity requirement, Khasait Ram Samras v. United States, 125 F.2d 879 (9th Cir. 1942), which held that uniformity related only to geography in the context of naturalization).

28 See McCullough v. Maryland, 17 U.S. 316, 421 (1819) (explaining the broad scope of Congress’ plenary powers in passing federal legislation: “Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.”). Regarding the PRWORA and immigrant health cases, Congress’ “ends” were elucidated in 8 U.S.C. § 1601 (2002). See also discussion supra, Part II(A) (explaining Congress’ reasons for the 1996 welfare overhaul).


30 Id.


advisory opinion) will probably be subject to a more deferential, rational relationship standard and be upheld.46

Nonetheless, it is important to note how the nation’s highest court has previously ruled on states’ abilities to limit government benefits to immigrants, period.47 The first four cases in the “equal protection” section—Takahashi v. Fish and Game Commissioner, Shapiro v. Thompson, Graham v. Richardson, and Mathews v. Diaz—concern limitations on government services to legal immigrants or citizens. The last case, Plyer v. Doe, concerns a public benefit to illegal immigrants. An analysis of how each case would apply to Texas’ current illegal immigrant health care situation will follow each case recitation.

a. Legal Immigrants

1. Takahashi v. Fish & Game Commissioner48

Takahashi was one of the first cases the U.S. Supreme Court addressed concerning the constitutionality of denying public benefits to immigrants based on alienage. In Takahashi, the respondent Torao Takahashi was a Japanese-born man who became a resident of California in 1907.49 Although he was allowed to live in California, Takahashi was prohibited from becoming a U.S. citizen due to then-existing federal law.50 From 1915 to 1942, Takahashi applied for and received a commercial license to fish within a three-mile radius off of California’s Pacific coastline.51 After the U.S. declared war on Japan and Germany in 1942, however, California passed a

47 Cristol-Dennis, supra note 12, at 146 (highlighting various United States Supreme Court cases that analyze illegal immigrants’ access to state benefits).
48 Takahashi v. Fish & Game Commissioner, 334 U.S. 410 (1948) (holding that it was unconstitutional for the state of California to deny a commercial fishing license to a Japanese-born man because he was not a U.S. citizen).
49 Id. at 412.
50 Id. (explaining that, pursuant to the then-existing law of 8 U.S.C. §703, only immigrants with preferred racial and color requisites could become American citizens). Note one of the Takahashi opinion demonstrates that citizenship eligibility gradually became available to persons of varying race, color, and ethnicity as history progressed. For example, Africans became eligible in 1870 (16 Stat. 254, 256), Europeans earned eligibility in 1940 (54 Stat. 1137, 1140), Chinese were granted status in 1943 (57 Stat. 600, 601), and Filipinos and Indians became eligible in 1946 (60 Stat. 416). It was suggested that Japanese were excluded from this preferred group because of war-time prejudices. Id.
51 Id. (noting that fishing was Mr. Takahashi’s primary source of income).

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law barring the issuance of commercial fishing licenses to any person ineligible for citizenship under federal law.52 Takahashi brought a mandamus action in a Los Angeles County Superior Court to compel California’s Fish and Game Commission to issue him a commercial fishing license.53 The case traveled through California’s appellate circuit and eventually reached the U.S. Supreme Court.54 The Court ultimately ruled that the equal protection clause applied to legal immigrants and citizens alike, because it embodied “a general policy that ‘all persons’ lawfully in this country shall abide in any state’ on an equality of legal privileges with all citizens under non-discriminatory laws.”55

Under a Takahashi analysis, Texas’ denial of public benefits to illegal immigrants would be constitutional. Texas counties could not provide public health benefits to undocumented immigrants because they are not “lawfully” residing in the state. Therefore, they would not be entitled to any “legal privileges” offered by the state. A court reviewing the Texas Attorney General’s opinion under a Takahashi judicial lens would allow it to stand.

2. Shapiro v. Thompson56

Shapiro and its sister cases57 gave the U.S. Supreme Court the opportunity to decide whether state statutes in Connecticut, the District of Columbia, and Pennsylvania, which “denied welfare assistance to persons who had not resided in those jurisdictions for the year immediately preceding their application for benefits,” were constitutional.58

The U.S. Supreme Court held that these required waiting periods created an illegal classification under the Fourteenth Amend-

52 Id.; see Calif. Fish & Game Code §890 (“A commercial fishing license may be issued to any person other than a person ineligible for citizenship.”).
53 Takahashi, 334 U.S. at 414 (noting that Takahashi brought suit in 1945, after he had been released from a U.S. military camp where the government had several Japanese-born persons during World War II); See also Korematsu v. United States, 328 U.S. 214 (1945) (sustaining a conviction for Korematsu, who violated a military order which prohibited all persons of Japanese-ancestry from inhabiting certain designated portions of the West Coast during World War II).
54 Takahashi, 334 U.S. at 415 (indicating that the Court granted certiorari to decide the importance of federal-state relationships and constitutionally protected liberties).
55 Id. at 420.
58 Cristol-Dennis, supra note 12, at 146.
ment between those who had lived in the respective jurisdictions for more than one year and those who had not. 64 Although the states certainly had compelling state interests in advancing these time restrictions, these interests were not strong enough to override equal protection rights and the fundamental right to travel.65 Shapiro held that discrimination in welfare eligibility against non-state citizens was unconstitutional; it did not address benefits to non-U.S. citizens. Therefore, a Shapiro analysis would probably render Texas' denial of preventive health care to non-citizens constitutional. Illegal immigrants in Texas would not be entitled to the same rights as legal immigrants or citizens. Therefore, they would not have access to state preventive health care services.

3. Graham v. Richardson66

Graham v. Richardson, a seminal United States Supreme Court case, grappled with whether states could condition their welfare benefits on either a beneficiary's U.S. citizenship status or resident alien status.67 The respondents in Graham were women who had resided and worked in their respective states for several years, but did not qualify for state welfare benefits because of their lack of citizenship.68 Arizona and Pennsylvania sought to justify these restrictions on the basis of the "compelling state interest" that states should have the option of favoring their own citizens in the "distribution of limited resources such as welfare benefits."69

64 Shapiro, 394 U.S. at 607 (pointing out that being in the wrong classification could mean the difference between having food, shelter, and other life necessities for a year).

65 Id. (indicating that the compelling state interests advanced by Pennsylvania, Connecticut, and D.C. included preserving the fiscal integrity of public welfare systems and discouraging indigents to travel to jurisdictions with easy welfare eligibility requirements); See also United States v. Good, 393 U.S. 743 (noting the Court's recognition of the fundamental right to travel from one state to another); Cf. Truax v. Raich, 239 U.S. 33 (1916) (demonstrating that courts have upheld certain legitimate state interests over the rights of illegal immigrants).

66 Graham v. Richardson, 403 U.S. 365 (1971) (noting that this case was considered together with No. 727, Sailer v. Loger, a case on appeal from the U.S. District Court for the Eastern District of Pennsylvania).

67 Id. (highlighting that Arizona and Pennsylvania were the states whose welfare laws were implicated).

68 Id. (noting that 64-year-old Carmen Richardson, born in Mexico, had resided in Arizona since 1936; Scottish-born Elsie Mary Jane Loger had lived in Pennsylvania since 1965; and Beryl Jarvis, a Panamanian native, had lived in Pennsylvania since 1968. All three women were denied state welfare benefits because they were not citizens. Id.

69 Id. at 372 (elying on Justice Benjamin Cardozo's reasoning in People v. Crane, 214 N.Y. 154, 168 N.E. 427 (1915), where Cardozo opined, "To disqualify aliens is discrimination indeed, but not arbitrary discrimination. . . . The state in determining what use shall be made of its own moneys, may legitimately consult the welfare of its own citizens rather than that of aliens.").

6 Id. at 373; Cf. Truax v. Raich, 239 U.S. 33 (1916).

61 Graham, 403 U.S. at 375.


63 Mathews v. Diaz, 426 U.S. at 69.

68 Id. at 69-70 (indicating that the Social Security Act of 1935, 42 U.S.C. §1395o, set forth such restrictions); See also 42 U.S.C. §1395 (providing that the Medicare Part B program covers certain doctors' costs, home health care, outpatient physical therapy, and other medical services). 42 U.S.C. §1395.

64 Mathews, 426 U.S. at 78 (emphasizing in note 13 of the opinion that Title 8 of the United States Code is founded on distinctions between U.S. citizens and aliens).

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The Court rejected the states' argument, concluding that a state's desire to preserve limited resources for its own citizens was not strong enough to usurp equal protection rights.60 Quoting Shapiro, the Court held that "the saving of welfare costs cannot justify an otherwise invidious classification."61 This case buttressed the notion that constitutional liberties were extended to all persons legally in the United States, not just all citizens.

In Graham, like Takahashi and Shapiro, the U.S. Supreme Court held that states could not discriminate against resident aliens who were lawfully in the country. Resident aliens, or legal immigrants, were entitled to the same state privileges as U.S.-born citizens. Graham, though, did not address state benefit eligibility for illegal immigrants. For this reason, illegal immigrants in Texas could not use Graham to support their fight for access to government health benefits.

4. Mathews v. Diaz62

The issue presented in Mathews v. Diaz was whether Congress could condition an illegal immigrant's eligibility for participation in a Medicare supplemental insurance program based on continuous residence in the United States for five years and permanent residency.63 The appellants in this case were Cuban refugees who had resident alien status, lived in Florida, were all over the age of 65, and who had been denied Medicare Part B coverage based on their citizenship status.64

The U.S. Supreme Court held that though all persons lawfully in the country were protected by the Due Process Clause, they were not all similarly entitled to all the benefits of U.S. citizenship.65 Congress' plenary power over naturalization and immigration law al-
lowed it to formulate laws that treated citizens and non-citizens differently. This treatment, though different, was not necessarily "invidious." The federal statute that limited Medicare benefits to U.S. citizens was constitutional.

This case may be the most persuasive in supporting Texas' stance on illegal immigrant medical care, because it concerns both immigration rights and government-provided health services. The following quote particularly supports the Texas Attorney General's decision:

The fact that Congress has provided some welfare benefits for citizens does not require it to provide like benefits for all aliens. Neither the overnight visitor, the unfriendly agent of a hostile foreign power, the resident diplomat, nor the illegal entrant, can advance even a colorable constitutional claim to a share in the bounty that a conscientious sovereign makes available to its own citizens and some of its guests.

In Mathews, even resident aliens who were lawfully in this country were not entitled to the same government services to which U.S. citizens were entitled. If legal immigrants did not have access to such benefits, it would be hard for illegal immigrants in Texas to argue that they had a right to these services, either.

b. Illegal Immigrants

1. Plyler v. Doe

Plyler v. Doe evolved out the Texas federal court system into the U.S. Supreme Courtroom. In 1975, the State of Texas had amended its education laws to withhold any state tax monies from school districts that enrolled children who were not legally admitted into the country. The question presented before the court in

- Plyler, 457 U.S. at 205.
- Id. at 210; See also Shaughnessy v. Mezei, 345 U.S. 206, 212 (1953) and Wong Wing v. United States, 163 U.S. 228, 238 (1896) (upholding the Court's belief that illegal aliens are protected under the U.S. Constitution's due process and equal protection rights).
- Cristol-Deman, supra note 12, at 149.
- Id.
- Plyler, 457 U.S. at 219, n. 19; see Cristol-Deman, supra note 12, at 149 (observing that Plyler's dicta may damage illegal immigrants' access to publicly funded services).
not. Therefore, classifications that discriminate against undocumented aliens will be subject to a more deferential, rational relationship standard.

Due to the fact that the Texas Attorney General’s ruling is premised on alien status and not alienage, it will probably survive an equal protection attack.

3. The Plenary Power Argument

Most scholars believe that the Fourteenth Amendment constitutional argument will be moot, however, because federal courts will approach the PRWORA as immigration legislation, not an equal rights matter.

Given Congress’s plenary power over immigration, courts will utilize a reduced, rational basis judicial standard of review when analyzing constitutional challenges to the PRWORA. As scholar Liza Cristol-Deman notes, “[b]ecause Congress can exercise complete control over immigration regulation, separation of powers concerns dictate the use of the lowest standard of judicial review for federal immigration laws.” For this reason, courts will probably hold that the PRWORA is constitutional.

Congress’s legitimate concerns about immigrants and self-sufficiency, combined with its plenary power to rule over all matters of immigration and naturalization, likely means that the PRWORA will withstand constitutional scrutiny. For these reasons, the PRWORA, and most state responses that evolve from it (like Texas’ stance on illegal immigrant health benefits) will probably endure any level of constitutional scrutiny.

C. The PRWORA’s Effect on Texas

Despite the fact that the PRWORA was passed in 1996, its impact on immigrant health policy in Texas was not fully realized until 2001 when the Texas Attorney General clarified the effects of the Act. Previously, state law required county hospital districts to provide health services to all indigent county residents. Specifically, the Indigent Health Care and Treatment Act required county residents. Harris County, which includes Houston, the largest metropolitan area in Texas, continued to function under this state law even after the enactment of the PRWORA.

The Harris County Hospital District (the District) is one of the largest public health systems in the country. The District is composed of two general hospitals (each with trauma units), a psychiatric hospital, eleven community clinics, and other facilities. State law required the district to “furnish medical aid and hospital care to indigent and needy persons residing in the district.” In order to receive this care, prospective patients had to produce proper documentation of indigence.

The District officials learned that many facilities within the District required different forms of documentation. While official district policy permitted applicants to use a range of identification to verify their eligibility, some facility clerks required applicants to produce a Texas driver’s license, which undocumented immigrants could not obtain. Due to these inconsistent documentation requirements...

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80 See supra note 41, at 1049.
81 See supra note 41, at 1039.
82 Id. (commenting that special judicial deference is given to Congress regarding immigration law).
83 Id. (noting that pursuant to federal law, undocumented immigrants could not have access to most publicly-funded preventive health care services).
84 Id. (providing Texas counties with the authority to create their own hospital districts).
85 Tex. HEALTH & SAFETY CODE §61.006 (Vernon 2000) (stating that the Texas Department of Health shall establish guidelines for various counties to follow in providing indigent health care).
86 Suval, supra note 87, at 33 (characterizing documentation requirements as obstacles to immigrants seeking health care).
87 Id. (detailing the problems that many aliens who had renewing their “gold cards.”).
ments, facilities denied discounted medical treatment to many poor illegal immigrants in Harris County.94

This problem became a bureaucratic nightmare.95 Immigrant advocates asserted that the district’s lack of a uniform policy on undocumented immigrants contributed to mass confusion and the erratic administration of medical treatment.96 Indeed, the Houston Catholic Worker, a local grassroots newspaper, reported “medical services to the Spanish-speaking in Harris County [were] in a state of crisis.”97

Consequently, the Hospital District, under new leadership, realized that it needed to create a uniform policy regarding eligibility requirements for county indigent medical care, especially with regard to undocumented immigrants.98 Aware of the PRWORA’s language cutting illegal immigrant social services, and anxious to create a consistent admission policy pursuant to state law, the district sought advice from the Texas Attorney General’s office in Austin, Texas.99

II. THE ATTORNEY GENERAL’S ADVISORY OPINION

On January 25, 2001, Harris County Attorney Michael Fleming asked the Texas Attorney General to address the issue of, “Whether the Harris County Hospital District may provide discounted health care to persons residing in Harris County, without regard to their immigration or legal status.”100

94 Id. (discussing the effect that the haphazard documentation policies had on immigrants seeking medical treatment).
95 See id.
96 Sural, supra note 87 at 34 (describing the Houston Immigration and Refugee Coalition’s concerns about the situation).
97 Id. at 34 (reporting that the aforementioned article was written by Louise Zwick, a co-founder of Casa Juan Diego in Houston, a medical clinic which provided preventive health services to anyone).
98 Id. (noting that the District’s longtime CEO, Lois Jean Moore, left the District in 1999 amidst severe financial problems and management). Moore was soon replaced with John Guest, the former President of the Boston University Health System in San Antonio. Id. Guest had more than sixteen years of experience in the public and community health sector. Id.
99 Id.; see Tex. GOV. CODE §§ 402.041-402.045 (Vernon 1998) (authorizing the Texas Attorney General to issue written advisory opinions on request).
100 Id.

The Attorney General concluded that Texas counties could no longer provide preventive health care services to undocumented persons regardless of their residence within county lines pursuant to the PRWORA.101

Undocumented persons could, however, continue to receive emergency care, immunizations, and treatment for communicable diseases under the PRWORA.102 Federal statute 8 U.S.C. §1621(b) decreed that restriction of health services did not apply to:

1. Assistance for health care items and services that are necessary for the treatment of an emergency medical condition (as defined in section 1596b(v)(3) of title 42) of the alien involved...
2. Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.103

Except for the health services specifically authorized by the PRWORA legislation, illegal immigrants were denied all other state funded health services.104 The PRWORA preempted all local and state laws that provided services contrary to this provision.105

The Attorney General’s opinion explained that the only way to legally provide such preventive care services would be for Texas state policymakers to enact legislation that “affirmatively provides for such eligibility.”106 Pursuant to 8 U.S.C. §1621(d), states may provide such services under the following directive:

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996 which affirmatively provides for such eligibility.107

102 Id.
103 8 U.S.C. § 1621(b)(1), (3) (1994 & Supp. V. 1999); see also the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. §1395dd (2000)(requiring a hospital to “provide for an appropriate medical screening examination within the capability of the hospital’s emergency department . . . ”). EMTALA defines an emergency medical condition as functions, or cause serious bodily organ dysfunction. Id. This treatment is given without regard to citizenship status. Id.
106 Id. at 3 (illuminating the way to continue to provide the same services to patients pursuant to the federal statute by passing an appropriate state law).
Harris County officials then alleged that House Bill 1398 of the 76th Texas Legislature, which amended the Indigent Health Care and Treatment Act, qualified as legislation that could circumvent the PRWORA requirements. This argument proved unpersuasive for the Attorney General, who noted that under the PRWORA's section 1621(d), the state must "affirmatively" give eligibility to illegal immigrants for enrollment in state-provided medical care. House Bill 1398 failed to refer to citizenship in order to be entitled to such medical services.

To support his argument, the Attorney General noted that the Texas Legislature previously granted illegal immigrants certain rights in other policy areas, and in these cases the legislature did so expressly. For example, in 1997, the 75th Texas Legislature amended the Texas Family Code to provide that the Department of Protective and Regulatory Services could use state and federal monies for the protection of children and families "without regard to the immigration status of the child or the child's family." Similarly (and in the same legislative term), the legislature revised § 264.006 of the Family Code to further ensure that children in Texas, regardless of their citizenship status, would receive protection from abuse. The Attorney General determined that because the Texas Legislature did not include this citizenship language in House Bill 1398, it did not intend to provide preventive health care to undocumented immigrants. If the Legislature intended otherwise, as the Attorney General argued, it would have included the proper terminology as it did in the Family Code provisions.

The Attorney General concluded that H.B. 1398 did not affirmatively provide for undocumented immigrant medical care. House Bill 1398 does not expressly refer to the immigration status of aliens nor does it include any indication that the legislature intended that an alien "not lawfully present in the United States" would be entitled to a state or local public benefit for which the alien was ineligible under the PRWORA.

The Attorney General then addressed Harris County's constitutional argument. The county argued that 8 U.S.C. § 1621(d) violated the Tenth Amendment of the United States Constitution. The Tenth Amendment provides that, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The County alleged that section 1621(d) effectively forced states to draft and pass legislation specifically granting illegal immigrants access to preventive health care. This mandate, they argued, violated the premise that "Congress may not assume control over the legislative processes of the states by directly compelling them to enact and enforce a federal regulatory program.

The Attorney General disagreed with the argument that the PRWORA compelled states to enact or enforce a federal regulatory program. Noting that federal statutes should be accorded a strong presumption of constitutionality, the Attorney General argued that the PRWORA simply provides states an option to circumvent the federal law through state provisions that affirmatively provide for such medical services. Thus, the Attorney General concluded that section 1621(d) enable[d] each state to make decisions about public benefits for undocumented aliens based on its own circumstances.

Under constitutional law, Congress may encourage
or urge a state to adopt laws consistent with federal policy. Congress may not, however, compel a state to do so. The Attorney General argued that the PRWORA would survive this constitutional challenge because section 1621(d) of the PRWORA did not compel states to deny healthcare to illegal immigrants; rather, it merely provided states the option of circumventing the federal law through state legislation. The District was required to comply with the law.

Harris County also inquired about the penalties for violations of the PRWORA by providing illegal immigrants preventive health care services. The Attorney General conceded that the PRWORA failed to specify any enforcement procedures. However, the Attorney General suggested that violations of the PRWORA could result in a withdrawal of federal and state funding such as Medicare and Medicaid monies because "the hospital district receives funds from Medicare and Medicaid and as a condition for receiving these funds, it must comply with applicable federal laws related to the health and safety of patients." The Attorney General also noted that the hospital district was responsible for the accounting and control mechanisms set forth by the County Commissioners Court or the Hospital District Board.

Attorney General Cornyn dismissed the public policy concerns raised by Harris County's brief to the state. The Attorney General stated that the ethical and economical concerns of denying illegal immigrants primary health care services were matters best reserved for the Texas State Legislature to contemplate, not the Texas Attorney General's Office.

In sum, Texas Attorney General John Cornyn found that the PRWORA made undocumented immigrants ineligible for govern-

139 See New York v. United States, 505 U.S. 144, 166 (1992) (holding that Congress may, short of outright coercion, exercise a number of constitutionally permissible methods to urge states to adopt a legislative program consistent with federal interests).

140 Id.

141 Id., at 3.

142 Id. at 8 (citing 8 U.S.C. § 1621 (2000)).


144 Id.

145 Id., at 6.

III. CASE DISCUSSION, ANALYSIS, AND POLITICS

The Attorney General's decision regarding illegal immigrant health care does not carry the weight of law. Regardless of its lack of legal bite, this advisory opinion raised controversy within the state. The following section analyzes the Attorney General's reasoning in the opinion, and discusses the local political responses.

146 States could elect to provide such coverage, but only through passage of state legislation after August 22, 1996 affirmatively providing for such health care services. Thus far, Texas has not passed such a statute; neither the Texas Health and Safety Code section 281.002 nor H.B. 1396 of the 76th Legislature demonstrated the requisite intent to provide such services to unqualified immigrants. County hospital districts that provide free or discounted nonemergency health care treatment to illegal immigrants can be subject to certain federal and state penalties for violation of this federal law.

147 Id. at 6 (arguing undocumented immigrants were ineligible for state provided preventive health care).

148 Id. (arguing states could elect to provide immigrants with preventive health care services only if the statutory deadline was met).

149 Id.


151 Id.

152 Id. at 3 (arguing states could elect to provide immigrants with preventive health care services only if the statutory deadline was met).

153 Id.

154 Id. at 3 (arguing states could elect to provide immigrants with preventive health care services only if the statutory deadline was met).

155 Id.

156 Office of the Texas Attorney General Website, Effect of Opinions, available at: http://www.agg.state.tx.us/opinions/opin_update_proc.htm (stating that, although not binding, Texas appellate courts have held that Attorney General Opinions are entitled to "great weight").

157 Id.
A. Case Discussion and Analysis

The Attorney General's decision is legally correct. The PRWORA's language clearly states that illegal immigrants can obtain state benefits only if the state "affirmatively provides for such eligibility."141

Philip Bobbitt, a renowned constitutional scholar, outlined six modalities for the interpretation of statutes or other legal instruments in his legal treatise, Constitutional Interpretation.142 For our analysis, we utilize the most common and practical modality, the textual method.

Bobbitt's textual method analyzes the plain language of the statute to determine its meaning. Using this analysis, we find that the Texas Attorney General looked to the plain meaning of what the PRWORA intended in 8 U.S.C. § 1621(d). The Texas Attorney General defined "affirmatively" to mean "by way of assertion or express declaration."143 Indeed, he cited the Oxford English Dictionary to clarify this directive.144

Under a strict textual analysis, Texas has not affirmatively provided preventive health care for illegal immigrants. The Attorney General properly rejected the District's argument that the Indigent Health Care and Treatment Act amendments passed in 1999 affirmatively provided for such care.145 Neither the Texas Health and Safety Code section 281.002, nor House Bill 1398, which Harris County also alleged qualified as appropriate state legislation, made any reference to immigrant status.146 The Indigent Health Care and Treatment Act required a name, address, social security number (if available), proof of poverty status, and proof of county of residence for treatment.147 It did not "assert" or make an "express declaration" for citizenship status as required by the PRWORA.148 The Texas Attorney General reasoned that the PRWORA required express reference to immigrant status, and neither the legislative history nor the language of the bill provided for illegal immigrant eligibility.149

The PRWORA's language and the legislative intent clearly require state legislatures to explicitly provide for illegal immigrant service eligibility.

B. The Politics

Controversy erupted soon after the Texas Attorney General declared that the PRWORA prohibited county hospital districts from providing preventive health care to illegal immigrants. The medical, media, political, legal and non-profit communities all either strongly condemned or supported this opinion.150

Hospitals and other health care providers reacted negatively to the decision.151 Some doctors, for example, claimed that the Texas Attorney General's office effectively hindered them from pursuing their professional duty to heal.152 Dr. Jeff Starke, Chief of Pediatrics at Ben Taub General Hospital, claimed that such an order violated his Hippocratic oath.153 To forbid doctors from treating a nonemergency illness, according to Starke, would be "morally reprehensible, and . . . contrary to every canon of modern medical ethics of which [he was] aware."154

Some of the media jumped into the fray as well, arguing that the decision was bad public policy. An August 2001 editorial in the

142 Philip Bobbitt, Constitutional Interpretation, 12-13 (1991). Bobbitt outlined six modalities for statutory interpretation. The textual method analyzes the plain language of the statute to determine its meaning. The historical method uses legislative history and the drafter's or legislators' original intentions to determine the correct implementation of a statute. The structural method focuses on each branch of government and determines statutory construction based on the duties delegated to each branch. The doctrinal method looks at precedent to discern statutory construction. The fifth method, the prudential modality, focuses on the policy and consequences of the statute to determine its meaning. Lastly, the sixth method looks towards ethics and morality to determine the meaning of a statute. Id.
147 Id.
148 Id.
149 Id., supra note 140.
150 Id. (responding to how he would react if told that he could care for someone with tuberculosis, a communicable disease treatable under the PRWORA, but not someone with asthma, which is not considered as a treatable illness under the same legislation).
Austin Chronicle labeled Cornyn’s opinion as “almost certainly lousy legal advice.” The columnist claimed the Attorney General’s opinion denied illegal immigrants, who live, work, and pay taxes in Texas, access to services that they helped pay for. Studies conducted by the National Immigration Forum, an immigration advocacy group, supported this contention. These studies showed that immigrants, over the course of their lifetimes, pay about $80,000 more in taxes than they use in government provided services.

Opponents of the Attorney General’s opinion also highlighted the fact that the Texas Legislature would have to wait to respond adequately to this legal and political matter. The Texas Legislature, unless convened by the Governor, meets every two years. Having concluded their most recent session in the year 2001, the Legislature would not reconvene until the year 2003, absent a special session.

On the political front, however, an organization called the Young Conservatives of Texas lauded the opinion. The University of Texas Law School chapter of this organization, headed by third year law student Mark Levin, publicly proclaimed that:

`It is an abuse of power for hospital districts in Harris, Dallas, El Paso, and Bexar Counties to continue to illegally force taxpayers to underwrite free health care for every citizen of another country who illegally crosses the border. The Harris County Hospital District alone has doled out $330 million in free medical care to illegal aliens over the last three years."

Levin went on to decree that Texas would become “Mexico’s Nursing Home” if the state continued to provide illegal immigrants prophylactic health services. To punctuate his fervor, Levin filed a complaint with the district attorneys of Dallas, El Paso, and Bexar Counties to register his approval of the Attorney General’s opinion.

In reaction to the Attorney General’s decision and these calls from the Young Conservatives of Texas, Houston District Attorney Chuck Rosenthal raised the stakes of non-compliance by threatening hospital employees with criminal sanctions if they continued to misappropriate public funds. The District Attorney warned district hospital officials that the punishment could include jail terms of five to ninety-nine years for misappropriation.

Some supporters of the Attorney General’s position also believed that, because entering the United States without authorization is a federal crime, offering preventive and primary health care to undocumented immigrants effectively rewards criminals for breaking the law.

C. Summary

Despite its political controversy, the Attorney General correctly interpreted the PRWORA. The Texas Attorney General looked to the plain meaning of 8 U.S.C. § 1621 and made a technically precise interpretation of the law. To affirm something means to express or assert it. To date, the Texas Legislature has failed to affirmatively grant illegal immigrants access to preventive health care in any state legislation. The statutory language and legislative intent of the

``health care, which is far superior to the health services available in most parts of Mexico, surely encourages the ongoing flood of illegal immigration into Texas . . . ."

Id. (outlining the importance of the Attorney General’s decision in controlling healthcare costs).

See Hernandez, supra note 108, at 1 (outlining the potential criminal consequences if hospitals continued to misappropriate public funds).

Id.

Steve Brewer, Hospital District Official Sees No Changes In Policy, HOUST. CHRON., Aug. 24, 2001, at 36A (arguing the Harris County District Attorney’s office lacked sufficient evidence to substantiate any potential criminal charges against named hospitals).


Yantley, supra note 139, at 18 (noting that providing illegal immigrants with taxpayer funded medical care creates incentives for immigrants to illegally enter the U.S.).

PRWORA clearly indicates the Attorney General made the right decision.

Moreover, the Attorney General correctly called upon the Texas Legislature to amend this policy conundrum. The Attorney General interprets the law for government entities, rather than creating the law.171 The funded preventive health care services if they wish to provide such services.172 The Texas Legislature, as representatives of the governed, should take into consideration the concerns of the medical, political, media, legal and non-profit communities and make this decision for Texans.

IV. POLICY IMPLICATIONS

The author contends that illegal immigrant health care is a matter for the state legislature, not the state courts or the Attorney General, to decide. The PRWORA’s language clearly requires state legislatures to affirmatively provide for illegal immigrant preventive health services.173 Legislatures are in a better position to weigh the moral and fiscal implications of denying health care to sick immigrants.

The following sections will discuss the ethics and economics of denying preventive health care to undocumented persons.

A. Denying Preventive Health Care—The Ethics

The Texas Legislature should contemplate the ethics of denying preventive health care to illegal immigrants in need of medical care. To many, the prospect of denying an ill child or an elderly person medical care for a chronic illness because of the lack of proper paperwork offends deep-seated notions of social, moral, and religious responsibility.174

For many Americans, stories about undocumented immigrants suffering because they cannot receive medical care offend personal notions of ethics.175 An example of such a story already exists in Houston: Dr. Pat McColloster, a doctor at the Casa de Amigos medical clinic in Houston, recalls treating an undocumented house cleaner from Mexico for hypertension.176 During one of the patient’s routine visits, the doctor discovered a lump in the patient’s breast.177 A biopsy revealed a malignant tumor, and the woman underwent a radical mastectomy.178 The patient returned once more to Casa de Amigos for treatment for her hypertension when the doctor noticed that the arm on the same side of her body as her mastectomy was “massively swollen.”179 Although he recommended that she continue with chemotherapy, she could not pay for treatment herself or qualify for state-funded treatment.180 The doctor has not heard from this patient since then, and he speculates that her health has deteriorated without treatment.181 Unfortunately, this account is probably just one of many.

In the introduction to For Profit Enterprise in Health Care from the Institute of Medicine, Bradford Gray argues that:

Health care is a community service to which words such as caring and compassion and charity should apply—words that connote the family and the church, where the functions of caring for the sick once resided. The response to disease and disability should stem not from the fact that a market is created from peoples’ misfortunes but from a humane response to their needs. The ideal is that the needs of the sick and unfortunate should be met by persons who, as a philosopher expressed it, are acting out of love rather than out of the expectation of gain . . . .182

172 Id.
176 Id. (revealing that the women underwent treatment at Ben Taub General Hospital). Ben Taub is another medical facility under the District’s authority. See Harris County Hospital District Locations & Services at http://www.tmc.edu/hchd/Locations_and_Services.html (last visited Nov. 13, 2002).
177 Id.
178 Id. at 20.
179 Id. at 20.
180 Id. (noting that the patient’s “gold card” was never renewed). A “gold card” was necessary to receive non-emergency care in the Harris County hospital district. Id. at 30. Because clinics began requiring all forms of documentation in order to receive a card pursuant to the Attorney General’s decision, this particular patient was unable to renew hers. Id.
181 Suval, supra note 87, at 40 (quoting Dr. McColloster, “It was a distinct possibility that the cancer had recurred because she had not finished her full course of chemotherapy . . . ”).
Many citizens feel a stirring in their social and moral consciences when they hear that indigent men, women, and children are denied health care. The Texas Attorney General’s opinion that denies illegal immigrants preventive health care will create more situations where one’s health is balanced against a spreadsheet, and where people’s consciences are balanced against their tax bills.

The Attorney General’s opinion also challenges doctors’ personal senses of morality. For example, Jeff Starke, MD, Chief of Pediatrics at Ben Taub General Hospital stated, “When you read the Hippocratic oath, it doesn’t say anything about a patient’s citizenship. It says I’m supposed to help people who come to me for help.”

Physicians, as a consequence of this Texas case, must balance their role as agent for their patients with their role as agent for the hospital. “Clearly, the highest ideals of medicine are not always fully realized in any sector of the health care sector . . . medical practice always involves a tension between altruism and self-interest.”

Religious responsibility also factors into the dilemma of denying health care on the basis of illegal immigrant status. Judeo-Christian ethics extol the virtues of welcoming the unfortunate into one’s care and hospice. For example, Exodus 22:21 states: “Do not oppress foreigners in any way. Remember, you yourselves were once foreigners in the land of Egypt.”

Similarly, Matthew 25:35 proclaims: “For I was hungry and you gave Me something to eat; I was thirsty and you gave Me something to drink; I was a stranger and you took Me in.”

Specifically, the Catholic Church has protested the provisions of the PRWORA that discriminate against immigrants. The Church called for a new worldwide perspective on immigrants’ rights, calling upon countries to recognize every person’s inherent human dignity. In June of 1996, Bishop Anthony M. Pilla of Cleveland, Ohio, extolled the virtue of Saint John witnessed and heard: “I command you to love each other in the same way that I love you.” Bishop Pilla urged his audience to “treat the alien who resides with you no differently than the natives born among you; have the same love for him as for yourself . . . . The basic love for the stranger helps each person realize and respect the human dignity inherent within that stranger.”

Other religions also advance the notion of caring for others. Judaism supports that “providing health care is not just an obligation for the patient and the doctor, but for society as well.” Similarly, Muslim doctors are instructed to “treat alike the rich and the poor, the master and the servant, the powerful and the powerless, the elite and the illiterate. God will reward him if he helps the needy.”

The PRWORA offends notions of moral and religious ethics by not providing preventive health care to illegal immigrants. Nevertheless, ignoring the PRWORA and providing preventive health care is illegal under federal law. The Attorney General correctly interpreted that the PRWORA prevented states from offering such prophylactic services without legislation which affirmatively provides for such services. The issue of providing preventive health care is one for the Texas Legislature to grapple with, not the Texas legal system. Texas policymakers should firmly consider the ethics of denying medical care to sick people and write legislation to provide limited state funded care to the illegal immigrant population.


Id. at 533 (discussing the Catholic Church response to United States immigration reform).

Id. at 534 (quoting John 15:12).

Owen, supra note 10, at 534 (quoting Bishop Pilla’s address to his fellow bishops in the Summer of 1996).


B. Denying Preventive Health Care—The Economics

Individuals who cannot afford health care tend to delay seeking treatment. Delayed treatment usually results in more serious health complications and higher medical bills. Put simply, preventive care saves more money than costly emergency care.

Harris County records show that the Hospital District spent $67 million in treating “unqualified” immigrants in fiscal year 2001. Taxpayers covered eighty-eight percent of the cost, insurance and Medicaid state reimbursements covered ten percent, and patients paid the rest.

These numbers seem to strengthen the argument to cut prophylactic health services to illegal immigrants. However, Harris County officials argue that the costs could be even more substantial if the District did not provide preventive health care services. Treatable diseases, like high-blood pressure and diabetes, can develop into emergencies if not medically supervised. In addition, lack of prenatal care may result in untreated conditions that can cause detrimental, costly medical complications.

Dr. Ron Anderson, President and Chief Executive Officer of Parkland Hospital and Health System in Dallas, Texas, agreed with this assessment. Offering routine primary care to illegal immigrants, according to Anderson, may prevent them from inundating hospital emergency rooms when their health conditions worsen. Under the Emergency Medical Treatment and Active Labor Act, all hospitals that operate emergency care facilities must treat every patient in an emergency; this federally mandated requirement results in overcrowding in emergency rooms and expensive medical bills.

Ben Taub General Hospital Chief of Staff James Mattox, MD, concurred with this conclusion. Dr. Mattox warned that the Texas Attorney General’s policy will “worsen an already overstressed situation, and at increased cost, because seeing someone in an emergency department is considerably more expensive than seeing someone in a clinic.”

Moreover, hospital emergency rooms may sacrifice care due to the increased number of patients involved. Dr. Mattox warned that the nearly four hundred patients Ben Taub treats everyday will increase twofold if undocumented immigrants are not permitted to receive preventive care. Hospital emergency rooms will be forced to balance an increased patient load with the same number of staff and resources at the risk of possibly jeopardizing the quality of care.

The Texas Legislature should consider the prospect that Texas taxpayers could actually save money by providing illegal immigrants with primary and preventive health care as opposed to providing only emergency medical care. Both the ethics and the economics of denying illegal immigrants primary medical care are appropriate concerns for the elected legislative branch of government, not the judiciary or the Attorney General. The Texas Legislature should carefully consider these public policy concerns and consider drafting legislation that affirmatively provides unqualified immigrants with limited health care services.

V. The States

This section focuses on how other states have reacted to the PRWORA’s mandate limiting federally funded welfare benefits. Prior to the PRWORA’s passage, only the federal government could
determine which immigrants were eligible for public benefits.210 Now that states have a voice in the discourse on immigrant services, an amalgam of PRWORA-inspired local policies have sprouted throughout the country.211 This section focuses on the states of New York and California. New York and California, like Texas, have large immigrant populations.212 This section will explore how each state has interpreted the PRWORA. Finally, this section will also suggest how Texas should address illegal immigrant health services in the future.

A. New York

New York and Texas have had similar difficulties with respect to the public policy issue of providing illegal immigrants state-funded preventive medical care. In response to the PRWORA, the state of New York enacted a bill entitled Social Services Law Section 122.213 This law terminated Medicaid for all unqualified immigrants.214 However, unqualified immigrants who resided in New York under the color of law (termed “PRUCOL”) maintained eligibility if they received Medicaid as of August 4, 1997, suffered from AIDS, or were residing in certain licensed residential health care facilities.215 PRUCOLS were distinguished from illegal immigrants in that “this designation is used to classify aliens of whom the INS is aware, but has no plans to deport.”216

On the other hand, legal, or “qualified,” immigrants remained eligible for Medicaid provided they entered the country prior to August 22, 1996 and had continuously resided in the United States.217

Immigrants entering the country after August 1996 were not eligible for such benefits until they lived in the country for five years.218

The court in Aliessa v. Novello held that New York’s Social Services Law section 122, which denied Medicaid benefits to people based solely on their status as legal aliens, was unconstitutional.219 The plaintiffs, twelve immigrants, resided in New York state.220 Some plaintiffs were permanent residents who had green cards221 and others resided in the United States under the color of law (PRUCOLS).222 All the plaintiffs were terminally ill and would qualify for state funded Medicaid benefits but for the statute.223

The plaintiffs argued that section 122 violated a portion of the New York State Constitution which mandated aid to the needy.224 The New York State Constitution provides that: “the aid, care, and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature from time to time may determine.”225

The New York Court of Appeals ultimately ruled for the plaintiffs.226 The court in Aliessa determined that certain qualified and unqualified immigrants (PRUCOLS) were eligible to receive state Medicaid benefits.227

New York’s approach differs from Texas’ approach in that selected unqualified immigrants (PRUCOLS) are eligible for state

210 Zimmerman, supra note 13, at 1 (noting that the United States Congress has amended some of the restrictions the PRWORA originally created).

211 Id. at 3 (stating that some states offer substantial assistance to immigrants).


213 Id. at 1091-92; see also supra discussion in Part II (regarding qualified and unqualified immigrants).


215 Aliessa, 754 N.E.2d at 1098 n.2; see generally Polen, supra note 9, at 1455, n.3 (“The definition of PRUCOL varies between benefit programs, but generally includes . . . individuals who are residing in the United States with the knowledge of the Immigration and Naturalization Service ("INS") and whom the INS does not plan to remove.”).


217 Id. at 1091-92 (concluding that section 122 of the New York Social Services Statute violated the letter and spirit of the state constitution).

218 Zimmerman, supra note 13, at 1 (noting that the United States Congress has amended some of the restrictions the PRWORA originally created).

219 Id. at 1088 (holding that the statute violates the Equal Protection clause of both the New York State and United States Constitutions).

220 Id. at 1098 (reporting that the immigrants were from countries such as Bangladesh, Belorussia, Ecuador, Greece, Guyana, Haiti, Italy, Malaysia, thePhilippines, Syria, and Turkey).

221 Id. See also Immigration and Nationality Act. 8 U.S.C. § 1101 (2002)(defining “lawfully admitted for permanent residence” as living “the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws . . . ”).

222 Id. at 1098-99.

223 Id. at 1097 (holding that the plaintiffs are entitled to relief).

224 Id. at 1088-89. (The putsative class consists of all Lawful Permanent Residents who entered the United States on or after September 22, 1996 and all [PRUCOLS] who, but for the operation of New York Social Services Law § 122, would be eligible for Medicaid coverage in New York State.)

225 N.Y. CONSU., art. XVII, § 1; Aliessa, 754 N.E.2d at 1092 (inferring that the plaintiffs are needy because they are sick and, therefore, should be provided more than just emergency aid).

226 Id. at 1093 (concluding that section 122 of the New York Social Services Statute violated the letter and spirit of the state constitution).
Medicaid benefits. Texas does not recognize PRUCOLs for the purposes of granting state benefits to illegal immigrants.228 However, the court in Allessa specifically stated that undocumented immigrants were not affected by the decision to become eligible for these health services.229 How the state of New York differentiates between undocumented PRUCOL immigrants who are eligible and those who are not eligible for primary health care remains unclear. Both populations are deemed "unqualified" by most legal standards.230 Regardless, New York denies certain unqualified immigrants access to preventive health care.231

B. California

Infamous for its anti-immigrant rhetoric, the state of California has become a hotspot for immigration policy and politics in the last several years.232 Undocumented immigrants in California are ten times more likely to receive Medicaid benefits for emergency treatment than undocumented immigrants in any other state.233 For this reason, "California stands out as the only state to aggressively pursue cutting unqualified immigrants off state and local benefits."234 California's reputation for discouraging immigrants has been stoked in the media by flattering events. For example, newspapers in 1998 reported that the California Coalition for Immigration Reform sponsored a highway billboard that read, "Welcome to California. The Illegal Immigration State. Don't Let This Happen to Your State. Call Toll Free—(877) NO ILLEGALS."235


229Allessa, 754 N.E.2d at 1091, n.6 ("Illegal aliens ... with whom we are not here concerned— are also non-qualified aliens.").

230See Zimmerman, supra note 13, at 17 (defining an "unqualified immigrant" as either an undocumented immigrant or an applicant for asylum, a PRUCOL, or a person with temporary status, such as a student or tourist).

231Allessa, 754 N.E.2d at 1091-92 (denying benefits to PRUCOL plaintiffs).

232See generally Zimmerman, supra note 13, at 5.

233Schloerb, supra note 17, at 15 ("[U]tilization of emergency care by aliens in California for comparison utilization in all other states.").

234Zimmerman, supra note 13, at 5 (noting the difference in treatment between legal and illegal or qualified and unqualified immigrants in California).

235Owen, supra note 10, at 383 (citing David Reyes & Robert Outlaw, Immigration Sign Remover, A-SZX at 1998, at 206 as reporting that the sign was removed by the billboard owner when the Coalition of Hispanic Organizations in California announced that it would send a rally to protest the racist sign).

Additionally, Proposition 187, spearheaded by former California governor Pete Wilson, created a national stir.236 In recommending Proposition 187, the California Assembly sought to bar undocumented immigrants from public services such as public education and Medicaid.237 Although the legislation passed, federal courts in California eventually deemed the proposition partially unconstitutional.238

California, like Texas and New York, chose to deny illegal immigrants preventive health care based on the PRWORA.239 In 1998, California abated legislation that previously authorized state funded prenatal care for pregnant unqualified immigrants.240 Since the PRWORA prohibited states and local governments from providing or funding routine, taxpayer-paid medical care for the benefit of illegal immigrants, Governor Pete Wilson, Kimberly Belshé (Director of the California Department of Health Services), and the Department of Health Services invoked emergency regulations to change state laws.241 Wilson and Belshé authorized this action to bring California into compliance with the PRWORA's federal mandate.242 The emergency regulations explained that the PRWORA "... was enacted on August 22, 1996, Section 411 of this federal law [§1621] took effect immediately and requires the immediate termination of state or local government funded public benefits for aliens who are not qualified."243

A San Francisco trial court granted an injunction, preventing the emergency regulations from taking effect.244 However, the
Court of Appeals, First District in California reversed the injunction.\textsuperscript{245} The Court of Appeals held that the respondents correctly complied with federal standards.\textsuperscript{246}

This case exemplifies that California, like Texas and New York, chose to deny illegal immigrants preventive and primary health care services. Indeed, Doe \textit{v.} Wilson illustrates how California revoked legislation which had previously affirmatively provided medical care for unqualified immigrants.

C. A Suggestion for Texas

The Texas Legislature should strongly consider passing legislation that would provide preventive health care services for illegal immigrants. The services should be limited, however, to maintain PRWORA's mandate of immigrant self-sufficiency.\textsuperscript{247}

A recent law review article has suggested offering undocumented immigrants in Texas prenatal care and screening and treatment for chronic and debilitating diseases.\textsuperscript{248} Legislation providing such limited services would be ideal because it would address both the economic and ethical concerns regarding illegal immigrant health care. Economically, this legislation could thwart expensive emergency care bills by treating diseases before they reach critical stages.\textsuperscript{249} Ethically, unborn children and chronically sick people would get the care they deserve without suffering.\textsuperscript{250}

The Texas Legislature has the opportunity to make these changes in the Spring 2003 legislative session. The Legislature should use PRWORA's directive to provide such limited preventive health care services to illegal immigrants in Texas.

\textsuperscript{246} Id.

\textsuperscript{247} S. C. S. \textsuperscript{1} 1601 (2002).


\textsuperscript{249} Id. at 430 (noting that this state-funding medical care would "allow hospital districts to preserve already strained resources by controlling costly emergency room visits and long-term hospitalization").

\textsuperscript{250} Id. at 432-36.
migrant health care are matters that will affect Texans for years to come.