



**UNIVERSITY OF HOUSTON
LAW CENTER**
INSTITUTE FOR HIGHER EDUCATION LAW & GOVERNANCE
100 LAW CENTER
HOUSTON, TEXAS 77204-6060
713.743.2075 713.743.2085 FAX
WWW.LAW.UH.EDU/LAWCENTER/PROGRAMS/IHELG

MICHAEL A. OLIVAS
William B. Bates
Distinguished Chair in Law
Director, IHELG
molivas@uh.edu
713.743.2078

DEBORAH Y. JONES
Program Manager
dyjones@uh.edu

**Undocumented Immigrants and State Higher
Education Policy: The Contrasting
Politics of In-State Tuition Eligibility
In Texas and Arizona**

IHELG Monograph

09-11

Kevin Dougherty, H. Kenny Nienhusser, and Blanca E. Vega

Professor Kevin Dougherty
Program in Higher and Postsecondary Education
Teachers College, Columbia University
206D Zankel
525 W. 120th St
NY, NY 10017
212-678-3750
kd109@columbia.edu

H. Kenny Nienhusser and Blanca E. Vega
Program in Higher and Postsecondary Education
Teachers College, Columbia University
525 W. 120th St
NY, NY 10017

© 2010, Kevin Dougherty, H. Kenny Nienhusser and Blanca E. Vega



University of Houston Law Center/Institute for Higher Education Law and Governance (IHELG)

The University of Houston Institute for Higher Education Law and Governance (IHELG) provides a unique service to colleges and universities worldwide. It has as its primary aim providing information and publications to colleges and universities related to the field of higher education law, and also has a broader mission to be a focal point for discussion and thoughtful analysis of higher education legal issues. IHELG provides information, research, and analysis for those involved in managing the higher education enterprise internationally through publications, conferences, and the maintenance of a database of individuals and institutions. IHELG is especially concerned with creating dialogue and cooperation among academic institutions in the United States, and also has interests in higher education in industrialized nations and those in the developing countries of the Third World.

The UHLC/IHELG works in a series of concentric circles. At the core of the enterprise is the analytic study of postsecondary institutions--with special emphasis on the legal issues that affect colleges and universities. The next ring of the circle is made up of affiliated scholars whose research is in law and higher education as a field of study. Many scholars from all over the world have either spent time in residence, or have participated in Institute activities. Finally, many others from governmental agencies and legislative staff concerned with higher education participate in the activities of the Center. All IHELG monographs are available to a wide audience, at low cost.

Programs and Resources

IHELG has as its purpose the stimulation of an international consciousness among higher education institutions concerning issues of higher education law and the provision of documentation and analysis relating to higher education development. The following activities form the core of the Institute's activities:

Higher Education Law Library

Houston Roundtable on Higher Education Law

Houston Roundtable on Higher Education Finance

Publication series

Study opportunities

Conferences

Bibliographical and document service

Networking and commentary

Research projects funded internally or externally

**UNDOCUMENTED IMMIGRANTS AND STATE HIGHER EDUCATION POLICY:
THE CONTRASTING POLITICS OF IN-STATE TUITION ELIGIBILITY
IN TEXAS AND ARIZONA¹**

Kevin J. Dougherty, H. Kenny Nienhusser, and Blanca E. Vega
Teachers College, Columbia University

Copyright 2009 Association for the Study of Higher Education.
This article will first appear in THE REVIEW OF HIGHER EDUCATION in 2010 and is
currently being assigned a volume number and corresponding pages.

December 18, 2009

¹ We wish to thank the following for the research leads and paper comments they have given us: Michael Olivas, Richard Murray, Beth Stevens, and two anonymous reviewers for this journal. Needless to say, all remaining errors are our own.

ABSTRACT

Every year about 65,000 undocumented students graduate from U.S. high schools. A major obstacle to their attending college is not being eligible for in-state tuition. Today, ten states permit it while four prohibit it. Even if the federal DREAM act passes, state policy decisions will continue to strongly shape college opportunities for undocumented students. This makes the contrasting policies of Texas and Arizona -- one permits in-state tuition eligibility; the other prohibits it -- highly instructive. To analyze the political origins of their divergent responses, we draw on the advocacy coalition and multiple streams theories of policymaking.

Undocumented immigrants make up a significant proportion of our population. It is estimated that as of 2008 there were nearly 12 million undocumented immigrants in the United States, accounting for nearly a third of the foreign-born population (Passel & Cohn, 2008). Every year an estimated 65,000 undocumented students who were not born in the U.S., but have lived here at least five years, graduate from U.S. high schools. These high school graduates are considerably less likely to go on to college than graduates with other citizenship statuses. It is estimated that 48% of undocumented immigrants who have graduated high school and are between the ages 18 to 24 are attending or have attended some kind of college by 2004, a much lower figure than for legal immigrants (73%) and native students (70%) (Passel, 2003, 2005a). The large and growing number of undocumented immigrant students and their difficulties in getting access to college have put the issue of college access for undocumented students on the policy agenda.

An important factor behind their college access problems is the fact that they may not qualify for in-state tuition, which usually is much lower than out-of-state tuition rates. For example, in Florida, it is estimated that every year 2,000 undocumented high school graduates are shut out of Florida public colleges and universities because the state does not make them eligible for in-state tuition and fees, which in 2004-2005 averaged about \$3,000 a year at Florida public universities, compared to nearly \$16,000 for out-of-state tuition and fees (Veciana-Suarez, 2005). In fact, across all 50 states, the average out-of-state tuition and fees for full-time undergraduate students at public comprehensive four-year colleges in 2007-08 were \$13,183, while the average in-state tuition and fees for residents were \$5,526 (Washington Higher Education Coordinating Board, 2008: Tables 5 and 6). This huge difference in tuition and fees has a particularly large impact on undocumented immigrants because they tend to have low family incomes (López, 2007; Mehta

& Asma, 2003; Passel, 2005a,b; Rangel, 2001). Compounding this problem is the fact that they are not eligible for any federal financial aid (Biswas, 2005; Perry, 2004; Szelenyi & Chang, 2002) and do not qualify for state student aid except in Texas and New Mexico (Dougherty, Reid, & Nienhuser, 2006; Fischer, 2004; Tulsa World, 2007). Moreover, it is hard for undocumented students to get private funding (Hausman & Goldman, 2001).

As of today, 10 states have legislated that undocumented immigrant students graduating from high school in the state qualify for in-state tuition: California, Illinois, Kansas, Nebraska, New Mexico, New York, Texas, Utah, Washington, and Wisconsin (Hebel, 2007; Keller, 2007; Krueger, 2006; National Conference of State Legislatures, 2008; Olivas, 2009).¹ However, four states -- Arizona, Colorado,² Georgia, and South Carolina -- have legislated bans on eligibility (National Conference of State Legislatures, 2008, 2009a). Moreover, state legislation to make undocumented students eligible for in-state tuition has been introduced, but failed to pass, in a good many more states (Hebel, 2007; Keller, 2007; Krueger, 2006; Olivas, 2008: 116). At first glance, it might seem that this legislation fares less well in more conservative states. But that would not explain why in-state tuition legislation passed in conservative states such as Texas, Utah, and Nebraska but failed in more liberal states such as Connecticut, Maryland, and Massachusetts (Krueger, 2006; Olivas, 2008: 116).

The controversy over states making undocumented immigrants eligible for in-state tuition has several important features. The first is that states have taken a major role in addressing the needs of undocumented immigrants in the face of the failure to pass the federal Development, Relief, and Education for Alien Minors (DREAM) Act. In fact, states are acting – as Justice Louis Brandeis once noted -- as “laboratories of democracy” in the evolution of educational and social policies to address the needs of undocumented immigrants. Secondly, in developing these new

policies, states may be setting the basis for a right to higher education for undocumented immigrants that represents the next stage beyond *Plyler v. Doe*, the 1982 Supreme Court decision that established the right to elementary and secondary education for this population. Thirdly, political responses to undocumented immigrants and the policy evolutions they set in motion are anything but uniform across this country. As we see above, some states have extended services to undocumented immigrants while other states have refused – sometimes adamantly – to do so. As has been repeatedly found in U.S. political life and political analysis, states constitute distinct polities (Gray & Hanson, 2007).

The purpose of this paper is to explore the forces that have shaped the varying responses of states to undocumented immigrants. We do this by conducting case studies of two states – Arizona and Texas – that have responded very differently to the issue of eligibility for in-state tuition for undocumented immigrants. Texas was the first to extend such eligibility in the U.S., with legislation in 2001 that received nearly unanimous support in the legislature and aroused little public opposition. Meanwhile, Arizona has forcefully prohibited such a policy, in both a legislative vote in 2005 and a public referendum in 2006. In order to analyze the politics of in-state tuition eligibility in Texas and Arizona, we draw not only on the extant research literature on the two states but also on two key theories of policy formation: the advocacy coalition framework (Sabatier and Weible, 2007) and multiple streams theory (Kingdon, 1995; Zahariadis, 2007). Used together, these two theories allow us a much more comprehensive analysis of the policies of in-state tuition eligibility in Texas and Arizona than we find in the existing research literature.

We see this paper as providing tools to analyze the future of state policymaking affecting undocumented immigrants to the United States. No matter what the federal government does,

states will continue to play an important role vis-à-vis immigrant students. Even if a federal DREAM act were to pass, it would not disallow state policymaking. As introduced this year, the DREAM act would make undocumented students eligible for federal aid and make clear that states are not prohibited from extending in-state tuition eligibility. However, states will still have to decide if they wish to extend in-state tuition eligibility and state financial aid to undocumented students (National Immigration Law Center, 2009).

LITERATURE REVIEW

THE POLITICS OF IN-STATE TUITION

The research literature on the politics of in-state tuition is limited. A major part is focused on the legality of in-state tuition eligibility. Studies of the actual political processes leading to the enactment or defeat of in-state tuition eligibility for undocumented immigrants are few in number and almost always sparse in content.³

Research on In-State Tuition Eligibility in Texas

The literature on the development of in-state tuition eligibility on Texas is fairly scarce (Belanger, 2001; Flores, 2007: 10-13; Olivas, 1995: 1066-1071; Olivas, 2004: 462; Olivas, 2008: 128-129; Rincon, 2008: chap. 3).⁴ The most developed analysis is by Rincon (2008). She provides essentially an interest-group pluralist analysis that stresses the role of four factors. The first is the presence of a growing number of undocumented students graduating from high schools but facing financial obstacles to going to college (Rincon, 2008: 71). Beginning in the late 1990s, this catalyzed the second factor, community organizing in Dallas and, particularly,

Houston by a coalition of undocumented students and their parents, activists in the Latino and immigrant communities, high school teachers, and university researchers to help undocumented students get greater access to public higher education and even to in-state tuition and state financial aid (Rincon, 2008: 74-75). Thirdly, these local efforts resulted in the adoption by the Houston and Dallas community college districts of policies of admitting undocumented students residing in their districts and extending them in-district tuition rates (Rincon, 2008: 68, 77). Fourth, these local initiatives were then taken up by state senator Rick Noriega (D-Houston), who pushed for state legislation extending eligibility for in-state tuition to undocumented students. Working closely with the community advocates in Houston, Noriega secured the support of various groups, including the Latino and Black caucuses in the state legislature, various Hispanic and immigration rights groups, and even the Texas Higher Education Coordinating Board (Rincon, 2008: 81-93). This account is supported by Belanger (2001)'s briefer analysis of the politics of in-state tuition in Texas.

As we will show below, we find that these elements of Rincon's analysis do hold true in our data. However, we find that her account misses several key factors. First, her analysis does not pay enough attention to how in-state tuition became the focus of the effort to help undocumented high school graduates and how the bill to give them in-state eligibility was crafted. In the late 1990's, it was rather widely held that the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) essentially prohibited the provision of in-state tuition to undocumented students (Romero, 2002: 405). Texas did not agree. Why did this occur and how did in-state tuition advocates craft legislation that allowed the state to avoid having IIRIRA trump in-state tuition eligibility?⁵

Second, Rincon's (2008) argument pays little attention to the opponents to in-state tuition eligibility. To be sure, there was surprisingly little opposition to in-state tuition legislation. But this very fact requires explanation. Given the strength of conservative sentiment in Texas, why was the vote for the in-state tuition legislation so lopsidedly favorable, with almost all Democrats and Republicans joined in supporting it? In order to shed light on this, we need to know about the impact of Texas's social, economic, and political structure on the politics of in-state tuition. In terms of social and economic structure, a full analysis of the politics of in-state tuition in Texas needs to consider in depth the nature of undocumented immigration: its size, timing, and the reactions of native-born Texans. Particularly important here is the attitude of the business community, given its possible stake in higher immigration and its influence over the Republican party. However, Rincon (2008) does not examine the role of business. In terms of political structure, we need to know more about the sources of the relative importance of the Latino caucus in the legislature. Moreover, we need to know more about the ideological cast and political strategy of the Texas Republican party in order to understand why it supported in-state tuition, given that opposition to immigration had emerged as a major theme in conservative politics in the 1980s and 1990s (Freeman, 1997). Finally, we need to look at constitutional structure to examine how it shapes the political expression of social demands. A key difference between Texas and Arizona politics is that the Arizona constitution allows initiatives to be put on the ballot, without requiring legislative approval (National Conference of State Legislatures, 2009b). This allows opponents of immigration much greater capacity to translate their views into public policy (Schildkraut, 2001).⁶

Research on In-State Tuition Eligibility in Arizona

If the research literature is slim for the politics of in-state tuition in Texas, it is even sparser for Arizona. There are research articles and reports that address the topic for Arizona (Ferraiolo, 2008; Kobach, 2007; O'Leary, 2009; Veranes & Navarro, 2005; Wilson, 2008).⁷ However, these publications go little beyond describing the content and immediate conditions of passage of Proposition 300, which banned eligibility of undocumented immigrants for in-state tuition or state financial aid.

To be sure, the sources do list some of the supporters and opponents of Proposition 300, as well as other legislation to restrict access to public services on the part of undocumented immigrants. They note that the supporters included Republican legislators and Arizona and national nativist groups and the opponents included Latino community groups (Ferraiolo, 2008: 500; Kobach, 2007: 496-498; O'Leary, 2009: 10, 18; Veranes & Navarro, 2005). However, there is no discussion about why Republicans were so much more opposed to benefits for undocumented immigrants than were Democrats. Also, the stance of the business community is not explored. Moreover, the extant research on Arizona does not explore why the sizable Arizona Latino community has been much less influential politically than the Texas Latino community. To shed light on these factors, we need to explore the fundamental social and political structures of the state.

Secondly, while the existing sources do describe the presence of anti-immigrant attitudes, they do not explore the content and sources of those attitudes in any depth. Why did the opponents focus on certain arguments? Why did those arguments resonate with the general populace? To understand this, we need to examine the fundamental social-cultural values of the Arizona polity.

Thirdly, some of the most important pieces of anti-immigrant legislation – including the prohibition of in-state tuition eligibility – were enacted by citizen initiative. The research literature on the politics of in-state tuition does not address the role of citizen initiative, as compared to the more conventional legislative statute. This means analyzing the role of a state’s basic constitutional arrangements in structuring the nature of policymaking in a state.

As can be seen, these points underscore for Arizona, as for Texas, the importance of examining the social, economic, and political context within which immigration policy was set. To provide this context, we need to draw on theories of policymaking that are not addressed in the existing research literature on the politics of in-state tuition eligibility.

THEORIES OF POLICYMAKING

To aid our analysis of the politics of in-state tuition in Texas and Arizona we have drawn on key theories of policymaking, particularly the advocacy coalition (Sabatier & Weible, 2007) and multiple streams (Kingdon, 1995; Zahariadis, 2007) approaches. Used in conjunction, these different theories help us identify important features of the politics of in-state tuition eligibility that are missed by the extant literature on that topic.

Advocacy Coalition Framework

The advocacy coalition framework (ACF) is particularly useful in illuminating the social, economic, and political context within which policymaking occurs. The ACF argues that policy change occurs – often over lengthy periods of time such as a decade or more – within semi-autonomous policy communities or “policy subsystems” that have expertise within a particular policy domain (Sabatier & Jenkins-Smith, 1993; Sabatier & Jenkins-Smith, 1999; Sabatier &

Weible, 2007). Within policy subsystems there are divisions between advocacy coalitions that are pushing different issues and solutions. The coalitions can be very broad, including legislators, agency representatives, interest groups, scholars, and journalists specializing in a given policy area. Advocacy coalitions are distinguished from one another by their different belief systems about the nature of society, public problems, and the types of policy solutions that should be advanced to solve them.⁸ The fundamental structure and dynamics of policy subsystems and the advocacy coalitions they contain are shaped by a number of different contextual factors that are not subject to rapid change, such as basic attributes of the problem area, fundamental socio-cultural values and social structure, the basic constitutional structure of government, or the natural resources of a political system. But smaller scale dynamics, such as policy changes, are shaped by more rapidly developing processes. One is a “shock” to the subsystem arising from external or internal factors. The external shocks can take the form of socio-economic changes, shifts in public opinion, spillover from neighboring policy subsystems, and “changes in the systemic governing coalition” controlling the executive branch or the legislature. These shocks cause policy changes by modifying the political resources and beliefs of advocacy coalitions. Policy change also arises through incremental “policy-oriented learning” that leads advocacy coalition members to alter their beliefs and through processes of negotiation between different coalitions (Sabatier & Jenkins-Smith, 1999; Sabatier & Weible, 2007).

As we will show below, several features of the advocacy coalition framework apply well to the case of Texas and Arizona. In both states, we find competing advocacy coalitions supporting and opposing in-state tuition eligibility, with those coalitions internally unified and externally divided by different beliefs about the nature and impacts of immigration, the nature of the

citizenship, and the proper role of government. The beliefs and actions of these competing advocacy coalitions were strongly shaped by fundamental socio-cultural beliefs, particularly the ambivalent reaction of the majority of Americans to immigration, mixing resistance to high levels of immigration but also a positive view of the role of immigration in U.S. history (Freeman, 1995; Espenshade & Hempstead, 1996). Secondly, the strength of the supporters of in-state tuition eligibility has been heavily dependent on the relative power of the Latino community, particularly its ability to translate population numbers into political power. In addition, the politics of in-state tuition eligibility have been shaped by long-standing properties of the political system, particularly the different attitudes of state Republican parties toward immigration and whether opposing immigration is a viable political strategy. The Texas and Arizona Republican parties differ sharply in this regard. Finally, the actions of the competing advocacy coalitions were also shaped by a basic feature of constitutional structure: the presence or absence of the initiative referendum. The presence of direct democracy makes it much more likely that popular objections to immigration can be translated into government policy (Ferraiolo, 2008; Schildkraut, 2001).⁹ This fact goes a long way toward explaining the different outcome in Arizona versus Texas. And in both states, we find policy being impelled by external shocks in the form of rapidly rising number of undocumented immigrants and events such as the terrorist attack on September 11, 2001.

Multiple Streams Approach

The multiple streams approach is particularly useful in understanding not so much the larger social context of policymaking but the more immediate and transitory political factors that shape its dynamics (Kingdon, 1995; Zahariadis, 2007). Advocacy coalition theory says little about the

particular circumstances in which coalitions are formed and how they come to stake out particular issues and solutions. It is here that multiple streams theory can be very useful (Mintrom & Vergari, 1996).

The multiple streams approach views the emergence of public policy not as a straightforward application of systematic, rational problem-solving, but rather as an exercise in bounded rationality often involving nonincremental decisionmaking. John Kingdon and his followers emphasize the role of “policy entrepreneurs” in getting social problems and preferred solutions to them on the decision agenda of government. These policy entrepreneurs take advantage of “policy windows” such as a major crisis, a change in national mood, or a new party in government to get on the government’s decision agenda the social problems they are concerned with and the solutions they prefer to those problems. Multiple streams theory notes that social problems do not get onto the agenda simply because they are important and certain solutions are not preferred simply because they are the most germane. Rather, social problems are more likely to get on the government decision agenda if they have certain features -- such as dramatic symbolism or resonance with dominant social values. Moreover, the solutions to those socially recognized problems often do not arise through careful review of alternative possibilities but rather are arrived at in often idiosyncratic ways. Solutions may often preexist the problems they supposedly solve and are coupled to barely relevant problems by policy entrepreneurs seeking opportunities to push pet solutions.

The multiple streams approach illuminates several aspects of our analysis of the politics of in-state tuition in Texas and Arizona. The theory highlights the role of political entrepreneurs who get their concerns (problems and policies) on the government agenda and – in the process, we argue – create the advocacy coalitions supporting those problems and policies. As we will see in

both Texas and Arizona, certain actors played a very important entrepreneurial role in organizing the coalition of supporters in Texas and the coalition of opponents of Arizona. The theory also helps us understand why certain problems (whether the education needs of undocumented students in Texas or the purported abuse of government benefits in Arizona) achieve agenda status and why the policy of in-state tuition eligibility (or its denial) was given attention in preference to other possible solutions.

As our remarks above indicate, we do not see the advocacy coalition and multiple streams theories of policy formation as mutually exclusive. Rather, we view them as complementary, each illuminating different aspects of the politics of in-state tuition eligibility in Texas and Arizona. In the analysis below, we will draw on both theories in order to highlight different facets of our two cases and to provide a more comprehensive analysis than we find in the extant research literature. At the same time, our data also illuminate limitations to the advocacy coalition and multiple streams theories, which we will note in the conclusion.

RESEARCH METHODS

CHOICE OF CASES

We focus our analysis on Texas and Arizona for two major reasons. First, their responses have been so different, with passage of in-state tuition eligibility with relatively little opposition in one case and prohibition of in-state tuition eligibility with great public conflict in the other. Secondly, the apparent similarity in social and political features between Texas and Arizona helps us unearth less obvious factors that shape the state politics of immigration policy and of state policymaking generally. Both states have large populations of undocumented immigrants,

are conservative politically, and share a similar political culture.¹⁰ In comparing them, we can look at how political outcomes are shaped by less obvious social and political factors that are often missed in policy analysis and, in fact, provide a crucial mediation between popular attitudes and the policy outputs of a polity.

DATA GATHERING AND ANALYSIS

This analysis is based on interviews in each state and examination of the documentary record in the form of public agency reports, academic books and journal articles, doctoral dissertations, and newspaper articles.

Table 1 indicates the number and types of interviews that we conducted with various kinds of political actors. We interviewed state and local higher education officials, state legislators and staff members, leaders of groups supporting and opposing in-state tuition eligibility, and leading academic scholars and observers of state politics in Arizona and Texas.

Table 1: Number and Type of Interviewees

	Texas	Arizona
<i>Supporters</i>		
Legislators & staff	2	2
Immigration advocacy groups	2	2
<i>Opponents</i>		
Legislators & staff		1
Anti-immigration groups	1	1
<i>Other</i>		
Business association officials	1	2
Higher education officials	2	2
Academic observers	4	2
Total	12	12

All our interviews were transcribed. They were thoroughly read by the authors, looking for main themes. The findings from the interviews were then triangulated with the findings coming from our review of the research literature, agency reports, newspaper articles, and the webpages maintained by supporters and opponents of in-state tuition eligibility for undocumented immigrants.

In the remainder of this paper we first analyze Texas and Arizona separately and then at the end draw conclusions about the causes of the different political trajectories of the two cases. In each case study, we apply the advocacy coalition framework and multiple streams theory to understand the policymaking processes in the state.

TEXAS: IN-STATE TUITION ELIGIBILITY IS ADOPTED

Texas was a pioneer in enacting legislation that extends eligibility for in-state tuition to undocumented immigrants meeting certain requirements. House Bill (HB) 1403 (2001) was the first legislation in the U.S. permitting undocumented immigrants to pay in-state tuition at state public higher education institutions. It was also the first state legislation to make undocumented immigrants eligible for state financial aid.

This legislation was significant because there is a large disparity between in- and out-of-state tuition for public colleges and universities in Texas. For example, in 2001-2002, the average in-state tuition and fees for residents attending Texas community colleges full-time were \$895 but the out-of-state tuition and fees charged to non-residents were \$2,069. And the gap for

Texas public four-year comprehensive colleges and state universities was even greater: in-state tuition and fees for full-time students averaged \$2,189 but out-of-state tuition and fees averaged \$6,425 (Washington Higher Education Coordinating Board, 2006: Tables 7-10).

LEGISLATIVE HISTORY

Bills supporting the extension of eligibility for in-state tuition to undocumented immigrants were successfully passed in 2001 and 2005. There has been little effort – and it has never been successful – to prohibit this extension. Table 2 below lists the major pieces of legislation that have been introduced in Texas that pertain to residency and in-state eligibility.

Passed in 2001, HB 1403/SB 1526 allowed undocumented immigrant students to be eligible to pay in-state tuition and partake in state financial aid programs, as long as they met the criteria for state residency. The bill does not explicitly stipulate that undocumented immigrants are eligible. Rather, it permits this extension of eligibility by stating the residency requirements in a way that includes this population. A student is considered a state resident and therefore eligible for in-state tuition and state financial aid at Texas' public higher education institutions

if the individual resided with the individual's parent, guardian, or conservator while attending a public or private high school in this state and: (1) graduated from a public or private high school or received the equivalent of a high school diploma in this state; (2) resided in this state for at least three years as of the date the person graduated from high school or received the equivalent of a high school diploma; (3) registers as an entering student in an institution of higher education not earlier than the 2001 fall semester; and (4) provides to the institution an affidavit stating that the

individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so (Texas Legislature, 2001a).

The Texas House of Representatives approved HB 1403 by bipartisan majority on the first vote: 142 yeas, 1 nay, and 2 abstentions. Subsequently SB 1526 passed the Senate by a vote of 30 yeas, 0 nays, and 1 abstention. Upon its return to the Texas House of Representatives, the final vote was 130 yeas, 2 nays, and 2 abstentions. HB 1403 took effect on September 1, 2001. At the time, an estimated 2,400 Texas students stood to benefit from the law (American Association of State Colleges and Universities, 2006; Chronicle of Higher Education, 2001). In 2005, the 79th Texas Legislature passed SB 1528, which superseded HB 1403. The bill removed two requirements in the 2001 act that restricted student eligibility: needing to reside with a parent or legal guardian while attending high school and having taken no college credit hours prior to fall 2001 (Rincon, 2008: 94-96, 104-106; Texas Higher Education Coordinating Board, 2005; Texas Legislature, 2005, p. 1; Authors' interview). The bill passed the Senate by a vote of 31 yeas, 0 nays, and 0 abstentions and the House by a non-recorded vote. The bill took effect on September 1, 2006.

The 80th Legislative Session, held in 2007, saw the introduction of HB 159, which sought to eliminate SB 1528. However, due to a technicality,¹¹ the bill did not come to a vote (Authors' interviews). In any case, Governor Rick Perry threatened to veto the measure if it were to reach his office (Houston Chronicle, 2007; Robison, 2007; Robison and Ratcliffe, 2007; Authors' interview). Governor Perry was quoted as saying: "I'm for leaving the [in-state tuition] law like it is because I think it serves a good purpose" (quoted in Robison & Ratcliffe, 2007). However,

there is anticipation that the next legislative session will bring a similar bill intending to repeal SB 1528 (Authors' interview).

Table 2: Texas Bills Addressing In-State Tuition for Undocumented Immigrants

Year	Bill	Provisions	Outcomes	Sponsors/ Introducers
2001	HB 901	For - Permits eligible undocumented immigrants to pay in-state tuition rate and receive state financial aid by expanding definition of resident.	Referred to Higher Ed Committee; merged with HB 158 to become HB 1403	Rep. R. Noriega (D-Houston)
2001	HB 158	For - Permits eligible undocumented immigrants to pay in-state tuition rate and receive state financial aid by expanding definition of resident.	Referred to Higher Ed Committee; merged with HB 901 to become HB 1403	Rep. D. Garcia (D-Dallas)
2001	HB 1403/ SB 1526	For - Permits eligible undocumented immigrants to pay in-state tuition rate and receive state financial aid by expanding definition of resident.	Passed	Reps. Noriega (D-Houston), Garcia (D-Dallas), Hill (R-Richardson), Reyna (R-Mesquite), Flores (D-Mission); Sen. Van de Putte (D- San Antonio and Bexar)
2005	SB 1528	For – Supersedes and clarifies language in HB 1403. Increases student eligibility to pay in-state tuition rate and receive in-state financial aid programs by expanding definition of resident.	Passed	Sen. Zaffirini (D-Laredo); Reps. G. Morrison (R- DeWitt, Jackson, Lavaca, Refugio, and Victoria)
2007	HB 159	Against – Repeal of HB 1403.	Not passed. Returned to committee.	Reps. Zedler (R-Arlington), Riddle (R-Tomball)
2007	HB 39	Against – Companion bill to HB 159. Repeal of HB 1403.	Not passed. Left pending in committee.	Rep. K. Paxton (R-McKinney)
2009	HB 50/ SB 850	Against – Redefine term resident to exclude undocumented immigrants from in-state tuition.	Not passed. Left pending in committee.	Rep. Riddle (R- Harris), Sen. Patrick (R- Harris)
2009	HB 4482	Against – Redefine term resident to exclude undocumented immigrants from in-state tuition.	Not passed. Left pending in committee.	Rep. Howard (R- Fort Bend)
2009	HB 266	Against – Undocumented immigrants prohibited receiving in-state tuition.	Not passed. Left pending in committee.	Rep. Berman (R- Tyler)

THE IMPACT OF HB 1403

There is strong evidence that the passage of HB 1403 led to an increase in the proportion of undocumented high school graduates who entered college. To begin with, following the passage of the law, the number of undocumented students entering Texas public universities and community colleges rose steadily and sharply, from 1505 in fall 2001 to 8880 in fall 2005 (Flores, 2007: 32, 67). In addition, a multivariate analysis of the impact of changes in college enrollment between 1998 and 2004 found a significant impact of the Texas policy when compared to other states without eligibility for in-state tuition for undocumented students.¹² Latino foreign-born non-citizens ages 18 to 24 – a proxy for undocumented immigrants¹³ -- experienced a significantly larger increase in Texas in proportion going to college, following the passage of HB 1403, than the same group in other Southwestern states without such a policy (Flores, 2007: 33-35).¹⁴

ANALYZING THE COMPETING ACTORS INVOLVED IN THE PASSAGE OF HB 1403: Applying Advocacy Coalition Theory

In order to understand the politics of in-state tuition in Texas, it is important to analyze how groups were mobilized for and against the passage of HB 1403. Advocacy coalition theory points us toward identifying the role not just of individual groups but of coalitions organized around common sets of beliefs. And indeed we find a number of supportive coalitions pitted against one opposing coalition that was weak and poorly organized. Below we detail the composition of each coalition and the beliefs that held it together.

The Supporters of In-State Tuition Eligibility

There were three different sets of supporters of in-state tuition eligibility. What they had in common was a “deep core belief” (in the language of advocacy coalition theory) that undocumented immigrants – particularly those who have been here a long time – are rightful members of society and that state government should meet their needs. Where the coalitions differed was in their beliefs about why the government should help undocumented immigrants.

The most active supportive coalition was one centered on the Hispanic and Black Caucuses in the legislature, immigrant-support groups, several leading Latino associations, academics, and the Texas Higher Education Coordinating Board. This coalition viewed the issue of in-state tuition eligibility as primarily about social justice – that undocumented immigrants graduating from high school are essentially citizens who should be given access to college opportunities just like any other citizens. However, the coalition also justified action in terms of the needs of the economy. Less active, but still important, were two other supportive coalitions. One that was centered on business justified government assistance to undocumented immigrants on the basis that this best served the long-term needs of the economy, as Texas moved to becoming a majority minority state. The other supportive advocacy consisted of the top leadership of the Republican party. They justified addressing the needs of undocumented immigrants publicly in terms of the two previous positions and privately in terms of securing the political support of Latinos, who have become a key electoral constituency in Texas politics.

The Egalitarian Advocacy Coalition

Latino legislators provided the key activists and main supports for the efforts to enact in-state tuition eligibility for undocumented students. The key legislator was state representative Rick

Noriega (D–Houston). He was joined by several Latino legislators in the House – particularly Reps. Domingo Garcia (D-Dallas), Fred Hill (R-Richardson), Elvira Reyna (R-Mesquite), and Kino Flores (D-Mission) – who co-sponsored the House bill. Meanwhile, a Hispanic Senator, Leticia Van de Putte (D-San Antonio and Bexar Counties), sponsored the Senate version of the legislation, SB 1526.¹⁵

The Black caucus also supported HB1403. As a leading scholar of Texas politics noted, “The African American delegation -- which is smaller, it is about half the size of the Hispanic, 15 House members and a couple of Senators -- supported them. So both the minority legislative blocks were in unison on this issue, and that helped pass it” (Authors’ interview).¹⁶

Several leading Latino associations also supported HB 1403. The Mexican American Legal Defense and Education Fund (MALDEF), the League of United Latin American Citizens (LULAC), and the National Council of La Raza (NCLR) each had a representative testify before the House Higher Education Committee in support of HB 1403 (Rincon, 2008: 90 n67; Texas Legislature, 2001d). Approximately two months later when the Senate Education Committee held its hearings on the companion bill, a state-level LULAC official again testified in support of this legislation.¹⁷ In addition, several other Latino associations – such as the Texas chapters of the National Association of Hispanic Nurses, the Society of Hispanic Professional Engineers, and the Hispanic Chamber of Commerce – helped mobilize popular support for the legislation (Rincon, 2008: 88, 90 n67; Authors’ interviews).

The Coalition for Higher Education for Immigrant Students (CHEIS) played an important role in mobilizing support for HB 1403 in the Houston area (Lozano, 2000; Rincon, 2008: 74-77, 81, 84; Authors’ interviews). It is a predominantly Houston-area community organization comprised of undocumented students and parents, high school counselors and teachers,

community college and university faculty and administrators, city officials, community leaders, and other residents in the district (Rincon, 2008: 75; Authors' interview). This group worked closely with Rep. Noriega to mobilize hundreds of supporters and get several undocumented students to testify before the House Higher Education Committee (Rincon, 2008: 81; Authors' interviews). Also supportive were the Texas Immigrant and Refugee Coalition and the Texas Catholic Conference (Rincon, 2008: 91, 92 n72; Authors' interview).

Many academics supported the passage of HB 1403, including the Texas Association of Chicanos in Higher Education. University of Houston law professor Michael Olivas played an important role in working out the rationale for and policy details of in-state tuition as a solution to the problem of inadequate college access for undocumented immigrants (Berger & Hegstrom, 2001; Fischer, 2004; Guy, 2001; Authors' interviews). In addition, a number of other faculty members from the University of Houston, Rice University, and the University of Texas Austin wrote op-ed pieces in local newspapers supporting HB 1403, testified in favor of it before the legislature, and conducted research supporting it (Rincon, 2008: 85, 90 n67; Authors' interviews).¹⁸

The Texas Higher Education Coordinating Board (THECB) was a quiet and also somewhat conflicted supporter of in-state tuition for undocumented students (Rincon, 2008: 80-84; Authors' interviews). A major legislative supporter of the HB 1403/SB 1526 described the THECB's position: "They cannot be for or against, but they were very cooperative... with any sort of data that we needed... we got great data, great help" (Authors' interview). THECB officials advised legislators and the CHEIS on how to make sure that HB 1403 was in compliance with the Texas education code (Authors' interview). At the same time, other observers note that the THECB at times interpreted state law governing eligibility for in-state

tuition in restrictive ways, seemingly for fear of antagonizing the legislature (Rincon, 2008: 80-84, 94-97).

The members of the egalitarian coalition were fundamentally pulled together by a belief that in-state tuition was a matter of social justice. Undocumented students were seen as fundamentally Americans, who deserve higher education opportunity just like other Americans (Belanger, 2001; Guy, 2001; Rincon, 2008: 71-74, 80-86; Taylor, 2001; Authors' interviews). The legislative testimony by Lico Reyes, an official of the League of United Latin American Citizens (LULAC), exemplified this stance:

Not allowing these kids a safety net, a way to advance is encouraging them to drop out. Think of the dynamics of telling these kids: "You know what, we've raised you through grammar school into high school and now you are ours.... You are one of our resources." Let's make them a resource instead of a liability to us. Otherwise we are going to subsidize and house them. We are going to put them in jails. We are going to take care of them with probation officers. There going to be working as waiters, as bartenders, cleaning latrines, heaven knows what. These people, these kids, need your help. I am looking at your heart. (Texas Legislature, 2001f)

As the statement above indicates, the social justice argument was coupled with – and in public presentations, sometimes overshadowed by -- an argument based on the economic self-interest of the Anglo population (Rincon, 2008; Authors' interviews). A major premise driving this economic argument was that college-educated immigrants would meet labor market demands, earn higher incomes, and pay more in taxes. Those testifying before the House Higher Education Committee repeatedly argued:

The cost of not helping motivated students to attend college is greater than the cost

of helping them. The long term implications of high rates of attrition to the state include a growing unskilled, undereducated workforce, accompanied by increased spending on social programs, higher rates of crime, and decreased opportunities for a higher quality of life. (House Research Organization, 2001, p. 4)

Similarly, a community college official we interviewed noted:

Our demographics were changing dramatically; [undocumented] students were becoming an ever-increasing part of our population and as such, an ever-increasing part of our workforce. By denying them accessible education, we were in effect stunting their growth and stunting the growth of the local economy. If we expected to have economic growth, we needed to have better-informed, better-educated and trained workers. (Authors' interview)

The Business Advocacy Coalition

Business is regarded as the most powerful interest group in Texas politics (Haag, Peebles & Keith, 1996: 157; Tannahill, 2003: 105). Though business groups were not overt and major champions of HB 1403 (with the exception of the Hispanic Chamber of Commerce), several of our respondents noted that the business community was quietly supportive of the legislation (Authors' interview). A leading legislative advocate noted:

Bill Hammond [of the Texas] Association of Business. Great friend on this issue. And even our local Chambers. The Chambers of what we call the Big 7: Houston, Dallas, Ft. Worth, San Antonio, El Paso, Austin and Corpus Christi. Those chambers of commerce had active statements of support, because they all knew kids in their

community who had been here basically all their lives, but whose parents aren't documented. (Authors' interview)

Legislative observers attributed this support to business's concern about securing a trained labor force in a state with an increasing immigrant population. A key legislative staffer noted:

Obviously business supported it, because they needed and are going to need those educated minds as the economy expands and the population grows. So they...might have been reluctant to do so publicly, just because again, there is a lot of negative attitude about immigrants. (Authors' interview)

A business leader echoed that assessment:

[Business organizations] are pretty pragmatic, and say, "we want the people here to be educated." And to draw a line in the sand and say, "educate this person; don't educate that person," does not make much sense to us, because they're here, and you know, as I said before, they are going to be one of two things. There's a line somewhere, where they go from being a burden to society, to being a contributing member of society and the economy. And most business organizations, at least the ones I know, are not going to split hairs on the pedigree of that person. Educate them if they're here. (Authors' interview)

State Republican Leaders

The final supportive advocacy coalition centered on Governor George W. Bush (1994-2000) and his supporters within the Republican party. Governors Bush and Rick Perry (2000-) made

it clear that they opposed efforts to deny immigrants access to public services (Berger, 2001). Speaking with reference to efforts to enact an English Only requirement, a leading Latino legislator noted: “when Governor Bush was governor, the very first term, he made it clear in no uncertain terms that if any Republican legislator even filed a bill that was English-only, not only would he veto it ... but he would veto any piece of legislation with that member’s name on it that reached his desk, period” (Authors’ interview). A Texas political scientist notes the political considerations underlying this position:

Governor Bush ... saw Pete Wilson’s 1994 campaign in California where ... he took up the immigration issue and ran hard on it ... George W. Bush said from day one, I’m not going that route. We have to reach out to the growing Hispanic population given our problems with African Americans, and he pretty consistently pursued that line. And he set a tone of leadership that the successive Republican Governor Rick Perry has generally followed.... [A]bout 25% of the Hispanics here are Republican, and some of them are prominent in the party, and they have had some influence. (Authors’ interview)

Opponents of Instate Tuition Eligibility

Overall, HB 1403 passed with little opposition (Authors’ interviews). There were only two votes against the legislation in the House and none in the Senate. After the bill passed the House some radio stations in Austin and Dallas-Ft. Worth voiced opposition to HB 1403 legislation. However, this apparently lasted only a day or two (Authors’ interview). Beyond that, the only other overt opposition came from the Texas Eagle Forum, the Young Conservatives of Texas, and Texans for Fair Immigration (Lozano, 2000; Texas Eagle Forum, 2001; Young

Conservatives of Texas, 2001). However, none of these groups played a role in the legislative deliberations on HB 1403 or made much of an effort to mobilize opposition after the act passed.

The opponents of in-state tuition eligibility were divided from the supporters by their very different deep core beliefs. They did not see undocumented immigrants as rightful members of American society and that government should address their needs. They argued that undocumented immigrants were law breakers who were not rightfully here and that in-state tuition eligibility would encourage illegal immigration and cost the state a lot of money (Chronicle of Higher Education, 2001; Hebel, 2001; Lozano, 2000; Rincon, 2006: 105; Authors' interviews). The Texas Eagle Forum, a conservative community group based in Dallas, opposed HB 1403 on the grounds that it would “encourage continued illegal immigration by sending the message that, far from punishing such behavior, the state of Texas gives out benefits to those who flaunt [sic] our laws” (Texas Eagle Forum, 2001). The Young Conservatives of Texas, with chapters at various Texas higher education institutions, argued that HB 1403 would encourage illegal immigration and would “cost Texas tax payers dozens of millions of dollars annually” (Young Conservatives of Texas, 2001).

AGENDA SETTING: Applying Multiple Streams and Advocacy Coalition Theory

If advocacy coalition theory helps us understand the role of coalitions in advancing political issues and policies, multiple streams theory (Kingdon, 1995; Zahariadis, 2007) helps us analyze how those coalitions come to be organized, focus on certain policies, and get their issues and preferred policies on the government decision agenda (Mintrom & Vergari, 1996). Multiple-streams theory underscores the role of policy entrepreneurs: actors who are well-placed, persistent, and heavily invest their resources of time and energy in securing governmental attention to the issues and policies they favor (Kingdon, 1995: 179-183). In the process, they

create supportive political coalitions and, not infrequently, catalyze the formation of opposition coalitions. However, while we will be relying particularly on multiple streams theory in the discussion below, advocacy coalition theory does make a contribution in its notion of how shocks lay the basis for policy changes.

The Policy Entrepreneurs

In Texas, the key political entrepreneurs were state representative Rick Noriega (D-Houston) and the Coalition for Higher Education for Immigrant Students (CHEIS), the group of educational and community activists in Houston. Noriega was contacted in 1999 by a Houston student, who spoke about the challenges he faced with paying tuition and how eligibility for in-state tuition would help him (Belanger, 2001; Rincon, 2008: 71-72; Authors' interview). As a seasoned political observer noted, "[Noriega] was looking for issues, but he hadn't really sort of carved out his niche yet. As it happens, this became his niche." This observer went on to note that Noriega was effective because he is "highly respected, in part because he's viewed as non-partisan...he doesn't represent specific interests and so forth. He [is] viewed as sort of a good government kind of guy, and he [doesn't] represent the [interest of] universities" (Authors' interview).

In preparation for introducing a bill in the 2001 legislature to provide eligibility for in-state tuition, Noriega and the Coalition for Higher Education for Immigrant Students (CHEIS) energetically publicized the problem of college access for undocumented immigrants. Noriega held meetings throughout 2000 with community college presidents, officials of the Texas Higher Education Coordinating Board, and immigrant parents. Meanwhile, the CHEIS was mobilizing community support in Houston (Rincon, 2008: 80-85; Authors' interviews).

Policy Selection

How did the supporters of in-state tuition eligibility come to see it as the key solution to lack of college access for undocumented immigrants? Policy researchers in the multiple streams theory tradition have noted that which policy proposals will attract serious attention by the policy community will depend on whether those proposals are seen as viable in terms of substantive relevance or technical feasibility, budgetary feasibility, and values acceptability (Kingdon, 1995: chap. 6; Van Vught, 1994).

The idea of in-state tuition eligibility as a solution to the college access problems of undocumented immigrants appeared to be substantively relevant and technically feasible because the key details had already been worked out. First, the argument had been made that it was compatible with federal law. Michael Olivas, a professor of law at the University of Houston, published several works on the issue of in-state tuition and undocumented immigrants that argued persuasively that it was not prohibited by federal law, including the 1996 Illegal Immigration Reform and Immigrant Responsibility Act. Olivas noted that in-state tuition eligibility could be extended to undocumented students as long as out-of-state students meeting similar conditions were accorded the same benefit (Olivas, 2004: 452-457, 200: 122-125; see also Romero, 2002; Ruge & Iza, 2005). It is important to keep in mind that the states that have made undocumented immigrants eligible for in-state tuition have done so by making eligible anybody who graduated from one of the state's high schools and has lived in the state for a certain number of years.

In addition, the idea of in-state tuition eligibility had already been anticipated by similar policies in practice for several years in the Dallas and Houston Community College Systems. In

1997, the Dallas Community College District enacted a policy – which went into effect in spring 1998 – permitting undocumented immigrants living within the district to pay in-district tuition if they had resided in the district for at least one year (Rincon, 2008: 70; Authors' interviews). In May 2000, the Houston Community College System followed, permitting undocumented residents of the district to pay in-district tuition rates in its community college system if they had resided within the district for at least one year while attending a local middle school or high school (Hegstrom, 2000b; Rincon, 2008: 77).

Representative Rick Noriega (D-Houston) picked up on the developments in Dallas and Houston and crafted a bill that was conceptually similar, insofar as it also extended to undocumented immigrants a tuition deduction (in the form of eligibility for in-state tuition) on in-state tuition (Belanger, 2001; Guy, 2001; Rincon, 2008: 71-74, 81-86; Authors' interviews).

As a Houston area community college official noted,

Noriega decided to take what [Houston and Dallas Community College systems] did to the state legislature. In the spring of 2000...he sponsored a Houston Hispanic forum, at which possible state legislation was discussed, and he thereafter introduced it into the state legislature in spring 2001. (Authors' interview)

Noriega was assisted in shaping and guiding HB 1403 by Michael Olivas (Fischer, 2004; Guy, 2001; Olivas, 2008: 128n). According to Noriega,

Michael [Olivas] was real instrumental on the front end for talking through what it was we were attempting to do.... Kind of walking through the chess game before playing it. Based on his experience and the fact that he's testified on these issues

before, he was a really good gauge for what to expect and really helped in getting this thing through. (Quoted in Guy, 2001)

Besides substantive relevance or technical feasibility, a solution that garners attention must typically also be seen as fiscally feasible (Kingdon, 1995: 105-109). Crucial to the acceptability of in-state tuition as a solution was the provision of official estimates by the state Legislative Budget Bureau and the Harris County Tax Assessor that increased college enrollment by undocumented students would be budget neutral and, as the students graduated college, would produce increased tax payments (Rincon, 2008: 89, 91; Texas Legislature, 2001b, c).

Besides in-state tuition, a number of other options were considered by advocates for undocumented immigrants as means of addressing their needs. These included offering online courses from universities in Mexico. However, these ideas were not seriously considered by the policy community because the cost and the logistical requirements were judged as too high (Authors' interview).

Getting In-State Tuition Policy on the Government Agenda: Shocks and Policy Windows

As multiple streams and advocacy coalition theory note, moving an issue and policy solution onto the government decision agenda is greatly facilitated if policy entrepreneurs can take advantage of a “policy window” (in the language of multiple streams theory) or “external shock” (in the language of advocacy coalition theory) (Kingdon, 1995: chap. 8; Sabatier & Weible, 2007: 198-199, 204-205).¹⁹ Two policy windows stand out in Texas.

One was an increased awareness of the problems faced by undocumented immigrants graduating from high school. A rapidly increasing number were finishing high school and

encountering difficulties in getting access to college. This generated a spate of newspaper articles describing how many undocumented students were graduating from high schools with good records – some were even valedictorians – but could not afford to go on to college because they were not eligible for in-state tuition (Gray, 2000; Hegstrom, 2000a; Lozano, 2000; Schiller, 2001). As a community college official noted, “there’s always the front-page story almost every May [about] a high school student who was the valedictorian, but they were an undocumented student, and thus didn’t have access to financial aid, and had to pay all this extra money” (Authors’ interview).

Second, the efforts by Noriega and the Coalition for Higher Education for Immigrant Students benefited from a second policy window: a shift in opinion of state political, economic, and educational elites (similar to Kingdon’s “national mood”) toward growing concern about the lagging college going rates of Latinos, who make up a major part of the state population²⁰ and include many undocumented immigrants.²¹ The Texas Higher Education Coordinating Board (THECB), in its “Closing the Gaps” initiative, highlighted the gap in college going between Latinos and non-Latinos and the negative consequences for the state economy:

Texas stands at a crossroads.... Enrollments in the state’s public and independent colleges and universities are not keeping pace with the booming Texas population. There is a shortfall in the number of degrees and certificates earned. And, fewer degrees and certificates earned leads to a less-educated workforce. The state’s workers are not able to support a growing state economy, which is necessary for a higher quality of life for all Texans, and individuals have fewer personal choices.... By 2008, Texas will become a minority-majority state.... The state’s Hispanic and Black populations have enrolled in higher education at rates well below that of the

White population. The educational enrollment and success rates for all Texans will have to rise more rapidly than ever to avoid a decline in educational levels. (Texas Higher Education Coordinating Board, 2000, pp. 5, 7)

Though the Closing the Gaps initiative did not mention undocumented immigrants, its strong focus on Latinos certainly led to more attention to the needs of undocumented students, since immigrants – including undocumented immigrants – make up a significant and growing portion of the Texas Latino population. Advocates for in-state tuition eligibility for undocumented immigrants cited the *Closing the Gaps* report to back up their arguments (Rincon, 2008: 72; Authors’ interviews). As a legislative staff member noted, “the Coordinating Board had released that spring, a report that had been in the making for a couple of years... *Closing the Gaps* it spotlighted ... the state of undereducating most of the minority population in the state, and what that would mean to the Texas economy in the future. And that, I think, had probably the biggest impact on the state legislature” (Authors’ interview).

The Coordinating Board’s initiative was buttressed by the efforts of Steve Murdock, the state demographer. He frequently and strongly argued that the education of minority, in particular Latino, students had to be improved sharply if the state of Texas were to continue to grow economically (Murdock, Hogue, Michael, White, and Pecotte, 1997; Russell, 1998; Authors’ interviews). For example, speaking before the Governor’s Commission on a Representative Student Body, Murdock testified:

No factor is more important to the Texas future than to make all members of our population more competitive in what is an increasingly global economy. I could be

the biggest bigot that ever walked the face of the Texas and I would say the same thing. (Quoted in Russell, 1998)

An academic characterized Murdock's contribution as important:

[Murdock] had been traveling the state for ten or fifteen years saying: "we're really going to fall behind. We've got to simply improve the educational qualifications of our growing population that is Hispanic." He's been sort of a missionary on this subject speaking to powerful business groups and associations. (Authors' interview)

WHY THE SUPPORTERS WON

In understanding why the advocacy coalition supportive of in-state tuition eligibility won, we have to take into account both the typical factors of interest-group organization highlighted by Rincon (2008) and other commentators and contextual features of the Texas situation that the extant literature on Texas does not discuss. Neither advocacy coalition theory nor multiple streams theory dwells on the particulars of why political groups win or lose, but advocacy coalition theory does give us some important clues, involving the role of fundamental social values and social structure and basic constitutional arrangements (Sabatier & Jenkins-Smith, 1993: 20-22; Sabatier & Weible, 2007: 191, 202).

The Strength of the Supportive Advocacy Coalition

Certainly, the supporters of in-state tuition were well-organized with very strong support from the Latino community. However, it is important to analyze why Latinos had become a potent political force, particularly given a strong legacy of discrimination against Latinos.²² It is such

fundamental features of social structure that advocacy coalition theory (Sabatier & Jenkins-Smith, 1993: 21; Sabatier & Weible, 2007: 191, 202) alerts us to.

Latinos in Texas are fairly well represented in the state legislature, local offices, and the population of registered voters. In 2003, Latinos made up 34% of the state population. They made up 23.4% of registered voters in Texas in 2002, and 20.9% of Texas state legislators in 2003 were Latinos (U.S. Census Bureau, 2004: Table 4a; *idem*, 2005: Tables 21, 401, 406). Moreover, the major Latino political organizations such as the Mexican American Legal Defense Fund, the National Council of La Raza, and the League of United Latin American Citizens were quite active in Texas.

The sizable political power of Latino legislators in Texas meant that they could more easily push legislation for in-state tuition eligibility and bottle up legislation against it (Authors' interviews). A leading scholar of Texas state politics noted this:

I think a lot of it is the different political geography. We've got now from El Paso to Brownsville and up to San Antonio virtually all those governments, county governments, all the Congress members, all the state legislators, are Mexican American. They have become an entrenched political establishment. In Arizona that's not the case.... You've got a big block of Hispanic legislators [in Texas] who are all going to get reelected, and their constituencies are 80-90% Hispanic. And in the State House to pass much, you can't afford to alienate that big a block of legislators. So they're in a pretty good position if they're united on anything to wheel and deal, and get some stuff that the legislators want, but don't care much about, specific narrow board issues for the Hispanic members so it's a good log rolling situation for the Hispanic delegations. (Authors' interview)

Because of the power of the Latino community in Texas, the Republican party in Texas – particularly under Governors George W. Bush (1994-2000) and Rick Perry (2000-) – has been solicitous of Latino views and opposed to denying government benefits to undocumented immigrants than has been the case in other conservative states (Berger, 2001). Bush and Perry appointed Latinos to high profile positions on the Texas Supreme Court and the Texas Railroad Commission and actively campaigned for Latino votes (Tannahill, 2003: 151; Authors’ interviews). An academic who closely tracks Texas state politics explained why he thought Perry had supported in-state tuition eligibility:

Mexicans have just become much more obviously potent in the state, both as voters and legislators and the state recognizes that at some point comprehensive immigration reform is going to pass, and these kids’ll be at the front of the line....

Perry just saw it in his interest not to [anger] Latinos. (Authors’ interview)

In addition to the political power of the Latino community, the supporters of in-state tuition eligibility also benefited from a more supportive attitude toward Latinos and immigration than was the case in Arizona. Advocacy coalition theory points to the importance of fundamental socio-cultural values of a polity in structuring the formation and operation of advocacy coalitions (Sabatier & Jenkins, Smith, 1993: 21; Sabatier & Weible, 2007: 191, 202). The racial and ethnic climate in Texas has changed significantly in recent decades, moving toward considerable acceptance of Latinos and Latino immigration (DeLeon, 1999: 142-143; Tannahill, 2003: 113). A prominent Texas business leader noted:

I would say the considerable majority of Texans accept immigration. They may not particularly like the way it happens, but they accept it as a fact of life, especially in communities along the borders that are more directly affected.... I would say that in Texas the issue is probably not as volatile as it is elsewhere, because the Hispanic presence in our culture is pretty well accepted by most people. So we don't have those kinds of racial overtones for the most part, or undertones, to the discussion that you might have elsewhere. (Authors' interview)

This assessment was echoed by a leading scholar of US-Mexico relations, who noted the close ties between Texan and Mexican border towns:

You have the case of communities such as El Paso, for instance, which is much more highly dependent on the economy of Juarez. The same happens with Laredo, McAllen, and you name it, so all of those border communities have much more to lose if restrictions are much higher in relationship to the flow of people and the flow of goods and services from Mexico. (Authors' interview)

The Weakness of the Opposing Advocacy Coalition

At the time HB 1403 was being enacted in 2001, the opponents of in-state tuition for undocumented immigrants were not well organized and exerted little influence (Authors' interviews). A right-wing interest group leader described conservatives' lack of coordination:

When [the movement for providing in-state tuition for undocumented immigrants] first happened, I don't think that there was very much light being shined at that point

on the issue of illegal immigration.... Up until recent times, there wasn't any organized opposition. (Authors' interview)

A key reason for this lack of organized opposition was that HB 1403 came to a vote before the September 11, 2001 terrorist attacks on U.S. targets (Authors' interviews). As an advocate of HB 1403, a local community college official, noted, "when we were first discussing [in-state tuition for undocumented immigrants], it was before 9/11, so immigration was not quite the hot button issue that it is today. And it was a little easier to have calm and rational discussions about it" (Authors' interview).

Secondly, the champions of in-state tuition deliberately tried to keep it "under the radar." There was relatively little public discussion while HB 1403 was being considered by the legislature (Authors' interviews). To be sure, there were stories in the media that highlighted how deserving undocumented students were graduating from high schools, yet could not attend college due to out-of-state tuition rates (Gray, 2000; Hegstrom, 2000a; Lozano, 2000; Schiller, 2001). However, neither the print nor television media covered the discussions as HB 1403 was being framed, prior to its being introduced in the legislature (Authors' interviews). A legislative staffer who was involved with the passage of HB 1403 noted:

we tried consciously not to call attention to ourselves, because we didn't want negative attention. We didn't hold press conferences when we filed the bill. We didn't send out a press release. You know, we didn't advertise in the newspaper locally whenever we had a couple of meetings with students or supporters and that type of thing. We did it sort of on the Q-T. And we just did our job, and tried not to draw attention to ourselves, even when they had the first committee hearing. We

did, I think, draw mention in the media, but it was relatively low profile. And it was just a mention. It wasn't a big issue. It was just another thing the legislature was doing. (Authors' interview)

Thirdly, a key pillar of anti-immigration sentiment in most states – the support of the Republican Party – was missing. As noted above, Governors George Bush (1994-2000) and Rick Perry (2000-) made it clear that they would not support anti-immigrant legislation (Berger, 2001; Authors' interviews).

Finally, Texas lacks an initiative referendum, which might have allowed anti-immigrant forces to circumvent the Republican leadership and go to the populace. Here we return to the importance of basic constitutional structure, which is highlighted by advocacy coalition theory (Sabatier and Weible, 2007). The Texas constitution – unlike the Arizona state constitution – does not allow citizens to put legislative measures to citizen ballot, without requiring the assent of elected officials (Tannahill, 2003: 165). In the case of Texas, there was no alternative if the governor promised to veto – as Governor Rick Perry did -- any prohibition of eligibility for in-state tuition. If there had been an initiative referendum, events in Texas might have taken a different turn. A leading scholar of Texas politics noted:

I think the politics in the state would be enormously different if we had an issue referendum. The right wing and particularly the anti-immigrant folks would be putting some measures on the ballot. But that's not an option here.... If we had had it would have been fairly likely someone would have funded a repeal or an override; just like somebody in all the other immigration issues there would have been a lot of agitation for a crackdown that would have probably resulted in various ballot

measures. But, you know, the legislature is not going to approve that going around them. (Authors' interview)

If Texas presents us with a case of the successful and relatively uncontroversial enactment of in-state tuition eligibility for undocumented immigrants, Arizona presents us with the opposite: the highly controversial prohibition of such eligibility. How do we explain this very different trajectory?

ARIZONA: IN-STATE TUITION ELIGIBILITY IS PROHIBITED

In a state referendum on November 7, 2006, the state of Arizona banned the extension of in-state tuition benefits and financial aid to undocumented immigrants. This was accomplished through the passage of Proposition 300, which secured over 70% of the vote (Baum, 2006).

Arizona's strong opposition to benefits – including in-state tuition – for undocumented immigrants is in some respects quite surprising. In 1987, a state court decision (*Judith A. v. Arizona Board of Regents*, No. 87-21579, Az. Super. Ct., Maricopa Cty., Nov. 24, 1987) found that undocumented immigrants may become residents (Olivas, 1995: 1022n). Moreover, Arizona has a large foreign born population (12.8% of all state residents) and an even bigger Latino population (28%) (U.S. Census Bureau, 2006). Additionally over 25% of Arizonians speak a language other than English at home. These numbers are comparable to those in states such as Texas, California, and New Mexico.

How then do we account for Arizona's very different political trajectory on the issue of eligibility for in-state tuition? Before we turn to an analysis of the main factors explaining this, we explore the history of Arizona legislation pertaining to in-state tuition.

LEGISLATIVE HISTORY

The bulk of Arizona legislation addressing in-state tuition for undocumented immigrant students has been in opposition. Only two bills have been introduced to allow such immigrants to receive in-state tuition or state financial aid. Most bills and referendum propositions – and the only successful ones – have banned offering state benefits to undocumented immigrants. These various pieces of legislation are listed in Table 3 below.

Table 3: Arizona Bills and Referendum Propositions Addressing In-State Tuition for Undocumented Immigrants

Year	Bill or proposition number	Provisions	Outcome	Sponsors/ Introduced by
2003	HB 2518	For – Undocumented students with state residency can obtain in-state tuition and financial aid.	Left in committee.	Reps. Miranda B, Loreda, Downing, Bustamante, Gallardo
	HB 2243	Against -- Prohibits public universities and community colleges from admitting undocumented students.	Left in committee.	Reps. Pearce, Barnes, Johnson, Hanson, Graf, Farnsworth, Gray C, Biggs, Jayne, Konopnicki, Nichols, Yarbrough.
2004	HB 2392	Against – Prohibits in-state student status for undocumented students.	Left in committee.	Reps. Gray C, Graf, Pearce, Quelland, Biggs, Hanson
	<i>Prop. 200</i>	<i>Against – Must show proof of residency to obtain public benefits.</i>	<i>Passed</i>	<i>Protect Arizona NOW: Randy Pullen, Randy Graf, Russell Pearce, Rachel Alexander.</i>
2005	<i>HB 2030</i>	<i>Against – Among other things, prohibits undocumented students from being considered in-state students or receiving financial assistance from public colleges and universities.</i>	<i>Passed but vetoed by governor</i>	<i>Rep. Boone</i>
2006	HB 2068	Against – Undocumented students enrolled in universities or community colleges cannot be offered any form of financial aid with state monies.	Left in committee.	Reps. Gray C, Burgess, Gorman, Murphy, Nelson, Pearce, Smith, Stump, Sens. Harper, Johnson, Martin.
	HB 2069	Against – Person not granted refugee status and without lawful immigration status is not entitled to classification as	Left in committee.	Reps. Gray C, Burges, Gorman, Murphy, Nelson, Pearce, Smith, Stump. Sens.

Year	Bill or proposition number	Provisions	Outcome	Sponsors/ Introduced by
		an in-state student.		Harper, Johnson, Martin.
	HB 2597	Against – Undocumented immigrants cannot be classified as in-state residents for tuition purposes.	Left in committee.	Reps. Boone, Murphy, Pearce, Yarbrough.
	HB 2598	Against – Undocumented immigrants cannot obtain in- state tuition waivers or obtain financial aid.	Left in committee.	Rep. Boone
	<i>Prop. 300</i>	<i>Against – Prohibits undocumented immigrants from receiving in-state tuition and financial aid, taking adult education courses, or receiving childcare benefits.</i>	<i>Passed by voters 11/7/06</i>	<i>Reps. Martin (sponsor), Pearce, Goldwater.</i>
2007	HB 2467	Against - Requires lawful presence in U.S. (citizenship, permanent residency) to receive state administered benefits.	Passed.	Reps. Pearce, Murphy, Gray C, Anderson, Biggs, Crump, Gray L, Johnson
	HCR 2029	For – Extends in-state tuition benefits to undocumented residents of state.	Left in committee.	Reps. Gallardo, Lopes, Lujan, Prezelski, Sinema.
2008	SB 1109	Against – Requires validation of lawful presence to receive govt. services	Left in committee.	Sen. Harper.
	HB 2624	Against – Requires illegal aliens to reimburse state for services received.	Left in committee.	Reps. Pearce, Burges, Groe, Kavanagh, Harper, Murphy
2009	SB 1024/ HB 2008	Against – Requires lawful presence identification to receive government services.	Passed.	Sens. Burns, Pierce; Reps. Adams, McComish, Tobin, Yarbrough
	HB 2645/ SB 1473	Against – Requires lawful presence identification to receive govt. services.	Vetoed by governor.	Reps. McComish, Tobin; Sen. Burns.
	HB 2636	Against – Requires lawful presence identification to receive government services.	Reported to floor.	Reps. Yarbrough, Adams, Kavanagh, McComish, Tobin

The first bill supporting extending in-state tuition and state financial aid to undocumented immigrant students was introduced in 2003 (two years after the successful passage of such legislation in Texas and California). It died in committee, never reaching a floor vote.

This bill in favor of in-state tuition eligibility was soon followed by a raft of measures against such a policy. Bills were introduced in 2003 and 2004 to prohibit undocumented students from qualifying for in-state student status and from being admitted to public colleges and universities. These initial bills died in committee. But in 2004, Arizona voters passed Proposition 200, which required undocumented people to show proof of residency in order to obtain public benefits (Shorey, 2004). In 2005, HB 2030 – prohibiting undocumented students from

qualifying for in-state tuition and from receiving financial assistance from public colleges and universities -- was passed by the Legislature but vetoed by governor Jane Napolitano (Billeaud, 2005b).²³ Finally, in 2006, voters passed Prop. 300 prohibiting in-state tuition and financial aid benefits for undocumented students, as well as prohibiting undocumented immigrants from taking adult education courses and receiving childcare benefits (Baum, 2006).

An effort was made in 2007 to repeal Proposition 300 via HCR 2029, the Arizona Dream Act. However, it died in committee, without getting a hearing (Arizona Legislature, 2007; Denogean, 2007; Leiby, 2007).

THE IMPACTS OF PROPOSITION 300

After Proposition 300 took effect on January 1, 2007, it affected thousands of students. Based on reports from public colleges and universities, the Joint Legislative Budget Committee stated that the public community college districts had found that, in fall 2007, 3,504 students were “not entitled to be classified as in-state because of a lack of lawful immigration status or unverifiable [status].” In addition, the three public universities reported that in fall 2007 the in-state tuition eligibility of 406 students was unverifiable because the students were unable to provide the requisite documentation. However, this may be a significant understatement. The universities also reported that another 8,652 students “did not require verification because they have either not requested, or received in-state tuition or state supported financial aid” (Arizona Joint Legislative Budget Committee, 2008, p. 7).

There are varying reports on the cost-savings to the state. State Treasurer, Dean Martin, an opponent of in-state tuition eligibility reports that by denying 207 undocumented students access to Arizona State University, the university was able to save \$2 million (Munsil, 2008). On the

other hand, Paul R. Kohn, Vice Provost for Enrollment Management and Dean of Admissions at the University of Arizona, is reported as saying that the University of Arizona has saved only \$70,000 by not educating undocumented immigrants and it has cost the university \$159,000 to implement Proposition 300 (Horton, 2008; Landecker, 2008).

ANALYZING THE COMPETING ACTORS INVOLVED IN THE PASSAGE OF PROP. 300: Applying Advocacy Coalition Theory

Two different coalitions were mobilized on the issue of in-state tuition eligibility: one against and one in favor. Both coalitions were focused not just on that one issue but the entire question of whether undocumented immigrants should get any access to public benefits, ranging from higher education to childcare services to assistance in getting jobs (O'Leary, 2009). The two coalitions are divided by very different deep core beliefs about whether undocumented immigrants have a rightful place in American society and whether government should help them. Below we describe the composition of each coalition and the beliefs that united each.

The Opponents of In-State Tuition Eligibility

The advocacy coalition opposing the extension of in-state tuition eligibility to undocumented immigrants and in fact supporting a prohibition of such benefits included a majority of the Republican party and a variety of nativist groups in society (Billeaud, 2005b, d, e; Keller, 2007; Riske, 2006, 2007). A prominent Latino leader listed several of the coalition members:

The Minutemen. Arizona Border Patrol. American Border Patrol. The Sonora Land Tribes. The Matron Minutemen. The Arizona Republican Party.... You can just go on and on.... the actual funding came from FAIR [Federation for American

Immigration Reform] in D.C. They provided the early funding. They provide the funds, you know, for the polling and the research intending to get these things on the ballot. (Authors' interview)

The Minutemen mounted rallies at the state capitol, calling for immigration restriction, and led border patrols to call attention to the issue (Meyers, 2006). Other groups such as Protect Arizona Now – with funding from the national Federation for American Immigration Reform – mobilized support for Proposition 200, which was passed in 2004 (Davenport, 2003, 2004; Shorey, 2004; Venares and Navarro, 2005).

Particularly consequential was the support of the Republican party. The breadth of Republican party leadership support for anti-immigrant policies – which contrasts very strongly with Texas – shows up in remarks by Randy Pullen, who became chair of the state Republican party in early 2007 after playing a key role in the effort to pass Proposition 200 in 2004 (Riske, 2007; Shorey, 2004). In 2008, when a Republican pollster argued that the Republican party would pay a political price for its anti-immigration positions, Pullen replied: "When we pass conservative ballot issues in Arizona that Latinos vote for, the ones that are here legally understand that the people the illegal ones impact the most is" [Hispanics in the U.S. legally]. I'm just so tired about hearing all these people pontificate about, 'Oh, the Republican Party has got to change its position on immigration. ' I don't think we need to change at all'" (quoted in Wilson, 2008). Meanwhile, at the 2007 party convention that elected Pullen, the state Republican party passed a resolution stating: "[T]he Arizona State Republican Party supports legislation that enforces fair and legal employment and sanctions against employers that knowingly hire illegal aliens; and requires that all agencies and personnel of this state and local government to fully

comply with the enforcement of laws against illegal aliens to the extent permitted by law" (quoted in Riske, 2007).

Motives for Opposition

The opponents of in-state tuition eligibility share a deep core belief that undocumented immigrants do not have a rightful place in American society and therefore do not deserve government help. Rather, they portray them as a source of crime and a drain on social resources.

The opponents of in-state tuition eligibility state that their main reason for wishing to prohibit undocumented immigrants from receiving such public benefits is that they drain the state budget (Authors' interview). For example, Protect Arizona Now, the group sponsoring Prop. 200, argued:

We've seen our state increasingly burdened by the negative effects of illegal aliens coming to this state against the laws of our country. We the taxpayers have been forced to pay for expensive benefits given away to illegal aliens. Often these benefits are denied to our own citizens. Is it right that veterans who sacrificed for us to defend our Constitution are denied medical care they can't afford; but an illegal alien, whose first and continuing act is to violate our laws, is carried on the backs of taxpayers?

(Protect Arizona Now, 2004)

The claim that unauthorized immigration is a major source of crime was forcefully stated by state representative Russell Pearce (R-Mesa) at an anti-immigration rally organized by the Minuteman Project at the Arizona capitol: "We do have a 9/11 going on every day. Domestic violence is when you're no longer safe in your neighborhoods, you're no longer safe from

carjackings and home invasions, or homicides or 90 percent of the drugs that come across the border. That's terrorism and it's got to be stopped" (quoted in Meyers, 2006).

Running through these sentiments is a very strong strain of antipathy to immigrants, particularly Hispanic immigrants (Authors' interviews). For example, at the Minuteman Project rally at the Arizona capitol, its founder, Jim Gilchrist, stated: "Are we going to back down and let [our nation] be converted into a third world nation, let our language be converted into Spanish and let our National Anthem be translated now for all the public schools to recite and sing in Spanish with the words changed? At what point do you draw the line and take a stand?" (quoted in Meyers, 2006).

The Supporters of In-State Tuition

The main supporters of in-state tuition and state financial aid for undocumented students have been a loose advocacy coalition consisting of Latino legislators, some Latino groups, some labor unions, and arguably, Democratic governor, Janet Napolitano (Billeaud, 2005c, 2006a, b; Authors' interviews). As a state legislator noted,

When you are looking at groups that support pro-immigration policies, or policies that oppose the denial of benefits to undocumented immigrants, you are not going to find any real major organized groups.... The only ones you are going to find out there supporting it are going to be a few individuals, legislators, just individuals who are either personally affected or who support these issues. But there is no real organized effort at all ... -- of course there are some Latino groups out here – but there's not the chambers of commerce or any Arizona educational association or any major political forces out there that really are supporting this. I mean, some unions

are... SEIU [Service Employees International Union] has been a strong supporter of pro-immigration policies, but in terms of organized groups, there's very little out here. (Authors' interview)

Drawing together this advocacy coalition have been deep core beliefs similar to those of the Texas supporters of in-state tuition eligibility. Undocumented students are seen as rightful members of U.S. society who deserve educational opportunity in order to be effectively functioning members of society. As a leader of an Arizona Latino organization noted,

That is what's sad, to me, is that we have so many brilliant minds that this state has willingly decided to waste. They could go to another state and follow their careers there.... What are you going do with 12 million [undocumented] people? You can't deport them all. Give them legal status. Give them a social security number. Make 'em work. (Authors' interview)

Then governor Janet Napolitano can also be considered a supporter of in-state tuition eligibility for undocumented immigrants. She did not actively support legislation to extend eligibility, but she did veto legislation to prohibit such benefits. For example, in 2005, Governor Napolitano vetoed HB 2030, which banned allowing undocumented immigrants to qualify for in-state tuition (Billeaud, 2005c). In her veto message she echoed – albeit somewhat weakly – the argument for social membership for undocumented students that was enunciated by Latino groups:

Today I vetoed House Bill 2030, related to citizenship requirements for certain public programs. While I agree that public programs should not be available to those who consciously decide to come here illegally, this bill goes too far by punishing

even long time residents of this state who were brought here as small children by their parents. I agree with the comments of United States Senator Orrin Hatch (R-UT) when he proposed the Development, Relief and Education for Alien Minors (“DREAM”) Act in 2003 to the United States Congress. (Napolitano, 2005)

THE PUBLIC SILENCE OF THE BUSINESS COMMUNITY

While the business community has often played a prominent role in public policymaking in Arizona, it has remained publicly silent with regard to in-state tuition benefits. As a state legislator who supported in-state tuition eligibility noted,

Our business community has been pretty silent on the issue.... Some of us in the legislature who have been fighting these issues have been ... pleading with the business community to become more involved and to become more outspoken on these issues, because privately, they will tell you that they support a more moderate approach to immigration [and] ... they oppose the prohibition on in-state tuition to undocumented.... But they are afraid to speak out publicly, because they sense that the public as a whole wants to see tough sanctions on undocumented people.
(Authors’ interview)

Arizona business leaders say that the state Chamber of Commerce made some effort to fight the anti-immigrant legislation, but did so behind the scenes, given the ferocity of the anti-immigration sentiment in the state (Authors’ interviews). A member of the state chamber of commerce noted how internal differences within the business community kept the chamber from

taking a very active stance, much less a public one, in opposition to the anti-immigration legislation:²⁴

The problem with any chamber is the legislature is very good at saying, “well, I’ll give you this, if you give me that,” and the Chamber is very vulnerable to those things.... there were a lot of people who were demanding to be removed from the ... Arizona Chamber with some of the positions the Chamber took.... it was a lot more of the small businesses, I would say, and then the large utilities that need the legislature for other things. The utilities are very powerful within these Chambers. The utilities are very dependent on the legislature ... and the government right now is ... hijacked by these [anti-immigration] zealots. (Authors’ interview)

AGENDA SETTING: Applying Multiple Streams and Advocacy Coalition Theory

The Policy Entrepreneurs

The key leaders of the anti-immigrant coalition have been Republican state legislators and activists within the Republican party such as Randy Pullen, who became party chair in 2007. Particularly active among the state legislators were state representative and later senator Russell Pearce (R-Mesa), then state senator (now state treasurer) Dean Martin (R-Phoenix), and Rep. Tom Boone (R-Glendale). Pearce has been particularly noteworthy and active. As a higher education official noted,

Probably the loudest voice has been that of Representative Russell Pearce, who is a Mesa Arizona Republican, and the chair of the Arizona House Appropriations Committee. The East Valley the largest city of which is Mesa, Arizona ... is very, very, very conservative. For example, significant numbers of the Republican

leadership in the East Valley would not endorse George Bush in the last election, because he was too liberal. (Authors' interview)

Pearce has been behind virtually all legislation to prohibit access to state benefits by undocumented immigrants. As Table 3 indicates, he sponsored numerous bills and was also one of the principal leaders (along with Randy Pullen) in the referendum drives that led to the adoption of Proposition 200 in 2004 and Proposition 300 in 2006 (Associated Press, 2005; Billeaud, 2006c; Davenport, 2004; Myers, 2006; Shorey, 2004). Meanwhile, Rep. Boone was the sponsor of HB 2030, which was passed by the legislature but was vetoed by the governor. And Sen. Martin was the sponsor, along with Rep. Pearce, of Proposition 300.

Policy Selection

The proposal to deny in-state tuition eligibility to undocumented immigrants was only one of many policy proposals to deter and penalize unauthorized immigration that were proposed in Arizona. Other proposals included requiring citizenship identification in order to receive public services, denying drivers' licenses to undocumented immigrants, penalizing employers who hired them, barring local governments from funding day labor centers to help undocumented immigrants find work, denying bail to undocumented immigrants, and making them ineligible for civil lawsuit awards (Billeaud, 2005b, 2007).

Given that the number of undocumented immigrants graduating from Arizona high schools is relatively small, one wonders why the prohibition on in-state tuition eligibility was added to this panoply of weapons of opposition. Elementary and secondary education would have seemed a more tempting target, given its large share of the state budget. However, as multiple streams theory notes, the criterion of substantive or technical feasibility (Kingdon, 1995: 131-132) enters

here to explain the choice of higher education as the target. Under the Supreme Court's *Plyler v. Doe* (1982) decision, states cannot deny undocumented children access to public K-12 education (Olivas, 1986). Hence, anti-immigrant leaders turned to public higher education as a constitutionally safer target for making a point with respect to access to education by undocumented immigrants (Hebel, 2007). As a leader in the effort to deny public benefits to immigrants noted,

We exempted K-12, elementary education, because of a very-poorly-written decision in the Supreme Court in '82, *Plyler vs. Doe*. ... we knew we didn't want to lose Prop 200 right off the bat.... The other thing we exempted was the emergency medical treatment, and I think mostly because of a federal law. (Authors' interview)

Getting Immigration Restriction on the Government Agenda: Shocks and Policy Windows

Two external shocks (in the language of advocacy coalition theory) or policy windows (in the language of multiple streams theory) played an important role in helping Russell Pearce and other anti-immigration policy entrepreneurs put the issue of immigration and the policy of denying public benefits to undocumented immigrants on the decision agenda of Arizona government. One was a sharp increase in the number of immigrants. The second was the events of September 11, 2001.

During the late 1990s and early part of this decade, the border between the United States and Mexico was greatly tightened in Texas and California. The result was a sharp increase in the number of immigrants entering illegally through Arizona (Billeaud, 2005a,b). The estimated number of unauthorized immigrants living in Arizona rose by 45% in five years, from 330 thousand in 2000 to 480 thousand in 2005 (U.S. Census Bureau, 2008: Table 46). This surge in

unauthorized immigration incensed many conservative Arizonans, particularly Republicans. For example, a Republican state senator told an opponent of a bill barring benefits to undocumented immigrants: "We are being invaded by foreign nationals. And you folks are aiding and abetting people that are invading our country, and I think that that's treasonous" (quoted in Billeaud, 2005a). These vociferous critics of unauthorized immigration saw the U.S. government as failing to take action and argued that the state therefore had to take matters into its own hands. Then state senator Dean Martin (R-Phoenix) argued: "The citizens of the state of Arizona are tired of waiting for the federal government to do something and want us to do something. This may not reach and do everything that everybody wants ... But it's something that a large majority of the voters in the state of Arizona have wanted" (quoted in Billeaud, 2005b).

A second policy window was the attack on the World Trade Center and the Pentagon on September 11, 2001. This event -- with its powerful symbolism of "foreign" invasion of the United States -- made the subject of border security and illegal immigration become even more heated. There was much discussion about how the 9/11 attackers were foreign nationals, most of whom had entered the United States illegally (Cohen, 2001; Gedda, 2001).

As a result, when the issue of in-state tuition for undocumented immigrants was first raised in Arizona in 2003 it encountered a very different climate from the one in which the issue was raised in Texas in 2000 and early 2001. Extensive immigration and the provision of public benefits to immigrants had come to be seen by many people as anti-American. A higher education official noted:

You know, a strong anti-immigration stance had become a litmus test for Republican politicians in Arizona.... Senator Kyl, who had just been re-elected, changed his position in favor of immigration, and he has brought the wrath of their local party

down on them [Kyl and McCain] in ways that is unmentionable. They have been called traitors. (Authors' interview)

WHY THE OPPONENTS WON

As mentioned earlier, advocacy coalition theory and multiple streams theory do not dwell on the particulars of why political groups win or lose. However, advocacy coalition theory does suggest some important avenues for analysis, focusing on the role of fundamental social values and social structure and basic constitutional arrangements in shaping policy subsystems and their component advocacy coalitions (Sabatier & Weible, 2007).

The Strengths of the Opponents

As the advocacy coalition framework (Sabatier & Weible, 2007: 191, 202) notes, a polity's fundamental socio-cultural values play a large part in influencing the dynamics of a policy subsystem. In the case of Arizona, the claim that undocumented immigrants cause a big fiscal drain has been effective rhetoric in placing immigration issues on the government agenda because it speaks to a strong libertarian current in Arizona political culture about keeping down taxes and the size of government. Arizona has a long history of anti-government beliefs that "government shouldn't tell people what to do" (Authors' interview; see also Berman, 1998). It is no accident that state senator Russell Pearce highlights on his webpage that he

received the 2nd highest award in the legislature from the Goldwater Institute and the Arizona Tax Payers Association on voting to keep spending down. I was one of only 17 elected officials nationwide (the only Arizona elected official) to receive "The

Hero of the Tax Payer Award” by the American Tax Reform Association. (Pearce, 2008b)

Another socio-cultural feature of Arizona that has played an important role in giving resonance to anti-immigration arguments has been its long history of anti-Latino sentiment and strong social conservatism (Berman, 1998; Sheridan, 1995; Whitaker, 2005).²⁵ Latinos make up a large portion of the Arizona population: 28% in 2004, double the U.S. average (U.S. Census, 2006). But, as a Latino activist notes, the racial/ethnic climate in Arizona has included a strain of great hostility to Latinos and to nonwhite immigrants: “I think it’s difficult for folks in other places to understand Arizona, but if you would consider what Mississippi was during the Civil Rights Movement and in the ‘60s, that’s what Arizona is to the undocumented community” (Authors’ interview). This hostility has shown up in a long history of discrimination against Latinos that has resulted in diminished political power, marked in part by below average voter participation (Berman, 1998).²⁶ Drawing on Elazar’s (1984) typology of state political cultures, Arizona political scientist David Berman argues:

Arizona has long reflected traditionalistic values of southerners who settled the territory and who have continued to migrate to the state over the years. As a traditionalistic state, Arizona has been characterized by relatively low levels of voter participation, efforts to exclude minorities from participation...., elitist policymaking (though this has sometimes been challenged by a populist backlash from the right or left), a government of limited spending, taxing, and regulation... (Berman, 1998: 194)

A second key factor noted by advocacy coalition theory that has shaped the efforts of the Arizona opponents of in-state tuition eligibility is the state's constitutional structure (Sabatier & Jenkins-Smith, 1993: 21; Sabatier & Weible, 2007: 191, 202). Arizona's constitution vests its citizenry with the right to pass legislation directly, without requiring action by elected representatives, through such means as the initiative and referendum. The initiative allows the citizenry – if enough signatures are collected – to put measures directly on the ballot, without requiring the permission of elected officials (Berman, 1998). Because the state allows citizen initiative, when the governor vetoed HB 2030, which prohibited various benefits for undocumented immigrants, the bill's proponents could bring it before the general electorate in the form of Proposition 300, which passed (Billeaud, 2006c; Small, 2006). A leading opponent of benefits for undocumented immigrants describes how the initiative allowed opponents to circumvent the Governor's veto: "You know, we're lucky to have a citizens' process in Arizona here. It allowed us to go around our elected officials" (Authors' interview).

The Weaknesses of the Supporters

The Latino groups supporting in-state tuition eligibility were not able to exert much influence on the legislative and public discussion in Arizona of in-state tuition and other public benefits for undocumented immigrants (Authors' interviews). Their political weakness stems from a number of factors that fit the emphasis of advocacy coalition theory on the importance of fundamental social structure and values. First, Latinos are not well represented politically in the state. In 2003, at the beginning of the push to have government restrict immigrant access to public benefits, Latinos -- though they made up 28% of the population -- accounted for only 13% of registered voters and 17% of state executives and legislators (U.S. Census Bureau, 2005: Tables

21, 401, 406).²⁷ Moreover, the leading Latino organizations are not as well established in Arizona as in other states. For example, the Mexican-American Legal Defense Fund (MALDEF) does not have a state office in Arizona. Contributing to both factors is the strong cultural animus of many in Arizona to Latino culture and the role of Latinos in Arizona society (Berman, 1998; Sheridan, 1995; O'Leary, 2009; Whitaker, 2005).

SUMMARY AND CONCLUSIONS

This paper has analyzed why two neighboring states – Arizona and Texas -- have taken very different directions in legislating in-state tuition for undocumented immigrants. Texas passed this legislation in 2001 with nearly unanimous bipartisan votes in the legislature and little public opposition. Arizona has forcefully prohibited such a policy, in both legislative votes and public referenda in 2004 and 2006, with the votes very sharply split along partisan lines.

Aided by the advocacy coalition and multiple streams theories of policy origins, we can illuminate many elements of the politics of in-state tuition eligibility in Texas and Arizona that are missed by the extant research literature. In both states we find competing advocacy coalitions – involving groups within and outside government, including researchers and academics -- supporting and opposing in-state tuition eligibility. As advocacy coalition theory (Sabatier & Weible, 2007) argues, those coalitions are organized around different sets of beliefs about the nature of society and of citizenship, the meaning and impact of immigration, and the proper role of government in addressing immigration. Those different beliefs bind coalition members together and differentiate them from other coalitions.

The beliefs, actions, and influence of the different advocacy coalitions were strongly shaped by several systemic properties identified by advocacy coalition theory (Sabatier & Weible, 2007). One is the fundamental socio-cultural beliefs in the states. In both Texas and Arizona, there is long-standing opposition to high levels of immigration, but the degree of opposition is weaker in Texas and it is not fanned by anti-government sentiment and anti-Latino animus to the degree that it is in Arizona. Another systemic property is the nature of the party system. In Texas, unlike Arizona, a major part of the state Republican party has opposed anti-immigration efforts, in the hope of cultivating Latino support for the party. Finally, the actions and outcomes of the competing advocacy coalitions have been shaped by a basic feature of constitutional structure: the presence or absence of the initiative referendum. The presence of such a state constitutional feature has made it much easier for anti-immigration forces to mobilize in Arizona than in Texas. Because Arizona has the initiative referendum, anti-immigration policy entrepreneurs were able to take the issue out of the hands of the governor, who did not support prohibiting in-state tuition eligibility, and move it to a new policy venue, the general electorate, where new actors could be mobilized.

The politics of in-state tuition eligibility in Texas and Arizona also have several features that are illuminated by multiple streams theory (Kingdon, 1995; Zahariadis, 2007). As highlighted by the theory, we find policy entrepreneurs who maneuver to get their concerns (problems and policies) on the government decision agenda and in the process create advocacy coalitions. In both Texas and Arizona, those policy entrepreneurs were able to get their problems and preferred policies on the decision agenda of government through the occurrence of policy windows (or external shocks, in the language of advocacy coalition theory). In Texas, policy entrepreneurs supporting in-state tuition eligibility were aided by two policy windows: a growing and much

publicized problem of undocumented students graduating from high school and having difficulty going to college; and a growing opinion among political, economic, and educational leaders that lagging Latino graduation rates were harming the long-term prospects for economic growth. Meanwhile, in Arizona, the policy entrepreneurs opposing in-state tuition could take advantage of another two policy windows: the rapid surge in undocumented immigration in the late 1990s and early 2000s; and the attack of 9/11, in which immigrants in the United States illegally had played a major role.

WHAT IS MISSED BY THE TWO THEORIES

Advocacy coalition and multiple streams theory greatly enhance our capacity to understand the politics of in-state tuition in Texas and Arizona. But those cases also shed light on the limitations of those two theories. Both theories are strongly pluralist in their orientation and tend to see power as dispersed and, even if not equally distributed, not concentrated. But in taking this perspective, they do not give sufficient weight to how persistent inequalities of race, class, and gender are woven into social and political structure and how seemingly neutral instruments such as the citizen initiative can serve race, class, and gender interests depending on the circumstances. Arizona points to how fundamental social-cultural values cannot be seen simply as universalistic properties of the entire political system but also have to be seen as cultural deposits and political resources that advantage some groups more than others.²⁸ Similarly, an unimpeachably democratic device such as the initiative referendum can be an instrument for the expression of racial-ethnic animus when a dominant group considers itself under challenge by another group.

WHY THE DIFFERENT STATE TRAJECTORIES?

In the end, what were the main reasons that the politics of in-state tuition took such different directions in Texas and Arizona? We argue that the explanation for the different trajectories of Texas and Arizona likely lies in differences in the operation of the following five factors, which varied sharply across the two states: the speed with which the undocumented immigrant population was growing during the time these measures were being considered (much faster in Arizona); the timing of the introduction of in-state tuition legislation (before and after 9/11); the racial political cultures of the two states (greater versus lesser acceptance of immigrants and Latinos); the political power of the Latino population (much greater in Texas); and the availability of the initiative power of citizens (present in Arizona but absent in Texas). The first two factors are particularly highlighted by multiple streams theory, with its emphasis on the importance of policy windows in giving policy entrepreneurs an opportunity to shape the government agenda. The latter three factors are particularly highlighted by advocacy coalition theory, with its emphasis on how the dynamics of policy subsystems are shaped by the social and political structure of a society.

THE SIGNIFICANCE OF OUR FINDINGS

Many hope that the passage of a federal DREAM act will greatly change the higher education prospects for undocumented immigrants and there is reason to believe that will be the case. However, a federal act will not eliminate the importance of state decisions on in-state tuition eligibility for undocumented immigrants. The proposed act will not mandate that undocumented students be made eligible. The current version of the DREAM act would only repeal Section 505 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), thus

removing what some states had taken as a prohibition on offering in-state tuition to undocumented immigrants. But if states are to have in-state tuition eligibility they must legislate it and there is no guarantee this will happen. Certainly, there is the prospect – akin to Texas – that more states will legislate in-state tuition eligibility, in response to an increasing number of undocumented students graduating from high school, an increasingly powerful Latino population, and a growing reluctance of Republicans to take anti-immigrant positions. On the other hand, results such as those obtained in Arizona – with a prohibition on in-state tuition eligibility – are also possible, especially given the continued strength of anti-immigration sentiment and the presence of the initiative process for making statutory changes in 22 states (National Conference of State Legislatures, 2009b). In either case, the cases of Texas and Arizona prove very instructive to those of us wishing to understand the past and future politics of state higher education policymaking for undocumented immigrants.

REFERENCES

- American Association of State Colleges and Universities (2006). *Access for all? Debating in-state tuition for undocumented alien students*. Washington, DC: Author.
http://www.aascu.org/policy/special_report/access_for_all.htm
- Arizona Joint Legislative Budget Committee. (2008). *Fiscal highlights – January 2008*. Phoenix, AZ: Author. <http://www.azleg.gov/jlbc/mfh-jan-08.pdf>
- Arizona State Legislature, (2005). Bill Overview, HB 2030, Forty-seventh legislature, first regular session, 2005. Phoenix, AZ: Author.
<http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/47leg/1r/bills/hb2030o.asp>
- Associated Press State & Local Wire. (2005, January 7). State lawmaker pushing for tougher immigration laws.
- Baum, B. (2006, November 8). Voters giving sweeping approval to immigration measures. *The Associated Press State & Local Wire*.
- Belanger, Kathleen. (2001). Social justice in education for undocumented families. *Journal of Family Social Work*, 6(4), 62-73.
- Berger, E. (2001, May 29). Legislature's moves reflect growing clout of immigrants. *Houston Chronicle*, p. A13.
- Berger, E., & Hegstrom, E. (2001, April 19). Immigrant tuition bill gets OK by state House. *Houston Chronicle*, p. A23.
- Berman, D. (1998). *Arizona politics and government: The quest for autonomy, democracy, and development*. Lincoln, NB: University of Nebraska Press.

Billeaud, J. (2005a, April 7). Ariz. lawmakers soften proposed restrictions on illegal immigrants.

The Associated Press State & Local Wire.

Billeaud, J. (2005b, May 12) Arizona lawmakers vote to impose new restrictions on immigrants.

The Associated Press State & Local Wire.

Billeaud, J. (2005c, May 20). Arizona governor vetoes two immigration bills, signs another. *The*

Associated Press State & Local Wire.

Billeaud, J. (2005d, May 9). Immigration proposals clear Senate with punishments for

businesses. *The Associated Press State & Local Wire.*

Billeaud, J. (2005e, May 11). Lawmakers nix punishments for employers hiring illegal

immigrants. *The Associated Press State & Local Wire.*

Billeaud, J. (2006a, April 6). Illegal immigrants step out of shadows to urge reforms. *The*

Associated Press State & Local Wire.

Billeaud, J. (2006b, May 2). Immigrant groups shift focus to voter registration, lawmakers. *The*

Associated Press State & Local Wire.

Billeaud, J. (2006c, June 22). Some lawmakers try to put immigration proposal on the ballot. *The*

Associated Press State & Local Wire.

Billeaud, J. (2007, July 18). Business leaders take aim at new Arizona immigration law. *The*

Associated Press State & Local Wire.

Biswas, R. (2005). *Access to community college for undocumented immigrants: A guide for state policymakers.* Boston, MA: Jobs for the Future.

http://www.jff.org/download.php/AccessstoCCUndoc.pdf?file=AccessstoCCUndoc.pdf&KC_PubID=27

Chronicle of Higher Education (2001, June 8). Texas lawmakers pass bill to give tuition break to illegal immigrants.” *Chronicle of Higher Education*.

Citrin, J., Green, D. P., Muste, C., & Wong, C. (1997). Public opinion toward immigration reform: The role of economic motivation. *Journal of Politics* 59, 3, 858-881.

Cohen, S. (2001, October 14). Easy entry by terrorists stirs calls for tighter visa controls. *The Associated Press State & Local Wire*.

Davenport, P. (2003, July 7). Measure on illegal immigrants proposed for Arizona ballot. *The Associated Press State & Local Wire*.

Davenport, P. (2004, July 1). Group files petitions to put immigration initiative on ballot. *The Associated Press State & Local Wire*.

DeLeon, A. (1999). *Mexican Americans in Texas: A brief history*. 2d ed. Wheeling, IL: Harlan-Davidson.

Denogean, A. (2007, February 8) Push to redo Prop. 300 an affront to voters' will. *The DREAM Act News*.

http://dreamact.info/index.php?option=com_content&task=view&id=89&Itemid=41

Dougherty, K. J., Reid, M., & Nienhusser, H. K. (2006). *State policies to achieve the dream in five states: An audit of state policies to aid student access to and success in community colleges*. New York: Columbia University, Teachers College, Community College Research Center.

http://www.achievingthedream.org/_images/_index03/State_Pol_to_Achieve_Dream_5_States_2-27-06.pdf

- Edison Media Research. (2006). National *election pool general election exit polls, 2006*. Ann Arbor, MI: Inter-university Consortium for Political and Social Research. 2007-05-04.
doi:10.3886/ICPSR04684
- Elazar, D.J. 1984. *American federalism: A view from the states*. New York: Harper and Row.
- Erikson, R.S., Wright, G.C., & McIver, J. P. (2005). *Public opinion in the states: A quarter century of change and stability*. New York: Columbia University, Department of Government.
- Espenshade, T. J., & Hempstead, K. (1996). Contemporary American attitudes toward U.S. immigration. *International Migration Review* 30, 2, 535-557.
- Ferraiaolo, K. (2008). State policy innovation and the federalism implications of direct democracy. *Publius* 38, 3, 488-514.
- Fischer, K. (2004). Illegal immigrants rarely use hard-won tuition break. *Chronicle of Higher Education* 51(16), p. A19.
- Flores, S. (2007). The effects of in-state resident tuition policies on the college enrollment of undocumented Latino students in Texas and the United States. Unpublished doctoral dissertation, Harvard University.
- Freeman, G. P. (1995). Modes of immigration politics in liberal democratic states. *International Migration Review* 29, 4, 881-902.
- Freeman, G. P. (1997). Immigration as a source of political discontent and frustration in western democracies. *Studies in International Comparative Development*, 32, 3, 42-64.
- Gedda, G. (2001, November 20). Mexicans told immigration reform is dead for now because of terrorism concerns. *The Associated Press State & Local Wire*.

- Giblin, P. (2007, June 9) Businesses say immigrants crucial to state's economy. *The Associated Press State & Local Wire*.
- Goff, J. S. (1983). *Arizona biographical dictionary*. Cave Creek, AZ: Black Mountain Press.
- Gray, L. (2000, October 12). The connection; Bright and intense but undocumented, Bob could have been just another immigrant laborer. Then he met Susan Lieberman. *Houston Press*.
- Gray, V., & Hanson, R.L. (eds.) (2007). *Politics in the American states*. 9th ed. Washington, DC: CQ Press.
- Guy, A. (2001, June 4). Big man on campus: Law professor fights for issues dear to his heart. *The Houston Chronicle*, p. 1.
- HB1403.com (2006). Eligibility. <http://www.hb1403.com/index.html>
- Haag, S., Peebles, R., & Keith, G. (1997). *Texas Politics and Government: Ideas, institutions and policies*. New York: Longman.
- Hausman, C., & Goldman, V. (2001, April 8). Great expectations. *New York Times*, p. 4A.
- Hebel, S. (2007, Nov. 2). Arizona's colleges are in the crosshairs of efforts to curb illegal immigration. *Chronicle of Higher Education* 54 (10), p. A15.
- Hegstrom, E. (2000a, May 11). Top student to be denied scholarships; Immigration status casts cloud on future. *Houston Chronicle*, p. A1.
- Hegstrom, E. (2000b, May 26). HCC board votes to accept undocumented immigrants. *Houston Chronicle*, p. A1.
- Hilgartner, S., & Bosk, C. (1988). The rise and fall of social problems: A policy arenas model. *American Journal of Sociology*, 94, 53-78.
- Horton, R.S. (2008, Jan. 1). 119 at UA reclassified as out-of-state. *Tucson Citizen*.
www.tucsoncitizen.com

- Houston Chronicle (2007, March 15). 80th Texas Legislature: Day 65. *Houston Chronicle*, p. B4.
- Keller, J. (2007, April 13). State legislatures debate tuition for illegal immigrants. *Chronicle of Higher Education* 53 (32), p. A28.
- Kingdon, J. (1995). *Agendas, alternatives, and public policies*, 2d ed. New York: Longman.
- Kobach, K. (2006). Immigration nullification: In-state tuition and lawmakers who disregard the law. *New York University Journal of Legislation and Public Policy*, 10, 473-523.
- Krueger, C. (2006). *In-state tuition for undocumented immigrants*. Denver, CO: Education Commission of the States. <http://www.ecs.org/clearinghouse/61/00/6100.htm>
- Landecker, H. (2008, January 1). U. of Arizona has reclassified 119 students as out of state, *The Chronicle of Higher Education*.
- Leiby, M. (2007, February 23). Immigration reform march planned for May 1st in downtown. *Arizona Capitol Times*.
- López, J. (2007). "We asked for workers and they sent us people": A critical race theory and Latino critical theory ethnography exploring college-ready undocumented high school immigrants in North Carolina. Doctoral dissertation. University of North Carolina, Chapel Hill. PhD: 234.
- Lozano, J. (2000, May 11). Immigration status casts doubts on student's hopes for higher education. *The Associated Press State & Local Wire*.
- Lukes, S. (2005). *Power: A radical view*. 2d ed. London: Palgrave.
- McClain, P. D., & Tauber, S. C. (1996). Black and Latino Socioeconomic and Political Competition: Has a Decade Made a Difference? *American Politics Quarterly* 26, 2, 237-252.

- McLendon, M. K., & Eddings, S. (2002). Direct democracy and higher education: The state ballot as an instrument of higher education policy making. *Educational Policy*, 16, 1, 193-218.
- Mehta, C., & Asma, A. (2003). *Education for all: Chicago's undocumented immigrants and their access to higher education*. Chicago, IL: Center for Urban Economic Development, University of Illinois at Chicago.
- Mintrom, M., & Vergari, S. (1996). Advocacy coalitions, policy entrepreneurs, and policy changes. *Policy Studies Journal*, 24, 3, 420-434.
- Munsil, L. (2008, Jan. 16). 207 ASU students lose residency status. *ASU Web Devil*.
<http://www.asuwebdevil.com/issues/2008/01/16/news/703089>
- Murdock, S., Hogue, N., Michael, M., White, S., & Pecotte, B. (1997). *The Texas challenge: Population change and the future of Texas*. College Station, TX: Texas A & M University Press.
- Myers, A. (2006, May 4). Minuteman Project returns to roots in post-boycott counterpunch. *The Associated Press State & Local Wire*.
- Napolitano, J. (2005, May 20, 2005). Veto letter.
- National Conference of State Legislatures. (2008). *In-State tuition and unauthorized immigrant students*. Denver, CO: Author.
http://www.ncsl.org/programs/immig/immig_InStateTuition0808.htm
- National Conference of State Legislatures. (2009a). *State laws related to immigrants and immigration in 2008*. Denver, CO: Author.
<http://www.ncsl.org/print/immig/StateImmigReportFinal2008.pdf>

- National Conference of State Legislatures. (2009b). *Initiative and referendum states*. Denver, CO: Author. <http://www.ncsl.org/Default.aspx?TabId=16589>
- National Council of La Raza (2001, June 18). *NCLR disappointed by Texas Governor Rick Perry's inconsistent action on legislation affecting immigrants*. News Release. Washington, D.C. <http://www.nclr.org/content/news/detail/2200/>
- National Immigration Law Center. (2009). *DREAM Act: Summary*. Los Angeles, CA: Author. <http://www.nilc.org/immlawpolicy/DREAM/dream-bills-summary-2009-03-31.pdf>
- Omi, M., & Winant, H. (1994). *Racial formation in the United States*. 2d ed. New York: Routledge.
- O'Leary, A. O. (2009). *Arizona's legislative-imposed injunctions: Implications for immigrant civic and political participation*. Research Paper Series on Latino Immigrant Civil and Political Participation, No. 2. Washington, DC: Woodrow Wilson International Center for Scholars.
- Olivas, M.A. (1986). Plyler v. Doe, Toll v. Moreno, and Postsecondary admissions: Undocumented adults and "enduring disability." *Journal of Law and Education*, 15 (1), 19-55.
- Olivas, M.A. (1988). Administering intentions: Law, theory, and practice of postsecondary residency requirements. *Journal of Higher Education*, 59 (3) (May/June), 263-290.
- Olivas, M.A. (1995). Storytelling out of school: Undocumented college residency, race, and reaction. *Hastings Constitutional Law Journal*, 22 (Summer), 1019-1086.
- Olivas, M.A. (2004). IIRIRA, the DREAM Act, and undocumented college residency. *Journal of College and University Law*, 30 (2), 435-464.

- Olivas, M.A. (2007). Immigration-related state and local ordinances: Preemption, prejudice, and the proper role for enforcement. *University of Chicago Legal Forum*, 27-56.
- Olivas, M.A. (2008). Lawmakers gone wild? College residence and the response to Professor Kobach. *Southern Methodist University Law Review*, 61, 99-132.
- Olivas, M. A. (2009). Undocumented college students, taxation, and financial aid: A technical note. *The Review of Higher Education* 32, 3, 407-416.
- Padilla, R. (1989). Postsecondary residency qualifications: The application of complex legislation to the complex circumstances of students. IHELG Monograph 89-6. Houston, TX: University of Houston Law Center, Institute for Higher Education Law and Governance.
- Passel, J. (2003). *Further demographic information relating to the DREAM act*. Washington, DC: Urban Institute.
- Passel, J. (2005a). *Unauthorized migrants: Numbers and characteristics*. Washington, DC : Pew Hispanic Center.
- Passel, J. (2005b) *Estimates of the size and characteristics of the undocumented population*. Washington, DC : Pew Hispanic Center. Available: <http://pewhispanic.org/files/reports/44.pdf>
- Passel, J., & Cohn, D. (2008). *Trends in unauthorized immigration: Undocumented inflow now trails legal inflow*. Washington, DC : Pew Hispanic Center. Available: <http://pewhispanic.org/files/reports/94.pdf>
- Pearce, Russell. (2008a). Legislative home page.
http://azleg.gov/MembersPage.asp?Member_ID=45&Legislature=48
- Pearce, Russell. (2008b). Campaign home page.
http://www.mesa18.com/candidates/russell_pearce.htm

- Perry, A. (2004). Philosophical arguments of membership: The case of undocumented immigrants and financial aid for postsecondary education. Doctoral dissertation. University of Maryland, College Park. PhD: 224.
- Pew Hispanic Center. (2008). *Arizona: Population and labor force characteristics, 2000-2006*. Washington, DC: Author.
- Plascencia, L. F. B., Freeman, G.P., & Setzler, M. (2003). The decline of barriers to immigrant economic and political rights in the American states: 1977-2001. *International Migration Review* 37, 1, 5-23.
- Protect Arizona Now. (2004). About Protect Arizona Now. Glendale, AZ.
<http://www.pan2004.com/about.htm>
- Rangel, Y. (2001). College immigrant students: How undocumented female Mexican immigrant students transition into higher education. Doctoral dissertation. University of California, Los Angeles. EdD: 190.
- Rice, T.W., & Sumberg, A.F. (1997). Civic culture and government performance in the American states. *Publius*, 27 (1) (Winter), 99-114.
- Rincon, A. (2008). *Undocumented immigrants and higher education: Si se puede*. New York: LFB Scholarly Publishing.
- Riske, P. (2006, April 14). Arizona candidate for governor promises actions at the border if elected. *Arizona Capitol Times*.
- Riske, P. (2007, February 2). Deep GOP split as Arizona Republican Party picks Pullen for chairman. *Arizona Capitol Times*.
- Robison, C. (2007, March 26). Immigration bills unlikely to get passed. *The Houston Chronicle*, p. B1.

- Robison., C., & Ratcliffe, R.G. (2007, January 12). Perry to stick by law giving tuition breaks to illegal immigrants; He also predicts legislation against repeat predators of children will be strengthened. *The Houston Chronicle*, p. B4.
- Rodriguez, N. (1990). Undocumented immigrant students and higher education: A Houston study. IHELG Monograph 90-10. Houston, TX: University of Houston Law Center, Institute for Higher Education Law and Governance.
- Romero, V. C. (2002). Postsecondary School Education Benefits for Undocumented Immigrants: Promises and Pitfalls. *The North Carolina Journal of International Law and Commercial Regulation* 27, 3, 393-418.
- Romero, V. C. (2003). Noncitizen students and immigration policy post-9/11. *Georgetown Immigration Law Journal* 17, 3, 357-366.
- Ruge, T. R. & Iza. A. D. (2005). Higher education for undocumented students: The case for open admission and in-state tuition rates for students without lawful immigration status. *Indiana International and Comparative Law Review* 15, 257, 1-22.
- Russell, J. (1998, March 10). Minority education called key to future. *San Antonio Express-News*, p. A1.
- Sabatier, P. A. & Jenkins-Smith, H. C. (Eds.) (1993). *Policy Change and Learning: An Advocacy Coalition Approach*. Boulder, CO: Westview Press.
- Sabatier, Paul A. & Jenkins-Smith, H. C. (1999). "The Advocacy Coalition Framework: An Assessment." In Paul A. Sabatier (Ed.), *Theories of the Policy Process* (pp. 117-166). Boulder, CO: Westview Press.
- Sabatier, P. & Weible, C.M. (2007). The advocacy coalition framework: Innovations and clarifications. In P.A. Sabatier (ed.), *Theories of the policy process* (pp. 189-220).

Boulder, CO: Westview Press.

Salsbury, J. (2003). Evading “residence”: Undocumented students, higher education and the states. *American University Law Review*, 53(459), 459-490.

Schildkraut, D. J. (2001). Official-English and the states: Influences on declaring English the official language in the United States. *Political Research Quarterly* 54, 2, 445-457.

Schiller, D. (2001, June 20). College law benefits immigrants; Texas grads who aren't legal residents can pay in-state tuition. *San Antonio Express-News*, p. B1.

Sheridan, T.C. (1995). *Arizona: A history*. Tucson: University of Arizona Press.

Shorey, A. (2004, Nov. 4). Arizonans pass measure cracking down on illegal immigrants. *The Associated Press State and Local Wire*.

Small, J. (2006, May 12). Arizona Republicans mulling 3-pronged approach to illegal immigration. *Arizona Capitol Times*.

State of Colorado. Office of the Attorney General. (2007). Formal opinion of John W. Suthers, Attorney General. No. 07-03. AG Alpha No. HE HE AGBCE. August 14, 2007. Denver, CO: Author.

http://extras.mnginteractive.com/live/media/site36/2007/0814/20070814_084925_Tuition.pdf

Stevenson, A. (2004). DREAMing of an equal future for immigrant children: Federal and state initiatives to improve undocumented students' access to postsecondary education. *Arizona Law Review* 46, 3, 551-580.

Stone, D. (2001). *Policy paradox: The art of political decision making*. Rev. ed. New York: Norton.

Szelenyi, K., & Chang, J. (2002). ERIC review: Educating immigrants: The community college role. *Community College Review*, 30(2), 55-73.

Tannahill, N. (2003). *Texas government: Policy and politics*. New York: Longman.

Texas Eagle Forum (2001, July 16). *Eagle eye on Texas: Focus on the family criticizes in-state tuition bill for illegal aliens*. Dallas, TX. <http://www.texaseagle.org/update/010716.html>

Texas Higher Education Coordinating Board (2000). *Closing the gaps: The Texas higher education plan*. Austin: Author. <http://www.theceb.state.tx.us/ClosingtheGaps>

Texas Higher Education Coordinating Board (2005, November). *Legislative update*. Presented at Texas Association of Collegiate Registrars and Admissions Officers (TACRAO) Annual Meeting. Houston, Texas.

Texas House of Representatives Research Organization (2001). *Bill analysis H.B. 1403, 77th Texas Legislature*. Austin, TX. <http://www.hro.state.tx.us/ba77R/HB1403H.pdf>

Texas Legislature (2001a). *H.B. 1403, 77th Texas Legislature. June 16, 2001*. Austin, TX. <http://www.capitol.state.tx.us/tlo/77R/billtext/HB01403F.HTM>

Texas Legislature (2001b, April 26). *Fiscal note H.B. 1403, 77th Texas Legislature*. Austin, TX: Legislative Budget Board. <http://www.capitol.state.tx.us/Search/DocViewer.aspx?K2DocKey=odbc%3a%2f%2ftlo%2ftlo.dbo.vwArchBillDocs%2f77%2fr%2fh%2fb%2f01403%2f3%2ff%40TloArchBillDocs&QueryText=hb+1403&HighlightType=1>

Texas Legislature (2001c, May 16). *Fiscal note H.B. 1403, 77th Texas Legislature. Revision 1*. Austin, TX: Legislative Budget Board. <http://www.capitol.state.tx.us/Search/DocViewer.aspx?K2DocKey=odbc%3a%2f%2ftlo%2ftlo.dbo.vwArchBillDocs%2f77%2fr%2fh%2fb%2f01403%2f4%2ff%40TloArchBillDocs&QueryText=hb+1403&HighlightType=1>

- Texas Legislature (2001d). *Witness List H.B. 1403, 77th Texas Legislature. House Committee Report*. Austin, TX. <http://www.legis.state.tx.us/tlodocs/77R/witlistbill/html/HB01403H.htm>
- Texas Legislature (2001e). *Witness List H.B. 1403, 77th Texas Legislature. Senate Committee Report*. Austin, TX. <http://www.legis.state.tx.us/tlodocs/77R/witlistbill/html/HB01403S.htm>
- Texas Legislature. (2001f). *House Higher Education Committee Hearing, 77th Texas Legislature*. Austin, TX. <http://www.house.state.tx.us/fx/av/committee/10313p16.ram>
- Texas Legislature (2005). *House Bill Analysis S.B. 1528, 79th Texas Legislature*. Austin, TX. <http://www.legis.state.tx.us/tlodocs/79R/analysis/pdf/SB01528H.pdf>
- Tulsa World. (2007, June 28). Attorney for Regents says he's studying Immigrant Act. *Tulsa World*, p. A9.
- United States Census Bureau. (2004). *Voting and registration in the election of November 2002*. Current Population Report P-20, #552. Washington, DC: Government Printing Office. <http://www.census.gov/population/www/socdemo/voting/p20-552.html>
- United States Census Bureau. (2005). *Statistical abstract of the United States, 2004-2005*. Washington, DC: Government Printing Office.
- United States Census Bureau. (2008). *Statistical abstract of the United States, 2008*. Washington, DC: Government Printing Office.
- Van Vught, F. (1994). Policy models and policy instruments in higher education. In J. Smart (ed.), *Higher education: Handbook of theory and Research*, vol. 10 (pp. 88-125). New York: Kluwer.
- Veciana-Suarez, A. (2005, April 29). Immigrants priced out of college. *Miami Herald*.
- Veranes, M., & Navarro, A. (2005). *Anti-immigration legislation in Arizona leads to calls for a state boycott*. Silver City, NM: International Relations Center.

Washington Higher Education Coordinating Board. (2006). *2005-06 tuition and fee rates: A national comparison*. Olympia, WA: Author.

<http://www.hecb.wa.gov/research/issues/documents/2005-06TuitionFeesNationaTX#5omparison.pdf>

Whitaker, M.C. (2005) *Race work: The rise of civil rights in the urban west*. Lincoln, NB: University of Nebraska Press.

Wilson, R. (2008, Nov. 20). Debate over Republican approach to immigration reform becomes more crucial. *Arizona Capitol Times*

Wilson, T. D. (2008). Research note: Issues of production vs. reproduction/maintenance revisited: Towards an understanding of Arizona's immigration policies. *Anthropological Quarterly* 81, 4, 713-718.

Young Conservatives of Texas (2006). *In-state college tuition for illegal immigrants. Legislative affairs policy brief*. Austin, TX.: Author.

<http://www.yct.org/state/leg/publications.php?show/3>

Zahariadis, Nikolaos. 2007. "The Multiple Streams Perspective: Structure, Limitations, Prospects." Pp. 65-92 in Paul Sabatier (ed.), *Theories of the Policy Process*. Boulder, CO: Westview Press.

ENDNOTES

¹ Oklahoma repealed its in-state tuition benefits in 2007 (Hebel, 2007).

² However, the Colorado state attorney general issued an opinion a year later finding that undocumented immigrants can legally establish domicile in the state and therefore qualify for in-state tuition (State of Colorado, Office of Attorney General, 2007).

³ To get sources on Texas and Arizona we consulted with scholars and searched the following databases: ERIC, Social Sciences Full Text, ProQuest, ProQuest Digital Dissertations, Google Scholar, and Lexis-Nexis Academic.

⁴ There are also a number of studies that analyze the college opportunities and access to in-state tuition of undocumented immigrants in the years before the 2001 Texas legislation (Padilla, 1991; Rodriguez, 1990).

⁵ As we will note below, university academics – particularly Michael Olivas at the University of Houston – played a key role in this development (Guy, 2001; Olivas, 2004: 462; Olivas, 2008: 128-129).

⁶ For an analysis of the role of direct democracy in higher education policy making generally, see McLendon & Eddings (2002).

⁷ In addition, there is a small research literature that describes the situation of undocumented students in Arizona, though it does not address the policies affecting them (Stevenson, 2004).

⁸ More specifically, advocacy coalition argues that the belief structures of coalitions have three levels. Most fundamental are deep core beliefs, which are general beliefs about human nature and society (e.g. the relative importance of freedom and equality, the relative priority put on the welfare of different groups, the proper role of government vs. markets). Less fundamental are policy core beliefs involving the application of deep core beliefs to a specific policy subsystem such as education. Besides instantiating the deep core beliefs, policy core beliefs also involve views about the seriousness of a problem, its basic causes, and the best solutions. The final level involves secondary beliefs, which are about the localized nature of social problems and what are the proper policy details involving program budgets and procedures (Sabatier & Jenkins-Smith, 1999: 132-134; Sabatier & Weible, 2007: 194-196).

⁹ Schildkraut (2001) finds that the presence of the initiative referendum very sharply increases the probability that a state with a high foreign-born population will enact an Official English law.

¹⁰ Both states are classed as predominantly traditional states in Elazar's (1984) typology of political cultures and both states rank fairly low (38th and 43^d) on Rice and Sumberg's (1997) measure of "civic culture" (indexed by degree of participation in the policymaking process to promote the public good, perceptions of each other as politically equal, feelings of mutual solidarity, and participation in social groups).

¹¹ HB 159 had language that referenced HB 1403, which had been superseded by HB 1528. Given this feature, the bill was thrown out.

¹² The analysis controlled for differences between states in unemployment rate and differences among respondents in age, gender, and metropolitan residence (Flores, 2007: 26, 48).

¹³ This category is the closest approximation to undocumented status allowed by data in the Current Population Survey. Approximately one half of this category consists of undocumented people (Flores, 2007: 20-21).

¹⁴ As a robustness check, Flores (2007) tested the same model on U.S. citizen Latinos and US born Latinos and did not find significant effects of the in-state tuition variable. This strengthens the case that the sharp increase in enrollments following the passage of HB1403 is not due to something affecting Texas Latinos generally but foreign-born (especially undocumented) Latinos specifically.

¹⁵ Rep. Irma Rangel (D-Kingsville), the chair of the Higher Education Committee, also played a key legislative role. Reps. Noriega and Garcia had introduced two bills regarding expanding postsecondary education residency requirements to include undocumented immigrants. She got both of them to agree to merge their bills into one (HB 1403), thus reducing the chances that they might undercut each other's efforts (Rincon, 2008: 86-87).

¹⁶ This instance of support by the Black Caucus of Latino immigration is by no means uncommon and is going to be important in the future politics of immigration. However, it is hard to forecast the future of Black-Latino political relations. Several studies find that African-Americans are more supportive of immigration than are whites (Citrin, Green, Muste, & Wong, 1997; Espenshade and Hempstead, 1996). However, there is also evidence of not insubstantial political tensions between African-Americans and Latinos and this may show up in state and local policymaking with respect to immigration (see McClain and Tauber, 1996).

¹⁷ Neither MALDEF nor NCLR testified before the Senate Education Committee (Rincon, 2008: 92 n72; Texas Legislature, 2001e). However, shortly after the passage of HB 1403/SB 1526, NCLR, the largest national Hispanic organization, sent out a press release that commended Governor Perry for signing this legislation into law (National Council of La Raza, 2001).

¹⁸ The higher education institutions did not take any official position on HB 1403 (Authors' interview). The main exception was the Dallas Community College District, whose chancellor testified in favor of the bill (Rincon, 2008: 90 n67; Texas Legislature, 2001d).

¹⁹ Multiple streams theory is buttressed here by the work of Hilgartner and Bosk (1988) on the social construction of problems and Stone (2001: chap. 6) on how problems are defined in politics.

²⁰ In 2005, persons of Hispanic or Latino origin made up 35.1% of the Texas population, more than double the national figure of 14%. Meanwhile, in 2000, the Texas foreign born population was 14% of the state's population, slightly higher than the U.S. average of 11%. Language other than English spoken at home is close to double that of the U.S. average (31% in Texas compared to 18% in the U.S.) (U.S. Census, 2006).

²¹ If we apply the national estimates of the number of undocumented immigrant provided by Passel (2005) and the U.S. Census Bureau (2006), undocumented immigrants would make up between 16.7% and 19.1% of Latinos in Texas.

²² Texas has had a history of suppression of Latinos, but there is wide agreement that this has changed greatly in the past three or so decades. Minority groups are considerably more powerful today than they were in the early 1960s (DeLeon, 1999: 142-144; Tannahill, 2003: 133)

²³ The House vote on the final version was 33 in favor (all Republican), 19 against (all but one Democrats), and 8 abstaining. The Senate vote was 16 in favor (all Republicans), 12 against (all but one Democrats), and 2 abstaining. The bill also required participants in state-financed adult education and child care assistance program to be citizens or legal residents of the United States or otherwise lawfully present in the United States (Arizona State Legislature, 2005).

²⁴ The one exception was the Chamber's active opposition to legislation, passed in 2007, to impose sanctions on employers who hired undocumented immigrants (Billeaud, 2007; Giblin, 2007).

²⁵ This animus seems to have increased in recent decades with the influx of retirees from the Midwest, who have had little previous exposure to Latinos. It is noteworthy that Russell Pearce's district is the home of such large retirement communities as Leisure World and Sun City (Authors' interviews).

²⁶ In 1909, the territorial legislature passed a literacy law to limit Mexican voter registration. In 1910 and 1911 a series of propositions were passed that severely discriminated against Mexican immigrants in Arizona. Proposition 48 legislated that noncitizens could not be "employed on any public project at the state, county, or municipal level."

Proposition 91 prohibited those who could not “speak the English language” from working in mines. It also prohibited “alien labor” from making up more than 20 percent of an employer’s workforce (Sheridan, 1995: 177-178).

²⁷ It should be noted, however, that Arizona has had a Latino governor. Raul H. Castro was elected in 1974 and served for two years (Goff, 1983).

²⁸ This point relates to Steven Lukes’ notion of the third dimension of power (Lukes, 2005) involving ideological domination and to Omi and Winant’s concept of the racialized state.