

The Changing Nature of Colorado Immigration Laws: 2006-2013

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Abstract

Colorado has a long history of passing immigration laws that either attempted to restrict immigration flow to the state or encouraged immigrants to become part of Colorado communities. Beginning in 2006, the Colorado General Assembly set an active immigration agenda that would lead to 56 laws being passed by 2013. This study explores the factors leading to two different types of policies: those addressing the *incorporation* of immigrants into the state culture and economy and those attempting to *restrict* the flow of immigrants into the state or their settlement. This study shows that from 2006-2007 Colorado passed numerous immigration laws leading to the state being recognized as having the most restrictive immigration laws in the United States. From 2008-2013, integration laws were passed that led analysts to describe Colorado as having the most “welcoming” immigration laws in the United States. This change can be explained by the party control of the legislature and governor’s office, changing state and national party pressures, the increased immigration population in Colorado, perceived threat of new immigrants settling in the state and the role played by highly visible political actors.

Keywords: Immigration, State Immigration Laws, Colorado Immigration Laws

1. Introduction

States, such as Colorado, have a long history of developing immigration policy. In the 1800’s as a territory, Colorado established an immigration board.

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The role of the Board was defined in the language of the statute as:

It shall be the duty of the said Board to adopt and put in execution such measures as will best promote and encourage immigration to the Territory, and for the purpose it shall publish and disseminate such useful information as can be obtained concerning the developed and undeveloped resources of the territory, and may provide for one of its members, or such other person as the Board may select, to attend such Agricultural and Institute Fairs as may be deemed expedient for the display of the Agricultural and Mineral products of the Territory (Colorado Territorial Assembly, 1872).

By encouraging immigrants to settle in Colorado, the legislature hoped that new laborers would be found to work on farms, in mines, and in other occupations. In addition, new immigrants would help Colorado achieve statehood by increasing its population, developing natural resources and increasing the state's tax base. The Board's five members actively recruited immigrants by developing pamphlets that were distributed in the eastern part of the United States and in Europe. The pamphlets described the rich farm country, the numerous natural resources, reliable sources of water and a pleasant climate.

The Territorial Board of Immigration was replaced by the Bureau of Immigration and Statistics in 1889 and functioned until 1897. The State Board of Immigration was created in 1909. In addition to carrying on the work of the earlier Board, the agency collected information about the state's resources, particularly the economic resources that would be of interest to new arrivals to Colorado. The State Board worked with local communities to attract immigrants for specific industries.

However, what was not occurring during this time was the passage of immigration laws by the Colorado State Assembly (Colorado became a state in 1876). In 1875, in *Chy Lung v. Freeman*, the U.S. Supreme Court ruled that states could not control the admission of immigrants to their states and that this power was clearly a Congressional one. After this, states moved away from passing immigration laws to developing immigration policy via their State Board of Immigration. Colorado continued to encourage immigration through its State Board until the early 1900s. At this time, the open door policy changed to reflect the rise of nativist sentiment in the U.S. and in the state.

With the increased popularity of the KKK in Colorado, its organization was able to help elect the Mayor of Denver (Stapleton in 1923) and the Governor of Colorado (Morley in 1924). The Immigration Board ceased to actively recruit immigrants and spent its time accumulating statistical information about Colorado's population and resources. Thus, it became the precursor to the Colorado Office of Demography.

However, the General Assembly following the lead of Governor Morley, passed laws indirectly aimed at restricting the activities of immigrants. For example, a measure passed that made it illegal to use wine for sacramental purposes. This was clearly aimed at Catholic immigrants from southern Europe. This use of symbolic laws and resolutions would be utilized by future legislatures when addressing modern immigration issues.

More recently, states have once again become actively involved in developing immigration policy for a variety of reasons including the lack of federal immigration reform. States such as Arizona have led the path in passing laws that control their immigrant population while others such as California have passed both restrictive and integrative legislation. Colorado became actively involved in developing its immigration policy in 2006 when the General Assembly passed a record number of immigration laws. The regular session was extended by a special session that was called to deal specifically with immigration issues. Immigration concerns, albeit at a less frantic level, continued to occupy the legislature into 2013.

The involvement by state legislatures into a historically federal controlled area is interesting all by itself. Many researchers have explored this topic and found a variety of factors that have led states to return to state controlled immigration policies (Berardi 2010, 2014, Boushey and Luedtke, 2006, Newton, 2012). In addition, there are studies that have specifically analyzed the rise of restrictive and integrative immigration policies at the state level (Boushey and Luedtke, 2011, Stewart, 2012). One of the conclusions of these studies has been that there is a lack of research analyzing individual state actions. This research hopes to fill this void. Colorado, as a case study, is unique because the state general assembly passed almost exclusively restrictive laws during two sessions and then in following sessions passed integrative laws. An analysis of this seemingly quick turnabout by the legislature will provide insights into the role that changing influences play on the development of subnational immigration policy.

This research undertakes a comprehensive review of laws passed by the Colorado General Assembly from 2006-2013 and addresses two research questions regarding why the legislature became involved in establishing an immigration policy driven by passage of numerous laws. The questions are: First, are the laws primarily restrictive or integrative in nature? Second, how can we explain that the legislature in a short period of time, moved from passing restrictive to primarily integrative legislation?

The involvement of states in immigration policy can be explained by numerous factors. One of factors that will be explored in this research is informed by the theory of out-group fear and threats posed by new immigrants settling in a state (Lieberson, 1982, Massey, 2008). With rising numbers of immigrants, especially a sudden increase in a population that does not have high number of new immigrants, it is expected that restrictive laws will be passed by the legislature (Newman, 2014). This action is spurred by a cautious reaction to the new immigrants in the state and particularly if immigrants are settling in areas that have not had a sizable increase in immigration population since the early 1900s.

In addition, this research will analyze additional factors that will explain the rapid expansion of laws passed by the Colorado General Assembly. Specifically, the research will try to answer the question of why the legislature passed a record number of restrictive immigration laws and then proceeded to pass a record number of integrative immigration laws. Factors such as party control of the legislature and governor's office, party polarization of the legislature, state legislative professionalism, influence from state and national party leaders and the role of highly visible political actors who were outside of the legislature will be analyzed. This includes exploring whether Colorado's activism can be explained by a frustration with the federal government's lack of leadership in the area of immigration reform. Studies show that without federal action the void will be filled by states pursuing their own interests.

The time period to be studied is between 2006 and 2013 when 56 immigration laws were passed. These laws are then classified as restricting or controlling immigrants or integrating immigrants. Integrative laws are those that aid immigrants in settling in a community. These laws address issues, for example, of housing, education, work and language training, driver's licenses, identification cards and welfare provisions. Restrictive laws are those that control the inflow and settlement of immigrants.

Examples are laws that restrict immigrants from having a driver's license, decrease or eliminate funding for immigration language training or education programs, and increase the number and types of documents required for social services

2. Theories of State Action and Immigration Politics

Political and sociological theories have attempted for a long period of time to explain how the interaction between newly arrived immigrants and the native population impact political decisions made by political institutions. One of the prevalent theories is that states that have had contact with immigration populations over a long period of time are more likely to accept the immigration population and with this pass integrative immigration laws (Allport, 1954, Lieberman, 1982). If a state has experienced a rapid increase in its immigration population it is more likely to respond to the feelings of nonimmigrants who feel threatened (Brader, 2008). The state government will respond by passing legislation that is intended to control the newly arrived immigrants (McLaren, 2001). These laws and particularly resolutions may not have a direct impact on the population; they may, however, be symbolic.

To measure how changes in the Colorado state population influence state immigration policy, the U.S. Census foreign born percentage of the population is used. Foreign born includes anyone born outside of the United States who is not a citizen. In addition, to measure the change in the foreign-born population, the American Community Survey is utilized (U.S. Census Bureau, 2000-2013). This information is collected from 2000 to 2013. It is expected that this research will show that the rapid increase in the percentage of foreign born during this time leads to an increase in restrictive immigration laws.

In addition, other factors, such as party control of the legislature, the professionalization of the legislature, the influence of state and national party leaders and influence of political leaders outside of the legislature, will be analyzed for their impact on the passage of restrictive or integrative laws.

Party control will be measured by looking at the control by Democrats and Republicans of the House of Representatives, the Senate and Governor's office from 2006-2013.

From this, it is hypothesized that when the Democrats control the legislature it is more likely to pass integrative measures. Conversely when the Republicans dominate the legislature restrictive measures will be passed. This is based on an analysis of the platform of each party with respect to immigration issues.

State legislative professionalism is measured by the number of months in session, number of staff members, and salary for legislators and for staff members. Recent studies have shown that the degree of professionalism in a legislative body will have an impact on the laws considered and passed. Specifically, in relation to immigration, a more professional state legislature will pass integrative laws as they will have more benefits for the state than control measures (Boushey and Luedtke, 2011). Professionalism of the Colorado General Assembly will be measured utilizing an index developed by King (2000) and Squire (1992).

In addition to using the above indexes and measurements, interviews of legislators involved in the legislative process will be utilized. Also, the reporting of the sessions in major newspapers will be analyzed

3. Immigration Bills, 2006-2013: An Overview

As states became more involved in immigration policy the number of laws and resolutions addressing this issue increased. By 2006, 570 immigration proposals were introduced by state legislatures. Of these 84 bills were signed into law.

The Colorado General Assembly, during its 2006 regular session responded to the growing concerns about immigration by proposing 17 bills and 3 resolutions. Of these, 5 laws and 1 resolution were passed. Dissatisfied with the legislature's inability to pass legislation that addressed additional immigration issues, Governor Owens (R) called a special summer session. The session passed 12 laws with 2 deferred to the public for a vote during the fall general election. The legislation fell into 5 categories (Table 1). The categories are those utilized by the National Conference of State Legislatures in their analysis of state immigration laws (National Conference of State Legislatures, 2006).

Table 1: Regular and Special Session Legislation: 2006

Legislation Category	Number of Bills Passed
Employment	5
Identification/Driver's License	2
Law Enforcement	7
Public Benefits	2
Voting/Elections	1
<u>Total</u>	<u>17</u>

The 2007 session was a continuation of the 2006 special session where the legislature considered numerous immigration measures. By the end of the session, the House and Senate had passed 6 laws in 3 categories (Table 2). Thus, the 2006 and 2007 sessions passed 23 immigration measures. This number far surpassed past years where very few immigration bills were considered.

Table 2: Regular Session: 2007

Legislation Category	Number of Bills Passed
Employment	2
Law Enforcement	1
Public Benefits	3
<u>Total Number</u>	<u>6</u>

Beginning in 2008 and continuing through 2013 the legislature passed almost the same number of immigration bills as had the previous two sessions. In the six sessions, the legislature passed 27 bills (Table 3). The bills addressed a wide variety of issues pertaining to immigration.

Table 3: Regular Sessions: 2008-2013

Session	2008	2009	2010	2011	2012	2013
Education		2	1		1	4
Employment	3		1			
Health	2	2				
Driver's License						2

4. Restrictive and Integrative Laws 2006-2013

Scholars have developed a number of ways to classify state immigration laws as being restrictive or integrative. Restrictive legislation varies in description from being defined as punitive or anti-immigrant (Progressive State Network, 2008) to controlling immigrants, and byregulating the flow and mobility to and within the state by symbolic legislation (Tichenor, 2002).

Integrative laws have been defined as those that are supportive of immigrants (Progressive State Network, 2008), protect rights of immigrants (Tichenor, 2002) and those that include social benefits, access to education and protection of worker rights (Stewart, 2012).

For this research, restrictive laws are classified as those that control the flow of the immigrant population especially unauthorized immigrants, control access to social services, higher education, identification cards and employment. Integrative laws are defined as those that provide access to higher education, granting of driver's license, public benefits, budget allocations for programs that benefit immigrants and access employment.(Unauthorized immigrant refers to a person who resides in the United States, but who is not a U.S. citizen, has not been admitted for permanent residency and is not in any of the authorized temporary statuses permitting work or residency.)Table 4 provides a summary of the number of laws passed that are identified as restrictive or integrative.

Table 4: Legislative Restrictive and Integrative Laws

Legislative Session Year	Restrictive laws	Integrative Laws
2006	7	0
2006 Special Session	10	0
2007	6	0
2008	3	4
2009	2	6
2010	1	5
2011	1	1
2012	1	3
2013	0	6
Total	31	25

The data show that between 2006 and 2013, 56 laws were passed. Between 2006 and 2007, 23 were passed and all of these were restrictive in nature. Between 2008 and 2013, 8 were restrictive and 25 were integrative. Appendix A provides a summary of the content of restrictive laws and Appendix B provides an overview of the integrative laws.

5. Background for Legislative Sessions

5.1 2006 Session

With the increased awareness by Coloradans of immigrants in their communities, pressure was put on state legislators to do what the federal government had not done and that was to pass immigration laws that would discourage unauthorized immigrants from coming to the state and allegedly using services that they were not eligible to receive.

In 2006, the Colorado General Assembly, controlled by Democrats for the first time in 44 years, responded to constituents' concerns by proposing 17 bills and 3 resolutions that broadly addressed immigration. The 'citizen' legislature, which meets once a year for 120 days (January-May), passed 7 laws and 1 joint resolution (The resolution endorsed the Western Governors Association resolution, which supports a temporary guest worker program, opposes blanket amnesty, and calls for sanctions against employers that hire unauthorized immigrants).

The passage of the laws was seen as a compromise by Republicans who demanded bills that would have had a greater impact on unauthorized immigrants. In particular, Republicans wanted to restrict state benefits that they felt unauthorized immigrants were receiving and that were being paid for by state tax dollars. In addition, it is clear, that the Democratic leadership felt the urgency to address immigration at least with a very public introduction of bills with the knowledge that in all likelihood that the most controversial bills would be killed in committee. The attempt to express the sentiment of citizens can be seen in several of the bills and in the joint resolutions. For example, Senate Bill 90 proposed that there would be no sanctuary for illegal immigrants in any Colorado city. However, it did not provide for anything that did not already exist in federal law.

Importantly, for legislators and citizens, the bill captured a growing concern in Colorado that many cities, in particular Denver, Aspen and Vail, were not complying with federal laws and thus were becoming known as a “sanctuary” for immigrants. The joint resolution expressed the view of many legislators that it was necessary to gain the support of fellow westerners on the issue of immigration. It was hoped that other western governors would push their legislators to pattern their immigration proposals after the ones passed by Colorado.

5.2 The Defend Colorado Now Initiative: 2006

At the same time that the legislature was contemplating immigration legislation, a citizen’s group was attempting to get an immigration initiative on the ballot. The proposed amendment to the state constitution was spearheaded by Defend Colorado Now (DCN) and asked voters in its Ballot title:

Shall there be an amendment to the Colorado constitution concerning the restriction of non-emergency government services to certain persons who are lawfully present in the United States, and, in connection therewith, restricting the provision of non-emergency services by the State and local governments to United States citizens and aliens lawfully present in the United States, except as mandated by federal law; and providing for the implementation and enforcement of this restriction (Colorado Secretary of State Office, 2008)?

Similar to initiatives in other states, the DCN initiative attempted to restrict non-emergency services to unauthorized immigrants. The initiative was originally filed in 2003 by Colorado Representative Tom Tancredo but did not make the ballot because there were not enough qualified signatures. The DCN tried again in 2006 and received approval from the Colorado Title Setting Board on January 4. The Board ruled that the initiative met the constitutional requirement that the measure did not address multiple issues. However, on June 12, the Colorado Supreme Court, in a 4-2 ruling, stated that the initiative contained numerous subjects and would not be on the November ballot. Governor Bill Owens (R) expressed his displeasure with the Supreme Court’s ruling and his desire for a rehearing before the court. In a press conference, Owens called the ruling “inconsistent, inappropriate and arrogant” (Owens, 2006). He urged the Supreme Court to reconsider its ruling and was supported by Attorney General John Suthers, who said he would file for reconsideration.

Owens threatened to call a special session of the legislature if the Court did not act in a timely fashion and reverse its decision. On June 26, the Colorado Supreme Court denied the petition for a rehearing and on the 29th, the Governor called a special session.

6. The 2006 Colorado General Assembly Special Session

The contentious events leading up to the special session made it unlikely that action would be taken to place the initiative on the November ballot or that bills addressing other immigration concerns would be passed. The urgency of the session was underlined when Governor Owens threatened to call additional sessions if action was not taken to his satisfaction.

The Democrats responded to the call for a special session with criticism of Governor Owens past efforts on immigration laws. Senate President Joan Fitzgerald (D) stated "Illegal immigration is not a new problem. Bill Owens has been Governor since 1999 and he's had a Republican House and Senate and they've done nothing. And now all of a sudden in three days in a special session we're going to solve this? No. Their party is in charge of the U.S. Congress and that is the prime mover and shaker on immigration issues" (Bartels, 2006).

6.1 A Remedy from Outside of the Legislature

Going into a divisive session, help in resolving the deadlock came from an unlikely individual; someone outside of the legislature and with ties to the DCN. Former Colorado Governor Richard Lamn, an outspoken critic of unauthorized immigration and of federal immigration policy and a supporter of the DCN ballot initiative, began working to find a compromise to the constitutional measure before the special session (Lamn and Imhoff, 1985). Lamn later described his effort as turning from a "constitutional to a legislative one" (Lamn, 2006). Helping him with this approach was former Denver Mayor Federico Pena. Pena had expressed concern over the lack of sanctions against employers of unauthorized immigrants and a desire for national immigration reform. What seemed to bring Lamn and Pena together was their desire to have national legislation that would address their multiple concerns about immigration.

If the national government would not act, the responsibility would fall to the states. However, the Colorado legislature would only be able to pass significant legislation if a compromise could be found.

Relying on a recently passed Georgia law, Lamn and Pena put together measures that included restrictions on who could get public benefits coupled with a stringent verification system. The measures also included penalties for employers of unauthorized immigrants. Lamn characterized his action, which seemed disloyal to DCN supporters, as a move to get more accomplished in July through the passage of laws, than waiting for a vote on the initiative in November.

As Lamn Explains

Should we merely ask to put our initiative back on the ballot?

That seemed inadequate to me. Why not go directly to legislation preventing illegal aliens from getting benefits, plus a secure method of verifying that applicants for public benefits were legal?

Why not get in July most or all of what we were seeking next November?

If we went the ballot route, we would still need implementation legislation next January (as required by the initiative), which probably would not pass until May of 2007. WHY WAIT?

Strike while the politics favor our cause (Open Letter from Richard Lamn to DCN, published on DCN website, July 1, 2006)!

The third partner in supporting the legislative route was Governor Owens. He agreed to sign legislation if it addressed the main issues of the initiative. With this compromise, the legislative session produced 34 measures; 22 were postponed, 2 referred to voters and 10 bills signed into law by Governor Owens.

After the five day session ended, both Democrats and Republicans declared that Colorado now had the toughest immigration policy in the country. The House of Representatives' Speaker of the House described the session as "Colorado passing more bills to curb illegal immigration than any other non-border state in the nation.

We did more to solve the problem of illegal immigration than Congress has done in a decade” (Romanoff, 2006). Further, the Governor stated that the new laws would mean that 1 million people receiving state aid would have to verify their citizenship and that of these, 50,000 illegals would be thrown out of these programs (Owens, 2006). The DCN director, Fred Elbel, declared the session a success, even though he restated his regret that Coloradans did not get a chance to vote on the initiative.

However, not everyone saw the session as a success. Bob Beauprez, a Republican candidate for the Governor’s office stated: “I’ll give the legislature and the governor credit for taking some little baby steps toward this problem. There’s a whole lot more to be done.” (Kelderman,2006) Even Owens agreed with this point when he said “The Legislature failed to enact commonsense solutions in several areas that require real and necessary reform...the biggest disappointment is that the initiative isn’t on the November ballot” (Migoya,2006).

7. 2007 Session

The results of the special session encouraged many legislators to pursue additional measures during the 2007 session. However, by the beginning of the session, it became apparent to state officials, agencies implementing the laws, and to some legislators that there were unintended consequences of the legislation that needed to be addressed. For example, state Senator Andy McElhany (R), encountered one such problem when he accompanied his daughter to the DVM to get her driver’s permit. They brought her passport as identification only to find that a passport was no longer a sufficient form of identification (Peterson, 2007). With numerous problems like this one, the legislature chose to study the current problems with the past legislation (Kottke, 2007).

Because of this, the legislature spent most of its time on only two new major proposals related to immigration. The first established a liaison office with Mexico to aid Mexicans in getting visas to work in Colorado. In essence the bill (HB 1325) proposed a program that would help the federal government issue worker visas. Senator Abel Tapia (Democrat, Pueblo) explained “All we’re doing is trying to expedite the (federal) visas.

What we have found is the visa process is filled with a lot of stumbling blocks, bureaucratic sidetracks. It is very, very hard to get through." (Ashby,2008)

Under the plan, Colorado would bring up to 1000 workers with an additional 1000 for five years. The visas would not lead to citizenship and to ensure the workers return to Mexico after the 10 month visa expires, 20% of their wage will be withheld and returned only after they return to Mexico. The bill also called for adding three new positions in the Department of Labor and Employment who would process the applications. The bill had the support of numerous labor and farm organizations such as the Colorado Farm Bureau and the Rocky Mountain Framers Union. In addition, agriculture groups, who opposed many of the laws that made it difficult to recruit immigrants to Colorado, lobbied for new programs that would provide labor during harvesting season.

This led the legislature at the end of the 2007 session to consider its second major proposal and a novel response to the dilemma faced by Colorado framers. A Representative from southern Colorado proposed that prisoners be used to pick crops on a trial basis. The pilot program, run by the Department of Corrections, placed low-risk prisoners in the southeastern part of the state. The inmates were paid 60 cents a day. Farmers were required to pay the Department of Corrections for transportation and security (Ashby, 2008, Frosch, 2007).

Representative Dorothy Butcher (D), in proposing the program, expressed the concern that 50% of immigrant laborers were unlikely to return to the farms in southern Colorado and thus, the prisoner program would provide a much needed work-force. Many farmers endorsed the plan and said that offering higher wages to local laborers had not provided enough of an incentive to entice workers to the fields. The Department of Corrections endorsed the program saying it would provide skills and a work ethic for the inmates.

Opponents of the program criticized it as being reminiscent of chain-gangs and forced labor. Julian Ross of the Colorado Immigrant Rights Coalition captured this sentiment when he stated: "Many immigrants are leaving Colorado for other states that will actually embrace their contributions as good citizens and hard workers. This exodus from Colorado has profound negative consequences on our economy and the very fabric of our society" (Frosch, 2007).

The program was funded through 2008 at which time the legislature ended the program.

8. 2008-2013 Sessions

At the beginning of the 2008 and 2009 sessions, Democrats, who controlled the legislature and governor's office (2008-2013), signaled that they would be introducing more integrative than restrictive measures. In addition, legislation would address the unintended consequences that resulted from the restrictive laws. This included a concern that state agencies, which were responsible for implementing the laws, had a lack of funding for refugee and immigrant programs.

Influenced by the election of Barack Obama and his stance on immigration reform, the legislature turned its attention to integrative measures. The laws that passed covered funding for immigrant assistance programs, and doing away with certain reporting requirements for health care and work programs. An identification law addressed the issue of providing ID cards for seasonal works. This repealed parts of the restrictive ID laws of 2006.

From 2010 to 2011, the legislature continued to pass integrative laws that included extra funding for immigrant programs, especially for education programs. These programs were overwhelmingly supported by Democrats. Republicans proposed numerous restrictive bills but were unsuccessful in getting them passed.

In 2013, the legislature returned to two divisive issues that had been debated since 2006. The first issue addressed if unauthorized immigrants should be allowed to have a driver's license. The 2006 restrictive laws clearly stated that this was unlawful. However, by 2013, several states (for example, New Mexico, Oregon, and Utah) allowed unauthorized immigrants to have a driver's license and Democrats argued that, if passed, the law would lead to integration of immigrations into Colorado communities. They would be able to get to work, attend church and participate in community social events. In addition, immigrants would have to buy insurance, and thus be a more responsible resident. This bill was also supported by Governor Hickenlooper. The second issue was the granting of in-state tuition for unauthorized immigrants. This was a highly contentious issue that the legislature had debated for several months.

Generally, Democrats supported the measure while Republicans opposed it on the grounds that it rewarded the behavior of adults who had illegally crossed into the United States

Both issues drew national attention from the media as had the measures during the 2006 sessions. The governor was very vocal in his support of both of these measures. After the passage of the measures, the legislature passed two other laws. The first is exemplary of integrative laws. It requires the state to pursue funding and federal support for comprehensive sexual education programs which must be culturally sensitive and meaningful to immigrant communities. The other measure repealed a statute that formerly compelled local law enforcement officials to participate with federal immigration issues. There were no restrictive laws passed in 2013.

At the end of the session the legislative actions were described by the media, the Governor and Democratic legislators as revising the laws of 2006-2007 and now providing the foundation for Colorado to be known as the "most welcoming" state for immigrants.

9. Discussion

9.1 Change in Foreign Born Population

In analyzing the immigration laws passed by the Colorado General Assembly there are numerous factors that explain the actions of the legislature. For example, studies have shown that since the 1990s states have become progressively more frustrated with a lack of action by the national government on immigration reform. This became a major concern for "new destination" states such as Colorado. After 9/11, there was an increased interest in the control of immigrants entering the country. This was accompanied by a heightened awareness of new immigrants settling in urban and rural regions of the U.S. Research shows that an increased awareness of foreign born in the population leads to immigrants being viewed as outsiders and threatening the dominant culture of the cities and state (Massey, 2008, Newman and Velez, 2014). This can lead to distorted and apocalyptic views of immigrants and the resultant push for legislation that restricts the flow of immigrants and their access to state and local benefits (Griffith, 2008, Habermas, 1982, Ruscher 2001, Stewart, 2012).

One way to measure this in Colorado is to analyze the change in the foreign born population. The 2000 census showed that Colorado was becoming a new destination state for legal and unauthorized immigrants. By 2006, the foreign born population was 489,496 or 10.3% of the population. Of this number, it was estimated that 3% were unauthorized immigrants. With this, Colorado ranked 16th in the United States for foreign born population. The foreign born were primarily from Mexico (52%), Asia (18%) and Europe (14%). New immigrants to the state came from India, Cambodia, Tibet, Vietnam, Korea, and from former Soviet Union bloc countries. In addition, refugees from Sudan and Ethiopia settled in Colorado. The rapid change of the immigrant population is certainly one factor that can explain the passage of restrictive measures in during the 2006 and 2007 sessions.

What is significant about the number of immigrants that settled in Colorado is the percentage change from 1990 to 2000. During this ten year period of time the increase of foreign born population was 205% (U.S. Census, 2008). Coloradans became aware of “new” and “strange” immigrants arriving in their communities by their number, new residential patterns and the rise of ethnic stores and restaurants. It is clear from legislative debates, constituent correspondence, media coverage and communities meetings that concern by residents led them to demand restrictive laws. These demands resonated with both Democrats and Republicans.

These concerns did not entirely disappear during the 2008 to 2013 sessions but they became less important than other issues such as rebuilding the economy and funding education. By 2013, it was even questioned if the groups that had supported restrictive legislation had dissolved. As noted by Rich Jones, director of the policy and research Bell Policy Center: “The tenor of the debate has changed... Two years ago, the number of witnesses who testified on the in-state tuition was split roughly in half. This year very few opponents showed up. Either the anti-immigrant side ran out of gas or there are fewer of them” (Volk, 2013).

9.2 Professional Legislature

Research on state immigration laws has posited a link between the professionalism of the legislature and the likelihood of passing restrictive versus integrative legislation (Boushey and Luedtke, 2011, Berardi, 2010).

This research hypothesizes that professional legislatures are less likely to pass restrictive legislation because their research shows it is fraught with problems, likely to be struck down by the courts and that it is within the purview of the federal government. Less professional legislatures tend to be more provincial and less likely to view the issue in a comprehensive way.

Based on the index developed by Squire, the Colorado legislature ranks in the middle of the professionalism scale. It is a citizen assembly that meets for only five months each year. The staff size is small with legislators dependent on an aide and interns for help with their responsibilities. This may explain the inability of the legislature to conduct extensive research on immigration issues and thus, pass laws with unintended consequences (Berardi, 2010) and those that were restrictive in nature. However, because the Colorado legislature did not become more professional by 2008, it does not explain the number of integrative measures passed during the 2008-2013 sessions.

9.3 Party Control and Party Polarization

Another predictor of the content of immigration legislation is which party is in control of the legislature and governor's office. Research has found that Democratic Party control of the legislature will likely produce more integrative legislation than legislatures controlled by Republicans (Pew Research, 2013). It would then be expected that between 1999 and 2005 when Republicans controlled the governor's office and the House and Senate (except for one session) that restrictive measures would have been passed. Although few immigrant related laws were passed during this time a majority were restrictive. However, from 2006-2013, the Democrats controlled the House (except for one session), the Senate and the Governor's office beginning in 2008. This helps explain the number of integrative measures passed beginning in 2008. Another factor that may explain the rise of integrative measures is party polarization. Based on research by Shore, the Colorado state legislature, starting in 2008, became one of the most polarized in the United States (2014). Only the California legislature is more polarized. Polarization is defined as the "average ideological distance between the median Democrat and Republican in the state legislature" (Shore, 2014). This study supports the idea that as the Colorado Democrats gained control of the legislature, the governor's office, the party became more reticent to compromise with Republicans on immigration issues.

While party control and polarization may explain the integrative laws passed beginning in 2008 with Democratic control of the legislature and governor's office, it does not explain the restrictive laws of the 2006-2007 sessions.

However, based on Senate and House committee meeting records, press conference, and interviews what is clear that party dynamics played a role in passage of the restrictive measures. First, the Colorado Democrats were feeling tremendous pressure from constituents to develop an immigrant policy that addressed their concerns about the increased number of immigrants in the state. In addition, democratic legislators felt their party had fallen behind the Republican Party (state and national) in developing immigration reform legislation. Specifically, the Democrats pointed to the action by President Bush and Colorado Governor Owens. In addition, they were concerned that a lack of effort or perceived effort would result in an electoral backlash at the next state and presidential elections. This led Democrats in 2006 to pursue a restrictive legislative agenda.

9.4 Political Leaders on Immigration

Political advocates for a policy position who have high visibility can influence the public and legislator's view on a policy issue. Research has been shown this to be the case on the state and local level in regard to immigration (Puig, 2009). Two advocates for a restrictive immigration policy at the state and national level were highly visible in Colorado during the period under study. Colorado Representative Tom Tancredo and former Governor Richard Lamn used their public positions to speak about immigration and had done so throughout their political careers. Tom Tancredo was elected to Congress from the Colorado 6th district (south and west of Denver) in 1999. As an ardent supporter of restricting unauthorized immigration to the United States, Tancredo brought an urgency with his message that had been not been heard in the state since the early 1900s. One impact of his rhetoric was to elevate residents' expectations about what Congress should do in reforming immigration policy (Doherty, 2006). The central expectation was that local and state needs and concerns would be addressed by Congress. When this did not occur, Tancredo used his visibility as a representative to support Colorado's efforts to restrict immigration such as an amendment to the state constitution to make English the official language of the state.

Former Governor Richard Lamn (1974-1988) has been recognized as an outspoken critic of U.S. immigration policy since the 1980s. In 1985 he wrote the controversial *Immigration Time Bomb*, where he called for a national policy that would restrict the number of immigrants admitted to the U.S. This book, newspaper editorials, and his public appearances kept his message in the forefront of the immigration debate. For example, in 2004 Lamn gave a speech entitled: "How to Destroy America" where he stated: "America's downfall would be to include dual citizenship and promote divided loyalties. I would celebrate diversity over unity. Diverse people worldwide are mostly engaged in hating each other" (Lamn, 2004). He continued writing and speaking about immigration, many times making controversial statements that made headline news.

The tone of the debate changed with the election of Barack Obama and Bill Ritter (D) to the governor's office in 2008. This was followed by President Obama's reelection in 2012 and John Hickenlooper (D) to the governor's office. Obama, Ritter and Hickenlooper embraced immigration reform and integrative laws. Governor Ritter pursued legislation that would 'correct' laws passed during Owens administration and worked on measures that would integrate immigrants into Colorado communities. The urgency to pass restrictive measures was waning with the Democrats controlling the state government and White House and with increased party polarization. Even former Governor Lamn recognized that restrictive laws and the emphasis on immigration issues needed to be put in perspective to other state concerns. He stated "It makes me think I was almost too successful by bringing attention to the issue (immigration). This is not a very good reading on what problems the state faces. It's a serious issue, but the people seem to have gone from an under-reaction to an over-reaction" (Lamn, *Overreaction to Immigration*, 2008).

This is indicated by public opinion polls that showed in 2004 and 2005 that a majority of Colorado residents supported restrictive state laws (Mason-Dixon Poll, 2006). This began to change by 2008 and by 2013, a Gallop Poll showed that 73% of Coloradans favored immigration reform and a Quinnipiac poll showed 59% of Coloradans favored more integrative laws that would allow unauthorized immigrants to stay in the United States if they are eventually moving towards U.S. citizenship (Gallop, 2013, Quinnipiac, 2013).

10. Conclusion

Like many states, that were frustrated with the lack of action by the federal government on immigration reform, Colorado became actively involved in 2006 in passing laws addressing citizen concerns on immigration. This led the legislature to pass a record number of restrictive measures during the 2006 and 2007 sessions. In addition, a rare special session was called. Beginning in 2008 and continuing through the 2013 legislative session the legislature, while still considering restrictive measures, passed laws addressing the unintended consequences of the earlier legislation and integrative laws.

Restrictive laws were defined as those attempting to control the flow of the immigrant population, especially unauthorized immigrants, control access to social services, higher education, identification cards and employment. Integrative laws were considered to be those that provided access to higher education, granting of driver's licenses, public benefits, budget allocations for programs that benefit immigrants and access to employment. This study considered numerous factors that would explain the change in direction that the legislature took from 2006 to 2013. These factors were selected based on research on state legislative action regarding immigration (Berardi, 2010, Boushey and Luedtke, 2006, 2011, Adams and Newton, 2009, Massey, 2008). The specific factors studied were: the change in the number of the foreign born population; the party control of the legislature and governor's office; the role of the national party; and the role of other political actors.

The research found support for several of these factors possessing explanatory power when analyzing the rise of the number of restrictive laws. One of the major factors was the rapid increase in the foreign born population between 1995 and 2005. It was not just the percentage increase in the population, but the fact that Colorado as a new destination immigrant state was encountering the arrival of immigrants from countries that traditionally had not settled in Colorado. Thus, cities and rural areas experienced not only an increased number of immigrants, but immigrants who brought with them social and political cultures that were new to most Coloradans. The reactions by some members of these communities led to immigrants being seen and treated as outsiders. Theories of group prejudice and group ethnic conflict confirm the likelihood of this happening when a rapid change in the immigrant population occurs (Lieberson, 1982, Massey, 2008).

The perceived threat of these groups and the concern that unauthorized immigrants would continue to arrive in Colorado led many legislators to lobby for restrictive laws. These laws in substance and symbolically were to restrict the flow of immigrants coming to Colorado.

The role of political actors, such as the governor, also had an important impact on the number, type and content of legislation. Governor Owens (R) used his agenda-setting ability and access to the mediator place immigration on the top of the legislative regular and special sessions (Dunaway, 2007). In addition, his use of calling a special session and the threat of calling numerous special sessions, had an impact on the number of restrictive laws that were passed.

It is clear the action of the governor is influenced by his party identification and this was the case for legislators as well (Cox, 2010). Republicans in the legislature had been calling for restrictive immigration laws since 2001 but it was not until 2006 that they found that Democrats were willing to work with them on several of their proposals. The actions by the state Democrats were influenced by national politics and pressure from the national Democratic Party for immigration reform. Specifically, Colorado Democrats felt the national party was falling behind in enacting immigration reform by comparison with Republicans. Thus, the Democrats, hearing from their constituents, decided to act on several immigration issues. In addition, it was clear the Democrats were concerned with how well they would do in upcoming state and local elections. They were also concerned with the 2008 presidential election: Colorado had already in 2006 been described as an important swing state. Passing "tough" immigration legislation was seen as one way to respond to the interests of constituents and respond to those Republicans who described Democrats as not having an immigration policy.

The actions of other political actors, such as Representative Tom Tancredo and former Governor Richard Lamn, served to highlight the "threat" posed by immigrants and provided arguments for restrictive legislation. Inflammatory rhetoric fueled the debate over the negative impact of immigration on the state. In addition, the media coverage that these actors received continually served to highlight the call for restrictive measures that were eventually passed by the legislature.

Finally, analyzing the professionalism of the legislature supports the studies that have shown that low-to mid-professional legislatures are more likely to support restrictive legislation than integrative legislation. However, this didn't explain why the legislature, which did not become more professional by 2008, began passing primarily integrative legislation.

As with restrictive measures, there are numerous factors that explain the passage of integrative measures beginning in 2008 and continuing through the 2013 session. One of these was the election of President Obama--specifically, his winning the state of Colorado and the direction that the Democratic Party decided to take in regard to immigration. Buoyed by Obama's position on immigration reform and support for integrative legislation, state Democrats proposed and passed several integrative laws. The legislative Democrats found support from newly elected Democratic governors in 2008 and in 2012. Both Colorado governors lobbied for these measures and received support from pro-immigrant groups. In addition, groups that had lobbied for restrictive measures were less visible at the Capitol beginning in 2008 and even more so by 2013. This was likely because they lacked Democratic support and perhaps felt their efforts were better centered on the national or local level.

Additionally, even by 2007, the legislature realized that they were unintended consequences of the restrictive laws. Some of these consequences, when addressed, led to integrative laws. For example, by allowing several forms of identification to apply for benefits, rather than two or three found in restrictive legislation, the impact was to provide access to benefits rather than denying it to immigrants.

These findings have implications for scholars of federalism who are analyzing the role of subnational units in developing immigration policy. It is clear that as long as states perceive the national government is not actively addressing immigration issues, there is a role for them to play. In addition, if states such as Colorado perceive cultural, political and economic threats from a rapidly increasing immigrant population, the legislature may take action to pass restrictive legislation. This research also shows that the passage of restrictive or integrative measure is the result of numerous factors that provide a complicated view of what occurs at the state legislative level.

To better understand the factors that led Colorado to pass restrictive and integrative laws further research will be needed. For example, this study did not consider the actions of local governments. It may be the case that local governments were passing laws that countered or supported the legislative actions. This would provide a more complex view of immigration politics at the state level.

Further research is also needed on the role of interest groups in the Colorado legislative process. While this research recognized the importance of these groups, it did not analyze the number, type and power of these groups. This would provide a more in-depth analysis of the role of political actors outside of the legislature.

Finally, valuable insights will be gained by further research on the impact of the laws on immigrants (legal and unauthorized) and native populations. This research could provide a better understanding of the consequences of the legislation and how likely it is that integrative, restrictive laws or a combination of the two will be passed in the future.

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Appendix A

Restrictive Law

006-Regular Session

Fines (\$50,000.00) for counterfeiting documents of legal status and identification purposes

Requires a report on the possibility of using a birth certificate issued outside of Colorado can be used for identification
Prohibits any state and local government from enacting legislation that impedes law enforcement agencies from cooperating or communicating with federal officials concerning an arrestee who is suspected to be illegally present in the U.S.

Police Officers are required to report any suspected illegal immigrant arrestees to ICE.

Makes smuggling humans a Class 3 felony, unless the adult is an illegal immigrant which makes the offense a Class 2 felony. Smuggling includes offering transportation to someone of illegal residency status to enter, pass through or remain in either the U.S. or Colorado.

Makes the act of deliberately voting in an election without proper authorization a Class 5 felony. **2006 Special Session**

Requires that contractors verify the work status of their employees before applying for economic development incentive awards. Contractors receiving awards and later found to employ unauthorized workers must repay the award and will be ineligible for another award for 5 years.

Mandates removal of authorization of any licenses, permits, ids, for applicants found to be unlawfully present in the state or U.S.

Mandates employers to withhold 4.63% from the wages of an employee without a validated SS number or validated taxpayer ID number for non-resident aliens.

Requires that employers examine the work status of each new employee within 20 days of hire. Employers having unauthorized workers face a penalty of \$5000.00 for the first offense.

Instructs the state attorney general to pursue reimbursement from the federal government for all costs associated with illegal immigration (incarceration, education and healthcare).

Restricts public benefits from those who are not US citizens or Legal Permanent Residents.

Restricted benefits include: welfare, health, disability, public or assisted housing, postsecondary education, food assistance and unemployment.

Makes the act of deliberately voting in an election without proper authorization a Class 5 felony.

2007 Session

Need for documentation to participate in unemployment insurance benefits

Requires a no-bond warrant be issued in a criminal case when the defendant is determined to be illegally present in the country

Allows for an abduction prevention order (for a child) when there is a possibility of change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the US.

Requires proof of lawful residence in the US for receipt of public benefits

2008-2013 Sessions**2008**

Requires that employers be notified of the prohibition against hiring an unauthorized alien.

Authorizes ICE officers to serve as peace officers.

50 percent of bond fees collected from persons illegally in the country who are charged in felonies or class 1 or 2 misdemeanors

2009

Adds to the crime of identity theft knowingly using someone else's passport, driver's license or identification card.

Long term care eligibility for Medicaid requires a declaration of immigration status.

2010

Require proof of the use of force, fraud, or coercion to prove the crime of trafficking in adults and children in involuntarily

Adds a five year waiting period for relative sponsors of noncitizens for the old age pension program.

2011

Allows certain drug offenders to obtain parole under a pilot program. Cannot have an immigration detainer.

2012

Deletes certain positions on the Colorado state advisory council for parent involvement in education including one representative from

2013 None

Appendix B

Integrative Laws

2006 Regular Session None

2007 None

2008

Provides for identification cards for seasonal workers.

Requires employers to provide transportation, housing, fair wages, workers' compensation. Eliminates restrictions on testing for tuberculosis which enhances the nondiscrimination policy regardless of immigration status.

Budgets funding for refugee and immigration assistance.

Budgets funding for English Language Proficiency programs, health care programs for noncitizens.

The State Department of Human Services is no longer required to report the citizenship status of members of families participating in the Colorado Works Program.

The Statue requiring the state department to report names and addresses of unlawful aliens to INS, except those who only receive benefits from Medicaid, is also repealed.

2009

State Council of Parent Advisors includes an immigrant rights advocate.

School District Accountability Committee must represent the migrant children population.

Budget monies for refugee and immigrant assistance.

2010

Expands definition of high-risk student to include migrant children and thus eligible for addition funding.

Extends Identification benefits for medical licensure for those becoming US citizens.

Funding for State Criminal Alien Assistance program.

Funding for refugees and immigrant assistance.

2011

Continues funding for refugee and immigrant assistance.

2012

Funding for immigrant assistance programs.

Renewal of identification cards to those who attest to lawful presence in the US.

2013

Allows for in-state students without lawful immigration status to be considered in-state residents for tuition purposes and exempts persons receiving educational services or benefits from in-state tuition. Allows individuals to qualify for a driver's license, instruction permit or identification card, despite the individual not being lawfully present or being only temporarily lawfully present in the US.

Requires the state pursue funding and federal support for comprehensive sexual education programs which must be "culturally sensitive" and meaningful to immigrant communities.

Repeals statute that formerly compelled local officials to participate in federal immigration issues.