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**Testimony on SB259 [Shockley], making remuneration to illegal aliens
non-deductible as a business expense**

Paul Nachman, 1611 W. Koch #25, Bozeman 59715, 587-2488, paul_nachman@yahoo.com

To the Montana State Senate Taxation Committee:

I'm Paul Nachman. I live in Bozeman and, as a retiree, am a volunteer researcher in the Physics Department at MSU. I grew up in Chicago, but I lived in southern California 1996 – 2005, prime seating to witness what illegal immigration is doing to our country. Based on this experience, I wrote an op-ed for the Bozeman paper in December outlining why mass immigration is a threat even in remote Montana. Thinking this op-ed might be informative to you, I've provided copies.

Illegal immigration has mushroomed into such an enormous problem that it must now be countered on many fronts. Probably the most potent front is jobs --- if illegal aliens can't get hired, they're less likely to come. And those here will begin to leave, to self-deport.

The biggest stick for drying up the jobs would be to enforce the criminal laws against **employers**. If prominent executives are seen doing the perp walk for hiring illegal aliens, beneficial change will happen quickly. Unfortunately, though, that approach is only allowed to the feds, not the states.

But there are many other approaches the states **can** use to discourage employing illegal aliens. They're outlined in a report from the Immigration Reform Law Institute, a part of the Federation for American Immigration Reform (FAIR). I've provided you with a copy of the relevant page.

One allowed approach is to make wages and benefits paid to illegal aliens non-deductible as business expenses for their employers. This is exactly what SB259 is about, so I support it enthusiastically. It follows in the path of the comprehensive law Georgia passed last April to combat illegal immigration. Please see my third attachment.

SB529 mandates that every employer in our state use the federal Basic Pilot program to check the work eligibility of every employee. This is great! BUT Basic Pilot may be used only for **new** employees. By law, employees already on the payroll when Basic Pilot is put into use may not be checked --- they're grandfathered in as far as Basic Pilot goes.

However, other approaches are probably available so that the entire workforce can be brought into compliance. One way might be to build upon section 7g of the Georgia law.

(It is also easy to electronically check one's entire personnel roster for mismatches between names and Social Security numbers. Arizona is doing this for all its state government employees about ten times per year. Please see my final attachment. I'm not sure this can be brought to bear on denying employers tax deductions for illegal-alien employees.)

I'd like to return to a larger theme: What does it mean that we've blithely let employers get away with hiring illegal aliens? It means many things:

-- Employers who would like to be good citizens and follow the rules can't afford to, since less-scrupulous employers will out-compete them by using "cheap," illegal labor. It's an example of

Gresham's Law. And the illegal labor isn't really cheap, since the larger society has to pick up the costs for health care, food stamps, employees' children's education, etc. [Meanwhile, foreign remittances have reached \$40 billion/year! See <http://www.iadb.org/am/2006/doc/StatisticalComparisons.pdf>]

-- Many "starter" jobs such as I did when I was a kid are now associated primarily with illegal aliens.

-- Younger Americans may now disdain such jobs because of this association, so they miss the useful intro-to-the-world-of-work experience such non-career positions provide.

-- Many jobs are actually closed to our kids because they "only" speak their native language, English!

-- Even when being mono-lingual in English is acceptable, the work environment may be unpleasant or even hostile because most of the conversation is in Spanish.

-- Jobs have been "ruined." For example, body and fender workers in Los Angeles, paid \$20/hour in 1980, now make \$8/hour because illegal aliens flooded the labor market. Wages in midwestern slaughterhouses plummeted similarly, and the jobs have become much more dangerous, again because of supply and demand.

A final thought starting with a memorable quote from Elton Gallegly, Congressman from California's Ventura County: "The more we become a nation of illegal immigrants, the deeper we fall into anarchy." So we Montanans should help pull the country back from the abyss. Passing a strong version of SB259 is part of that.

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Technical suggestions regarding SB529:

1. Change "unauthorized aliens" to "illegal aliens." The latter is perfectly appropriate technical language which you'll find explicitly in the U.S. Code. And in Title 8, Section 1325a of the code you can see that illegal entry is, indeed, a crime.
2. The Basic Pilot program is listed in the Notes for 8 USC 1324a, not the section itself. Perhaps this is how it should be referenced in SB529.
3. Where "Basic Pilot" appears in the SB259, the language might be generalized to include "any other federal employment authorization program" since other programs may become available and/or the name "Basic Pilot" might be changed.

Planning for State Immigration Enforcement Legislation (page 2 of 7)

IMMIGRATION REFORM LAW INSTITUTE
1666 Connecticut Ave. N.W. Suite 402
Washington, DC 20009

www.irli.org/Planning4StateImmEnfLeg.pdf

A. Unauthorized Employment:

Note: Current federal law (8 USC 1324a(h)(2)) expressly preempts any non-federal law.

Restriction
on what
states can
do →

"imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens."

In practice, this means that draft legislation should usually avoid (a) direct fines or (b) criminal convictions against employers for recruiting or hiring illegal aliens as a principal enforcement mechanism.

1. Prohibition of performance of unauthorized employment by aliens.

Make the performance in the jurisdiction for more 80 hours in any 12-month period of work of any type for compensation, whether in cash, benefits or other valuable consideration, by any person who is an unauthorized alien as defined in federal law (8 USC 1324a(h)(3)), a felony punishable by at least one year imprisonment and a fine equivalent to the value of any compensation received by the alien. Note that this criminal sanction is applied to the alien, not the employer, and thus is not preempted.

2. Unfair discharge of a United States worker.

Make the discharge of any United States worker (as defined in federal law) by an employer, if the employer on the date of discharge retained as an employee any unauthorized worker, an unlawful discharge. Aggrieved discharged US workers may initiate a civil action in state court for recovery and damages. Provide employers who have used the electronic verification system (e.g. Basic Pilot) to verify the worker's employment eligibility (even if later found to be in error) immunity/safe harbor from suit.

3. Disallowance of business expenses deductions from state taxes.

Disallow the deduction from state income, corporate, or other business taxes of the expense of compensation provided to an unauthorized worker within the fiscal year in question. Disallowance of a tax deduction is not a civil fine.

4. Restriction of payment of invoices for government contracts.

Require government contracts to contain a clause allowing the government to disallow payment of any portion of an invoice submitted to a government agency for contracted services of any nature, where the services were performed by unauthorized workers. Provide employers who have used the electronic verification system (e.g. Basic

SB259 is
an allowed
approach →

Section 7 of Georgia Security and
Immigration Compliance Act, signed by
Gov. Perdue on 4/17/2006

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SB529/AP

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by adding a new Code section immediately following Code Section 48-7-21, to be designated Code Section 48-7-21.1, to read as follows:

"48-7-21.1.

(a) As used in this Code section, the term:

(1) 'Authorized employee' means any individual authorized for employment in the United States as defined in paragraph (2) of subsection (a) of 8 U.S.C. Section 1324a.

(2) 'Labor services' means the physical performance of services in this state.

(b) On or after January 1, 2008, no wages or remuneration for labor services to an individual of \$600.00 or more per annum may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer unless such individual is an authorized employee. The provisions of this subsection shall apply whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration.

(c) This Code section shall not apply to any business domiciled in this state which is exempt from compliance with federal employment verification procedures under federal law which makes the employment of unauthorized aliens unlawful.

(d) This Code section shall not apply to any individual hired by the taxpayer prior to January 1, 2008.

(e) This Code section shall not apply to any taxpayer where the individual being paid is not directly compensated or employed by said taxpayer.

(f) This Code section shall not apply to wages or remuneration paid for labor services to any individual who holds and presents to the taxpayer a valid license or identification card issued by the Georgia Department of Driver Services.

(g) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section."

SECTION 8.

Said title is further amended in Code Section 48-7-101, relating to income tax withholding, by adding a new subsection at the end thereof, to be designated subsection (i), to read as follows:

"(i) *Form 1099 withholding and reporting.*

<http://www.azcentral.com/news/columns/articles/1016ruelas1016.html>

State effort proves that Social Security info can be verified

Richard Ruelas
Arizona Republic columnist
Oct. 16, 2006 12:00 AM

Quietly, for the past year, state officials tucked away in a non-descript building near the state Capitol have waged a small battle against illegal immigration.

What they do seems pretty simple: They check state employees' Social Security numbers to make sure they match those on file in Washington.

But that monthly running of the numbers might prove significant in the debate over illegal immigration in Arizona.

Because it knocks down a major argument that kept state Republicans from supporting legislation last year that would crack down on employers of illegal immigrants.

Namely, it shows the database works.

Arizona started checking the names and Social Security numbers of its employees in December after Gov. Janet Napolitano signed an executive order mandating the program.

Since then, every five weeks or so, the state Department of Administration has electronically sent the names and numbers of all 42,000 state employees through the Social Security Number Verification program.

So far, only 409 people have been kicked back as "no-matches." That's an average of about 40 a month. Alan Eckert, a department spokesman, said the number has gone down each time.

Those 409 "no-matches" do not mean that Arizona was employing people here illegally. The most common reason for a "no-match" is an employee getting married and still having her maiden name on file with Social Security. Or using a middle name as his or her first name.

Employees who don't match are told to fix the problem. Eckert said the state doesn't know how many people have quit because they couldn't produce a verifiable Social Security number.

But the main lesson is this: More than 99.9 percent of the employees were verified with no hitch. The state didn't devolve into chaos.

x9

The supposed inaccuracy of the database was the main reason the Arizona Chamber of Commerce opposed a law that would have made employers use it.

Napolitano said the state has now shown the reliability of the database. "It seemed to me we needed to lead by example," she said.

Now that it's a proven program, Napolitano said she won't let Republicans hide behind the chamber's excuses. "I'll insist that if (lawmakers) are going to continue to send me immigration-related matters, they need to include realistic employer sanctions," she said.

By the time the legislative session opens in January, "we'll have by then, over a year's worth of actual real experience," Napolitano said. "And we're one of the largest employers in the state."

Turns out she won't get much argument from Jim Weiers, who most likely will return as House speaker next year.

"I think it needs to be expanded," Weiers said, "based on the fact we've done it without the chaos predicted."

Weiers said he would recommend that Arizona's cities and counties also use the program and possibly mandate that any company that does business with the state also verify its employees.

He predicted that the Chamber of Commerce would still oppose any expansion of the program, but the state now has data to rebut its arguments.

"People do not like change," Weiers said, "but this is what the people are demanding."

Reach Ruelas at richard.ruelas@arizonarepublic.com or (602) 444-8473.

Montana may bear the impact of mass immigration

In a Nov. 12 article about immigration's looming presence in the Gallatin Valley, Chronicle reporter Gail Schontzler quoted Montana State University sociology Professor Leah Schmalzbauer and me. Most of what was attributed to Schmalzbauer is contradicted by the facts, as I will outline.

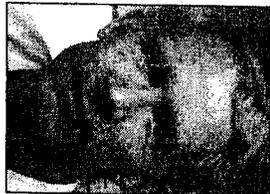
This enormous subject deserves continued exposure because, although not yet highly visible in Montana, mass immigration is causing burgeoning distress to citizens in much of the rest of our country. As Colorado Congressman Tom Tancredo has said, "We are facing a situation, where if we don't control immigration, legal and illegal, we will eventually reach the point where it won't be what kind of a nation we are, balkanized or united, we will actually have to face the fact that we are no longer a nation at all."

Montanans may bear the impacts in two ways. Impacts can be direct, with large influxes of immigrants and illegal aliens imposing public costs and, instead of assimilating to us, expecting us to serve them in their native languages. Indeed, that was an underlying

thread in the Chronicle's article: Local public agencies are preparing for a surge in Spanish-speaking clients. The trajectory of such developments is well known from experiences in other states. Ultimately, Americans come to feel like strangers in their own country.

Mass immigration may also indirectly affect Montana. Example, for some years now, California's net population growth of 500,000 people per year has been entirely due to foreign immigration and births to foreign-born women. With the state's population now at 37 million, native-born Americans are moving to Idaho, Montana, and other states to escape California's metastasizing congestion and concomitant dysfunction, becoming, in a sense, internal refugees within the United States. In the interest of full disclosure, I am among California's

"Class of 2005" refugees. (Of course, the "refugees" trope shouldn't be taken too far — most of us escape with substantially more than the clothes on our backs! But the operative word is still "escape.") If this surge out of California continues, Montana's glorious open



PAUL NACHMAN
Guest columnist

spaces will fill up. According to Prof. Schmalzbauer, "Immigrant workers pay a lot of taxes." In fact, many illegal aliens pay zero income and payroll taxes, since they work off the books (i.e. for cash), so their sole contributions to public budgets are sales taxes and the real estate taxes incorporated in their rents. Illegal aliens who do have taxes withheld from paychecks are typically paid poorly enough that the taxes they remit are quite modest. And a large fraction of today's legal immigrants also fall into that "poorly paid" category.

Robert Rector, a formidable public policy analyst at the Heritage Foundation explains why: "Today's immigrants differ greatly from historic immigrant populations. Prior to 1960, immigrants to the U.S. had education

levels that were similar to those of the non-immigrant workforce and earned wages that were, on average, higher than those of non-immigrant workers. Since the mid-1960s, however, the education levels of new immigrants have plunged relative to non-immigrants. Consequently, the average wages of immigrants are now well below those of the non-immigrant population. Recent immigrants increasingly occupy the low end of the U.S. socioeconomic spectrum."

Professor Schmalzbauer also claimed that, following the 1996 federal Welfare Reform Act, very few immigrants and illegal aliens can receive public assistance, and "There's a myth out there they're tapping into public coffers."

Actually, it's no myth. In his 1999 book "Heaven's Door: Immigration Policy and the American Economy," Harvard economist George Borjas (himself an immigrant from Cuba) wrote: "By the 1990s, immigrants received a disproportionately large share of the welfare benefits distributed, and had a severe fiscal impact on some immigrant-receiving states, particularly

Mill levy needed

I would like to respond to George Birtch's letter of Dec. 11 regarding the failed Central Valley Fire District mill levy. I absolutely empathize with Mr. Birtch's feeling of tax fatigue, and I salute his rugged independence as he drives his old BLM truck around his ranch squirting water on fires.

Like money well spent to me.

Dr. Gamble, you were hired to make the decisions that you are making. Keep up the good work and may it continue for years to come.

Ray Johnson
Belgrade

Pay attention

The passion of all the current letters

LETTERS

instruments panels, the least used part of those vehicles is the turn signal indicator. Those now-new behemoths will in 20 years be rusted relics, but they will still have bright shiny unused appendages sticking out of the steering column.

So, with the cell phone glued to the ear, drivers in this town sail through four-way stops. Left-hand turning lanes

tion behind the wheel.

Diversity is good

Gale Kinzie
Bozeman

Where can you go to find Chinese, Mexican, Vietnamese, Italian, and just about all the other major ethnic foods you can think of? If you go to any major

California." Borjas noted that the 1996 reforms intended non-citizens from welfare were never enforced. He concluded that, counting both cash and benefits, "[I]n 1998, almost immigrant households received type of assistance, as compared to native households. In short, Rector, Borjas, have conclusively shown that rent mass immigration, the States is importing poverty. Finally, Schmalzbauer is wrong, "I always tell my students unless you're Native American immigrant." Nope. For example, I was born in Chicago and have returned to the country to return to the country for most of the people living in Montana and, indeed, in the U.S. Americans such as my immigrants.

Paul Nachman of Bozeman retired laser physicist who lives years in southern California, witnessed mass immigration population.

been to many different countries, the people's feelings of national limited their ability to accept ideas. Yet, our "melting pot" groups of people the opportunity, life, liberty, and the pursuit of happiness.