

Driving Lessons

NC Driver Licenses for Unauthorized Immigrants:

How they got it,
How they lost it,
& How they might get it back.

By Wayne Hurder
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Preface

This monograph started as a series of answers to questions posed to me by Dr. Julie Weise, an assistant professor of history at the University of Oregon who was writing a book, **Corazon de Dixie: Mexico and Mexicans in the U.S. South since 1910**, to be published fall 2015 by the UNC Press. I first became acquainted with Dr. Weise about the year 2001 when she was working for the Mexican government in its Office of the President for Mexicans Living Abroad, and she had some questions about North Carolina's policies towards Mexican immigrants.

In 2012, she turned to me for clarification of some issues for her book. Being retired and with time on my hand, I gave her answers that went into far greater detail than she needed for her book. Regardless, she encouraged me to take my answers and expand on them. Three years later, it has come to this.

Researching it has taken me in a lot of different directions and provided me some pleasant surprises. For instance, I had never known how little exposure North Carolina had to immigration. From 1850 (when these statistics were first captured) until 1930, North Carolina had the lowest amount of immigration in the nation, and stayed near the bottom until the 70s. So I find myself all the more impressed with the hospitality that North Carolina has displayed to newcomers who struggle with English, many of them here outside the boundaries of the law. Looking at the few examples of public opinion polls from the critical period of 1995 to 2006 addressing immigration issues, I am again impressed at the accommodations North Carolinians were willing to make.

The main theme of the monograph is how unauthorized immigrants lost the right to state-issued driver licenses or identification cards. Contrary to what some people might want to think, that loss was not driven by animosity towards the immigrants among us (not that there wasn't some of that, just that wasn't the prevalent factor). That loss was driven more by anger at DMV for failing to maintain acceptable levels of service to its traditional customers and by fear after 9/11. Exacerbating those factors were misinterpretations of state law by legislative staff and lawmakers and misinformation in the media.

I came to DMV in 1993, and I am very grateful to former State Representative Peggy Stamey for encouraging me to go to DMV as part of the administration of incoming Governor James B. Hunt. Peggy's husband Jim (now deceased) had been an assistant commissioner of DMV during Jim Hunt's first two terms in office (1977-1985). She told me I would really like the people there and the mission. I was very dubious of that - I probably had all the stereotypes of DMV that most people have - but I trusted Peggy's judgment. All I can say now, 22 years later, is "Thank you, Peggy."

After starting out in May 1993 in an ombudsman role in the Commissioner's office, I became director of the driver license system in 1994. From January 1, 1994 until I left DMV in October 2008 (leaving as deputy commissioner) I had responsibility for driver license operations, with several changes to my title along the way. I held the director's job longer than any predecessor and was the first director to serve two different governors. Historically, the director has been a political

appointee, and so subject to a lot of turnover. The average tenure of my predecessors was 14 months. The place can be a meat grinder.

My arrival at DMV was my first true exposure to a large bureaucracy. Having had my own business the previous 11 years, it proved very frustrating. But after a few years, I came to embrace the logic of the bureaucracy and the values it brings to a democratic society by virtue of adhering to its norms (“the rule of law”), which acted as an electric fence that few tried to stray beyond. I came away very impressed with staff and their respect for the boundaries established by state and federal law and – most critically – their willingness to accept change. DMV faced a lot of headwinds in serving the unauthorized immigrant population: the Immigration and Naturalization Service didn’t like what we were doing; some law enforcement agencies didn’t like it; many customers didn’t understand it or like it. But when examiners and other staff had explained to them what the requirements of the law were, they put their proverbial shoulders to the wheel, and with a few minor exceptions, worked hard to serve the new customers, as well as their traditional customers.

The audience for this monograph is very small. I will share it with a few people intimately involved with the issue over the past couple of decades or who may have an interest in the topic as a case study of how government agencies behave and why and the legislative process that drives the agencies.

If I was truly in pursuit of a larger audience for my experiences at DMV, I wouldn’t write this monograph. I would write a script for a sit com based on our real life experiences. I would probably start with the irate elderly customer who had received an official notice to be retested because of concerns she was no longer a safe driver. So the customer calls her local TV station to protest against the DMV bureaucrats and invites a reporter to her house where the news team can document what a safe driver she is. The TV crew showed up at her house in its van. She got in her car, all ready to demonstrate her skills, put it in reverse...and thank goodness the TV crew had its cameras rolling as she backed into their van. At DMV the customer is not always right.

It is hoped that this monograph will provide some guidance for persons dealing with issues involving bureaucracies, social change, and the administrative, legislative and media environment in which they must operate.

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Table of Abbreviations and Forms Referenced

Abbreviation/Form	Meaning/Purpose
AAMVA	American Association of Motor Vehicle Administrators
AG	Attorney General
DACA	Deferred Action, Childhood Arrival, designation for unauthorized immigrants
DL/ID	Driver License/Identification Card (both require the customer to provide the same proofs of identity)
DHS	The U.S. Department of Homeland Security, the agency created by Congress in 2003 to be responsible for immigration, border security, transportation security, etc.
DHHS	U.S. Department of Health and Human Services
Form I-94	A document issued by the Immigration & Naturalization Service or the Department of Homeland Security to show the holder has received permission to enter the U.S.
FR	Face Recognition Technology, implemented by NC DMV in 2005
HB or SB	Designation the NC. General Assembly of a bill introduced into the House (HB) or Senate (SB)
INS	Immigration and Naturalization Service: the federal agency responsible for immigration into the U.S. until 2003. It was rolled into the U.S. Department of Homeland Security and became ICE - Immigration and Customs Enforcement.
ITIN	Individual Taxpayer Identification Number (Issued by the U.S. Internal Revenue Service)
NCDMV	North Carolina Division of Motor Vehicles
NCDOT	North Carolina Department of Transportation, parent organization to NCDMV
NCDPS	North Carolina Department of Public Safety
NCGS	North Carolina General Statutes (the compilation of all the state's laws)
SADLS	State Automated Driver License System, the mainframe computer application software for processing issuance of driver licenses and identification cards
SSA	Social Security Administration
SSN	Social Security Number

Introduction: Licensing Non-Citizens - From Bouquets to Brickbats

At the turn of the 21st century the North Carolina Division of Motor Vehicle (NCDMV) was hitting its stride in the delivery of driver license services to its residents who were not U.S. citizens, regardless of whether they had authorized presence in the country. North Carolina motor vehicle law - developed during an era when the state had the lowest foreign born population in the nation - did not even address citizenship - much less legal presence - as an issue in determining residents' eligibility for a driver license (DL) or state-issued identification card (ID).

In the 1980s and early 1990s, as immigration into the state, particularly from Mexico and Central America, accelerated, the NCDMV took faltering steps to serve this new population. From 1990 to 2000, North Carolina had the fastest rate of growth of immigration of any state - 274 per cent.¹ In 1993, with the inauguration of a new governor, the State recognized a need to improve services to its non-citizen customers, many of whom spoke limited or no English.

While the new immigrants overwhelmed service before outreach efforts could be ramped up, by the late 1990s, NCDMV was earning recognition around the nation for its approach and was starting to gain hard-earned compliments from the Hispanic community and immigration advocates. The President of Mexico, Vicente Fox, recommended to the governors of Texas and California that they model their driver license operations on North Carolina. The New York Times featured the driver license services to undocumented aliens above the fold on its front page. National Public Radio did a feature on the outreach. Swedish national TV sent a crew to Raleigh to report on the effort.

While immigration advocates, the business community, and highway safety experts showered NCDMV with bouquets, disgruntled North Carolina residents, faced with long lines in many driver license offices, started agitating against the state's efforts. To many, the outreach represented surrender to lawbreakers and a diversion of resources to non-citizens at the expense of American citizens.

Two-thousand and one (2001) was a watershed year for what many considered an enlightened approach to the undocumented immigrant community. In the wake of the tragedy of 9/11 came accusations that the DMV was rolling out the red carpet for terrorists. NCDMV management was dodging brickbats hurled its way.

The tipping point came in September 2001 with the convergence of four factors that ultimately doomed the availability of driver licenses for unauthorized immigrants:

1. A breakdown in service to the public that resulted in historically long lines and lengthy waits

¹ MPI Data Hub: Fact Sheet on the Foreign Born: North Carolina, www.migrationinformation.org/state_census.cfm?ID=NC

2. Misinterpretation by legislative staff and legislators of a state statute requiring social security numbers for driver license applicants which resulted in many legislators and the public believing that DMV was violating the law
3. Misrepresentations of key issues by the news media
4. The fear of future terrorist attacks resulting from the 9/11 tragedy.

The year 2001 saw the first of many legislative efforts to stop service to unauthorized immigrants and impose other limitations on authorized immigrants and foreign visitors. Leadership of the Democratically-controlled General Assembly and two Democratic Governors (Jim Hunt, 1993-2001, and Mike Easley, 2001-2009) supported the initiatives of NCDMV, although Easley backed off them in 2004. Ultimately, with passage of the U.S. REAL ID Act in 2005, setting federal standards for driver licenses and ID cards, the leadership acquiesced to public demands. By 2007, the General Assembly had passed legislation, with the Governor's signature, which banned driver licenses for unauthorized immigrants and restricted licenses for other non-citizens. The delay in final passage of law stopping licenses for unauthorized immigrants can best be attributed to the role of the Democratic leadership in the State House and State Senate. Despite support at a couple of junctures by a majority of legislators for an end to that service and despite Governor Easley and DMV Commissioner George Tatum adopting de facto legal presence administrative requirements in 2004, the leadership delayed passage until the REAL ID Act made it clear a change would have to come.

This monograph is a review of that struggle to serve the immigrant community, the Division's efforts to maintain that service in the face of criticism, and the eventual passage of laws that stopped it. It then looks at President Barack Obama's executive order establishing the Delayed Action, Childhood Arrival (DACA) program which opened the door for young unauthorized immigrants to get a license, the most recent "delayed action" on unauthorized immigrants, and the potential for a legislative change to allow restricted licenses for North Carolina's unauthorized immigrants.

The momentum to change the law to deny licenses to undocumented immigrants came at both the national and state level from voters – mostly conservative – who saw licensing of undocumented immigrants as rewarding persons breaking the country's immigration laws and, in the wake of 9/11, posing a threat to the nation's security.

From the author's standpoint, the federal and state decisions to bar licenses for the unauthorized immigrant represent a perverse form of punishment that inflicts more damage on the public good than on those denied a license. Consider that denial of licenses:

- results in greater risks in driving for the entire population as it takes away incentives for undocumented immigrants to learn the rules of the road
- By increasing the number of unlicensed drivers, and concomitantly the number of accidents involving unlicensed drivers, it shifts the costs of those accidents to licensed and insured drivers.
- denies to local, state and federal law enforcement a valuable trove of information useful for public safety that would otherwise be available through the licensing process. Immigrants

“undocumented” by Homeland Security become “documented” in a fashion by DMVs through the process of obtaining state-issued driver licenses and identification cards.

- Stops a net revenue gain to states generated through the fees levied for driver licenses or for titling of vehicles. While there has been much debate about the overall costs of undocumented immigrants to state and local jurisdictions, in North Carolina the licensing process generated \$5 for every \$1 of cost of providing the service.
- Reduces the economic benefits that come from a large segment of the population – 300,000+ persons – purchasing vehicles, repairing vehicles, etc.

This monograph addresses the issues of service to three different categories of non-citizens: (1) unauthorized immigrants, or what was previously referred to as undocumented aliens (or ‘illegal aliens’ to critics); (2) authorized immigrants, or what formerly were referred to as documented aliens; and (3) non-immigrant residents, non-citizens admitted to the U.S. legally for limited stays (e.g. students, temporary workers, etc.).²

In the minds of many people, the issues involving immigrants that are addressed here are referred to as Hispanic or Latino or Mexican “problems.” Indeed, one survey conducted by the UNC School of Journalism used the term Hispanic as a stand-in for “immigrant ” while the Elon Poll used the terms Hispanic or Latino as a stand-in for undocumented immigrants. While Latinos or Hispanics were a clear majority of the state’s immigrant population, the state has had substantial immigration from other parts of the world. Even the term “Hispanic” or “Latino” can be a little misleading, as it references linguistic and ethnic roots in the Iberian Peninsula countries of Spain and Portugal. In fact, many of the immigrants to North Carolina from Mexico or Central American are indigenous people who do not speak Spanish but only their local languages. For instance, North Carolina has a population of several thousand Nahua people who speak Nahuatl, the language of the ancient Aztecs of central Mexico.³

In the author’s experience working with other state DMVs, each state’s laws and procedures for motor vehicle services uniquely reflect that state’s history, and so this monograph provides a quick summary of issues in the state’s history and its political culture that impacted the debate.

² Terminology as used in “Estimates of the Unauthorized Immigrant Population Residing in the United States: January, 2011” Office of Immigration Statistics, U.S. Dept. of Homeland Security, March 2012, pp 1-2

³ Per conversation with Fernando Trulin, a former member of the Governor’s Advocacy Council on Hispanic/Latino Affairs, and himself a Nahua.

Chapter 1 -- Immigration in North Carolina

The first Europeans to settle in North Carolina were Spanish speaking. They were members of the Spanish Imperial Army who came up the Pee Dee and Yadkin River from South Carolina into the interior, near the modern city of Morganton, in the foothills of the Appalachian Mountains. There they built a fort in 1567 that survived two years before being destroyed by Indians.⁴

The second European venture into the state was likewise unsuccessful, although it at least managed to capture the imagination of the public - “The Lost Colony” - the settlement sponsored by Sir Walter Raleigh on Roanoke Island in 1587. It disappeared after about two years, leaving behind only the mysterious word “Croatan” carved on a tree, but otherwise no evidence of what had happened to the settlers.⁵

Most people have heard of the failed English colony at Roanoke, in northeastern North Carolina, but North Carolina’s first wave of Hispanic immigration was lost to history until earlier this century when archeologists uncovered remains of the fort.

Successful European colonization finally came to the Carolinas in the mid-1660s. By the mid-18th century, North Carolina had become a thriving colony that attracted a variety of Europeans besides the English, including German-speaking Swiss near modern-day New Bern, German-speaking Moravians who migrated south from Pennsylvania into the area around today’s Winston-Salem, and Gaelic-speaking Scottish Highlanders who settled throughout southeastern North Carolina. The 17th, 18th and 19th centuries brought Africans slaves, arriving directly from Africa or via the Caribbean.⁶

North Carolina has always been a state of contrasts and contradictions; sometimes what it seems to be is not what it is. For instance, take the state’s first constitution, which restricted office holding to Protestants: “...no person who shall deny the being of God or the truth of the Protestant religion, or the divine authority of either the Old or New Testament...shall be capable of holding office...” Irrespective of that provision, in 1833 the legislature elected as one of the state’s Supreme Court justices a practicing Roman Catholic, William Gaston.⁷ A person selected to interpret and enforce the constitution was someone constitutionally prohibited from holding the office. Even before the election of a Catholic to the state’s Supreme Court, voters in Carteret County ignored the requirement and in 1808 elected a Jew, Jacob Henry, to represent them in the House of Commons. The House seated him on a technicality.⁸ That pattern of often contradictory and contrasting sentiments and actions in the state is reflected in the story of immigration to the state. Reality rests somewhere in the middle of all that.

⁴ John Noble Wilford, “Fort Tells of Spain’s Early Ambitions,” *New York Times*, 23 July 2013

⁵ William Powell, *North Carolina through Four Centuries*, Chapel Hill, University of North Carolina Press, 1989 pages 47-48

⁶ *Ibid.* pages 104-113,

⁷ Powell, page 273

⁸ *Ibid.* 272

“No spreeing Irishmen, revolutionizing Frenchmen, or speculating Scotchmen...”

Despite the wave of immigration from different parts of Europe in the 1700s that helped invigorate the state, by the 1800s North Carolina had subsided into a state of lethargy that earned it the title of “The Rip Van Winkle State.”⁹ North Carolina leadership for the most part was content in its isolation from the rest of the country and the wave of immigrants populating other states. “We have no spreeing Irishmen, revolutionizing Frenchmen, or speculating Scotchmen among us,” one state leader, Bartlett Yancey, wrote smugly to a newspaper editor.¹⁰ Added historian Powell, “similar conditions prevailed in the state as a whole.”¹¹ Historian Henry Adams observed, “Whatever was the cause, the State of North Carolina seemed to offer few temptations to immigrants...”¹²

The U.S. Census first started tabulating the nativity of American residents in 1850. From the 1850 Census through the 1930 Census, North Carolina held the distinction of having the lowest percentage of foreign-born residents in the nation, with the foreign born representing .3 per cent of the population, except in the 1900 Census, when that number dipped to .2 percent. In 1940, North Carolina shared that distinction with South Carolina and Mississippi.¹³

It wasn’t until the 1950 Census that North Carolina showed a growth in its foreign-born population, with that number increasing from 9,212 to 15,250 and the percentage going from .3 to .4. For the first time, North Carolina no longer owned the bottom spot in the country; South Carolina had that distinction all to itself.¹⁴

At the start of the 20th century, North Carolina embraced change, investing heavily in education and transportation to improve its business climate, changes that started to earn the state a reputation for “business progressivism.”¹⁵

Political scientist V.O. Key in 1949 found a state much different from the Rip Van Winkle state of the early 1800s: “The prevailing mood in North Carolina...is energetic and ambitious. The citizens are determined and confident; they are on the move. The mood is at odds with much of the rest of the South - a tenor of attitude and of action that has set the state apart from its neighbors.”¹⁶

⁹ Ibid. 245

¹⁰ Ibid. 246

¹¹ Ibid 246

¹² Henry Adams, *History of the United States of America During the Administration of Thomas Jefferson*, The Library of America, New York, 1986, page 27

¹³ U.S. Census Report, “Nativity of the Population, for Regions, Divisions, and States: 1850 to 1990,” March 9, 1999, <https://www.census.gov/population/www/documentation/twps0029/tab13.html>

¹⁴ Ibid

¹⁵ Rob Christensen, *The Paradox of Tar Heel Politics*, Chapel Hill, The University of North Carolina Press, 2nd edition, 2010, p 1

¹⁶ V.O. Key Jr. *Southern Politics*, New York, Vintage Books, Random House, 1949, page 205

He attributed this difference to the role of a “progressive plutocracy”¹⁷ formed as the state entered the 20th century.

By the 1960s, the state was earning the label of the “Dixie Dynamo.”¹⁸ State government investments in its higher education system, development of the Research Triangle Park, and consolidation of the nation’s banks, led to rapid growth in the Raleigh-Durham-Chapel Hill area and Charlotte, with spillover into surrounding counties. The state also became a magnet for retirees, especially in the mountains around Asheville, the Sandhills around Southern Pines, and along the coast.

Immigration edged upward. By 1980, the number of foreign-born in the state had more than tripled to 78,358 and by 1990 it was up to 115,077, or 1.7 per cent of the population.¹⁹ At this point the vast majority of immigrants – 83 per cent – were naturalized citizens.²⁰ Over the next decade, the number of foreign-born skyrocketed to 430,000, posing challenges to the state’s ability to absorb a population that in many instances had a faltering ability to speak English.²¹

Unauthorized Immigrant Population Increases 800% in ‘90s

Of the foreign-born in North Carolina in 2000, the Census said that 146,400 reported they spoke English “not well” or “not at all,” with the greatest number of these being Spanish speakers – 123,600.²² Increasingly the newcomers were unauthorized immigrants. In 1990, the state had an estimated 25,000 unauthorized immigrants, according to estimates by the Pew Research Center. That number climbed to 210,000 by 2000, then peaked at about 375,000 in 2005.²³

Until the 1990s, immigration was never a significant public policy issue for North Carolinians. Although there was hardly a threat of immigrants eroding North Carolina’s traditional way of life, in the first half of the 20th century there were prominent state leaders who were rabidly anti-immigrant. The most powerful of them was Furnifold Simmons, who had been an architect of the state’s Jim Crow laws in the early 1900s.²⁴ He masterminded the Democratic machine in the state that was successful in electing seven of the state’s eight Governors between 1900 and 1928.

¹⁷ Ibid.

¹⁸ Christensen, page 3

¹⁹ U.S. Report, “Nativity of the Population, for Regions, Divisions, and States: 1850 to 1900”

²⁰ MPI Data Hub: North Carolina: Social & Demographic Characteristics,
www.migrationinformation.org/datahub/state.cfm?ID=NC

²¹ MPI Data Hub: States Ranked by Numeric Difference in the Foreign-born Population: 1990, 2000, 2010, 2011,

²² MPI Data Hub, “Fact Sheet on the Foreign Born: North Carolina,”
www.migrationinformation.org/datahub/state_census.cfm?I=NC

²³ Jeffrey S. Passel and D’Vera Cohn, Pew Research Center, “Unauthorized Immigrant Population: National and State Trends, 2010: Appendix A: Additional Figures and Tables,” February 1, 2011,
<http://www.pewhispanic.org/2011/02/01/appendix-a-additional-figures-and-tables/>

²⁴ Richard L. Watson Jr. “Furnifold M. Simmons and the Politics of White Supremacy,” in *Race, Class & Politics in Southern History*, edited by Jeffrey J. Crow, Paul D. Escot, and Charles L. Flynn Jr., Baton Rouge, Louisiana State University Press, 1989, page 126-172

Simmons, a U.S. Senator from 1900 to 1930 referred to immigrants as “scum”²⁵ but overreached when he all but endorsed Republican Herbert Hoover in 1928 by publicly raising fears about Democrat Al Smith’s Catholicism and his pro-immigration sympathies.²⁶ Hoover carried the state, but Simmons lost the support of his key followers who turned against him and defeated him in the 1930 Democratic primary.

Soon after Simmons downfall came the upset Senate election of Robert Reynolds (U.S. Senate, 1933 to 1945) who also embraced an anti-immigrant agenda and eventually drifted into fascist sympathies.²⁷ In 1939, he started a national organization, called the Vindicators, which had five stated objectives, the first being to keep the U.S. out of the war and the other four calling for curbs on immigration and foreign influences. The Vindicators refused membership to African-Americans or Jews and was openly anti-Semitic in its pronouncements.²⁸ A fellow Congressman referred to him as the “Number One Nazi spokesman in the United States.”²⁹ His hard turn to fascism found few takers at home and, seeing probable defeat, he chose not to run for re-election in 1944.³⁰

While for most of its existence as a state it has not had to address issues of immigration, the economic success of the state at the end of the 20th century made it a magnet for immigrants, primarily from Mexico and Central American countries, but also with significant numbers from Asia.

North Carolina’s modern streak of progressivism tended to overshadow a core of reactionary politics that often erupted in rejection at the polls of the progressive leadership. “Long before it became fashionable to talk about America’s political polarization, North Carolina was a boiling political cauldron. Throughout the twentieth century, the state frequently oscillated between its progressive impulses and its broad conservative streak, sometimes swinging back and forth in ugly violent spasms.”³¹

North Carolina’s spurt of growth in the 1990s, which accelerated for most of the first decade of the 21st century, made it a magnet for immigrants, documented and undocumented. This rapid influx created various levels of conflict in the state over the allocation of the state’s resources through the activities of various state and local services, especially health, education and driver licensing.

The fight over serving undocumented or “illegal” aliens (the term most commonly used in the public debate) was very contentious, becoming an issue in one gubernatorial primary campaign and leading a national organization to purchase billboards accusing NCDMV of licensing terrorists. While some of the excessive rhetoric reflected a strain of immigrant bashing that had precedence in the public pronouncements in the 20th century by two of the State’s U.S. Senators, in the

²⁵ Christensen, page 57

²⁶ Ibid

²⁷ Julian M. Pleasants, *Buncombe Bob: The Life & Times of Robert Rice Reynolds*, Chapel Hill, University of North Carolina Press, 2000.

²⁸ Ibid, page 166

²⁹ Ibid, page 167

³⁰ Ibid, Page 158

³¹ Christensen, page 2

author's opinion, it would be an overreach to say the issue was a battle over tolerance of immigrants, authorized or unauthorized. The debate reflected some serious issues about how the government serves the public when it is providing a service that the public would prefer to do without but which they must buy - namely DMV services, and where the influx of new users of the service dramatically degrades the overall level of service to traditional customers.

The issue, as it affected driver licensing, played out in three phases in North Carolina:

- (1) 1982 to 1993, when the state started seeing an increase in immigration and made faltering steps to deal with the issue, but at the core accepted its legal responsibility to serve unauthorized non-citizens;
- (2) 1993 to September 11, 2001, when the state embraced the idea that it should reach out to the immigrant community, whether documented or undocumented, and encourage its members to seek driver licenses; and
- (3) Post 9/11 to 2007, when opponents of licensing unauthorized non-citizens gradually succeeded in changing state law to make it more difficult, and, ultimately, impossible for an unauthorized non-citizen to receive a driver license or a state identification card.

Chapter 2 - NCDMV Engages with Immigration Issues

At NC DMV, as in most bureaucracies, when an employee in the frontline of customer service encounters an issue for which they have had no training and can find no policy or procedure in their manuals addressing it, they refer it up their chain of command for a decision on what to do. No one knows when the first inquiry rippled its way up the NCDMV chain of command, but by 1982 there had been enough seen of unauthorized immigrants applying for driver licenses that the issue first landed on the desk of the director of driver license, and he was prompted to issue a policy bulletin on the matter.

Most of this narrative hinges on the role of the bureaucracy in government, as it was the bureaucracy in the Driver License Section that determined (with input from attorneys and persons higher up the chain of command) that non-citizen residents of the state were eligible for driver licenses and identification cards. Post-1993, it was the bureaucracy that re-engineered some of its business processes to accommodate them and to encourage them to apply for DL/IDs. So it is critical to consider the role and responsibilities of the bureaucracy.

The Role of the Bureaucracy in Serving Unauthorized Immigrants

If there were a patron saint for bureaucrats, arguably it should be German sociologist Max Weber. Weber, in his studies and writings in the late 19th and early 20th century, outlined the role played by the bureaucracy in the ascendance of capitalism and democratic government. For bureaucrats accustomed to being used as metaphorical punching bags, Weber's analysis of their critical role in democratic government is refreshing. What to the public is a vice (e.g. rigidity, insensitivity) is to Weber a virtue in the bureaucrat.

Commented Weber: "Bureaucracy inevitably accompanies modern mass democracy...This results from the characteristic principle of bureaucracy: the abstract regularity of the execution of authority, which is a result of the demand for 'equality before the law' in the personal and functional sense - hence of the horror of 'privilege' and the principled rejection of doing business 'from case to case.'" ³²

And he added: "Bureaucracy is *the* [his emphasis] means of carrying 'community action' into rationally ordered 'societal actions.'" ³³

The concept of equality before the law is at the heart of the concept of the rule of law. It is a concept that dates back at least 2,300 years ago to Greek philosopher Aristotle, who said, "...it is preferable that law should rule rather than any single one of the citizens... [H]e who asks Law to rule is asking God and Intelligence and no others to rule; while he who asks for the rule of a human being is bringing in a wild beast; for human passions are like a wild beast and strong

³² Max Weber, "Bureaucracy," in *From Max Weber: Essays in Sociology*, edited by H.H. Gerth and C. Wright Mills, New York, Oxford University Press, 1958, page 224.

³³ *Ibid.* page 228

feelings lead astray rulers and the very best of men. In law you have the intellect without the passion.”³⁴

Aristotle suggests the rule of law as a countermeasure to the tendency of “...people in office of government [to]... do all manner of things on the basis of their likes and dislikes.”³⁵

So at NCDMV “the rule of law” was the foundation of each employee’s responsibilities, as defined over time by management, state attorneys, court decisions, etc. with proscription against employees following their own “likes and dislikes,” or the “likes and dislikes” of their fellow citizens.

Weber warned of the risks of bureaucracy acceding to public opinion in the exercise of its duties: “Every sort of ‘popular justice’ – which usually does not ask for reasons and norms – as well as every sort of intensive influence on the administration by so-called public opinion, crosses the rational course of justice and administration just as strongly, and under certain conditions far more so, as the ‘star chamber’ proceedings of an ‘absolute’ ruler has been able to do. In this connection, under the conditions of mass democracy, public opinion is communal conduct born of irrational ‘sentiments.’ Normally it is staged or directed by party leaders and the press.”³⁶

So beginning in the early 1980s, the members of the NCDMV bureaucracy put aside their personal opinions on how to deal with undocumented immigrants, and put aside the opinions of their neighbors, the news media, the talk shows, etc. to figure out what they were supposed to do.

At NC DMV, the “Bible” for the bureaucracy was referred to as “Chapter 20”, a bound volume with all the state’s laws addressing motor vehicles, most of which fell under Chapter 20 of the North Carolina General Statutes.

Driver Licenses, Public Safety and Evolving Legal Standards

Historically, “driver’s licenses were created for the purpose of protecting public safety by recognizing those individuals who met the necessary standards to receive state sanction to operate a motor vehicle. Generally, those standards include age, knowledge of traffic laws, physical capability to drive and practical driving competence.”³⁷ Massachusetts and Missouri were the first states to pass a driver license law (1903)³⁸. By 1954, every state in the Union had driver license laws. North Carolina passed its first driver license law in 1935. Each state was left to set its own standards, although the states worked through the American Association of Motor Vehicles Administrators (AAMVA) to coordinate policy, establish best practices standards, and develop technology for sharing driver and vehicle information. The federal government did not get involved in the issuance of driver license’s until 1986 when it set standards for drivers of large commercial vehicles, those hauling hazardous materials and those carrying 16 or more passengers.

³⁴ Aristotle, *The Politics*, translated by T.A. Sinclair, Baltimore Penguin Books, 1962, page 143

³⁵ Ibid. page 144

³⁶ Weber page 221

³⁷ Albert Harberson, “Licensed by the States,” State Government News, The Council of State Governments, Denver, August 2002.

³⁸ Anne Teigen and Ann Morse, “Driver’s Licenses for Immigrants,” LegisBrief, National Conference of State Legislatures, Vol. 21, No. 30, August 2013, page 1.

Virtually all states required that a licensed driver be a resident of that jurisdiction, although that definition was very vague legally and could be interpreted to include a person living temporarily in a jurisdiction for vacation (e.g. Florida) or for a work assignment. Up until the late 1990s, the laws governing licensing (and defining residency) usually did not even consider whether a person was a citizen or non-citizen, and if a non-citizen, whether their residency was authorized³⁹.

North Carolina law (NC General Statute 20-7(b1)) in the 1990s set forth the following requirements: “To obtain an identification card, learners permit, or driver’s license from the Division, a person shall complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and, except for an identification card, demonstrate his or her physical and mental ability to drive safely a motor vehicle in the class of license for which the person has applied.”

Statutes in 1990, or 2000, said nothing of citizenship of the applicant, or immigration status, or ability to understand English. Other parts of NCGS 20-7 set age limits for different types of licenses, but there was no age limit for ID cards. In essence, anyone who considered themselves a resident of the state could show up at a Driver License office and expect to be served. Driver License examiners had a responsibility to serve them and apply the various legal standards to their applications, depending on what kind of service the customer wanted.

The vagueness of the term “residency” is captured by North Carolina’s statutory definition (NCGS 20-4.01(34): “Any person who resides within this State for other than a temporary or transitory purpose for more than six months shall be presumed to be a resident of this State; but absence from the State for more than six months shall raise no presumption that the person is not a resident.”

Seeking more clarification from the State Attorney General’s office in 1991, DMV received this response: “Residency is a slippery issue and is difficult to define with specificity. The keys to determining whether a person is a resident are his purpose for residing here and his intent to remain in the state.”⁴⁰

NC DMV Starts Grappling with the Issue

In the 1980s, the influx of Hispanic – primarily Mexican – immigrants, most of them undocumented, started to accelerate. The state also started welcoming refugees, especially

³⁹ There is one exception to this – Canada. Historically, the American states and Canadian provinces have cooperated on motor vehicle laws and policies, working under the umbrella of AAMVA, which included Canadian provinces as part of its jurisdictional members. Numerous agreements had been reached between the states and provinces over the exchange of driver violation information and other records. Consequently, N.C. General Statutes 20-4.01, which defines terms used in North Carolina’s motor vehicle laws, in its definition of “State” (20-4.01(45) says “A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, a province of Canada...”

⁴⁰ Assistant North Carolina Attorney General Bryan E. Beatty, memorandum to Georgie Ball, Assistant Director, Driver License Section, 9 September 1991.

Vietnamese and Hmong. This resulted in the first encounter that the author could find in the DMV files of issues related to licensing these newcomers.

On August 27, 1982, Driver License Director Zeb V. Hocutt Jr. issued Policy Memorandum No. 10, "Form 1-94," which said "Effective immediately, Form 1-94 [an INS form showing lawful entry into the U.S. by a non-citizen] will no longer be accepted as proper identification for aliens applying for driver licenses, learner's permits or special identification cards. You are instructed to advise alien applicants to provide the same type identification as other applicants."⁴¹

That was followed three days later by Policy Memorandum No. 11, "Acceptable Forms of Identification," in which he commented that "Fraudulent application for driver licenses, learner's permits and special identification cards is a source of grave concern. Therefore a determination has been made to limit acceptable identification to the following..." He went on to say that an applicant could establish their identity by submitting a certified birth certificate or a photo driver license or present two forms of ID from a list of nine different forms of identification, including such items as school records, photo IDs from employers, military papers, copy of census report, U.S. passports, and "Family Bible."⁴² (This latter frequently resulted in college students bringing in "family" Bibles that purported to show their family tree and a birth date for the applicant "proving" he or she was age 21. Examiners were advised to check the Bible to make sure it wasn't a Gideon's Bible from a local motel, as was occasionally the case).

While the memorandum did not specifically address non-citizens or issues of immigration status, that list of acceptable forms of identification would have made it very difficult for authorized or unauthorized non-citizens to satisfy DMV's requirements.

It was then followed on November 1, 1982, by Policy Memorandum Number 12, "Acceptable Identification for Immigrant Applicants," which cracked the door ever so slightly for immigrants by making it easier for refugees to meet state standards. That policy stayed in place until 1987, when it was finally changed as the result of a kerfuffle over another policy memorandum requiring legal presence.

About 1986 or 1987 (exact date cannot be determined), the Driver License Section began providing knowledge tests in Korean and Spanish, with the tests translated by volunteers. The Spanish version was translated by a Cuban immigrant, which in the early 1990s resulted in complaints from other Hispanics, especially those from Mexico, that the tests were not in a version of Spanish they could understand.

On 16 February 1987 Chief Driver License Examiner Major B.D. Miles (the person responsible for field operations) issued a policy (Policy Memorandum No. 46) stipulating that "Immigrant applicants are to be required to present two forms of identification with at least one being from the Immigration Services." He added, "The Driver License Examiner must be satisfied the person is

⁴¹ NCDMV Driver License Director Zeb V. Hocutt, "Policy Memorandum No. 10: Form-1-94" to Driver License staff, 27 August 1982.

⁴² NCDMV Driver License Director Zeb V. Hocutt, "Policy Memorandum No. 11: Acceptable Forms of Identification" to Driver License Personnel, 30 August 1982.

legally in the United States and North Carolina.” No criteria were established for documents needed to establish legal presence.⁴³

It is unclear from the memorandum or from the author’s discussions with staff what prompted the memo, whether it was encouraged from upper management, reflected his personal feelings, or came in response to recommendations from examiners in the field.

Regardless of its source, that policy memo created a furor of opposition by immigrant advocates, and the requirement for legal presence was withdrawn in a memorandum by the Chief Driver License Examiner 21 May 1987. This memorandum, Policy Memorandum No. 49, repealed policy memorandum No. 46, as well as the previous memoranda No. 11 and No. 12 established 20 different acceptable forms of identification, including several that unauthorized non-citizens might have access to, such as employment application, hospital files, income tax records, marriage certificate, baptismal certificate, vehicle registration, etc.⁴⁴

Provided they could meet the DMV’s requirements for proof of identity (which were very open-ended and included such items as the family Bible, a job application, and an office or school ID), the authorized or unauthorized non-citizen resident could apply for a driver license, and provided they passed the vision, knowledge and skills tests they could receive a standard driver license. If they could prove their identity by those standards, but could not pass the tests, they could obtain an identification card, which could be used in applying for jobs, cashing checks, etc.

The issue did not die with the repeal of the restrictive policy memoranda. It took a different tack that summer when the General Assembly passed Senate Bill 115, “An Act to make English the official language of North Carolina,” which was followed by DMV discontinuing the use of Spanish and Korean language knowledge tests. This also created an uproar. It prompted the General Assembly to pass a resolution August 14 (House Resolution 2166) stipulating that in enacting SB115 the General Assembly had “not intended to deny or deprive any State or local service to any person otherwise entitled thereto.” That same day another bill (HB 674) was amended to specify that SB115 “shall not permit the Division of Motor Vehicles to discontinue providing driver license examinations in any language previously administered.” Speakers of the House generally do not have their names on bills, but in this case Speaker Liston Ramsey (D-Madison) was the sole sponsor of the resolution and amendment instructing DMV to restore foreign-language testing.

There continued to be rumblings of opposition from Examiners and the public about the licensing of undocumented aliens. In four different advisory opinions between September 1991 and June 1993, the North Carolina Attorney General’s office confirmed that the state’s requirements for licensing did not include any aspect of U.S. citizenship or authorized presence and therefore could not be administratively required. In the first of those, dated September 9, 1991, Assistant Attorney

⁴³ NCDMV Driver License Chief Examiner B.D. Miles, “Policy Memorandum No. 46 Identification Requirements for Immigrant Applicants, 16 February 1987

⁴⁴ B. D. Miles, Chief Driver License Examiner, “Policy Memorandum No. 49: Identification Requirements for Immigrant Applicants, 21 May 1987.

General Bryan E. Beatty responded to DMV's inquiry: "You...asked whether migrant workers are residents of North Carolina. In my opinion, if a person dwells in this state with the intent to reside here as long as he can maintain employment, he is a resident of this State."⁴⁵

Soon thereafter, the issue arose within the Driver License Section of whether foreign exchange students could apply for licenses. Deputy Attorney General Jane P. Gray in a memorandum November 8, 1991 commented that "many examiners have been denying licenses to persons who want to obtain a North Carolina driver's license even though they aren't required to have one....[T]he primary affected group seems to be the foreign students at our colleges and universities. ...If they have a valid foreign license, it will entitle them to drive the class of license authorized by that license. However, while that valid license entitles them to an exemption [from having a NCDL to drive in the state] it does not prohibit them from qualifying for a North Carolina license if they can provide a valid residence address in this state and they pass any necessary tests."⁴⁶

The Assistant Director of the Driver License Section, George Ball, explained the meaning of the AG's opinions to field staff in a memorandum on January 13, 1992: "After further research the Attorney General's Office has determined resident is not legal residence or nationality, as in citizenship, but rather whether the client has a legitimate residence in this state."⁴⁷ Beatty finally nailed down the issue for DMV with a memo June 4, 1993 to Driver License Director Gwen Canady:

It is my opinion that the Division's authority under [North Carolina General Statutes] Chapter 20 to require driver license applicants to provide proof of identification is solely for the purpose of verifying that the applicant is who he or she claims to be. The purpose of requiring a driver license is to promote highway safety by establishing that the applicant is competent to safely operate a motor vehicle. Nothing in Chapter 20 reveals an intent to distinguish between U.S. citizens and aliens, whether residing in this state legally or illegally. Absent at least some statutory authority for treating aliens, or suspected aliens, differently from other persons, the Division should apply the same identification requirements for all driver license applicants.⁴⁸

While referring solely to driver license applicants, it applied also to applicants for learner's permits and identification cards. Beatty's opinion was to guide Driver License management for the next 13 years.

⁴⁵ North Carolina Assistant Attorney General Bryan E. Beatty, Memorandum: "Definition of Resident of this State/G.S. 20-7 & 20-37.7, to Georgie Ball, Assistant Director, Driver License Section, 9 September 1991

⁴⁶ Deputy Attorney General Jane P. Gray, memorandum: "G.S. 20-7(a); Residency Requirement for License, to John Armstrong, Director, Driver License Section, 8 November 1991

⁴⁷ Assistant Director George Ball, memorandum to Chief Examiners and District Supervisors, "Policy on Residency for Licenses," 13 January 1992.

⁴⁸ Beatty, Memorandum: "Division Policy Regarding Proof of Identification," to Gwen Canady, 4 June 1993.

Chapter 3 -- A New Governor and a New Approach

In 1993, Democrat James B. Hunt Jr. was inaugurated as Governor. He was to serve two terms, 1993 to 2001 (this is after having served two terms 1977-1985). He replaced Republican James G. Martin. As in all previous administrations, the top administrators within the Division of Motor Vehicles were replaced. Gwen Canady, who had no previous experience at DMV, was named director of driver license. The author, who had no previous experience at DMV, came in as special assistant to the Commissioner (Alexander Killens) for Citizen Affairs, an ombudsman type role. All of the above came in as political employees, serving at the pleasure of the Governor.

As one of her first acts, Canady requested that her district supervisors send her a memo on what they would like to see as Driver License Section priorities in the new administration. Of the eight responses she received, two (from the Charlotte and Western Piedmont areas) cited issues with undocumented aliens: “Adopt policy which would prevent issuances to illegal aliens”⁴⁹ and “Establish policy for Immigration (make sure they are here legally.)”⁵⁰

Another, from rural Eastern North Carolina, requested guidance on how to serve immigrant customers: “We need help with the non-English speaking client, especially the Spanish. Things such as, the correct way of putting a Spanish name in the system, examiners should be trained on how to read a Spanish birth certificate, days, years, numbers, months, etc. The presentation of fake ID from migrant workers continues to be major problem.”⁵¹

These different recommendations – two from more urban areas, and one from a more rural area – represented a division of opinion that was frequent with examiners, where those from agricultural areas tended to be more sympathetic to the immigrants and aware of their contributions to the rural economy, while those from medium and large-size towns tended to look more on the immigrants as burdens on NCDMV or other government services or as “law breakers.”

Hispanic Customers Complain of Discrimination at DMV

The number of Hispanics seeking licenses swelled that spring of 1993, and their advocates began complaining to the Governor that they were being discriminated against by Driver License Examiners. Local news media took up their cause. With the encouragement of the Governor’s Office, NCDMV set up a Hispanic Task Force bringing together Driver License management and Hispanic advocates to discuss barriers to licensing. Much of the discussion focused on perceived incidents of discrimination by examiners, lack of documents and study guides – especially the driver license handbook-- in the appropriate version of Spanish, and the lack of Spanish speaking personnel. The Task Force held several meetings that year, and DMV pledged action to address

⁴⁹ R.J. Carter, District Supervisor, “Issues to be addressed by Director,” Memorandum to Gwen A. Canady, 26 April 1993.

⁵⁰ M. Ray Tedder, Acting District Supervisor, “Items of discussion to improve the Driver License Section,” Memorandum to Gwen Canady, 26 April, 1993.

⁵¹ Terry W. Davis, District Supervisor, “Major issues this administration needs to address,” Memorandum to Gwen Canady, 26 April 1993...

the problems. As part of the discussions, NCDMV agreed that as of January 1, 1994, when the Division implemented a new list of acceptable ID documents, foreign birth certificates and marriage certificates, as well as the Mexican Cartilla Nacional [a military service identification card], would be allowed.⁵²

Ms. Canady resigned at the end of the year and the author became director January 1, 1994.

A Focus on the Mission of the Driver License Section

The conflicting sentiments about serving the immigrant population forced DMV to focus on its mission.

In many respects a driver license agency has a dual mission – law enforcement and public health (and, to a lesser extent, economic development by facilitating mobility and by certifying commercial drivers). In most cases those law enforcement and public health missions coexist comfortably, but in the debate over undocumented aliens those missions diverged significantly, dividing staff. During his tenure (1994 to 2008) the tendency of the director was to give priority to the public health mission of the agency, while pursuing a law enforcement mission except where it directly conflicted with the public health mission in the application of the law to situations. While many in DMV suggested the Driver License Section seek legislation to clarify the responsibility to serve undocumented aliens, the Director opposed that, partly because he thought the Section was doing the right thing from a public health standpoint and partly because seeking legislation could result in unanticipated and unwanted changes.

While that part of motor vehicle law (NCGS 20-7) setting DL/ID standards was silent on the issue of citizenship and legal presence, the Director took another statute, addressing issues of reciprocity with other states, as providing broad guidance in support of measures to improve highway safety.

NCGS 20-4.23, which implemented the national Driver License Compact, included “Legislative findings” that: “(a) (1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.” NCGS20-4.23(b) established that “It is the policy of the General Assembly and each of the states that is a member of the Driver’s License Compact to: (1) Promote compliance with the laws, ordinances, and administrative rules and regulations of a member state relating to the operation of motor vehicles....”

The Driver License Director, with the support of the Commissioner, took that as justification to reach out to newcomers in multiple languages, irrespective of immigration status, knowing that many non-citizen residents would otherwise drive without licenses. The goal became to improve highway safety by encouraging compliance with the law through the process of studying the state’s motor vehicle laws, passing a driver license knowledge test, demonstrating ability to drive, and purchasing liability insurance. At the same time, the Driver License Section looked at ways to further its law enforcement mission. With the implementation of digital driver licenses in 1996,

⁵² Gwen A. Canady, Director, Driver License Section, Memorandum: “Required Proof of Age and Identity,” to Driver License Examining Personnel, 30 December 1993

NC DMV for the first time retained a repository of customers' images and signatures, and the director viewed that as a benefit to law enforcement, in essence documenting those who were "undocumented."

Unfortunately, arguments for highway safety find few takers when you are waiting in line for a service you don't really want, and especially when the service took 30 minutes to transact 5 years ago, but now took 90 minutes. Or four hours, as occasionally became the case in high-growth areas.

INS, Training Issues Undercut New Goals

In January 1994, DMV implemented new requirements for documenting identity, based on new "best practices" standards from AAMVA. In January, February and March, the Driver License Section conducted in-service training for examiners. Since INS documents were among those allowed by DMV as proof of identification, the Section in late 1993 decided to invite INS representatives to give presentations on their documents and the features to look for to validate the documents. This training, done by INS Enforcement officers, was a contributing factor to the furor that erupted over the next 13 years of allowing unauthorized non-citizens to be licensed.

In the process of their training, (which was not screened by Driver License management) the INS staff told examiners they had no business issuing licenses to "illegals." INS Enforcement officers told examiners they may be violating federal law by doing so and encouraged examiners to call the INS when they saw a license applicant they thought might not have authorization or who had what they thought were counterfeit documents, especially counterfeit INS documents. Further aggravating the situation was implementation of a new state law (NCGS 20-34.1, effective December 1, 1993) which was misinterpreted during the training sessions to mean that any examiner who accepted false documents was guilty of a felony.

Management was blissfully unaware of this line of instruction emanating from the INS (or the issue with NCGS 20-34.1) until an incident in the town of Rocky Mount when examiners called the INS Enforcement officers on a Haitian applicant who purportedly had a counterfeit I-94. The applicant was handcuffed and thrown in jail until INS could come to the scene and review the documents. At that point INS officers said there had been a mistake made by the examiner.

There had been a mistake, a mistake on the part of the INS which had trained examiners on the covert features to look for on an I-94 issued at the Houston INS port of entry. But this customer had come in through another port of entry (Miami) and so had valid documents whose covert features were unique to that port of entry. The customer sued over his arrest, and NCDMV subsequently settled out of court.

DL management then had to try to back out that component of the training given to examiners and never totally succeeded. Despite DL's re-training efforts, the INS had successfully indoctrinated a significant number of examiners (and supervisors) to believe that as Americans in positions of authority they had a responsibility to stop issuance of licenses to undocumented aliens.

The INS's passion on this issue (and they were very passionate) was stoked by the fact that the INS, as required by the Immigration Reform Act of 1986, had recently adopted new standards for forms of identification that employers could accept as proof of legal presence. One of those documents was a driver license or state-issued identification card. No one in INS had ever bothered to check with AAMVA or state DMVs to find out whether issuance of driver licenses or ID cards entailed documentation of legal presence. So the INS was trying to deal with a glaring loophole in its own regulations. The fact that a driver license combined with a Social Security card (which could be easily counterfeited) met the standard of acceptability for employers helped spur many unauthorized non-citizen residents to seek a driver license or state issued identification card.

Too late, DMV management learned a valuable lesson: always screen training materials to ensure they are consistent with law, policy and organizational goals.

The indoctrination into the INS viewpoint was also a contributing factor to the effort by some legislators to overturn DMV's approach. Prior to passage of a new state personnel act in 1997 (prompted by a scandal at DMV), most examiners, except in the largest cities, came to their jobs through political connections. Consequently, many had lines of communication open to their legislators, and many legislators went to their examiners for their opinion on motor vehicle issues. So for those examiners still embracing the lesson taught by the INS and facing public complaints about long lines, it was a logical step to blame the problem on DMV management's willingness – or eagerness, in their eyes – to serve undocumented, non-English speaking customers.⁵³

The fallout from the fiasco with identification training in early 1994 resulted in lengthy, heated meetings with the Hispanic Task Force as management tried to identify steps it could take to accommodate the interests of migrants without compromising the integrity of the licensing system.

The situation reached its nadir on July 12, 1994 when the Farmworkers' Project, a non-profit agency working with migrant farm workers, organized a demonstration in front of the NCDMV building which attracted extensive media coverage. The Farmworkers' Project said it was a "protest against the constant harassment and discrimination that people of color, immigrants, and farmworkers suffer when they go to apply for a driver's license or a state ID card." The protest also drew the support of the N.C. Council of Churches which had started an outreach effort to the immigrant community.⁵⁴

Governor Hunt Encourages Outreach to Hispanic Community

Governor Hunt has been categorized by sociologist (and State Representative) Paul Luebke (Dem-Durham), as a "modernizer politician,"⁵⁵ meaning one who actively promotes economic growth,

⁵³ This comment is based on the author's personal observations and discussions with legislators.

⁵⁴ Farmworkers Project News Release, "Stop the Discrimination at the DMV," June 28, 1994, copy in files of author.

⁵⁵ Paul Luebke *Tar Heel Politics: Myths and Realities*, Chapel Hill: University of North Carolina Press, 1990, page 27

While Gov. Hunt made it clear to DMV management he was impatient with the agency's difficulties serving the immigrant community, the Administration could send mixed messages about its priorities. To wit:

During that same period of protest against DMV mistreatment of Hispanic customers, Driver License Senior management had indicators of an examiner in a small town near Raleigh not following policy and being abusive to Hispanics.

The director and an assistant director drove to the office to do a documented counseling session (the mildest of disciplinary actions) and to reassign the examiner temporarily to a nearby office for retraining.

On the way down, the assistant director briefed the examiner on the political connections of the examiner. On the trip back, the assistant director laid odds that the actions would be reversed by the end of the day. Halfway back, the director was paged to call the commissioner's office. He called and was told to back out the action. The examiner had called a relative, who called the Governor's office, which called DOT, which called the Commissioner to rescind the action. By the following day, word had rippled across the state that management had been backed down by the Governor's Office.

especially in pursuit of non-traditional, higher paying industries, while being "more sympathetic to social changes in race or gender relations."⁵⁶

Political scientist Tom Eamon further elaborated on that characterization, describing Hunt as "the model progressive, promoting all levels of education; infrastructure improvements; wider economic opportunities for people of varied genders, races, and backgrounds...Hunt believed that progress and human betterment demanded a partnership of public officials and politicians with business leaders and educators."⁵⁷

Hunt made it clear that he was supportive of the issue of service to Hispanic immigrants. By way of example, a fact sheet compiled by Driver License management in early July at the request of the Secretary of Transportation bears the handwritten notation from the Secretary's office, "This memo was hand delivered to the Governor's Office this afternoon." It is dated 12 July 1994. That fact sheet listed actions taken as a result of the dialogue with various Hispanic leaders and immigration advocates. Those actions included:

- Hiring bilingual staff (the first Spanish-speaking examiner, a Mexican-American originally from Los Angeles)
- Completion of a week-long Spanish language immersion class by about 10 examiners
- The start of the process of translating the driver handbook into a predominantly-Mexican version of Spanish. The previous handbook had been translated by a Cuban and was considered difficult to read for the mostly-Mexican immigrants.⁵⁸
- Inclusion of the Cartilla Nacional and Mexican grade school diplomas (with photo) as acceptable forms of ID.
- Accepting English language translations attached to foreign-language documents.⁵⁹

⁵⁷ Tom Eamon, *The Making of a Southern Democracy: North Carolina Politics from Kerr Scott to Pat McCrory*, Chapel Hill, University of North Carolina Press, 2014, page 285

⁵⁸ In a display of some national pride, this "Mexican" Spanish version brought complaints from Cuban, Puerto Rican and South Americans who felt it the book should have been published in their version of Spanish. The driver manual included a glossary in the back that translated some motor vehicle technical terms into Spanish terms common in other countries.

⁵⁹ "Fact Sheet: DMV's On-going Program to Better Serve the Hispanic Population,"

Late in July 1994, the Commissioner of Motor Vehicles, Alexander Killens, spoke to the annual conference of the N.C. Association of Human Relations Officers, telling them:

The language of the customer – that is not a notion that many of us in North Carolina are used to dealing with. We are used to the fact that all of our customers, all of our taxpayers, spoke English....

...Our new challenge is to deal with those people who don't even speak English – or who barely speak it. Here in North Carolina, according to the 1990 census, we have over 100,000 persons who speak Spanish as the primary language when they are at home. The number is probably close to 200,000, if you consider that the census probably missed a lot of these people, and their numbers have grown greatly in the last four years.

We also have over 40,000 people who speak French or French Creole. These are mostly Haitians who have fled oppression in Haiti. We have over 25,000 persons who speak German as their primary language. We have over 7,000 Chinese and 6,000 Koreans, and over 5,000 Japanese....

...We in North Carolina can truly say we are becoming a melting pot. But what can we do to make sure we do not become a Tower of Babel fighting among ourselves and not appreciating the many gifts that we can each bring to the table?⁶⁰

He went on to list things the Division had done to serve the new population, including, at that point, having just hired two Spanish-speaking persons in headquarters and posting all examiner jobs as “bilingual preferred.”

Over the next several years, the Section continued its efforts to implement solutions to the problems raised by the Task Force. These included:

- Cultural awareness training for all examiners conducted by the N.C. Center for International Understanding
- Continued hiring of bilingual examiners and bilingual front-desk greeters
- Publication of other documents in Spanish
- Working closely with the new Mexican consulate in Raleigh, including having bilingual staff set up booths at events sponsored by the consulate in order to distribute materials and answer questions from Mexican citizens
- Adoption of other Mexican documents, such as the Matricula Consular, the Mexican federal commercial driver license, and the federal credencial para votar (voter registration ID) as acceptable forms of identity.

⁶⁰ Alexander Killens, speech before North Carolina Association of Human Relations officers, Wilson, NC, July 28, 1994

The sale of identification documents by “coyotes” had its tragicomic moments:

In Hendersonville, a Hispanic customer presented a birth certificate and was turned away by an examiner because the birth certificate was clearly fraudulent. The customer returned the next day with another birth certificate. This also was fraudulent, and he was turned away. The customer showed up a third day, again with a fraudulent birth certificate. This time, an inspector from DMV’s Bureau of License & Theft, was called in. The customer was taken to a back room where the inspector and the examiner questioned the customer. The customer said he paid \$200 each for the fraudulent documents. The inspector asked the customer to produce his true identity documents. The examiner reviewed the documents and told the customer that if he had just produced those documents in the first place he would have been eligible for a license. He was allowed to apply for a license and sent on his way with no charges on the assumption the \$600 he wasted with the coyote was punishment enough.

DMV Tries to Disincentivize ID Fraud

NCDMV’s work with the Mexican consulate was partly driven by a need to address a growing issue with fraudulent identification documents. Driver License examiners were receiving a high number of fraudulent identification documents, in particular birth certificates from U.S. jurisdictions. Birth certificates were easily counterfeited, and since there was no central database of birth certificates and over 3,000 types of birth certificates in the U.S., it was easy to pass off a good counterfeit as the real thing. In one instance that underscored the difficulty of stopping fraud, the State of Florida had 50,000 blank, numbered birth certificates stolen. It was a simple matter to make them into “real” birth certificates, although with bogus personal information.

Part of what DMV management tried to do was to disincentivize the use of counterfeit documents by accepting from immigrant customers high-quality identification documents from their home country. During the late 1990s, the director and examiners participated in events with the Mexican consulate in Raleigh in which the consulate visited local towns to issue or re-issue documents to Mexican citizens (e.g. matricula consular, credencial para votar, passport, etc.). From that process, DMV management gained confidence that the Mexican government had high standards for documenting their citizens’ identity before issuing new or replacement documents.

Management believed that helped address the problem of false documents to a degree. But the nature of the immigration process made it difficult to eliminate the use of counterfeit documents. Immigration advocates explained that in many cases the “coyotes” who helped bring undocumented immigrants into the country also made a business of selling counterfeit documents. So in furtherance of their counterfeit document business, they would tell immigrants that they would only succeed in getting a license by using their counterfeit documents and that their Mexican identification documents were worthless in the U.S.

The issue of multiple identities was documented by labor historian Leon Fink in his study of Guatemalan immigrants in Morganton, where the persons he interviewed typically gave him their name they used for

employment purposes, not their given name.⁶¹ Further complicating matters, Fink reported a tendency of immigrants returning to their Guatemalan village and lending their U.S. identification papers to a relative who was headed north. Fink noted the story of another community leader “who had returned home to Guatemala in early 2001 [and] could not come back under the same name,”⁶² presumably assuming another false identity. As another indicator of the challenge facing examiners, the subjects of Fink’s study in most cases spoke neither Spanish nor English; the subjects spoke a variety of Guatemalan dialects.

In 2000, in preparation for a forum in Charlotte to discuss identity theft and identity fraud issues, the director analyzed 100 cases of driver license fraud then under investigation by the License and Theft Bureau. That analysis showed that 10 per cent of the cases of fraud involved immigrants who were victimized by someone else taking their identification papers and obtaining licenses in their name and subsequently committing illegal acts that created problems for the victims whose identities were stolen.

Periodically state and local law enforcement agencies conducted busts of criminal rings that were producing fraudulent documents, contributing to an impression that NC DMV was being overwhelmed with fraud.

In 1997, the N.C. Center for International Understanding organized a 9-day trip to Mexico for leadership of North Carolina non-profit organizations designed to brief them on Mexican cultural and economic issues affecting migration to the U.S. The director of driver license was invited to take part and was the only government official to make the visit. The visit was such a success that the organization began taking groups at least once a year, including legislators, public health and education officials, and local government elected officials from several counties with high immigrant populations (as well as a Driver License administrative officer who served as a liaison to immigrant advocacy groups).

Between 1994 and 1997, complaints from the Hispanic population diminished, but the groundwork was being laid for the next big explosion of protest against DMV. And it was not to come from immigrants.

⁶¹ Leon Fink, *The Maya of Morganton: Work and Community in the Nuevo New South*,” University of North Carolina Press, Chapel Hill, 2003, page 6.

⁶² Fink, page 152

Chapter 4- A Backlash Develops

It could be said that an issue has arrived when it starts showing up as a line of inquiry in public policy and political surveys. By that definition, the issue of immigration specific to North Carolina arrived in 1995.

While the issue may have appeared in political candidates' internal surveys earlier and certainly the issue had raised its head in legislative debate in 1987, the first reference to the issue in published polls (at least, which the author could find) was in fall 1995 in the Carolina Poll, a public opinion poll conducted annually in the spring and summer by the School of Journalism and the Institute for Research in Social Science at the University of North Carolina Chapel Hill.

It is interesting to note that while North Carolina was having a significant increase in immigration from around the world, especially from Asia and Africa, the issue as addressed in polls spoke just of Hispanics. In one case, polls done by Elon University in 2006, the issue of immigration was more narrowly defined to mean "undocumented immigration of Hispanic or Latino populations into N.C."⁶³

Surveys Show Support for Outreach to Immigrants

Over the 11 years from the first poll in fall 1995 to an Elon Poll in November 2006, a total of 12 polls were found in the public domain (i.e. through an Internet search) that had questions specifically addressing immigration issues in North Carolina. The surveys indicate a rising concern over immigration but when forced by questions to take voice their support or opposition to specific public policy issues, the public was surprisingly supportive of efforts to reach the new residents of the state.

A
1997

A further indicator of the complexity of the identification issue: On the 1997 trip to Mexico, members of the group had an opportunity to visit with families who had children in the U.S. undocumented. The author asked the parents he visited about their children's identification documents – birth certificate, cartilla nacional, school diploma, etc. The mother went in a backroom and emerged with a small lockbox out of which she took a set of documents for each child. The various documents were considered too valuable to be taken on the trip across the border. They were kept at home. Once DMV got the word out about accepting birth certificates, cartillas, etc., it was not unusual for a Mexican applicant to present his documents to an examiner in a Fed Ex package. The applicant had arranged for the parents to send the appropriate documents to him in North Carolina.

⁶³ Elon University Poll, November 20, 2006

Carolina Poll by the School of Journalism at the University of North of North Carolina at Chapel Hill found a majority of North Carolinians (61.1%) favored provision of at least some government services in Spanish, with 33.7% opposed to any services in Spanish.⁶⁴

Indeed, in one instance, relatively late in the period of debate – 2005 – a liberal website, the Daily Kos – reviewing data from the Fall 2005 Carolina Poll, comments, that:

North Carolinians also have a surprisingly open view toward the place of immigrants in the economy. 58% said they believe immigrants mostly take jobs native Americans don't want, while only 30% said they think they mostly take jobs away from Americans. This could minimize the success of anti-immigration issues as a GOP-driven issue in coming years.⁶⁵

Another indicator of that openness to unauthorized immigrants came in 2005 as the door was being closed on driver licenses for those with unauthorized entry into the U.S. It came from a poll conducted by another North Carolina institution, Elon University, which queried residents about support for legislation pending in the General Assembly which would allow undocumented immigrants who had attended a North Carolina high school for four years and graduated to pay in-state tuition to attend a state university or community college, provided they seek legal immigration status. Somewhat surprisingly, a plurality, 49%, supported the proposal, while 41% opposed it.⁶⁶ (See Appendix A for a summary of the results of the 12 public opinion polls).

Over the next several years, a very vocal backlash developed against the service the DMV Driver License Section offered to immigrants, especially unauthorized immigrants, and that primarily being Hispanic or Latino customers. But it would be wrong to characterize that opposition to service as resulting from any sizeable animosity towards immigrants. It came as the result of the gradual piling up of problems that drove DMV's customers to become more vocal in their complaints and opposition.

The first challenge to public acceptance of Driver Licenses for unauthorized immigrants came from a federal mandate to collect Social Security numbers (SSN).

SSN Requirement Stokes the Flames of Resentment

One of President Bill Clinton's signature initiatives was the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, frequently referred to as the Welfare Reform Act. One component of the law was designed to do a better job of collecting child support payments from parents. To that end the Act mandated that states collect the SSN of applicants for a driver license

⁶⁴ School of Journalism and Mass Communication and the Odum Institute for Research in Social Science, University of North Carolina at Chapel Hill, spring 1997, http://www.irss.unc.edu/content/pdf/cp_spring97_freqs.pdf

⁶⁵ The Daily Kos, www.dailykos.com/story/2005/11/11/1614134/-fall-2005-Carolina-Poll

⁶⁶ <http://www.elon.edu/e-web/elonpoll/20050427.xhtml>

and share those records with state social service agencies so they could track down “deadbeat parents” or “delinquent obligators,” as the social service bureaucrats liked to call them.

The North Carolina General Assembly passed enabling legislation in 1997, and it was implemented October 1, 1997. As October 1 approached, DMV launched a public awareness campaign. The requirement fostered push back from the public, especially from privacy advocates, from some Christian fundamentalists who considered the SSN the “mark of the devil,” and from libertarians who saw their worst nightmares of government tracking of citizens about to come true. DMV made it clear that no SSN, no license.

Then the issue arose of what about the people who do not have an SSN, including those aliens here with authorized status but not eligible for SSNs as well as those in an unauthorized status. Having served on the working committee that drafted the legislation in 1996-97, the director knew the legislation was targeted just at people who had an SSN; there had been no discussion of how to accommodate non-citizens. But he also sought and received a verbal opinion from the State Attorney General’s office confirming that interpretation. That interpretation was conveyed to examiners. The interpretation was that if a person said they did not have an SSN, they could still receive service. The director sent a memorandum to all driver license personnel instructing them:

...Not everyone has a Social Security number. The law applies only to those persons who have a SSN. If the customer claims that he or she does not have a SSN, then enter a series of “9”s in the SSN field [on the computer]...A significant number of people, particularly immigrants but also some U.S. citizens, do not have a SSN. Many of these people get Taxpayer Identification Numbers through the Social Security Administration in order to get a job. The Taxpayer Identification Number is not the same as the SSN. The law does not require us to collect the Taxpayer Identification Number...⁶⁷

The verbal opinion given management was subsequently reinforced by a written advisory opinion from the senior deputy attorney general Andy Vanore. The same bill (House Bill 301) that required DMV to collect SSNs also had a component that required Registers of Deeds to collect SSNs in the issuance of marriage certificates. Registers of Deeds requested guidance from the AG’s office on whether they should issue marriage licenses to persons without SSNs.

The relevant passage of HB301 said “Each applicant for a marriage license shall provide on the application the applicant’s social security number. The register of deeds shall not issue a marriage license unless all of the requirements have been met.” That language mirrored the language used on the part of the bill dealing with driver licenses.

Vanore advised that “...where an alien meets all of the other requirements for a marriage license but is prohibited by federal law from receiving a social security number, a register of deeds shall issue the alien a marriage license.”

⁶⁷ Wayne Hurder, “Change in Social Security Number Requirements,” memorandum to Driver License Personnel, October 1, 1997

He added that “To read [NC General Statutes] 51-8 in such a way that would deny an alien a marriage license because he cannot provide a social security number which he may not legally obtain would make a mockery of the law. Certainly this was not the intent of Congress or the General Assembly.”⁶⁸

So, beginning October 1, 1997, the DMV began demanding SSNs from customers and requiring that they bring in documentation of the number. But, if the customers told the examiner he or she did not have an SSN, the examiner could proceed with the transaction. Customers who came to the office without the documentation of their SSN were sent them home to get the documents, while the Examiner would proceed with service for the non-citizen. As if demanding the SSN wasn't bad enough, this took the debate to the level of a nuclear meltdown. The nuances of legal requirements were hard to convey to someone who did not want to give their SSN in the first place and then was told to go home and get documentation, while Jose or Juanita was receiving service. Further inflaming the situation was news coverage that focused on situations where examiners – erroneously – were requiring Hispanic customers to provide proof of SSN. The Raleigh News & Observer on Dec. 8, 1997 had a front page story, “DMV Policy hits wrong target.” The article reported that “hundreds of recent immigrants, mostly Hispanic” have been “ensnared” by the law because examiners erroneously told them to produce documentation of SSN.⁶⁹ While Hispanic advocates tended to blame the problem on examiner biases, some of the problem arose from the fact that examiners were required to ask every customer if they had an SSN and if the customer said yes, to then require documentation of it. Many Hispanic customers, ill-versed in English, tended to nod their head affirmatively or answer “yes”, not knowing what they were agreeing to, and thus truly ensnaring themselves in the requirements of the law. On December 31, 1997 the director sent a policy memo to the field telling examiners that if a customer initially says they have an SSN, is told to get proof of that SSN, then comes back later and says they do not have an SSN, then the examiner is to proceed with the transaction on the customer's word.⁷⁰

So it is easy to see how some residents became very resentful of the process, even though it was strictly grounded in the requirements of the law. And while the News & Observer talked about immigrants being “ensnared,” the vast majority of North Carolinians coming to Driver Licenses offices felt like they were the ones ensnared in a bureaucratic nightmare.

This process also sowed the seeds of a subsequent problem. Per the guidelines of the SSA and in preparation for the time when DMV would have the technology in place to verify numbers against the SSA database, if a customer said they did not have an SSN, the examiner was instructed to enter 999-99-9999 in the field as a placeholder for the computer system. This came to be branded as entering a “bogus” SSN in the records, with all the negative connotations attached to the term

⁶⁸ Andrew A. Vanore Jr., General Counsel, N.C. Department of Justice, “Advisory Opinion: Marriage License; Eligibility of an Alien to Obtain a Marriage License where the Alien is Prohibited by Federal Law from Obtaining A Social Security Number,; Register of Deeds; N.C.G.S. 51-8., August 14, 1998,

⁶⁹ Ruth Sheehan and Ned Glasscock, “DMV Policy hits wrong target,” Raleigh News & Observer, December 8, 1997, page 1

⁷⁰ Hurder, “Clarification of Social Security Number Policy,” Memorandum to Driver License Certification Personnel, December 31, 1997.

“bogus,” even though the use of “9s” in the SSN field was strictly a “dummy” or “filler” number recommended by the Social Security Administration.

Unbeknownst to DMV (and presumably to legislators and legislative staff), an official with the U.S. Department of Health and Human Services (USDHHS) had provided guidance to state health and human services agencies that coincided with the interpretation provided by the State AG. Commissioner David Gray Ross of the USDHHS Office of Child Support Enforcement wrote to the states: July 14, 1999 “We interpret Section 466(a)(13)(A) to require that States have procedures which require an individual to furnish any social security number that he or she may have. Section 44(a) (13) (A) does not require that an individual have a social security number as a condition of receiving a license....”⁷¹

An observation by Alexis de Tocqueville from his travels in America 180 years earlier is pertinent to that debate and where it would lead:

... [T]he idea that occurs most spontaneously to men in centuries of equality is that of uniform legislation. Since each man sees himself as not very different from his neighbors, **he finds it difficult to understand why a rule that applies to one man should not apply equally to all the others.** [Author’s emphasis] The merest of privileges are therefore repugnant to his reason. The slightest dissimilarities in the political institutions of the nation offend him, and legislative uniformity strikes him as the primary prerequisite of good government.⁷²

De Tocqueville’s comments would probably have received a thunderous ovation from North Carolinians. It didn’t take a public opinion poll for most legislators to know that the majority of North Carolinians found it very repugnant that many immigrants were escaping the requirement to document their SSN.

A Failed Protest Against Immigrants

The biggest ruckus over immigration came in early 2000 and occurred at what might be considered “ground zero” of the Nuevo North Carolina.

Siler City is a small town almost in the center of the state, one so quintessentially small-town rural that Aunt Bea of the Andy Griffith Show (actress Frances Bavier) retired there because it reminded her so of fictional Mayberry. She died there in 1990, and in the decade after it became a magnet for Hispanic migrants attracted to a poultry processing plant there, as well as other job

⁷¹ David Gray Ross, Commissioner, Office of Child Support Enforcement, U.S. Department of Health and Human Services, memorandum to State IV-D Directors and Regional Program Managers, “Re: Inclusion of Social Security Numbers on License Applications and Other Documents,” July 14, 1999, <http://www.acf.hhs.gov/programs/css/resource/social-security-numbers-on-license-applications-and-other-documents>

⁷² Alexis de Tocqueville, *Democracy in America*, translated by Arthur Goldhammer, The Library of America, 2004, page 787.

opportunities. Their numbers had grown so that, by 2000, 40% of the population of the town of 6,000 was Hispanic.

At the apparent invitation of a handful of local white supremacists, former Ku Klux Klan leader David Duke from Louisiana [ironic, given that Louisiana has a substantially bilingual culture] announced he would hold a rally in Siler City Saturday, Feb. 19. The rally attracted about 50 to 60 obvious supporters and about 400 to 500 curious onlookers, plus dozens of media representatives. The lackluster response to Duke was a reflection that Duke was an outsider and that the town for the most part had reached an accommodation with its new residents, recognizing that they had helped resurrect a dying town.⁷³

Additional Issues Affecting Customer Service in High Growth Areas

During this period the state was undergoing phenomenal growth, both in terms of in-migration from other states and from other countries (authorized and unauthorized). DMV has always been a child of the political system, and that manifested itself especially in the realm of staffing. In the early 1990s the Driver License Section tried to close many of its inefficient, one-person, part-time offices and was successful to an extent. But as the population in metropolitan areas increased rapidly while stagnating in small towns, (where there might be an office staffed by 3 or 4 examiners) management did not have the flexibility to move positions to offices that were inundated with customers moving into the state.

These offices that were struggling to serve the public in a timely fashion were typically also offices where there was a high influx of unauthorized immigrant labor moving to the city or suburbia to work construction jobs, landscaping jobs, or other service type work. So yet again, for a U.S. citizen coming to a driver license office in Charlotte or Monroe or Hendersonville, there was the logical thought process, “get these illegal aliens out of this office, and maybe I can get served faster.”

To a person having those thoughts, it is hard to get them to focus on issues of highway safety, auto insurance, etc. or to understand the nuances of the SSN law. Although that is what management tried to do, lacking an ability to move examiners around to try to accommodate customer demand, hobbled that effort. Management took some steps to try to deal with the issue, paying overtime, hiring temporary employees to assist with intake, etc. but their impact was marginal.

All of the aforementioned offices were in the fastest growing part of the state during this era, and so the ratio of residents to examiner got worse every year (until the General Assembly appropriated

⁷³ Ned Glasscock, *Raleigh News & Observer*, “Rally Divides Siler City,” February 20, 2000. For a comprehensive report on Siler City, see a story on American Public Radio, <http://americanradioworks.publicradio.org/features/immigration/c2.html>].

money for more positions, and even that was just catching up with the game, not getting ahead of it). The other issue population growth statistics don't capture is that the kind of service required of new residents is more time consuming. A new resident is more likely to require multiple trips to an office due to any number of factors: wrong documents, failing a test, lack of proof of liability insurance, etc. The impact was even greater where the growth involved non-citizens, who typically required more time, the waiver of SSN requirement notwithstanding. Immigrant customers were more likely to have the wrong documents, more likely to fail knowledge tests and more likely to fail a skills test, meaning multiple trips to the driver license office.

The dynamics of the influx of non-citizens from 1990 to 2000 underscore the challenge DMV (and other local and state agencies) faced. From 1990 to 1994, 82,454 foreign-born persons moved into the state; from 1995 to March 2000, the number was 185,903.⁷⁴

In 1990, the state had an estimated 25,000 unauthorized immigrants, according to estimates by the Pew Research Center. That number climbed to 210,000 by 2000, then peaked at about 375,000 in 2005.⁷⁵

Furthering the challenge for DMV, 146,400 of the foreign-born in 2000 reported they speak English "not well" or "not at all." Of these, the greatest number was Spanish speaking (123,600). On the national level, 35 per cent of the foreign-born reported speaking English "not well" or "not at all" compared to a comparable figure of 42 per cent for North Carolina.⁷⁶

Those figures also underscore that many of the immigrants coming into North Carolina had not been in the United States for long and thus were less familiar with laws and norms of the state or nation, and thus more likely to get into difficulties, such as driving while impaired, using counterfeit documents, etc., behaviors that might have gone less noticed at home, but could draw stiff penalties in the U.S..

In 1999, the Driver License Section began implementing computer-based knowledge testing equipment which allowed testing in 10 languages. Besides the advantages to immigrants, it increased examiner productivity and virtually eliminated the potential to cheat on knowledge tests, a serious problem. One example of the ingenuity of those trying to beat the system was featured on the Oprah Winfrey show. In this instance, someone managed to steal (or buy from an examiner?) the North Carolina test answer keys used for the 5 rotating tests employed for regular licenses. He or she then etched the answer scheme on the 5 sides of a #2 pencil and was selling the pencils for \$100 each. Oprah exhibited one of the pencils on her show. After that, management made sure customers did not bring their own pencils into the testing area. Automated testing eliminated that issue.

Governor Hunt, President Fox Commend NCDMV While Customers Fume

⁷⁴ U.S. Census Bureau, "Migration of Natives and Foreign Born: 1995 to 2000," Census 2000 Special Reports, August 2003, <http://www.census.gov/prod/2003pubs/censr-11.pdf>

⁷⁵ Jeffrey S. Passel and D'Vera Cohn, Pew Research Center, "Unauthorized Immigrant Population: National and State Trends, 2010: Appendix A: Additional Figures and Tables," February 1, 2011, <http://www.pewhispanic.org/2011/02/01/appendix-a-additional-figures-and-tables/>

⁷⁶ Ibid

Throughout this period the leadership of the state, in the executive and legislative branch reached out to the new Hispanic community in a variety of ways. Governor Hunt established an Office of Hispanic/Latino Affairs in 1998 and appointed a Puerto Rico native, Dr. Nolo Martinez, as its director. In signing an executive order establishing the office and an advisory task force, Governor Hunt made off-the-cuff remarks to the group that are striking for their boldness and insight into the needs of a non-traditional population of new North Carolinians and government's responsibilities. He closed by complimenting the efforts of DMV:

...North Carolina is rich in diversity, and one of the top priorities of my administration, and I would say to you a top priority of the people this state - because the people elected me, and I speak for them - has been to strengthen the common bond that we share as North Carolinians. Our Hispanic-Latino population is the fastest growing population in our state. As a result, there is an obvious need to address the issues that this population experiences. We need to do this in a way where it's not somebody telling someone what they need. We need to do it in a way that is truly democratic, and that means all of us, who are leaders, listen to the people, and we learn from them what their lives are like and what their needs are, what they are planning to be, and learn together, and try to respond to those.

...Now, there are some special problems that we know about, for example: Hispanic citizens in our state face many challenges regarding language. Our schools are struggling to teach students that did not speak English at the beginning. Doctors and other health professionals are often faced with not being able to communicate with their patients well enough. This is something we must work hard to change, and in a state with such cultural diversity as we have, it is a challenge that we must face and something we must do. Many of our agencies in government have dealt with these problems. The Division of Motor Vehicles is a great example, and everybody who works needs a driver's license, right? And we need to all obey the law.

The Department [sic] of Motor Vehicles has worked hard to improve relations with Spanish-speaking applicants that get their driver's license.

...That department has hired interpreters, it [has] required diversity training for examiners, it [is] providing Spanish versions of the driver's license handbook and a written test, and I commend them for that. We have a need, and we recognize that, and we are working to fill it, although there are many problems left that we need to work on.⁷⁷

⁷⁷ Transcript, "Executive Order Signing, Governor's Advocacy Council On Hispanic/Latino Affairs," June 5, 1998, pages 212-214, *Addresses and Public Papers of James Baxter Hunt, Governor of North Carolina, Volume IV, 1997-2001*, Department of Cultural Resources, Office of Archives and History, Raleigh NC 2010

DMV started working with Dr. Martinez and his council, appointed by the Governor, to address issues. In the State Senate, the President Pro Tempore, Marc Basnight, appointed a special assistant for Hispanic and Latino Affairs, Matty Lazo-Chadderton, making him the only State Senate leader in the country to have such a dedicated resource and advocacy person. Basnight, a restaurateur from the Outer Banks, has been described by Eamon as “one of the most influential – perhaps the most influential – public officials in the state.”⁷⁸ He was known for speaking passionately to business groups about the economic and cultural benefits to the state of immigration. Soon after Basnight appointed his Latino liaison, Lt. Governor Beverly Perdue appointed a Hispanic liaison for her office, Maria Padilla.

In mid-2000, the National Highway Traffic Safety Administration released a notice of proposed rule-making for a regulation that would forbid states from issuing driver licenses and identification cards for persons without authorization to be in the country. The proposed rule was a result of a mandate from the 1996 Illegal Immigration Reform Act to stop states from issuing to unauthorized immigrants. That summer, DMV submitted a response to the proposal, drafted by the author, which opposed the proposal as an unfunded federal mandate and documented the costs involved in requiring additional staff, training, and technology to implement such a proposal. The regulations were never finalized, and Congress subsequently repealed the mandate. In April 2001, Dr. Juan Hernandez, executive director of the Institute for Mexicans Abroad in the government of Mexican president Vicente Fox, visited Raleigh to meet with members of the Mexican community. In remarks to a forum, Dr. Hernandez “commented that on the recent trip to California President Fox told [California] Governor Gray Davis that California needs to use North Carolina as a model for driver licensing. Dr. Hernandez also said that President Fox had the same comment for the Governor of Texas.”⁷⁹

Throughout 2000 and in to early 2001, the service to unauthorized immigrants was the focus of news articles in small town newspapers and correspondence to DMV complaining about long lines at Driver License offices and linking the problem to services for unauthorized non-citizens. Most of the coverage came in small towns in the Charlotte area and in the mountains. One e-mail from a customer in Hendersonville aired some common grievances and documented the overcrowding in that particular office:

“...Nothing should be done – especially at taxpayer expense and inconvenience – to make it easier for ILLEGAL [sic] immigrants to be in the U.S. I feel this is exactly what is being done with regard to illegal Hispanics in this country. If what is being done is in accordance with the law, then concerned citizens need to rally together to get the laws changed...”⁸⁰

The resident went on to document long lines in the Hendersonville office:

...on six random instances of my visiting this DMV office...The waiting room, the hall and often the sidewalk leading to the building were virtually jammed with

⁷⁸ Eamon, page 279.

⁷⁹ Hurder, e-mail to Julie Weise, “Tennessee Contact, etc.” 3 May 2001.

⁸⁰ Carlton Freeman, e-mail to Wayne Hurder, March 14, 2001

Hispanic applicants. On all these occasions, there were at least 50 Hispanic applicants there. On two or occasions, there were approximately 100 (or more).

...On every occasion, I saw no more than five (approximately) non-Hispanic applicants in these lines...As a side issue, eliminating illegal Hispanics from the DMV's pool of applicants would drastically reduce the long lines, etc. since the lines are 80 to 90 per cent Hispanics - and based on the sheer numbers, the majority of them are illegally in the U.S...

...On every occasion, the parking lot and the roads leading to and from the parking lot were filled with mostly out-of-state vehicles.⁸¹

He went on to say that a DMV employee had told him the office served an average of 100 Hispanic applicants per day for the last four years, for a total of 100,000.⁸² That comment was representative of one of the problems in the debate - exaggeration of the extent of the issue by some staff who passed on such erroneous information to the public, to news media (off the record) and to legislators.

Part of the problem with the writer's statement was the conclusion that this represented 100,000 different individuals coming through the office. Service to an immigrant - authorized or unauthorized - typically might take three or four visits - and frequently more - before they succeeded in getting a driver license because the challenge of having all the right documents, passing the knowledge tests, and then passing the driving test was rarely done in one visit.

The assumption that the presence of vehicles with license plates from other states was an indicator of people flocking to North Carolina and returning to their home state with a North Carolina license was also erroneous, but it was a perception that would not go away.

Another fallacy referenced by the writer Freeman was that the unauthorized immigrants were not taxpayers, that they "enjoy the benefits being paid for by legitimate residents."

While the issue of net cost of services for unauthorized immigrants has prompted much research and debate, when it came to motor vehicle services, the customer, whether unauthorized immigrant or U.S. citizen, was clearly paying for the service. In North Carolina, DMV's budget comes from the Highway Fund which derives its revenue from a gas tax and various DMV fees. In a performance audit of the Driver License Section in 2005, the State Auditor noted that "the cost of operations...has averaged approximately one-fifth of the total revenues generated...from the sale of driver's licenses and identification cards for that same period."⁸³

⁸¹ Ibid.

⁸² Ibid.

⁸³ Leslie W. Merritt Jr. State Auditor, "Performance Audit: North Carolina Department of Transportation, Division of Motor Vehicles: Driver's Licensing Process," Office of the State Auditor, page 1, June 2005.

Freeman's letter complained about staffing at the office, and the issue of staffing at the office was representative of part of the problem DMV faced in addressing its customer service issues. In the private sector, management could have moved staff positions to the office cope with the demand.

The problems in Hendersonville typified the problem the Driver License Section faced statewide. Management understood the political realities that made it virtually impossible to move positions around, but in the mid to late 90s, it had budgetary flexibility to hire temporary workers to augment the work of the examiners. Those funds also helped the Section hire Spanish (and other language) speakers at many offices, which helped reduce the bottleneck that occurs when an examiner who only speaks English tries to assist a customer who has limited or non-existent English skills. But at the very time when the number of non-English speaking customers was accelerating, management lost the budgetary freedom to hire the temporary workforce.

The other staffing issue the Driver License Section encountered was high turnover among its Spanish-speaking examiners. After a couple of years at DMV, a bilingual examiner could command a good salary (and better work conditions) at construction companies, driver training schools, law firms, temporary work agencies, etc.

All of these issues brought things to a boil in 2001.

Chapter 5 -- 2001: The Tipping Point Reached

Long lines and customer anger with SSN requirements created a perfect storm of customer dissatisfaction with Driver License operations in the summer of 2001. Where previously discontent among traditional customers had not resulted in any change of direction for DMV, in 2001 a series of events resulted in revisions to state law to address hot-button issues with unauthorized immigrants. But no substantial barriers were erected until 2004, and those changes resulted from administrative actions supported by the Governor, not by legislative fiat.

Fueled by long lines and complaints that immigrants were coming from out of state to get North Carolina licenses and avoiding the Social Security Number requirement, a prominent African-American Democratic Senator from Charlotte introduced Senate Bill (SB) 700, "NCDL - Address Requirements on Application." He was joined by six other prominent Democratic Senators, including two Senators recognized as being in the top leadership of the Senate, Tony Rand from Fayetteville and David Hoyle from Gastonia. The bill listed several documents that should be required to prove residency in the state and added the word "valid" to the statute's requirements for a Social Security Number. Normally with that line-up of sponsors, the bill should have been assured of passage in the Senate.

On the House side, three weeks later, Rep. Larry Justus, Republican from Henderson County, in April 2001 introduced a companion bill, (companion bill meaning it had the same language as the Senate bill). House Bill (HB) 1273, "NCDL - Address Requirements on Application." After introduction, the bill picked up 61 sponsors, which would be enough to pass the bill, except that it

never made it out of committee. Among the 61 sponsors were several prominent Democrats from around the state.

The Division was opposed to the bill for several reasons: because of the additional workload on examiners without providing additional resources; because the list was limited in terms of documents a person could practically be expected to have; and because the Division anticipated that many items on the list to prove residency could be easily counterfeited.

The insertion of the word “valid” was not an issue to management because it was meaningless for resolving the issue of persons without a SSN. The word “valid” as applied to Social Security Numbers simply means the use of a number that had been issued by the SSA.⁸⁴ What would have been more appropriate would be to require a SSN that had been verified, meaning the Division had verified with the SSA that the number and the name, sex, and date of birth of the applicant matched their records. In that regard, the Driver License Section was already working towards a technology interface with the SSA to allow real-time verification of numbers, with the goal of denying a license to persons who presented an SSN that did not match SSA records. The DMV did not need statutory authority to deny licenses to persons whose SSN did not verify. But whether the wording was “valid” or “verified,” that still did not change the fact that the proposed bills, as with the existing law, did not specify how to treat persons without an SSN, which meant they would maintain their eligibility in the eyes of DMV, per the Attorney General’s advisory opinion.

In the debate, two points were not grasped by opponents of the status quo at DMV:

- (1) holding an SSN did not necessarily mean the holder was authorized to be in the U.S. While an authorized non-citizen needed INS authorization to work (and therefore, to obtain a Social Security Number) that SSN always assigned to that customer even if the alien’s work authorization had expired or been canceled.
- (2) Many persons had INS authorization to be in the U.S. but they were only eligible for an SSN if they had work authorization. In discussions with legislators, the intent of the two bills was to bar persons without an SSN from getting a driver license or ID card. Had they succeeded legislatively, the spouses of foreign executives working in North Carolina and their children would have been denied DLs/IDs. Likewise, foreign military on long-term assignment at Ft. Bragg would have been denied licenses, as would most foreign exchange students.⁸⁵

⁸⁴ In 2007, the Republican State Auditor, Leslie W. Merritt Jr., conducted a “strategic review” of NC DMV’s use of social security numbers. In his report, he defined an invalid SSN as a number “not within the range of valid numbers issued by the Social Security Administration.” Merritt, “Strategic Review: North Carolina Division of Motor Vehicles,” Raleigh North Carolina, March 2007.

⁸⁵ Author’s note —as director of the agency, the author had a responsibility to work with legislators (working through the bill drafting section of the General Assembly) and he did so frequently on other issues. In that capacity, he gave advice on how the bill should be crafted, regardless of whether he supported the outcome. In this case, as with several other bills subsequently introduced, the director was not consulted, and the bills never quite grasped the intricacies of the issue; consequently that made

The Senate sponsor was from Charlotte which had the longest wait times for licenses of all offices in the state and where many examiners had expressed discontent with management's efforts to work with the Hispanic community on licensing. The Senate sponsors notwithstanding, the bill was held in the Senate in the Transportation Committee. The bill in the House was referred to Rules committee and then to House Transportation Appropriations subcommittee. Neither moved from those committees, but Democratic leadership recognized it had its fingers in the dike, holding back a flood of demands for changes at DMV.

Over the spring and summer, the director met with key legislators, Hispanic advocates and legislative staff to discuss ways to address the proof of residency issue, which was recognized as providing the most opportunity for abuse. They also discussed possible use of the Individual Taxpayer Identification Number (ITIN) as an alternative for those persons without an SSN. John Herrera, vice president of the Self-Help Credit Union in Durham, endorsed the concept, partly because it would also open the door for undocumented workers to file tax returns to recoup tax payments collected by the IRS.⁸⁶ Legislative staff worked with the director, Hispanic advocates and legislators crafting language that could go into a provision of the appropriations bill that would serve as an alternative to HB1273.

In the House, Rep. Justus was successful in June in amending the House budget bill (HB1005) to include a requirement that the first issuance of a DL/ID was to be mailed to the applicant's residence. HB1005, with his amendment, passed the House. In mid-September, it was referred to a conference committee of Representatives and Senators to reconcile differences between the two houses' budget bills.

Later in the session, national media coverage brought attention back to the issue.

***New York Times* Article Puts NCDMV in the Cross-Hairs**

A front page, above-the-fold New York Times article by David Firestone on Saturday, August 4, 2001 provided a spark that was to ignite into a bonfire with 9/11. Firestone's article was

it easier to oppose them. Ironically, if legislators had brought the director into the bill drafting process they might have achieved their objectives much earlier.

Bill drafters did not understand that a non-citizen could have a valid SSN and be here illegally or that you could be here in an authorized status and not have an SSN. Or, a person could have a "valid" SSN, but it could be someone else's number, a situation Driver License frequently faced with enterprising criminals "harvesting" SSNs in Puerto Rico selling them, along with accompanying false ID documents. . . . During this time, the author was serving on an AAMVA workgroup that was revising the "best practices" standards for identification and residency, as well as issues of legal presence, so if consulted, he could have – and would have – provided them a wealth of guidance on the complexities of the issue and on how other states were dealing with the issue} Rep. Justus was one of the few legislators to discuss this issue in depth with the author.

⁸⁶ John Herrera, e-mail to Wayne Hurder, "HB1273," 28 April 2001.

headlined: “In U.S. Illegally, Immigrants get License to Drive” and was datelined Garner, N.C... a suburb of Raleigh:

The roofer climbed down from the scaffolding around the new strip mall, pulled out his wallet, and fondled the little plastic card inside as if it were enchanted. Though he did not speak English, he was delighted to point to the words on the card: “State of North Carolina Driver License” and underneath his name, Alejandro.

“I used to have a Mexican license which the police did not like,” [author note: under NC law it was legal to drive on that Mexican license] he said through an interpreter, declining to give his name because he is in the country illegally. “But here in North Carolina they said I could have this, a real license, and I couldn’t believe it. Now I get insurance, and I don’t have to worry so much when I get in the car.”

Three other workers on the same job site in this suburb south of Raleigh said they also had licenses despite their illegal status, and said they get paid as much as \$2 an hour more because of the extra versatility their license gives them on the job.

For these and hundreds of thousands of other illegal immigrants who have taken advantage of North Carolina’s liberal rules for a license, driving is no longer a furtive affair, conducted under cover of night and only when absolutely necessary.

Their card and the sense of identity it confers allow them at least a partial entry into the mainstream of the United States, a sense of security above the underground of menial jobs and makeshift communities.⁸⁷

Firestone added that “...In recent months...Dr. Juan Hernández, appointed by Mr. Fox as the director of the Office of Mexicans Abroad....had met with about a dozen American governors, urging them to follow North Carolina's lead, but has encountered considerable resistance.”⁸⁸

It was a great and heart-warming story, except for when it got to the part where the reporter said, “...Only three other states [besides North Carolina] – Tennessee, Utah and Virginia – give licenses to any state resident who can pass the driving test, regardless of their legal status.”⁸⁹

In fact, at that time, based on a survey conducted by AAMVA earlier that year, there were 25 states who allowed undocumented aliens to get licenses and 25 that prohibited it.

Unfortunately North Carolina was not able to correct the record, partly because public relations staff with the parent organization, the Department of Transportation, were not too upset with the

⁸⁷ David Firestone, “In U.S. Illegally, Immigrants Get License to Drive,” *New York Times*, August 4, 2001, page 1. For the complete article, see Appendix B.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

article and preferred to let the issue die, and it was not clear that a correction buried on the inside on page 2 (where the *Times* lists its corrections) could have undone any of the damage.

Neither Hurder nor DOT public affairs staff realized at the time the degree to which the article would fan the flames of opposition to the licensing of unauthorized immigrants.

Summer 2001 - Customer Service Meltdown

The summer months - especially July and August - are the worst months for service in a Driver License office. Typically, offices in the summer have reduced staffing due to examiners taking vacation time. Coupled with that, the number of customers spikes: families move into the state, requiring the more time-consuming issuance of the customer's first North Carolina license; high school students take driver education skills classes in the summer, and as soon as they finish, they head to the DMV. In 1995, the Driver License Section conducted monthly customer service surveys. From September through May, the number of survey respondents indicating satisfaction ("highly satisfied" + "somewhat satisfied" categories) with their service hovered around 90 per cent. But in the summer months, and especially in July and August, it dipped to about 70 per cent. And that survey was done before the surge of immigrant customers.

In August and September, the director received a flurry of e-mail requests from the Charlotte Observer about issues related to long lines in the Charlotte area, including staffing ratios, number of examiners, number of offices, guidelines for staffing decisions, etc. That was followed by an inquiry from legislative staff about the same issue.

The Sunday Charlotte Observer on August 26, 2001 had a page one article about the problems with driver license offices in the state's largest city under the headline "Relief on the Way..." The article reported that "Following complaints from Charlotte motorists and area lawmakers, the Division of Motor Vehicles is putting an 'emergency plan' into place to ease the long lines in Charlotte and neighboring Union County."⁹⁰

Whitacre reported talking to one customer who waited in line four hours and who said she witnessed two persons in line fainting from the heat. She also quoted Hurder saying that one third of the tests given on the automated testing units were in Spanish. "The state has a hiring freeze, but Hurder says Transportation Secretary Lyndo Tippet has authorized him to fill 15 vacant driver license examiner positions statewide, including the ones in Charlotte."⁹¹

Her story was followed 23 September by an article headlined "DMV pay, turnover makes Charlotte Lines the worst." Authored by Whitacre and Tim Funk, it compared Charlotte offices to those in Raleigh. In Raleigh, they reported, a customer could schedule an appointment five days in advance, whereas in Charlotte the soonest appointments could be arranged were six to eight weeks out.⁹²

⁹⁰ Diane Whitacre, "Relief on the Way," *Charlotte Observer*, 26 August 2001, page 1

⁹¹ Ibid.

⁹² Diane Whitacre and Tim Funk, "Low pay, turnover keep county drivers waiting," *Charlotte Observer*, 23 September, 2001, page 1B

They reported that one of the problems hiring examiners in Charlotte was the competitive economic environment. DMV examiners in 2001 started at a salary of \$24,355 a year, and “that’s about what the city pays unskilled workers in its wastewater treatment plant.”⁹³ “...basically for the amount of education and experience, people can get better jobs,” commented a local economics professor. “And every time you look up, you have made people waiting,” the economist added. “The legislature has not budgeted extra money to hire more Charlotte examiners since 1996,” the article reported.

A proposal to raise... [driver license fees]...which would have pumped \$25 million into DMV and other related programs, died in committee.

The county’s five DMV offices consistently have the state’s highest turnover. Six of the 36 examiner jobs are vacant. At one point, in 1999, 11 jobs were vacant. “The average experience of a Mecklenburg examiner is 11 months. In Western North Carolina, it’s 11 years.

Part of the reason for the greater inexperience in Mecklenburg DMV is that many of those hired live in other counties. Once they’ve worked a few months, many decide they’d rather work closer to home. More than 20 per cent of the Mecklenburg examiners have applied to transfer to another DMV.⁹⁴

“...We beg for more money,” the paper quoted Tippet. “In March Tippet says he asked legislators to increase the fee for a five-year driver’s license from \$12.50, where it’s been since 1983, to \$15. The fees would have raised 25 million and we could have used it to beef up that outfit some...We thought people standing in line would have been glad to pay a little more (for faster service.’ “But some legislators saw the fees as tax increases, and they never came up for a vote,” reported Whitacre and Funk. “Plus some legislators have blocked DMV efforts to close smaller offices in their districts. Such moves, DMV says, would free money to hire more employees where they are needed.”⁹⁵

NCDMV had been investigating technology solutions to help divert some customers away from having to visit driver license offices, and had started work on a project to issue duplicate license (changes of address or lost licenses) via the internet. That new service was rolled out in August 2001. In the first three months of that service, about 25,000 persons ordered duplicate licenses through the Internet, and “about half of them have been from Mecklenburg County.”⁹⁶ But all that barely made a dent in the long lines.

Residency Issues Inflamm the Debate

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ Hurder, “DMV On-line Services,” e-mail to Johanna Pinerua, Editor *La Noticia*, 27 November 2001.

Accusations that lax standards were attracting driver license customers from all over the country also intensified in September, making an already volatile situation more explosive.

On September 10, the *Raleigh News & Observer* ran an article headlined “Lacking ID, immigrants flock to state DMV offices.”⁹⁷

The lead for the story was about a Floridian driving to Raleigh to get a North Carolina license:

Procoro Garcia strode triumphantly out of a Division of Motor Vehicle office in Raleigh, clutching the prize he had come all the way to Raleigh from Miami to claim: a North Carolina ID card.

The undocumented Mexican immigrant intends to parlay the identification card into a driver’s license in Florida, which will accept the North Carolina card as proof of identity. That way he can legally drive to work.

Word has spread among undocumented immigrants in nearby states that North Carolina is the place to come for a driver’s license or state-issued ID card. Unlike other states, North Carolina does not require a Social Security number or even proof of residency to get a license or ID.⁹⁸

The story acknowledged that the legislature was considering a change that would take effect in January that would require applicants to provide proof of residency in North Carolina.

A week later the *Charlotte Observer* weighed in on the issue with an unattributed allegation that further inflamed the issue:

...The North Carolina General Assembly is poised to consider a provision that would make it harder to get a driver’s license by requiring at least two proofs of residency.

The reason?

The Tar Heel State has become the Driver’s License State to **tens of thousands of out-of-state immigrants who can’t get licenses where they live.**

[author’s emphasis]

Latinos from as far away as New York and Florida have stood in line at North Carolina’s driver license offices, drawn by word on the street that the state does not require a Social Security number or proof of residency.

This lenient policy, copied by a few states but resisted by many more, has become part of a national debate over how far to go to accommodate immigrant workers.

⁹⁷ Ned Glasscock, “Lacking ID, immigrants flock to state DMV offices,” *Raleigh News & Observer*, September 10, 2001.

⁹⁸ *Ibid.*

The Immigration and Naturalization Service doesn't like North Carolina's approach, but many employers eager to hire immigrants do.

...Those out-of-staters lengthen the long lines at many of the state's license offices, including most of Charlotte's. Because few of the area's Division of Motor Vehicles employees speak Spanish, delays are compounded.⁹⁹

Especially damaging was Funk's statement about "tens of thousands of out-of-state immigrants" coming to the state. There was no attribution made, and he did not talk to the director or anyone at DMV for the story, so there is no way to know how he came up with that number.

Had he talked to DMV, he would have been informed that the country was split half and half in its approach to licensing, and that it was not a matter of policy, it was a matter of law. While DMV recognized issues with proof of residency, it did not refute the statement at that time, partly because of the rush of legislative business and partly because there was no objective data with which to counter him.

Census Data Highlights Immigration to NC From Other States

Time has shed some light on that situation in the form of U.S. census data that undercut Funk's undocumented contention of "tens of thousands" of non-residents flooding the state. Those critics missed several key points:

- Because of North Carolina's booming economy, hundreds of thousands of people - U.S. citizens and non-citizens - were moving to North Carolina. U.S. Census data bolster the argument that what people thought were out-of-staters coming here just for DL/ID and then returning home were truly (for the most part) persons moving to North Carolina. As part of the 2000 census, the U.S. Census Bureau did a study of state-to-state migration from 1995 to 2000. It found that North Carolina had the fourth highest rate in the country, 48.4 immigrants per 1,000 population, trailing only Nevada, Arizona and Georgia and just ahead of Florida and Colorado. Drawing a starker picture of that influx are the raw numbers - a total of 919,000 persons (U.S. citizens and non-citizens) moving into the state from other states (this number excludes immigrants coming directly to North Carolina from other countries). That total included 100,727 persons from New York, 96,255 from Florida, 89,149 from Virginia, 61,237 from South Carolina, and 48,000 from Georgia.¹⁰⁰

⁹⁹ Tim Funk, "Legislators focusing attention on licensing laws," *Charlotte Observer*, September 16, 2001

¹⁰⁰ U.S. Census, "State-to-State Migration Flows: 1995 to 2000," August 2003.

<http://www.census.gov/prod/2003pubs/censr-8.pdf>

- The first thing a person new to the state gets is a driver license – not a license plate. A driver license has immediate value to the immigrant from another state or another country (citizen or non-citizen) for cashing checks, opening a bank account, identification for a job, etc. A license plate had no such immediate value, and in fact most persons would rather put that off as long as possible because purchasing a license plate also entails paying a highway use tax and local property taxes. A license plate ultimately could cost a person five to 10 times the amount of a driver license. So the reason the parking lot at the Driver License office in Hendersonville or West Charlotte or South Winston-Salem had cars with license plates from Georgia, Florida, New York, etc. is because thousands of people from those states were moving to North Carolina.
- Especially for non-citizens getting their first driver license, multiple trips were usually required before they met all the requirements, so all the more reason why the parking lots were filled with cars from other states, outnumbering the North Carolina residents who may only need one visit to the office to renew their license, change an address, etc.

During this debate, NCDMV never denied there was a problem with fraud from out-of-state persons; it merely disagreed with the scope of the allegations. DMV was looking at ways to address the issue. In one meeting with Rep. Justus that year, the author suggested central issuance as a way to stop such fraud. NCDMV at that time used what is referred to as over-the-counter issuance, meaning that once a customer met all the requirements, the DL/ID was produced on the spot and handed to the customer. Under central issuance, the information is transmitted to a central site, allowing time for further verification of documents, and then the license is mailed to the customer residency address. Justus subsequently incorporated central issuance into one of his bills. NCDMV did not support his bill because it did not provide the additional personnel needed to make the process effective. Eventually, in 2007, the General Assembly approved central issuance and 36 new positions to go with it.

The Role of Misinformation in the News Media

As debate over the issue heated up in the General Assembly and in the public, supporters of the status quo of licensing unauthorized immigrants found themselves fighting perceptions that had been fostered by erroneous information in the news media. That erroneous information was especially damaging because it did not come from advocacy organizations or advocacy media, it came from mainstream newspapers which most readers would have considered neutral or liberal-leaning in their tendencies. The bulk of the problem coverage occurred in August through October 2001, and then the misinformation was repeated in debates as if “Gospel truth.” Those issues included:

- The report on page 1 of the New York Times on the cusp of the 9/11 tragedy that NC was one of only four states who licensed “undocumented aliens,” furthering the impression that NC was way out of the mainstream on the issue, when in fact half the states followed similar practices. The only difference was that North Carolina admittedly worked hard to reach out to this population.

- The notion that NC was entering “bogus” information into its database by using 9’s in the SSN database, which underscored the idea by some that NC was violating the state law by accommodating the population without SSNs, and what better proof than the fact that it was entering “bogus” or “phony” numbers, when in fact it was following SSA procedure.
- The allegation that “tens of thousands” of undocumented immigrants were flocking the state to get licenses and then returning to their homes in another state.
- And finally, in the aftermath of the 9/11 attack, various reports that the state issued licenses to terrorists associated with the 9/11 attacks.

All four erroneous reports had two common elements that reflected a deviation from core principles of journalism:

1. The statements were made without attribution to a source, thereby lending the statements the aura of accuracy, as if they were incontrovertible evidence of DMV run amok; and
2. In none of the four cases did the reporter check those facts with anyone at NCDMV before publishing them.

The Pew Research Center is a non-profit foundation with a variety of interests. One of those is journalism. In 2006, it assumed responsibility for the Project for Excellence in Journalism which had previously been affiliated with the Columbia University School of Journalism. One of its initial endeavors was collaboration with working journalists and members of the public to identify core principles of journalism. Its report was released 2 October 2013 and identified nine core principles.

Coverage from some media, such as *the New York Times*, *Los Angeles Times*, *Charlotte Observer* and others deviated from those core principles in ways that proved damaging to the public debate over the issue of licensing unauthorized citizens. The Pew Research Center’s first core principle is: “Journalism’s first obligation is to the truth.” Specifically, the group concluded:

Democracy depends on citizens having reliable, accurate facts put in a meaningful context. Journalism does not pursue truth in an absolute or philosophical sense, but it can – and must – pursue it in a practical sense. This “journalistic truth” is a process that begins with the professional discipline of assembling and verifying facts. Then journalists try to convey a fair and reliable account of their meaning, valid for now, subject to further investigation...Even in a world of expanding voices, accuracy is the foundation upon which everything else is built – context, interpretation, comment, criticism, analysis and debate....As citizens encounter an ever greater flow of data, they have more need –not less – for identifiable sources dedicated to verifying that information and putting it in context.¹⁰¹

¹⁰¹ Pew Research Center Journalism Project, www.journalism.org/resources/principles-of-journalism, accessed 29 April 2014.

The Pew Research Center's third principle described the essence of journalism as "a discipline of verification... Journalists rely on professional discipline for verifying information.... This discipline of verification is what separates journalism from other modes of communication, such as propaganda, fiction or entertainment."¹⁰²

It is difficult to understand why the various reporters did not attribute their "facts" to a source other than a desire to streamline their prose and/or to appear more authoritative on the subject.

In retrospect, the agency should have moved swiftly and with as many resources as possible to counteract the false information, even that which it initially thought was harmless (the NYT article). This is what political campaigns and corporations do when faced with false or misleading media coverage that threatens their standing with the public. While DMVs or most state agencies don't have the resources or the ability to respond quickly, much public support can be lost by acquiescing to misrepresentations in the media.

Consequences of 9/11

The *New York Times* article painted a bulls-eye on North Carolina. The 9/11 attack ultimately sealed the fate of all unauthorized immigrants seeking a driver license in a US jurisdiction. Even though there were multiple snafus in the intelligence community and the security process that allow the hijackers to board their planes, attention became focused on driver licensing process, since the hijackers had licenses from Florida, New York and Virginia, with Florida accounting for 13 licensees of the 19 hijackers.

In September 2001, the North Carolina General Assembly was still wrestling with a budget that should have been in place July 1. Democrats supportive of the Hispanic community grasped that they were on the wrong end of a losing issue and looked for a way to tamp down the debate without totally giving up on access to driver licenses for undocumented aliens.

In the week following 9/11, Hispanic advocates and staff from the legislature, the Governor's Hispanic Task Force, the DOT lobbyist, a representative of the N.C. Attorney General, the author, and several key legislators recognized that in addition to amending the statutes to require documentation of residency in North Carolina, they would also have to give ground on the SSN issue.

The bill dealt with the residency issue by requiring customers to provide two documents as proof of residency, or, lacking that, complete an affidavit of residency. The list of acceptable documents was much more comprehensive than the list provided for in SB700/HB1273, and included documents that immigrants might have, such as the Mexican matricula consular, an identification document issued by Mexican consulates with a photo.

¹⁰² Ibid.

On the SSN issue, the legislation allowed a person “ineligible” to obtain a SSN to provide an Individual Taxpayer Identification Number (ITIN) issued by the U.S. Internal Revenue Service. The budget bill, with these provisions, was passed 21 September 2001 and signed by the Governor on 26 September 2001, with an effective date of January 1, 2002 for the DMV provisions.

But passage of that bill did little to quiet critics.

On September 27, the House was considering Senate Bill 600, Motor Vehicle Technical Corrections, when Republican Russell Capps of Raleigh, the archetype of a Tea Partier, introduced an amendment stipulating that “The Division [of Motor Vehicles] shall recall all drivers licenses issued with fictitious or invalid social security numbers, and reissue those licenses upon submittal of a valid social security number...” Per DOT Lobbyist Ruth Sappie, the move to recall was the result of comments from the well-respected chief of bill drafting, Gerry Cohen: “...he started it all with that comment in committee that DMV was in violation of the law.”¹⁰³

Earlier in the month, Cohen injected a personal note in the debate, complaining he had to search around to find documentation of his son’s SSN for him to get a license. “Gerry’s comment was that the issue isn’t so much whether people are here legally or not, but that people resent the fact that they have to jump through a bunch of hoops to have paperwork but that the illegal aliens just have to say they don’t have an SSN.”¹⁰⁴

Capps was a lifelong gadfly to progressives in Raleigh and Wake County, founding the Wake County Taxpayers Association in the early 1990s and opposing almost every bond issue floated in Wake County, whether for schools, parks, roads, or other public facilities. He didn’t often play a winning hand, but that afternoon he came up aces, channeling the growing disgruntlement of the public.

The amendment passed 58 to 43 with 50 Republicans and 8 Democrats voting for it. Only two Republicans voted against it: Danny McComas, a native of Puerto Rico who represented Wilmington, a coastal town; and Monroe Buchanan from the mountain county of Mitchell, which has a strong Christmas tree industry that is reliant on migrant labor.

Capps’ target was the 388,000 North Carolinians who had told DMV they did not have an SSN, and for whom DMV had consequently entered “999-99-9999” in the SSN field of the applicant’s computer record.

Rep. Jeff Barnhart (R-Cabarrus), from an area with heavy Hispanic immigration, told the Raleigh News & Observer he was offended by suggestions the bill targeted Hispanics. “I have Hispanic friends. The Amendment was aimed not at Hispanics but at preventing terrorism, he said,” per the *News and Observer* article. “We can make a difference,” Barnhardt said. “This is not some issue where we’re trying to go after a certain segment of society.”¹⁰⁵

¹⁰³ Sappie, e-mail to Wayne Hurder, “Rep. Capps Amendment,” 27 September 2001.

¹⁰⁴ Hurder, e-mail to Ruth Sappie, “Re: Social Security Presentation” September 14, 2001.

¹⁰⁵ Ibid.

It is hard to predict what the impact of the would have been had it become law, given that the use of the “9” placeholder was neither a fictitious or an invalid social security number, but the Democratic leadership withdrew the bill from the legislative calendar and referred it back to committee. The legislative session continued into November, but DOT lobbyist Sappie, in daily contact with legislative leaders, assured DMV it was a dead issue: “As far as the amendment goes, the House leadership does not intend to pass Capps’ amendment...”¹⁰⁶

But the fact that the bill picked up significant Democratic support showed there was widespread discontent with the way NCDMV was serving the immigrant community – and its traditional customers.

For those who had supported the amendment, there was some consolation the next day in articles in two of the nation’s leading newspapers, the *Wall St. Journal* and the *Los Angeles Times*. A *Wall St. Journal* Article that September 28, 2011 carried the headline: “As States Tighten Driver License Rules, Foreign Born Can Expect Closer Scrutiny.” The article said “Many states are moving to tighten procedures for issuing driver licenses and identification cards amid concerns that the terrorists who struck September 11 as well as their suspected accomplices obtained the documents too easily or under false pretenses.”¹⁰⁷

On that same day, the *Los Angeles Times* had an article headlined: “The Valid ID Almost Anyone Can Get.” Midway through the story, the reporter, Stephanie Simon, reports “... it may be...easy, experts say, to get a legitimate license from a state with weak controls.

“Take North Carolina,” she continues:

The state nominally requires a Social Security number from all drivers’ license applicants. But there are 388,000 licenses out there linked to the bogus Social Security Number 999-99-9999, which clerks have been instructed to put in the computer system if an applicant cannot come up with a valid number.

State Rep. Larry Justus {Republican, Hendersonville} a legislator investigating the issue, said Spanish-language radio stations in at least two other states ran ads telling immigrants where to pick up shuttle buses to North Carolina motor vehicle offices for no-hassle driver licenses.

‘We were just handing them out wholesale,’ Justus said....

...Uneasy about passing out such benefits so freely, some states are tightening regulations. North Carolina lawmakers are considering revoking all licenses that carry phony Social Security numbers.¹⁰⁸

¹⁰⁶ Sappie, e-mail to Hurder, [Fwd:Help Please] 19 November 2001

¹⁰⁷ Andrew Caffrey, “As States Tighten Driver-License Rules, Foreign-Born Can Expect Closer Scrutiny,” *Wall Street Journal*, September 28, 2011, page A11.

¹⁰⁸ Stephanie Simon, “The Valid ID Almost Anyone Can Get,” *Los Angeles Times*, September 28, 2011, www.latimes.com/news/nation/la-092801license.story

The *LA Times* reporter never contacted North Carolina for any comment, so management was not able to correct her statement that the use of “9’s” in the SSA field was “bogus” or “phony”. As if news coverage could not get any worse, a story went national that North Carolina may have issued licenses to terrorists, including Mohammed Atta and Ramzi Yousef, one of the 1995 World Trade Center bombers.

One example of how that story played out was on the front page of the *Winston-Salem (NC) Journal*, where reporter Dana Damico reported, “The state issued driver’s licenses to four men whose names match those on a list of 200 people whom federal investigators want to question in the wake of terrorist attacks September 11.” She also repeated the canard about “invalid Social Security Numbers.”¹⁰⁹

The names of Atta and Yousef were the ones that attracted the most attention.

Again, that story got national circulation without anyone checking with NC DMV. Had they, they would have been informed that neither Atta nor Yousef had ever been issued a driver license in North Carolina. Persons with the same name (and they are common Arabic names) had received citations in North Carolina, and as a result were on the DMV database, although the database clearly indicated the persons had not been issued DL/IDs.

The accusation with Yousef was all the more egregious, since on the date he was allegedly licensed by the Division he was actually in federal prison in Colorado.

The sequence of news media misinformation in summer and fall 2001 helped seal public opinion that NCDMV was out of control and too interested in serving non-Americans, national security and customer service to taxpayers be damned.

It took the 9/11 Commission to confirm that North Carolina had not credentialed any of the 9/11 hijackers, but by that point damage had been done, and there was little media interest in the story.¹¹⁰

In a show of how difficult it is to erase misinformation, in a 2005 report on an audit of the NCDMV, WTVD (Durham-Raleigh) Capitol reporter Steve Daniels reported:

In the days after the September 11th terrorist attacks, the FBI launched a worldwide manhunt – releasing a list of people it wanted to question. On that list were four people who obtained drivers licenses from North Carolina DMV offices. Among them, a man believed to be Mohamed Atta – the suspected ringleader of the

¹⁰⁹ Dana Domico, “Four Names on the FBI’s list received N.C. driver’s licenses, official reports,” *Winston-Salem Journal*, October 3, 2001, page 1

¹¹⁰ Thomas R. Eldridge, Susan Ginsburg, Walter T. Hempell II, Janice L. Kephart, and Kelly Moore, “9/11 and Terrorist Travel: Staff Report of the National Commission on Terrorist Attacks Upon the United States,” 2004, http://www.9-11commission.gov/staff_statements/911_TerrTrav_Monograph.pdf

attacks, Ramzi Yousef – who was linked to the 1993 World Trade Center bombing, Khalid Alsubiani¹¹¹ – A Saudi Arabian man who paid cash for flight lessons at a North Carolina airport. And Imtiaz Ahmad Siddiqui – a man who authorities say was connected to two 9/11 hijackers.¹¹²

DOT Secretary, Legislature Adopt Stricter Standards

In a further effort to mollify critics, the Secretary of Transportation, with the obvious blessing of the Governor, on October 5, 2001, announced a series of measures designed to fight fraudulent applicants for driver licenses, including the accelerated implementation of the law requiring proof of residency. While it wasn't clear that it was legal to enforce a law before its statutory launch day, DMV began implementation on Nov. 1.¹¹³

In mid-November, as part of the process of crafting a technical corrections bill, House Bill 231, for the recently enacted budget, budget conference committee added language authorizing DMV to issue licenses with an expiration date that coincided with the expiration of the applicant's authorized stay. It was passed December 6 in the House 87 to 24 and in the Senate 23 to 5, with most of the "no" votes coming from Republicans.

The bill said "A first driver's license may be issued for a shorter duration if the Division determines that a license of short duration should be issued when the applicant holds a visa of limited duration issued by the United States Department of State." The bill extended the same authority to renewal licenses. The bill did not affect immigrants who never had any authorization to be in the state. Given the cost of implementing changes to the driver license computer system that would be required, and with no funding for such changes, the Division did not implement this provision until 2005.

But the criticism kept coming

The false information about North Carolina being one of only four states licensing undocumented aliens returned to dog those four states on November 30, when three Republican Congressmen wrote a letter to the nation's 50 Governors asking them to deny reciprocity (a standard practice among the states) to the four states.

Dear Governor:

...As you may know, four states (Virginia, North Carolina, Tennessee and Utah) currently issue driver licenses to illegal immigrants, arguing that it makes the

¹¹¹ Alsubiani had received a North Carolina driver license. He attended college in North Carolina under authorized status, and by today's standards would have been eligible for a license, although the issuance would have expired with his "end of stay" date.

¹¹² Steve Daniels, "Audit Reveals DMV Flaws, WTVD, 20 July 2005,

www.abclocal.com/wtvd/news/072005_NW_driverslicenseaudit.html

¹¹³ North Carolina Department of Transportation news release, "Secretary Tippet Announces Tighter Measures for Issuing Driver Licenses," Release No. 440, October 5, 2001.

roadways in their states safer. At least three of the terrorists involved in the September 11th attacks who were in the U.S. legally obtained drivers' licenses from one of these states [Virginia]....

...Recently the Attorney General of South Carolina, Charlie Condon, instructed his state's Department of Public Safety to stop automatically granting reciprocity to applicants with licenses from the four states that issue them to illegal immigrants.

....We are writing to encourage your state to follow the lead of South Carolina and implement a similar policy of 'insisting upon the integrity of its drivers' licenses.'¹¹⁴

The letter was signed by Congressmen Tom Tancredo of Colorado, Steve Largent of Oklahoma, and Nathan Deal of Georgia (now its Governor).

In mid-January 2002, the *Hendersonville Times-News* urged in an editorial: "Plug holes in driver's license law." It went on to express concern about adoption of the ITIN alternative to the SSN and against the use of residency affidavits. It also expressed regret that Rep. Justus' original idea of central issuance had been defeated.¹¹⁵

There were some counter-arguments. *The Hickory Daily News* in the foothills of the Appalachians ran an editorial January 30, 2002: "Licenses for Illegals."

The question of whether illegal aliens should be granted driver's licenses is a classic conundrum of reconciling the ideal with the practical.

The ideal answer is, 'No, of course not!' If they even ask, we ought to round them up and ship them back where they came belong. They are here 'illegally,' after all. "The reality is that there are an estimated 9 million illegals in the United States. Sending them home is not a priority with anyone. Immigration and Naturalization Service officials have told local law enforcement that INS won't come get illegals unless there is a busload. They don't have the resources.

Even after the attacks of Sept. 11 and the national concerns about homeland security, there is no likelihood that we will seal our borders...

Maybe it shouldn't be so, but it is. That is the reality we must face. Another reality is that lack of driver's license will not keep an illegal alien from getting behind the wheel of a car on driving on American roads.

So the states must decide whether its residents are safer and better served by teaching and testing illegals on the rules of the road and requiring them to carry insurance to protect the rest of us or to make believe they don't exist or that they aren't driving.

¹¹⁴ Tom Tancredo, Steve Largent, Nathan Deal, Letter, "Dear Governor," November 30, 2001.

¹¹⁵ *Hendersonville Times-News*, January 13, 2002

That choice seems plain.

North Carolina has wisely chosen to license illegals. While the DOT should tightened [sic] the rules – and perhaps require the illegals to correct their immigration status – it is doing what is best.¹¹⁶

The General Assembly adjourned in fall 2001 and met again in May 2002 to make adjustments to the 2002-2003 state budget. On June 13, a group of Republican House members introduced a bill, HB 1755, labeled the “Antiterrorism Identity Security Act of 2002. It was sponsored by seven Republicans – including Shubert, Justus and Barnhart – and one prominent, conservative Democrat. No companion bill was introduced in the Senate, however. While lacking all the specificity needed by the Division, this bill was the first to directly address legal presence, but legislators continued to show a failure to grasp the complexity of the issue. The bill provided that a license issued to a noncitizen should expire when the applicant’s presence is no longer authorized under federal law. If passed, that provision would have granted noncitizens licenses with a longer term of validity than those issued to citizens (e.g., someone with a permanent alien residence card, under this provision, would get a license for life).

House leadership assigned this bill to the London Tower of unwanted bills, the Committee on Rules, Calendar, and Operations of the House, where it never again saw the light of day.

Democratic Leaders Fend off Change in 2003 Legislative Session

On March 24, 2003, in a new session of the General Assembly, Senator Fern Shubert [she had moved from the House to the Senate] and 14 other Republican senators introduced a bill, SB531 entitled “Antiterrorism. End Residency Affidavit.” A week later the same bill was introduced in the House by a group of 9 Republican representatives. This bill had substantially correct technical language for requiring legal presence and for tying license expiration dates to end-of-stay dates set by INS. It would bar DMV from using forms of identification from other countries (e.g. the Mexican matricula consular or cartilla nacional), require it to verify SSNs and alien registration numbers, and invalidate all licenses where the SSN could not be verified by the SSA. It also proposed, for first-time issuances, that the license be mailed to the applicant’s home and not delivered immediately over the counter. There were no Democrats co-sponsoring either bill.

For the first time, DMV was called on to submit a formal fiscal note, a statement of the anticipated cost of implementing the bill. Total cost was estimated at \$1.5 million for the first year, with annual recurring costs of \$850,000.

In both the House and the Senate, the bills were referred to committees, where they died. A substantially similar bill, HB1141, with a changed heading, “Verify Residency for Drivers Licenses” was introduced April 9 and met the same fate as the other two.

¹¹⁶ *Hickory Daily News*, “Licenses for illegals,” Hickory NC January 30, 2002

In an effort to defeat those two bills, the director of driver license prepared “talking points” for legislative supporters addressing what he considered to be the benefits of making licenses available to unauthorized immigrants (see Appendix C).

In June, the *Carolina Journal Online*, a publication of the conservative John Locke Foundation, ran an interview with Senator Shubert about her efforts to get changes to driver license laws. She continued the fallacy about how few states granted licenses to unauthorized immigrants, this time claiming “there are only three states in the country now that issue driver’s license to illegal aliens.” Asked who opposes the bills, she comments: “[Governor] Mike Easley, [N.C. Attorney General] Roy Cooper, Wayne Herder [sic]. All the leadership of the Democratic Party. Last year, I tried to amend a bill that retail merchants wanted dealing with driver’s license and underage drinking. The House Majority Leader Phil Baddour [Dem-Wayne County] came to my office and said that if I ran my amendments, he would pull the bill and have it killed.”¹¹⁷

In August of 2003, in the aftermath of some problems with examiners improperly servicing unauthorized immigrants, Hurder sent an e-mail to field managers, and that e-mail was subsequently leaked to the news media, drawing criticism for Hurder and NCDMV from its opponents. Hurder wrote:

As I stated for the last nine years, the fact that a person is in the United States without the permission of the Department of Homeland Security (formerly INS) is irrelevant as far as North Carolina DMV is concerned, as per NCGS 20-7 and NCGS 4.01.... If local law enforcement wants to make an issue of their legal status, that obviously is their right and responsibility depending on the statutes under which they operate.

But let me make it clear -- for the umpteenth time -- North Carolina General Statutes, Chapter 20, does not involve itself with a person’s legal status in determining their eligibility to apply for a license....

...As you know well, the fact that the General Statutes do not require proof of legal presence upsets some people who wish we would decline to serve people here without proof of legal presence. Whichever way you may feel, or whichever way your friends or associates feel, we are required to follow General Statutes. For that reason we do not require customers to prove legal presence. In requesting identification documentation, you should not be requesting that the customer prove legal presence. Contrary to what some people say, there is nothing in federal law that says a person must be legally present in the country to receive a driver license. You should not make statements to the customers accusing them of being here illegally or without proper immigration documentation. It is your responsibility to follow the laws of the State of North Carolina. If and when the General Assembly

¹¹⁷ *Carolina Journal Online*, “Union Lawmaker talks about her driver’s license legislation,” June 17, 2003, www.carolinajournal.com/exclusives/display_exclusive.html?id=823

changes the laws of the State, we will change our policies and procedures accordingly.¹¹⁸

For the first time, Hurder's comments on serving unauthorized non-citizens drew a rebuke from his boss, the Commissioner of Motor Vehicles, George Tatum at that time. Tatum told the news media that Hurder's statement "is not representative of my vision or a statement I would make for what we should do here." Tatum was soon to lay out his vision, and it would create major impediments for unauthorized immigrants.

As a further sign that times were changing, DOT public affairs staff told Hurder that the Governor's office had said he should no longer speak to the media on immigration-related issues.

In the fall of 2003, Sen. Fern Shubert announced her candidacy for governor, with restrictions on driver licenses for "illegal" aliens one of her main planks. One of her television ads featured an endorsement from the 9/11 Families for a Secure America. The message targeted incumbent Democratic Governor Mike Easley:

Within days after 9-11, Mike Easley signed a law that made it easier for terrorists, illegal aliens, drunk drivers and everyone except citizens to get drivers licenses. Fern Shubert is the only person running for Governor who has been fighting Mike Easley's policy of giving licenses to illegal aliens and the terrorists who hide among them.¹¹⁹

Shubert managed to get some media attention and won several straw polls in county Republican conventions, but eventually she finished fifth in the Republican primary in May 2004, getting only 4 per cent of the vote or 14,445 votes.

The 2003 session of the General Assembly funded 45 new driver license examiner positions for fiscal year 2003-2004, with DMV allocating eight of the positions to Charlotte and three to Monroe. In July 2004, the Driver License Section did a study of the impact of the new positions on customer wait times. Using data captured in its electronic queuing systems, the Section was able to show the new positions reduced wait times by 29 minutes for persons getting first-time licenses and by 23 minutes for customers for renewals and duplicate licenses. The total time savings was an estimated 1 million hours of customer wait time.¹²⁰ Unfortunately, the new positions and the impact on customer wait time came too late to become a factor in the debate over services to unauthorized non-citizens.

In response to state and national debate over licensing issues, DMV was evolving its approach to the issues. Within the Driver License Section, management held out the hope that a path would be available to accommodate the licensing of unauthorized immigrants while addressing very serious issues with identification and residency fraud.

¹¹⁸ Hurder, e-mail to Devin Drye et al., "Issues Involving False Documents," 28 August 2003.

¹¹⁹ Fern Shubert campaign website, <http://4fern.com/prel070604.htm>.

¹²⁰ Hurder, "Driver License Milestones and Achievements," report submitted for 2005 performance audit, Office of the State Auditor, 21 February 2005.

NC DMV (as well as other states) faced the dilemma that the more valuable a driver license or ID card became, the more willing some people were to commit a crime(s) to obtain one. Contrary to the rhetoric of its critics, the North Carolina Driver License Section was very active in trying to stop fraud, prior to 9/11 and prior to any of the proposed legislation.

In the most tragic example of the seriousness of driver license fraud, in 1995 an examiner, Charles Kornegay, in Goldsboro in the eastern part of the state was killed (beaten to death) by persons wanting the license production equipment for a local Mexican drug dealer who used it to produce and sell fraudulent licenses.

In some cases the driver license fraud involved customers subverting examiners. The worst example of it was in the New Bern driver license office, where in the late 1990s, the Senior Examiner (office manager) and three of the five examiners colluded with a Vietnamese couple who were tied in with Chinese gangs who were smuggling Chinese immigrants into the country. The immigrants, once in the country, paid for the smuggling by being indentured to businesses. The gangs sent the new arrivals by bus to New Bern, where the couple arranged for them to receive licenses. Over 400 licenses were fraudulently issued. The senior examiner and one other examiner (a former deputy sheriff) ended up in federal prison. The licenses that were fraudulently issued were cancelled (after giving the licensees the opportunity to establish they truly met the state's standards).

About that same time, a former clerk of superior court in Cumberland County (Fayetteville) and a local examiner were arrested for their role in creating false identities for a local drug gang that had imported over \$30 million worth of cocaine and marijuana into the state during a 10-year period they were in operation.

Another examiner was caught working with a Nigerian gang based in Baltimore that was involved with financial fraud and motor vehicle theft.

From 1994 to 2008 (when central issuance made it virtually impossible for an examiner to commit fraud), an estimated 25 to 30 examiners were arrested, fired and prosecuted for selling licenses or knowingly giving a license to customers who were not eligible for them. That was out of a total of about 1,000 examiners employed at various times in that 14 year period.¹²¹ Most examiners broke the law for money; one broke it for love of her Mexican boyfriend who was bringing immigrants from the Atlanta area and being paid well to do it.

New ID Standards Create De Facto Legal Presence Requirement

At the request of the Governor's office, the Division submitted a list of "Proposed Driver License Enhancements" to DOT Secretary Lyndo Tippet on December 30, 2003. He signed off on them and then forwarded the proposals to the Governor, who made them part of his "Operation Stop

¹²¹ In 1994, the Section employed 376 examiners in the field. By 2008, thanks to legislative appropriations, there were 509 examiner positions. Turnover statewide was typically 8 to 10 per cent year.

Fraud.” The biggest change was in the list of acceptable documents as proof of identity. This new standard went into effect February 2, 2004. Of greatest note to the immigrant community was the elimination of the use of tax records, *matricula consular*, the Mexican *credencial para votar*, and *cedulas*.¹²²

It is an interesting commentary on the power of the Hispanic radio stations in the state that within hours of the announcement of the new standards, and within hours of dissemination on Spanish language radio stations, Driver License offices faced a surge of Hispanic applicants trying to get a license before the new standards went into effect.¹²³ The new standards grandfathered in persons already established in the system.

The new standards drew a sharp reaction from 40+ organizations that worked with immigrants and Hispanics, expressing dismay that “...the measures proposed target the immigrant community alone. The items removed from the list of acceptable documents proving identity are almost exclusively those documents presented by immigrants. This gives the impression that these changes are anti-immigrant, rather than merely ‘anti-fraud.’”¹²⁴

The letter commended DMV for making a “progressive decision in recognizing the need to bring undocumented immigrant drivers within the state’s regulatory process to ensure the safety of our roads and vehicular traffic. Unfortunately,” it added, “even though the NCDMV has no statutory authority to impose a ‘legal presence’ requirement on North Carolina drives, which is the effect of one of the proposed changes. Previously, the NCDMV considered a valid foreign passport as sufficient proof of one’s identification. Now, such a passport will not be valid by itself to prove identity. Rather an unexpired I-94 or I-551 stamp will also be required. These immigration stamps have no other purpose than to show that one is legally residing in this country.”¹²⁵

In early March, Driver License Director Hurder appeared before a forum of about 75 Hispanic leaders to explain the new identification policies, and the *Raleigh News & Observer* reported on the event:

The head of driver licensing at the state Division of Motor Vehicles said Sunday he doesn’t think identification cards issued by the Mexican government are a security risk but said the DMV stopped accepting them as valid ID last month under pressure from the federal government.

Wayne Hurder...said he thinks the Mexican government is careful about the documents it issues, including the ‘*matricula consular*,’ a card provided by the Mexican consulates and often used by illegal immigrants [sic] as identification.

¹²² George Tatum, Commissioner, “Proposed Driver License Enhancements,” memorandum to NC. Department of Transportation Secretary Lyndo Tippett, December 30, 2003.

¹²³ The DOT Public Affairs news release distribution lists included Hispanic print and broadcast media.

¹²⁴ Dani Martinez-Moore et al, Letter to Michael Easley, Governor; Franklin Freeman, Senior Assistant to the Governor, Lyndo Tippett, Secretary, Department of Transportation; George Tatum, Commissioner, Department [sic] of Motor Vehicles; and Wayne Hurder, Director, Driver’s License Section, January 28, 2004.

¹²⁵ Ibid

Hurder said the FBI and others in the federal government think Mexican ID cards are easily used by criminals, and potentially by terrorists, to establish false identity....
“It is difficult for us to say, ‘No, we don’t think you know what you’re talking about,’ he said.¹²⁶

The article went on to add:

Many Latinos think the restrictions on Mexican ID cards are politically motivated, as politicians try to look tough on terrorist and illegal immigration. Javier Castillo, chairman of the Pitt County Republican Party, said the old requirements worked because they encouraged immigrants to learn to drive safely and get insurance. “The system was not broken,” said Castillo, of Greenville.¹²⁷

At the same time the new standards went into effect, the Division implemented its on-line verification system for SSNs, a project its information technology staff had been working on for several years. As anticipated, the verification process caught a lot of innocent people in a bureaucratic nightmare. Typical were cases of persons whose SSA record had never been updated to reflect marriage or divorce, cases of typographical errors, etc.

In the summer of 2004, after two years effort to get funding, Secretary Tippet found funds for the Driver License Section to implement face recognition (FR) technology as a way to identify fraud in the application process. DMV brought the FR system online in late 2005. NC Driver License was only the seventh DMV agency in the country to implement FR, but it was the first to enroll all existing images in its database (as opposed to other states that enrolled from a certain date forward). As a result of enrolling all of its existing images in the database, NC DMV at that point had the largest FR database in the United States and the second largest in the world after Pakistan.

The Driver License Section then embarked on a process of “cleansing” its driver license records, identifying cases of potential fraud and clerical error, and referring cases for law enforcement investigation as appropriate. Over the next four years, the Driver License Section identified thousands of bad records, with about half reflecting the use of fraudulent identification and about half reflecting human error on the part of examiners. Customers with suspect records were called in to the office to correct the record or have their driving privileges cancelled.

Post 9/11 Reports Leave Issue Open of Licensing the Undocumented

At the national level, post 9/11, AAMVA, the National Governors Association, and the National Conference of State Legislatures had been working on a proposal for a set of national criteria for issuance of driver licenses that would be consistent with the recommendations of the July 2002 “National Strategy for Homeland Security. That report did not call for an end to licensing of

¹²⁶ Richard Stradling, “Latinos hear from DMV,” *Raleigh News & Observer*, March 8, 2004, page 1B

¹²⁷ Ibid

unauthorized non-citizens. Under the heading of “Coordinate suggested minimum standards for state driver’s licenses,” it concluded:

The licensing of drivers by the 50 states, and District of Columbia, and the United States territories varies widely. There are no national or agreed upon state standards for content, format, or license acquisition procedures. Terrorist organizations, including Al-Qaeda operatives involved in the September 11 attacks, have exploited these differences. While the issuance of driver’s licenses falls squarely within the power of the states, the federal government can assist the states in crafting solutions to curtail the future abuse of driver’s licenses by terrorist organizations. Therefore the federal government, in consultation with state government agencies and non-governmental agencies, should support state-led efforts to develop suggested minimum standards for driver’s licenses, recognizing that many states should and will exceed these standards.¹²⁸

Similarly, the final report of the 9/11 declined to give a blanket recommendation against licensing unauthorized immigrants:

Recommendation: Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists.¹²⁹

The final report, rather than fingering state-issued driver licenses or ID cards as the primary source of the problem – as some of the post-9/11 news commentary and political rhetoric implied – concluded that: “Our investigation showed that two systemic weaknesses came together to in our border system’s inability to contribute to an effective defense against the 9/11 attacks: a lack of well-developed counterterrorism measures as part of border security and an immigration system not able to deliver on its basic commitments much less support counterterrorism.”¹³⁰

The report also noted a need to get engaged in a positive way with the immigrant community:

Our borders and immigration system, including law enforcement, ought to send a message of welcome, tolerance and justice to members of immigrant communities in the United States and in their countries of origin. We should reach out to our immigrant communities. Good immigration services are one way of doing so that is valuable in every way – including intelligence.

¹²⁸ National Strategy for Homeland Security,” Office of Homeland Security, Washington DC, July 2002, page 49).

¹²⁹ National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, New York: W.W. Norton & Co., 2004, page 390.

¹³⁰ Ibid. page 384

It is elemental to border security to know who is coming into the country. Today more than 9 million people are in the United States outside the legal immigration system. We must be able to monitor and respond to entrances between our ports of entry working with Canada and Mexico as much as possible.¹³¹

Recommendations from the National Strategy for Homeland Security and the 9/11 Commission were incorporated into a bill on intelligence reform that passed Congress in December 2004. The recommendations reflected the work of the AAMVA Identification Standards Work Group (on which the author served).

The Value to Law Enforcement of DL/ID Records for Unauthorized Immigrants

A case can be made that NCDMV having issued licenses to an estimated 400,000 unauthorized immigrants and having their photos, demographic data, and signatures in a database provided a level of information available to law enforcement that would otherwise be non-existent, and accordingly helped meet that goal set by the 9/11 Commission of knowing who is coming into the country.

DMVs across the country did not begin putting photos on driver licenses until the 1960s. In most cases states used a Polaroid-photo system, which meant there was no negative or image retained of the person. The only photo was on the face of the license. Beginning in the early 1990s, states began implementing digital imagery for driver licenses which meant an image of the customer and of his signature could be retained in a database for use by DMV and law enforcement. North Carolina implemented a digital driver license system in 1996. As part of implementation, North Carolina was one of a handful of states that established a fax-on-demand system that allowed law enforcement officers to dial into the system to request images for up to three customers at a time, and the system automatically faxed the image(s) back to the law officer. In the late 1990s, North Carolina's system was responding to over 56,000 requests per year, with some requests coming from law enforcement as far away as Maine and Oregon.

The most common use of photos was by law officers serving civil or criminal summons. Before the system was implemented, deputies frequently found themselves trying to deliver papers to persons they had no idea how to identify. A deputy trying to serve papers on John Doe or Juan Cruz could very well go the residence of John or Juan and be told by John or Juan that the subject no longer lived at that address. Without a photo, there was no way to disprove the person. But with an image in hand, the deputy would know who he or she was looking for. This was especially critical in dealing with persons with a history of violence.

The availability of driver license images was expanded greatly beginning in 2006 when the North Carolina State Highway Patrol, working with DMV, pioneered technology that allowed troopers in their patrol car to access North Carolina DL/ID images on their laptops. That was later expanded to allow troopers and other law enforcement to download the driver license photos to a cell phone.

¹³¹ Ibid. page 390

In 2007, North Carolina and Virginia (with North Carolina as the lead agency) became the first states in the country to transmit driver license images from one state to the other in response to a law enforcement request. That capability has gradually been expanded across the nation.

The feedback from law enforcement was that the availability of images via printed copies, cell phones or laptops made them more productive and improved their safety in making roadside stops, arrests or serving court papers. Take away service to unauthorized non-citizens, and the Division would have had 400,000 fewer customer records to share with law enforcement on the front line of public safety, which could make their jobs less productive and more dangerous.

Not all states allow DMV to share customer images with law enforcement (e.g. Illinois). In North Carolina customer image and customer signature “is confidential and shall not be released except for law enforcement purposes.” (NC General Statutes 20-43). That provision was drafted by legislative staff in 1995 in consultation with the Driver License director in order to gain maximum law enforcement benefits from the state’s implementation of digital driver license images. Consequently, North Carolina law enforcement – and other law enforcement agencies outside North Carolina – were able to take advantage of a database of some 20 million+ customer images representing more than 6 million persons, including 400,000 unauthorized immigrants.

The value of that trove of images was further enhanced by the implementation of FR in 2005. In the years following implementation, FR experts within Driver License assisted a wide variety of local, state and national law enforcement agencies, as well as several federal agencies and task forces involved with issues of terrorism and homeland security. Images taken in different venues could be submitted to NCDMV for comparison against the state’s image database to determine if the image taken outside the system matches anyone on North Carolina’s records.

North Carolina Earns a “C” for its Licensing Standards

In the midst of being buffeted by allegations of laxity in the North Carolina driver licensing program, a national organization spearheaded by sociologist Amitai Etzioni, and which grew out of a study on national security conducted by the Markle Foundation, released a study: “License to Hide: Security Implications of America’s Lax Driver’s Licensing Laws.”¹³²

The study recommended four major criteria for a secure driver license:

1. Implement on-line Social Security Verification
2. Require proof of citizenship or legal presence in the U.S.
3. In the case of non-citizens, tie the expiration date to the end-of-stay expiration date.
4. Collect biometric data on the customer, either through finger prints or face recognition technology.

¹³² Amitai Etzioni, “License to Hide: Security Implications of America’s Lax Driver’s Licensing Laws,” George Washington University, 2004: <http://www.gwu.edu/~ccps/documents/2004LicensetoHide.pdf>

The group devised a “Report Card” on how well the states met their standards. North Carolina got a “C” based on its SSN verification and tying expiration date to end-of-stay date.

Three states scored an “A”: Colorado, Kentucky and West Virginia. Four states failed the standards: Alaska, Michigan, Oregon and Wisconsin.

With 18 states scoring an “A” or a “B” and 22 states scoring a “D” or an “F”, North Carolina was right in the middle of the pack.

The General Assembly opened its 2005-06 session in February 2005, and in April a group of Republicans reintroduced essentially the same bill from 2003. HB1451 was labeled “Reform Driver’s License Issuance Criteria.” Surprisingly, it only had 4 sponsors (all Republican) and a companion bill was not introduced in the Senate, which is usually the case if the party caucus backs a particular initiative. It was referred to a judiciary committee and never made it out.

“Don’t License Terrorists, North Carolina”

In May 2005, during Congressional debate on an Iraqi War funding bill, U.S. Rep. James Sensenbrenner (R-Wis) introduced an amendment to the bill encompassing what is now referred to as the REAL ID Act. That bill repealed the driver licensing standards encompassed in the intelligence reform act of 2004 and established a stringent set of requirements for the states, including documentation of authorized presence for non-citizens, to implement in a very tight (and extremely unrealistic) time frame. Failure to comply with the law would mean that a state’s DL/IDs would not be acceptable as identification for boarding airlines, entering federal buildings, etc.

Groups outside North Carolina kept the heat on DMV. In late 2005, a national organization calling itself the Coalition for a Secure Driver’s License announced that it would spend \$50,000 in early 2006 for billboards with the message, “Don’t License Terrorists, North Carolina.”¹³³

The group previewed the billboard for the media. Reporter Michael Easterbrook of the *Raleigh News & Observer* reported the group’s intention on December 9, describing it:

... [T]he billboard...shows supposed terrorists standing near a winding mountain road.

One of the terrorists, wearing a traditional Arab headdress, is holding a grenade and a North Carolina driver’s license. The others are wearing ski masks and have rocket-propelled grenade launchers strapped on their backs.”¹³⁴

Per reporter Easterbrook,

¹³³ Michael Easterbrook, “Billboard takes state to task,” *Raleigh News & Observer*, December 9, 2005, page 1B

¹³⁴ Ibid

... [T]he group is targeting North Carolina because its members think the state's driver license requirements are lax. She said it would be easy for a terrorist to establish a false identity in the United States using a North Carolina license... Ernie Seneca, spokesman for the state Department of Transportation, said the group is mistaken.

'They're flat wrong, and they're totally inaccurate,' said Seneca. 'North Carolina has a strong driver's license program, and we have taken significant steps to address security and the identification of license holders.'

Specifically, the group wants North Carolina to require that applicants for a license show a valid social security card and proof that they are residing in the country legally.

...However the State Department of Transportation hopes to encourage state legislators to pass a law forbidding the use of the ITIN when applying for a license, Seneca said.

...In another change that began this month, licenses issued to immigrants with visas will expire on the same day their visas expire, Seneca said.¹³⁵

¹³⁵ *ibid*

Chapter 6 -- The End of Licensing for Unauthorized Immigrants

In the closing days of the 2006 session of the General Assembly, SB 602, “Technical Corrections Act” was introduced by Democratic Senator Clark Jenkins and passed. It eliminated the use of the ITIN. It also specified that the “Division shall issue a driver’s license of limited duration...to an applicant present in the United States under a valid visa issued to the applicant by the United States Department of Homeland Security if the applicant presents that valid visa.” It was supported by Democratic leadership in the House and Senate.

On the House side, it passed 107 to 3, with liberal Democrat (and staunch immigrant supporter) Paul Luebke of Durham a nay vote, as well as 2 conservative Republicans, John Rhodes from Charlotte and John Blust from Greensboro. Blust and Rhodes had been co-sponsors of H1453 which had most of the reforms incorporated into SB602, such as visa limitations and elimination of use of the ITN. It is hard to figure out why they voted against SB602. On the Senate side, it passed 41 to 6 with all Democrats voting for it and six Republicans against it (with 15 Republican Senators voting for it). There is no known reason why the Republican senators voted against it, unless there were other elements in the technical corrections bill they opposed.

The Impact of a Ban on ITINs

Elimination of the ITIN option substantially eliminated the opportunity for undocumented aliens to get a license, although bill drafting staff still did not grasp that a person could have a valid SSN based on a previous period of legal entry in the country (e.g. several of the 9/11 hijackers) but not have legal presence. The bill also had the unintended consequence of barring spouses of Canadian nationals employed by a North Carolina employer from getting a license or identification card, since the spouse would not be eligible for an SSN and federal regulations waived visa requirements for Canadians.¹³⁶

There was one other problem with this bill, which became law: it spoke of visas issued by Homeland Security. As the director tried to explain to bill drafters, DHS does not issue visas. The U.S. Department of State issues visas. The Attorney General’s office ruled that NCDMV should follow the intent of the law, which was to issue licenses with “end-of-stay” expirations.¹³⁷

For all practical purpose, SB602 spelled the end of licenses for unauthorized immigrants. On December 12, 2006, DMV Commissioner George Tatum gave a “Review of the Impact of the U.S. REAL ID Act on North Carolina” to the North Carolina Joint Legislative Committee on Transportation Oversight.

¹³⁶ Neal Dalton and Christopher Brooks, Special Deputy Attorney General and Assistant Attorney General, respectively, “Interpretation of Section 35.2 of Senate Bill 602, NCGS20-7” to George Tatum, Commissioner, Division of Motor Vehicles, September 27, 2007. .

¹³⁷ Neal Dalton and Christopher Brooks, Special Deputy Attorney General and Assistant Attorney General, respectively, “Interpretation of Section 35.2 of Senate Bill 602” to George Tatum, Commissioner, Division of Motor Vehicles, 24 August 2006. .

He reported that “Based on the law’s passage, DMV has focused on working toward substantial compliance with the requirements of the REAL ID Act by May 2008” although he added that such effort was “complicated by the fact that the U.S. Department of Homeland Security has not issued its proposed draft regulations laying out how the law is to be implemented.”¹³⁸

The Final Nail in the Coffin

In late March 2007, Senator Fletcher Hartselle, Rep-Cabarrus, a legislator well-respected among Democrats, introduced a bill “Driver’s License Issuance/Expiration Date” (SB1026) that was designed to correct an error in earlier legislation in which the bill (statute at this point) referred to visas issued by the Department of Homeland Security, rather than by the Department of State. By this point, Democratic leadership in the House and the Senate recognized that it was the end of the road for licensing undocumented aliens. Senator Hartsell’s bill became the vehicle for making the final statutory changes that would reflect the requirements of the U.S. REAL ID Act.

This bill passed 46-0 in the Senate and 116-0 in the House.

The bill also provided for the state to change its issuance system from “over the counter” in which the customer walks out the door with his or her license to a “central issuance” system in which the customer is issued a temporary driving certificate in the field and the final product is mailed to the customer after the customer’s information is verified, SSN validated, alien registration verified, other jurisdictions notified of the license (in case of people moving in from other states), and an FR check is conducted. NC DMV had supported central issuance provided it came with additional personnel required to do a more thorough check of customer identification documents and to conduct an FR search on each applicant to make sure there was no fraud involved. The 2007 legislative session provided the Driver License Section 36 additional staff for central issuance.

Most importantly, the bill stipulated customers had to provide proof of citizenship or proof of legal presence in the U.S. and authorized the Division to cancel the licenses of those persons without legal presence in the United States who may previously have been issued a license (or ID card).

Canceling licenses would have been extremely difficult and expensive, as it would have required the Division to send a letter to each suspect person giving them time to come to DMV to provide proper documentation of their legal presence. Hurder chose not to exercise the authority granted it by statute and instead allowed the unauthorized immigrants to hold their licenses until they expired.

The act took effect May 23, 2007 with its signing by the Governor. In July 2007, the Driver License Section implemented on-line verification of immigration documents in order to be sure of the legal presence of the customer. With implementation of that, DMV was able to ensure that DL/IDs were issued only to persons with legal presence in the country, ushering in a new era for

¹³⁸ George Tatum, Commissioner of N.C. Division of Motor Vehicles, “Review of Impact of U.S. REAL ID Act on North Carolina,” report to the Joint Transportation Oversight Committee, N.C. General Assembly, December 12, 2006.

NCDMV, an era in which highway safety became secondary to compliance with the nation's immigration laws.

Chapter 7 - Re-Opening the Door to Driver Licenses for Unauthorized Immigrants

In the months following passage of SB1026 in 2007, the focus of NC DMV was on implementation of the REAL ID Act. One of the core principles of the REAL ID Act was a requirement for central issuance, since that reduced the potential for fraud and created time in which DMVs could verify customer information, especially as it related to immigration documents. Other key aspects of compliance with the REAL ID Act awaited final promulgation of DHS regulations. Throughout the process there continued to be rumors that the REAL ID Act might be repealed. But when the Obama administration (2009 to present) declined to pursue repeal of the law or substitute legislation, North Carolina, as well as other jurisdictions, recognized that it needed to move forward with implementation of REAL ID.

The REAL ID Act did not prohibit states from issuing driver licenses to undocumented immigrants. It only specified that in the event that a state chose to issue such licenses, the license must be marked prominently to show that it did not comply with the REAL ID Act, thereby limiting the holder from boarding airplanes or using other forms of transportation or other services where a REAL ID compliant identification was required.

Many advocacy groups for the unauthorized immigrants opposed the notion of having a “branded” license since it automatically signaled that the holder was an unauthorized immigrant, and so few advocacy groups lobbied their legislator for that option.

However, 13 states carved out some type of procedure within their state laws that would extend driving privileges to unauthorized immigrants with some type of “branding” involved. Those states – as of August 2013 – are California, Colorado, Connecticut, Georgia, Illinois, Maine, Maryland, Nevada, New Mexico, Oregon, Utah, Vermont, and Washington.¹³⁹

DACA Cracks Open the Door for Licenses for Unauthorized Immigrants

In mid-June 2012, the U.S. Department of Homeland Security, based on a presidential executive order, announced that it would grant deferred action to unauthorized immigrants age 16 to 31 who had entered the country prior to age 16. Referred to by the acronym DACA – Deferred Action for Childhood Arrivals – it granted the immigrant, after an approval process, a two-year, renewable lawful status which included the right to apply for work authorization (and the SSN that accompanies that status). Because the REAL ID Act allows persons with deferred action to hold a standard driver license, the initiative by President Obama opened the door for a segment of the unauthorized immigration population to get licenses. However, while the REAL ID Act accepted

¹³⁹ Anne Teigen and Ann Morse, National Conference of State Legislatures, Legisbrief, Vol. 21, No. 30, “Driver’s Licenses for Immigrants, August 2013, Denver CO.

the DACA designation as a gateway to a driver license, DACA status did not automatically enable the holder to apply for a license since each state sets its own criteria for licensing

Some North Carolina young immigrants received their DACA status documents in fall 2012 and went to local Driver License offices with them, where they were issued licenses that expired at the end of the DACA authorized term. Those issuances caught NC DMV management off guard. Management was still in the process of deciding how to handle DACA applicants when 13 persons slipped through the cracks. NC DMV management immediately put a hold on the issuances and announced that it was seeking an opinion from the N.C. Attorney General on how to handle these applicants. On January 11, 2013, DMV mailed a letter to those 13 persons canceling their licenses and informing them that the licenses were issued in error and that the Division was awaiting an advisory opinion from the AG as to how to proceed.

On January 17, 2013, the Acting Commissioner of NCDMV, J. Eric Boyette, received an advisory opinion from the state's Chief Deputy Attorney General, Grayson G. Kelley. In his opinion, Kelley concluded, "Based on our review of the historical background and legal concepts applicable to prosecutorial discretion and deferred status in the enforcement of immigration laws, we believe that individuals who present documentation demonstrating a grant of deferred action by the United States government are legally present in the United States and entitled to a driver's license of limited duration, assuming all other criteria are met."

He further noted that "This conclusion should not be construed to suggest that individuals granted deferred status under the DACA program have 'lawful status' in the United States. Lawful immigration status is generally understood to refer to specific formal classifications for immigrants who have been granted permanent resident status, or temporary, non-immigrant status for certain purposes....

"There exists, however, a recognized legal distinction in immigration law between 'lawful status' and 'lawful presence'...Deferred status...is a grant of permission to remain in the country for a specified period of time without receiving formal immigration status. The grant of deferred status therefore establishes lawful presence for the period of deferment..."¹⁴⁰

NC DOT - parent organization of DMV - roiled the water again on the issue in February 2013 when it announced that it was going to "brand" the DACA licenses with a fuchsia colored bar across the top of the license, in contrast to the standard blue bar. NCDOT Secretary Tony Tata said the card would be marked "Limited Term" and "No Lawful Status." That announcement drew a flurry of complaints from immigration advocacy groups. In March, NCDOT backed down and released a sample of the new license, with the standard blue bar and with the legend "Legal Presence No Lawful Status" marked on the front.¹⁴¹

¹⁴⁰ Grayson G. Kelley, N.C. Chief Deputy Attorney General, Letter to J. Eric Boyette, Acting Commissioner, Division of Motor Vehicles, January 17, 2013, Raleigh N.C.

¹⁴¹ "Pink stripe dropped from driver's licenses for illegal immigrants," WRAL-TV News, March 21, 2013

In the months that followed, an estimated 13,000 licenses were issued to persons with DACA status out of an estimated 22,000 North Carolinians granted DACA status.¹⁴²

In 2013, a newly-elected General Assembly convened with a so-called super majority of Republicans (meaning two-thirds of members Republican). A bill, HB 786, was introduced calling for the state Department of Public Safety (NCDPS) to study a variety of issues related to “illegal immigration,” including temporary driving privileges for undocumented immigrants. The bill also included some requirements for the use of E-Verify, the federal system for verification of legal status of workers. Republican Governor Pat McCrory expressed concerns about the provisions in the bill on E-Verify.

Nonetheless, the bill passed in July 2013 and went to McCrory who vetoed the bill on August 15 “due to concerns that loopholes in the bill would make it easier for employers across many industries to hire illegal immigrants rather than North Carolina citizens.”¹⁴³ Overriding a veto in North Carolina requires a vote of two-thirds of the members of both houses, and the State House of Representatives and the State Senate met that threshold on September 15, 2013.

The newly minted law required that the State’s Department of Public Safety conduct a study of a variety of immigration issues as they impacted the state. Included in that was a requirement to “study the potential impact on public safety, the State economy, and illegal immigration to the State of...Implementing a process for undocumented aliens to obtain a temporary driving privilege.”

The bill specified that the study should consider:

“...the impact that such a process would have on highway safety, insurance rates, and claims for accidents that occur at the hands of the uninsured.

“...the number of individuals who would seek to obtain a temporary driving privilege through such a process.

“...whether there are adequate insurance products available to insure individuals who obtain the temporary driving privilege.”¹⁴⁴

In addressing the issue of some type of limited or temporary driving permit, the report noted that

When a driver obtains a license it allows the State to determine that the driver has a minimal level of skill and understanding of North Carolina traffic laws. The threat of losing the driving privilege motivates a licensed driver to comply with traffic law. This generally increases safety through greater compliance. According to DMV, the number of unlicensed drivers involved in crashes in 2013 was approximately

¹⁴² Jeanne Batalova, Sarah Hooker and Randy Capps with James D. Bachmeier, “DACA At the Two-Year Mark: A National and State Profile of Youth Eligible and Applying for Deferred Action,” Migration Policy Institute, August 2014, page 12.

¹⁴³ N.C. Department of Public Safety, “Session Law 2013-418: Report on Study of Immigration Measures,” page 8, Raleigh NC.

¹⁴⁴ Frank L. Perry, Secretary of North Carolina Department of Public Safety, Memorandum to Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety, “Study and Recommendations Regarding Immigration Measures,” March 2014, Raleigh N.C.

97,803. Increasing the number of licensed drivers among those operating vehicles in the State should lead to safer driving in North Carolina. However, there is no established statistical basis of comparison or methodology to verify this conclusion.¹⁴⁵

The report went on to note that implementation of a temporary driver license for unauthorized immigrants could lead to a surge of immigrants to the state and increased costs for DMV in personnel, including examiners and interpreters. It noted that some industries in the state were very supportive of such a measure, in particular agriculture, but the report did not make any recommendations.

In a prescient note, the report expressed doubt about the potential for immigration reform legislation in Congress and concluded, “It is likely that any near-term changes will be similar to an executive order like DACA rather than passage of legislation.”¹⁴⁶

Two Prospective Paths for Licensing Privileges

In late 2014 and early 2015 two doors were cracked open to allow unauthorized immigrants to get licenses. One door was opened by the President but it was quickly shut by federal courts and is working its way towards probably resolution by the Supreme Court. The other door was opened by North Carolina Republican legislators. At this point, it offers the most hope for expansion of licenses in the state.

President Obama made his move on November 20, 2014, announcing the expansion of “deferred action.” The Migration Policy Institute, which had provided technical assistance to the White House and the U.S. D.H.S. on the issue, concluded the President’s action applied to an estimated 3.7 million persons at risk of deportation. It estimated that between the new action and the existing DACA program, almost half of the 11.4 million unauthorized immigrants in the U.S. would benefit.¹⁴⁷

Those targeted for relief under the executive order are parents of U.S. citizens (i.e. primarily those who had children born in the U.S.) with 5+ years of U.S. residency and those parents of persons with legal permanent residency who have 5+ years of U.S. residency plus a small of additional persons to be incorporated into the DACA program.

The MPI projected that North Carolina had 155,000 immigrants who would benefit from the expanded program, in addition to the 22,000 already benefitting from DACA. About half of DACA enrollees applied for North Carolina’s temporary driver permit, so it is reasonable to anticipate that some 75,000 to 80,000 of these new “deferred action” immigrants would apply for licenses as they gain their paperwork documenting the status.

¹⁴⁵ North Carolina Department of Public Safety, page 24

¹⁴⁶ North Carolina Department of Public Safety, page 9

¹⁴⁷ Michelle Mittelstadt, Migration Policy Institute Press Release, “MPI: As Many as 3.7 Million Unauthorized Immigrants Could Get Relief...” November 19, 2014,

The President's proposal met a firestorm of opposition who argued it was an overreach of executive authority. Twenty-six governors signed on to a federal suit opposing the plan. A U.S. District Court Judge in Texas halted the extension of deferred action in February. The White House made an emergency appeal to delay the lower court's decision. In May a three-judge panel from the Fifth Circuit Court of Appeals upheld the decision of the Texas judge. Again, the White House appealed, and this time the issue is to be considered by another three-member panel of the Fifth Circuit, including two judges who ruled against the President in May. Regardless of how the Appeals Court rules, it is likely to be appealed to the Supreme Court by the loser, meaning a resolution likely would not happen until late 2016.¹⁴⁸

The most likely avenue for licensing will come from a bill introduced by four Republican members of the N.C. House titled, "Highway Safety/Citizens Protection Act."

The bill's subject line reads like a get-tough bill on undocumented immigrants, describing it as:

An act to reduce identity theft by increasing penalties for the manufacture, sale and possession of counterfeit documents, to clarify which documents are acceptable for identification before government officials and agencies to create a rebuttable presumption against the pre-trial release of certain undocumented aliens, and to ensure that citizens and lawfully present aliens can travel safely on the roads of this state by ensuring that every driver on the roads of this state has been properly licensed or permitted."¹⁴⁹

The bill allows a person "not lawfully present in the United States" to get a restricted driver license provided they agree to be fingerprinted and have a criminal history check done; conviction of a variety of criminal offenses would bar them from being licensed.

The license would be branded with a unique serial number and a statement that the holder is not eligible for public benefits or the right to vote and "does not legitimize the holder's presence in the United States."

However, the bill also provides some protection to the holder by prohibiting DMV from using the holder's information to seek their deportation or otherwise releasing information on their status to anyone, except as explicitly required by law.

The bill prohibits local governments from issuing any type of identification for aliens, as had been considered by the City of Charlotte. It also prohibits government agencies, state and local, from accepting the Mexican matricula consular and similar documents issued by other nations as a form of identification.

The bill drew criticism from three groups advocating stricter enforcement of immigration laws: NC Listen, North Carolinians for Immigration Reform and Enforcement, and Americans for Legal

¹⁴⁸ "Court Will Revisit Deportation Policy," Nathan Koppel and Miriam Jordan, *Wall St. Journal*, 10 July 2015.

¹⁴⁹ House Bill 328, North Carolina General Assembly, Session 2015.

Immigration Political Action Committee.¹⁵⁰ Representatives of several Hispanic advocacy groups, including El Pueblo, spoke in favor of the bill.

Republican Governor Pat McCrory sent his legislative liaison to express his opposition to the bill at a committee meeting where the bill was being considered on June 9. Despite his opposition, the bill passed out of committee on a 22-11 vote.

A representative of the N.C. Association of Chiefs of Police appeared at the committee to support the bill as beneficial to police for identifying the people living and working in their towns.¹⁵¹

Because the bill would entail a cost of about \$2.5 million, primarily to make changes in the DMV mainframe computer system, the bill was referred to the House Finance Committee. The bill allows DMV to set fees for the special licenses as such a level as to recoup their expenses, although no estimate was provided of what revenue to expect. With Donald Trump's poll numbers ascending with every assault on immigrants and with the fiscal year 2015-16 underway, it is extremely unlikely that the bill will resurface this year.

2016 "Short Session" May Create Opportunity for Passage

The N.C. General Assembly will reconvene for the so-called "short session" in May 2016 to consider adjustments to the state's budget for 2016-2017, and there is a scenario in which HB328 could be passed.

During the short session, the legislature considers the budget and bills which have passed in only one of the two houses. HB328 does not meet that latter criteria. However, because the bill deals with revenue, the language of the bill could be inserted into the 2016 budget as a budget provision.

Theoretically, that same action could be taken in the summer of 2015. However, given the heated national debate over immigration leading up to the 2016 Presidential primaries, it is unlikely the legislature would tackle such a controversial issue.

However, in May 2016, Republican legislators will have already weathered their own primaries, which is where opposition to the licensing bill would gain the most traction. With their nomination secure (or in some cases, acting as lame ducks), some legislators who have may have been sitting on the fence may be more willing to approve the bill for the benefit of their party.

For Republicans, there may be a significant political incentive to move the legislation in summer 2016 - the potential for picking up Hispanic votes in the November presidential election.

North Carolina is expected to be a hotly contested state in the race for President. In 2008, Obama edged out Senator John McCain by 14,000 votes out of 4.3 million cast. Next year can very well be as close. There are 124,000 Hispanic voters in the state as of July 2015. Voter turnout in 2008

¹⁵⁰ "NC House panel Oks driving permits for illegal immigrants," Matthew Burns, WRAL-TV, Raleigh NC, 15 April 2015.

¹⁵¹ "NC driving privileges for people in US illegally clears committee," Mark Binker and Kathryn Brown, WRAL-TV, Raleigh NC 9 June 2015.

was just shy of 70%. If that turnout was repeated, then an estimated 87,000 of those Hispanic voters may actually vote.

In 2012, 68% of the North Carolina Hispanic vote went to Obama (compared to 71% at the national level to Obama).¹⁵² In 2008, a shift of 7,000 votes from one candidate to the other could have meant John McCain would get the state's 15 electoral votes, and not Obama.

If Republican strategists are looking at ways to pick up a few thousand Hispanic votes in the state, they would be wise to consider passing HB328 or its equivalent in a budget bill. They could then claim to deliver to Hispanic voters something Democrats had not been able to do. The downside risk would be small. It is hard to imagine a conservative voter switching votes, or even staying at home, because of such a bill. Slipped into the lengthy budget bill at the last minute and not implemented until after the election, it would draw minimal attention. If it is to happen, it would probably involve Republican legislators making a decision behind closed doors in their respective caucuses, requiring a majority of the caucus to support the move.

Enacting the licensing provisions of the bill would not create long lines at DMV offices that might prompt pushback as in 2001. In June 2015, DMV implemented a law allowing on-line renewal of driver licenses. By 2016, DMV can expect anywhere from 300,000 to 400,000 persons to avoid their offices and renew licenses on-line. In addition, the requirement for fingerprinting and a criminal background check will serve as a bottleneck to the process, so instead of a flood of customers there will be a steady but manageable stream.

For unauthorized immigrants, the better option would be for President Obama's deferred action to be approved by the Courts, but that may not happen. So HB328 may be their best hope to regain licensing privileges.

¹⁵² Latino Voters in the 2012 Election: Appendix A: National and Selected State Results," Pew Research Center, <http://www.pewhispanic.org/2012/11/07/latino-voters-in-the-2012-election/>, 11 July 2015.

Conclusion -- “Barney, I don’t think we’re in Mayberry anymore”

Given the extent of change in North Carolina from the 1960 census to 2000, it is amazing how minimal was the pushback against the immigrants, documented or undocumented. Note for example that in fall 1995 while the Carolina Poll was still exploring how well the state was absorbing English-speaking immigrants from north of the Mason-Dixon line, there is raised for the first time the issue of immigrants from south of the border who speak a variety of languages.

Despite all that change, only one statewide candidate – Fern Shubert – embraced it as an issue, and she failed to gain any traction. In the Republican primary she came in fifth, getting only 14,445 votes or 3.96 per cent of the statewide total. Especially telling are results from her home county, Union, where there were long lines at the Monroe driver license offices and a heavy influx of Hispanic immigrants. She had been elected to the State Senate in 2002 with 33,822 votes but in the primary for the Republican nomination in 2004 she only got 3,024 votes in her home county, or 34 per cent of the primary voters. The only major protest against immigrants was mounted by an out-of-stater, David Duke, and it was a flop. Even the billboard protest against DMV licensing immigrants in 2005 was staged by an out of state advocacy group.

So North Carolinians deserve credit for absorbing major demographic and cultural change. Or, as it was stated in a Driver License workshop, in a riff on the Wizard of Oz and the Andy Griffith Show, “Barney, I don’t think we’re in Mayberry anymore.” In 1960, when the Andy Griffith Show debuted, the State had 21,978 foreign-born residents or 0.5 per cent of the population, tying for 47th in the nation with South Carolina and Alabama¹⁵³. Over the next 50 years, that population increased 30-fold. By 2010, North Carolina’s foreign-born population was 7.4 percent (compared to a national level of 12.7%) and the state was 23rd in the nation in percentage of population foreign-born.¹⁵⁴

For many in the state, especially its small towns where the immigrant population was often most visible, the changes must have seemed dizzying and dismaying. But the majority of North Carolinians showed evidence of striving to bring Sheriff Andy Taylor’s small-town values to their encounters with their neighbors old and new, English-speaking or not.

The loss of licenses for undocumented immigrants was probably destined to happen, given the trauma to the American people of the 9/11 tragedy and the questions it stirred up about non-traditional immigrants in its midst (i.e. those not from Europe or who were not wartime allies like Koreans and Vietnamese). But given that a handful of states held-out against stripping licenses from the undocumented immigrants, it is legitimate to question what North Carolina could have done to maintain its licensing system and resist the demands that the state acquiesce to the standards set by conservative Republican Congressman Sensenbrenner.

¹⁵³ U.S. Census Report, “Nativity of the Population, for Regions, Divisions, and States: 1850 to 1990,” March 9, 1999, <https://www.census.gov/population/www/documentation/twps0029/tab13.html>

¹⁵⁴ U. S. Census Bureau, American Community Survey, 5-Year Estimates, 2006-2010. Updated every year. <http://factfinder2.census.gov>

Certainly credit goes to leadership of the N.C. House and N.C. Senate for resisting change, even as Governor Easley and DMV Commissioner George Tatum took administrative actions in 2004 that created a de facto legal presence requirement.

In the author's opinion, there were three critical factors that eroded support for licenses, two of which might have been countered by DOT and DMV management, and one of which was probably beyond amelioration.

The problem with customer service in summer 2001 was doubtless out of reach. DOT Secretary Tippett was rebuffed in efforts to get the legislature to approve funding for more examiner positions. State budget woes deprived DMV of the vital resource of temporary employees who had previously helped the Driver License Section cope with long lines. And the strong economy attracting tens of thousands of persons to North Carolina from out of state only fanned false perceptions that non-resident, undocumented immigrants were taking advantage of North Carolina's rules and elbowing out true residents trying to get their licenses.

Two components of the debate in 2001 could have been handled better.

First, most immigrants were getting a free pass from the state's requirement to document the customer's SSN while many traditional customers were sent home to get proper documentation before they could be licensed. That requirement was implemented in fall 1997 and was in place for four years until it was changed in fall 2001 to require an ITIN for persons ineligible for an SSN. As soon as the discrepancy in standards came to the fore in late 1997, DMV management should have sought a change in statute to incorporate the ITIN. Management was aware of that option in 1997 but was content to let sleeping dogs lie.

De Tocqueville's comments on fairness should be taken to heart by anyone in management of government agencies:

... [T]he idea that occurs most spontaneously to men in centuries of equality is that of uniform legislation. Since each man sees himself as not very different from his neighbors, **he finds it difficult to understand why a rule that applies to one man should not apply equally to all the others.** [Author's emphasis] The merest of privileges are therefore repugnant to his reason. The slightest dissimilarities in the political institutions of the nation offend him, and legislative uniformity strikes him as the primary prerequisite of good government

Second, management from DMV through DOT up to the Governor's office should have pushed back against false information in the media, most importantly with the coverage by the New York Times where it could have been easily documented that North Carolina's practices reflected what half the states were doing. Similarly, allegations of "bogus" SSNs and North Carolina licensing terrorists should have been forcefully refuted. The damage to North Carolina from the false claims was not immediate but came with recycling of the information by opponents in the years between 2001 and 2006.

Political campaigns and corporations know the value of quickly reacting to false allegations. Government agencies lack the resources to mount campaigns against false information, and even if they had the resources, administrators of government agencies typically doesn't have it in their DNA to punch back against false claims. Even political candidates once elected are more tentative about counter-attacking in situations where there would be no hesitancy in the midst of an election campaign.

Given national demographics showing an increase in Hispanic and Asian voters, it is likely that at some point the North Carolina General Assembly will find a way to accommodate licenses for undocumented immigrants. The fact that a Republican-dominated House committee could report out legislation to that effect by a 22-11 vote is cause for hope. However, given the ability of Republican Donald Trump to surge in the polls with his anti-Hispanic message, it is not likely to happen in 2015.

But the political dynamics may be in place to make passage of the licensing provisions of HB 328 possible in the summer of 2016 as part of an effort by Republicans to pick up some Hispanic votes.

While the provisions as written exact a high price on undocumented immigrants, they would improve the social and economic lives of immigrants, enhance highway safety and provide benefits to the law enforcement community.

Appendix A -

Public Opinion Polls on Immigration Issues in North Carolina, 1995-2006

While public frustration with the impact of immigration in North Carolina started manifesting itself in the mid-1980s and early 1990s, it could be argued that it finally reached the point of being a “bona fide” issue when it started appearing on public opinion surveys. While the issue may have appeared in political candidates’ internal surveys earlier, the first reference to the issue in published polls (at least, which the author could find) was in fall 1995 in the Carolina Poll, a public opinion poll conducted annually in the spring and summer by the School of Journalism and the Institute for Research in Social Science at the University of North Carolina Chapel Hill. It randomly polled about 600+ residents. Questions on immigration issues appeared on five polls administered by UNC-CH between 1995 and 2005.

Elon University in the town of Elon, about 30 miles west of Chapel Hill, launched its own poll in 2000, conducted by the Elon Institute for Politics and Public Affairs. In 2005-2006, the Institute conducted 6 polls with queries about voter sentiment on immigration issues, including one in April 2006 that went into considerable detail on the issue, trying to get at what most upset North Carolinians about immigration.

Finally, a Raleigh polling firm with a national client base, included questions on immigration issues in spring 2006 in the run-up to the fall national mid-term elections.

The Carolina Poll

UNC-CH’s first poll in fall 1995 started a series of questions with the observation:

“In recent years, there have been a lot of changes in North Carolina, with new lifestyles, and new people moving in who have different ways. Some people feel that these changes don’t fit in to the traditional way of life in the state. Other people welcome these changes. How do you feel about the changes in the way of life here?¹⁵⁵ All in all, are you comfortable with these changes, uncomfortable with these changes, or haven’t you paid much attention to them?¹⁵⁵”

Responses to that question were that 41.6% of respondents were comfortable with the changes, 18.3% were uncomfortable, and 30.4% said they hadn’t paid much attention.

Follow-up questions addressed themselves to more specific examples of change, with one asking how the respondent felt about “immigrants speaking languages other than English.”

¹⁵⁵ School of Journalism and Mass Communications and the Odum Institute for Research in Social Science, University of North Carolina at Chapel Hill, fall 1995, http://www.irss.unc.edu/content/pdf/cp_fall95_xtabs.pdf.

A majority of respondents indicated they were uncomfortable to some degree with immigrants not speaking English, while those very uncomfortable with this change were 18.3% and those somewhat uncomfortable being 32.4%, while those not all uncomfortable 47.5% with only 1.8% not having an opinion.

Two other survey questions provide an interesting context for the question about non-English speaking residents.

One question asked how the respondent felt about “Northerners moving into the state,” with 84% comfortable with that, but 5.5% very uncomfortable with it and 8.3% somewhat uncomfortable.

A follow-up question qualified the issue by asking how the respondent felt about “Northerners moving into the state, spreading liberal ideas.” The number “not at all uncomfortable” with their new Yankee brethren dropped to 61.9% in this instance, and the number very uncomfortable with this doubled to 11% and the number somewhat uncomfortable went to 21%.¹⁵⁶

In spring 1996, the Carolina Poll revisited the issue, repeating the question about immigrants speaking a language other than English, with some gradual change to dissatisfaction with non-English speakers in their midst.

By March 1996, those “very uncomfortable” was 17.6% a virtual tie with results six months earlier, but the number “somewhat uncomfortable” was up to 37.6% and the number “not at all uncomfortable” had declined to 40.9%.

Interestingly, respondents had also grown more wary of Northerners moving into the state, with 8.3% “very uncomfortable” and 17.7% “somewhat uncomfortable,” while those “not at all uncomfortable” had dropped to 67.9%.

More to the point, this survey posed the question: “There has been an influx of Hispanics into North Carolina in the last few years. For the most part, would say this influx is good or bad for North Carolina?”

A clear plurality - 42% - said this was bad for the state, while 23.5% said it was good, 14.6% said it was equally good and bad and 19.9% chose not to answer the question. The category of “equally good and bad” was not part of the survey answers, but represented the volunteered responses of those surveyed.

Finally, the survey asked “How do you think most people in your neighborhood would feel if a number of Hispanics moved in,” with a resounding 67% saying they would not like it, only 7.3% saying they would like it, and 13.2 % saying they would be indifferent. This response, as with the

¹⁵⁶ School of Journalism and Mass Communications and the Odum Institute for Research in Social Science, University of North Carolina at Chapel Hill, fall 1995, http://www.irss.unc.edu/content/pdf/cp_fall95_xtabs.pdf.

choices in the previous question,” represented volunteered answers. Those who didn’t know or declined to answer was 12.5%.¹⁵⁷

A year later, spring 1997, the poll revisited the immigration issue, in a poll with a sample size of 727 respondents, with four questions targeting issues that were emerging in public debates over immigration.

The first asked the respondent whether “the migration of Hispanics is good or bad for North Carolina,” with 42.4% saying “bad,” 33.2% saying it was “good” and 20.3% saying they didn’t know, with 4% declining to answer.

The 1997 survey repeated the question about neighbors tolerance of Hispanics moving in, and a year later the number who thought their neighbors would not like it had actually declined to 53.6% while they number that said they would like it had also declined, to 4.8% with the number indifferent grown to 33%.

The survey then addressed the issue of government services in Spanish: “People disagree about whether tax dollars should be used to provide government services in Spanish. Which of the following statements best describes your opinion on this issue: (1) Government funds should be used to offer services in Spanish. (2) Government funds should support only some services in Spanish; or (3) there should be no government funding of services in Spanish.”

Surprisingly, the majority of respondents favored Spanish language services at some level, with 10.6% supporting funds for services in Spanish and 50.5% favoring funds for some services in Spanish, while 33.7% opposed any funding for government services in Spanish.¹⁵⁸

That was the last appearance of questions in the Carolina Poll about Hispanics or immigrants until fall of 2005, when the survey asked whether “you think the immigrants coming to this country today take jobs away from American citizens, or do they mostly take jobs Americans don’t want?. A majority – 58.2% said they mostly take jobs Americans don’t want, while 30.5% felt they mostly take jobs away from Americans.¹⁵⁹

Interestingly, one liberal, Democratic-leaning, liberal blog, took heart from these responses, commenting that North Carolinians “also have a surprisingly open view toward the place of immigrants in the economy. 58% said they believe immigrants mostly take jobs native Americans don’t want; while only 30% said they think they mostly take jobs away from Americans. This

¹⁵⁷ School of Journalism and Mass Communication and the Odum Institute for Research in Social Science, University of North Carolina at Chapel Hill, spring 1996, http://www.odum.unc.edu/content/pdf/cp_spring96_xtabs.pdf

¹⁵⁸ School of Journalism and Mass Communication and the Odum Institute for Research in Social Science, University of North Carolina at Chapel Hill, spring 1997, http://www.irss.unc.edu/content/pdf/cp_spring97_freqs.pdf

¹⁵⁹ School of Journalism and Mass Communication, University of North Carolina at Chapel Hill, 2006, "Carolina Poll, Fall 2005", <http://hdl.handle.net/1902.29/D-33440> Odum Institute;Odum Institute for Research in Social Science, University of North Carolina at Chapel Hill [Distributor] V1 [Version]

could minimize the success of anti-immigration policies as a GOP-driven wedge issue in coming years. ¹⁶⁰

Elon University Poll

The Elon Poll conducted five surveys with questions or results that addressed immigration specific to North Carolina, the first in April 2005, two in early 2006 and two conducted in fall 2006, one in September before the fall elections and a follow-up in November designed to capture what was on voters' minds at the time they voted.

In spring 2005, the N.C. House of Representatives was considering a bill that would allow unauthorized immigrants to pay the lower in-state tuition rate provided they had attended a North Carolina high school for four years and graduated, and provided that they seek legal immigration status. In a news release, the pollsters reported:

Of those surveyed, 49 percent said they strongly support or support the measure. Forty-one percent were opposed or strongly opposed. Statistically significant differences of opinion also emerged along the lines of gender, age, race, and political ideology. Women were more likely than men to support the idea, as were younger adults ages 18 to 34, nonwhite respondents, and people who described themselves as politically moderate or liberal.

"While the overall numbers may be encouraging for supporters of the bill, there are clear differences of opinion that break along some very interesting lines," Vercellotti [poll director] said. ¹⁶¹

The Elon Poll conducted surveys on political issues in February and March 2006 with one question addressing immigration, asking whether the respondent considered it an important issue for the state, with 62 per cent saying it was a "very important" issue. ¹⁶²

In April, the Elon Poll came back with a survey instrument laden with questions about immigration, and again instructing respondents:

As you are likely aware, there is much discussion in North Carolina about immigration...but just to make sure we are talking about the same thing, when we refer to immigration – we are talking about the undocumented immigration of Hispanic or Latino populations into North Carolina... ¹⁶³

By April, 71 per cent of North Carolina respondents said immigration was a "very important issue," with 23 per cent saying it was "somewhat important" and 6 per cent that it was not important with a plurality (44 per cent) saying it had been "bad" for North Carolina. A quarter of the respondents (26 per cent) said it had been good for the state,

¹⁶⁰ <http://www.dailykos.com/story/2005/11/11/164134/-Fall-2005-Carolina-Poll#>

¹⁶¹ <http://www.elon.edu/e-web/elonpoll/20050427.xhtml>

¹⁶² Elon University Poll, Feb. 20-23 and Feb. 26-Mar 2, 2006, www.elon.edu/e-web/elonpoll/20060703.xhtml

¹⁶³ Elon University Poll, April 2-6, 2006, www.elon.edu/e-web/elonpoll/041006.xhtml

while 16 per cent said it hadn't made a difference. In a similar vein, 64 per cent said there had been "too many" immigrants to the state while 22 per cent said the number of immigrants was "about the right number."¹⁶⁴

As a follow-up, pollsters asked respondents to choose between two statements describing the impact of immigrants:

- "immigrants today strengthen the state because of their hard work and talents
- immigrants today are a burden on the state because they take jobs, housing and health care."¹⁶⁵

A majority – 53 per cent – said the immigrants were a burden while only 29% said they strengthen the state.

It could be argued, however, that the survey questioned was skewed towards a negative answer, since one of the choices implied a "zero sum game" in which job, housing and medical care took away the same from current residents.

The poll followed up with a series of questions designed to get at "what makes immigration an issue"

- "is it that they are the wrong kind of people coming to the state?" with 72 per cent saying no to that proposition and 22 per cent saying yes.
- "they take jobs away from North Carolinians,?" with 52 per cent saying yes and 44 per cent no.
- "providing them services such as school and health care costs too much?" with 70 per cent yes and 24 per cent no.
- "there's too much Spanish spoken and everyone should speak English only? With 47 per cent yes and 47 per cent no.
- "they don't pay their fair share in taxes?" with 72 per cent yes and 18 per cent no; and, finally,
- "they have broken the law, regardless of their situation??" With 69 per cent yes and 24 per cent no.¹⁶⁶

The Elon Poll in September 2006 – in advance of the state and national legislation – queried voters as to what they considered the top issues. At the national level, the respondents considered the war in Iraq the top issue (30 per cent of respondents) followed by terrorism and security (22 per cent) and third by the economy (11 per cent). The most important issues facing North Carolinians, as indicated by respondents, were education (19 per cent), the economy (14 per cent) and immigration (12 per cent).¹⁶⁷

¹⁶⁴ Ibid.

¹⁶⁵ Ibid

¹⁶⁶ Ibid.

¹⁶⁷ Elon University Poll, September 29, 2006, www.elon.edu/e-web/elonpoll/092906.xhtml

In a poll soon after the fall election – presumably while election issues were still within memory of respondents, the Elon poll addressed a wide array of immigration issues.

The November poll found that 63 percent of North Carolinians disagree with proposals that would allow undocumented immigrants to stay in the U.S. as long as they have a job.

The poll found that 56 percent of citizens said the immigration of Hispanics or Latinos to North Carolina in recent years has been bad for the state, up from 44 percent in an April 2006 Elon Poll. Fifty-three percent agreed with the statement “immigrants today are a burden on the state because they take jobs, housing and health care,” down from 57 percent in April. Twenty-nine percent agreed with the statement “immigrants today strengthen the state because of their hard work and talents,” up from 25 percent in April. Eighteen percent said immigration has been good for the state, compared with 26 percent in April.¹⁶⁸

Sixty-one percent said immigration was a very important issue to them, down from 71 percent in the April poll. Thirty-two percent said immigration was somewhat important, compared with 23 percent in April.

“People in North Carolina see immigrants as taking more than they give back to the state,” said Hunter Bacot, director of the Elon University Poll. “With more and more people saying immigration is bad for the state, we will have to see how this issue plays out politically over the next year.”

North Carolinians were asked a series of questions to determine what makes immigration an issue. Seventy-two percent believe immigrants don’t pay their fair share in taxes, compared with 73 percent in April 2006. Sixty-nine percent said immigrants who have not entered the state legally have broken the law regardless of their situation, down from 75 percent in the April poll. Seventy-three percent said immigration is an issue because it costs too much to provide immigrants with health care services. Fifty-two percent said immigration is an issue because immigrants take jobs away from North Carolinians, down from 55 percent in April.¹⁶⁹

Public Policy Polling Survey

A somewhat different picture of immigration issues during 2006 emerges from a survey taken by Public Policy Polling (PPP), a private sector polling service based in Raleigh that conducts surveys at the state and national level for a predominantly Democratic clientele. Its poll surveyed 900 households on April 19, 2006. The survey focused on public policy issues as they might play out in an election.

PPP asked respondents whether they would be “more or less likely to vote for a candidate for office that favored tighter controls on immigration into this country,” with 81% responding they would be more likely to vote for that candidate with 12% less likely and 7% saying it would make no difference.

¹⁶⁸ Elon University Poll, November 20, 2006, www.elon.edu/e-web/elonpoll/112006.xhtml

¹⁶⁹ Ibid.

The survey also asked whether the person would be “more or less likely to vote for a candidate for office that favored a program allowing illegal immigrants to remain in the country legally if they had a job and meet certain requirements?” That question split respondents right down the middle, with 48% “more likely” and 47% “less likely,” statistically a tie.

PPP followed that with a question whether the respondent would “be more likely to support allowing illegal immigrants to remain in the United States legally, if we tighten border controls to reduce the amount of illegal immigrants that enter the country every year?” That option drew 52% who said they would be more likely to support such a proposal and 39% less likely.¹⁷⁰

¹⁷⁰ Dean Debnam, Public Policy Polling, Raleigh NC, April 24, 2006, <http://www.publicpolicypolling.com/main/2006/04/>

Appendix B

New York Times

In U.S. Illegally, Immigrants Get License to Drive

By DAVID FIRESTONE

Published: August 04, 2001

The roofer climbed down from the scaffolding around the new strip mall, pulled out his wallet, and fondled the little plastic card inside as if it were enchanted. Though he does not speak English, he was delighted to point to the words on the card: "State of North Carolina Driver License," and underneath, his name, Alejandro.

"I used to have a Mexican license, which the police didn't like," he said through an interpreter, declining to give his last name because he is in this country illegally. "But here in North Carolina they said I could have this, a real license, and I couldn't believe it. Now I get insurance, and I don't have to worry so much when I get in the car."

Three other workers on the same job site in this suburb south of Raleigh said they also had licenses despite their illegal status, and said they get paid as much as \$2 an hour more because of the extra versatility the license gives them on the job.

For these and hundreds of thousands of other illegal immigrants who have taken advantage of North Carolina's liberal rules for a license, driving is no longer a furtive affair, conducted under cover of night and only when absolutely necessary. Their card and the sense of identity it confers allow them at least a partial entry into the mainstream of the United States, a sense of security above the underground of menial jobs and makeshift communities.

The validation conferred by a license, of course, is precisely why most states do not provide them to immigrants in the country illegally, out of concern that it would induce more people to cross the border in violation of national law. Only three other states -- Tennessee, Utah and Virginia -- give licenses to any state resident who can pass the driving test, regardless of their legal status. Other states, including Illinois and New Mexico, have considered the possibility, weighing North Carolina's argument that the licensing and testing process will improve highway safety and see to it that more drivers have insurance.

"In 9 out of 10 cases, people who move here for jobs and opportunities are going to drive, whether they have a license or not," said Wayne J. Hurder, North Carolina's director of driver's license certification. "We think it's in the best interests of everyone in the state if we can get them to learn the laws of the road and get insurance. It's not our job to get into national immigration policy -- this is a purely practical decision."

But that argument, which has been made most vociferously by President Vicente Fox of Mexico, has failed to persuade many of the largest states, where benefits to immigrants

remain a touchy emotional and political issue, rather than a matter of practical policy. Even in some states that have begun to extend some benefits, like in-state college tuition, a driver's license is still considered a touchstone of citizenship that remains jealously guarded.

Officials of the Immigration and Naturalization Service say they are not happy with licensing procedures like North Carolina's, but that there is nothing they can do about it.

Tennessee's decision in May to grant licenses to illegal immigrants may be an indication of their increasing acceptance in society, and the legislatures in California and Texas have also approved such measures in the last year. But the governors in the two states, a Democrat and a Republican respectively, vetoed the bills, and some states, including Georgia, Minnesota and South Carolina, have moved to tighten restrictions, making licenses far more difficult to obtain for those who cannot document their legal status.

"These are criminals, who slip stealthily and evasively into this country and remain here as fugitives, and I don't think we should reward that kind of behavior with the privilege to drive," said John Graham Altman III, a Republican member of the South Carolina House of Representatives. "North Carolina obviously isn't serious about observing the law, but I think if you encourage the invasion of the illegals, you'll just get more of them."

Earlier this year, Mr. Altman introduced a bill that would ban licenses for illegal immigrants, making explicit a policy already followed by the state. The measure passed the House but was not taken up by the Senate. Independent of that effort, the state motor vehicles division recently decided to require applicants to produce either a Social Security card or a letter from the Social Security Administration stating that the applicant is in the country legally.

North Carolina asks for a Social Security number to comply with a federal law seeking people who do not pay child support, but if an applicant does not have one, the state accepts other identification, including a Mexican military I.D. card and voter registration cards from other countries. In May, Gov. Don Sundquist of Tennessee, a Republican, signed into law a similar policy, producing waiting lines so long that some legislators wanted to repeal the measure. (The lines have since returned to a manageable size.)

The divergence in the states' policies can easily be seen in the waiting rooms of their motor vehicles offices. In North Carolina and Tennessee, branch offices are full of people speaking Spanish, and many can barely keep the Spanish translations of their driving manuals in stock. In South Carolina offices, there is far less Spanish to be heard, and many immigrants say they want nothing to do with the licensing bureaucracy.

"If you go in there and speak Spanish, they give you a big hassle and want to see all kinds of proof," said a welder from Mexico in Spartanburg, S.C., who crossed over illegally. "So we just drive anyway, and stay under the speed limit and hope no one stops us." He added that he had no auto insurance.

North Carolina immigrants, on the other hand, can not only get insurance, but many who were fearful of driving without a license are free from the dependence those who could drive, particularly in an area with almost no public transit.

"My brothers used to take me places, and a friend of mine drove me to work every day," said a woman from El Salvador who repairs uniforms at a rental company and who got her license in Cary, another Raleigh suburb. "It was bad when I had to wait outside in the cold for a ride. But now I can go anywhere by myself."

The Legislature never formally approved the state's policy, but it began to evolve in the late 1980's when immigrants began arriving in the state in large numbers. Today the state has the nation's fastest-growing Hispanic population, and businesses are eager to see their work force licensed and insured.

Since 1997, Mr. Hurder said, the state has issued more than 400,000 licenses and ID cards to people lacking Social Security numbers, more than 260,000 of whom were Hispanic. Officials say they believe the policy has reduced the number of fake ID's and Social Security numbers often used elsewhere by immigrants.

Some of those, he acknowledged, were not North Carolina residents. The state's policy has become well-known among immigrants across the country, and people from Florida, South Carolina and the northeast have flocked to North Carolina to get a license and then return to their home states. A high school student from Huntington, New York, who was born in El Salvador, said he was in the Garner branch office today for precisely that purpose.

"I need a license in New York in case I get stopped," he said. "Back home, lots of people have a North Carolina license."

To restrict that practice, a bill is now under consideration in the State Legislature to require license applicants to show proof that they are North Carolina residents, which could be a pay stub or a utility bill. But legislators say they do not plan to require applicants to be legal United States residents.

"The ability to drive is very helpful to our newest residents in getting their lives established here," said State Senator Wib Gulley, a Democrat from Durham who is chairman of the transportation subcommittee. "They play a crucial role in our economy, which would be severely hurt if we put a wall up around the state."

In recent months, that message has been carried around the country by Dr. Juan Hernández, appointed by Mr. Fox as the director of the Office of Mexicans Abroad. Dr. Hernández said in an interview that he had met with about a dozen American governors, urging them to follow North Carolina's lead, but has encountered considerable resistance.

"Politically, they feel it's a very hot issue for them right now," he said. "But what we tell them is, these people did break one law coming here, but they shouldn't be forced to break other laws. These are the people who are building the roads of America, but they're not allowed to drive on them."

Appendix C

Talking Points for House Bill 1141 and Senate Bill 531

Highway Safety Issues

- *The Atlanta Constitution on December 26, 2002 compared North Carolina's driver license laws and regulations with those of Georgia. It reported that North Carolina has a 6% uninsured motorist rate compared to 13% in Georgia.*
- *The main differences in the law in the two states is that Georgia requires proof of legal presence, which automatically discourages undocumented aliens from learning the motor vehicle laws or getting insurance.*
- *New York, which has laws similar to Georgia has a 20% uninsured motorist rate, according to the New York Times.*
- *There is no evidence that laws requiring proof of legal presence for a driver license have the effect of discouraging people from driving. They just discourage people from getting insurance and learning the rules of the road.*
- *20 states in the United States do not require proof of legal presence. For the states that have debated this issue, the primary concern is highway safety. 30 states do require proof of legal presence. This is from data collected by the American Association of Motor Vehicle Administrators in 2002.*
- *In 2001, 1,530 persons were killed on North Carolina roads and 134,000 people were injured. So highway safety is a very serious issue.*
- *According to DMV crash data, the crash rate and death rate based on vehicle miles driven has declined. So North Carolina must be doing something right with its motor vehicle laws. Should we tamper with rules that have improved highway safety?*

Law Enforcement and Homeland Security Issues

- *Many North Carolina police departments work closely with their immigrant populations to encourage them to get licenses, irrespective of their immigration status.*
- *Many local police officers say they appreciate knowing that North Carolina does license illegal immigrants, because this creates a record of that person and a photo that is available to law enforcement.*
- *By requiring proof of legal presence, the state will force many undocumented aliens to be totally undocumented - we will not have any information about them which could benefit law enforcement. This is not good for law enforcement.*
- *These rules alone will not deter terrorists. The State of Florida has required proof of legal presence for many years, and yet 11 of the 19 9/11 terrorists had driver licenses from Florida.*
- *The American Immigration Lawyers Association opposes restrictions because "licensing non-citizens enriches our domestic intelligence by allowing law enforcement authorities to verify and obtain the identities, residencies and addresses of millions of foreign nationals. Restrictive licensing will deprive authorities of this information.*

Issues of the Law and Federalism

- *The American Immigration Lawyers Association is opposed to restricting immigrant access to Driver Licenses.*
- *In a position paper released March 6, 2003, the Association said “Restrictive Licensing will impede Law Enforcement and National Security.”*
- *AILA says “restrictive licensing will require state motor vehicle administrators to become INS law and document experts in order to evaluate properly an applicant’s immigration status and determine when such status expires.”*
- *The AILA says there are approximately 60 ever-changing non-immigrant visa categories in addition to classifications for asylees, refugees, parolees, persons in immigration proceedings, persons under orders of supervision, etc. This will be a nightmare for DMV and will only make long lines longer while not improving security.*
- *The AILA says that “due to extensive INS delays in application processing, many immigrants and lawful non-immigrants will be unable to present documentation of their status.”*
- *The AILA says “Requiring DMV personnel to understand and enforce immigration laws will most likely result in legal United States residents facing wrongful license denials and revocations for reasons that are not wholly unrelated to driver competence. “*
- *A recent paper by the Council of State Governments and the National Conference of State Legislatures made the comment that “should the federal government attempt to shift the responsibility for monitoring foreign nationals to the states, the costs and liability issues for the states are enormous.”*
- *This bill and others shifts the responsibility to North Carolina, but it does not provide the resources for North Carolina to do the job, and it does not protect the liability of DMV as they try to do the work of the INS.*
- *The position paper by the Council of State Governments and the National Conference of State Legislatures concludes that “the best driver’s license system will not and cannot stop terrorism.”*

Customer Service Issues

- *This bill will punish all North Carolina drivers by making long lines even longer*
- *It will require immigrants - legally in the United States and who have good driving records - to make repeated visits to the Driver License offices.*
- *According to testimony from the President of AAMVA, Betty Serian, “the social security check will not match records in approximately 20% of the cases because of the use of nicknames...unmarried names, data entry errors, etc. on the social security record.”*
- *This bill would force DMV to declare the driver licenses of these people to be invalid. Can you imagine how irate customers or constituents you would have when over 1 million drivers get letters from DMV telling them that their license will be declared invalid because the Social Security Administration information does not match the information on DMV records?*