

Linton Joaquin\*  
 Karen C. Tumlin\*  
 Shiu-Ming Cheer\*  
 Melissa S. Keaney\*  
 NATIONAL IMMIGRATION LAW  
 CENTER  
 3435 Wilshire Boulevard, Suite 2850  
 Los Angeles, California 90010  
 Telephone: (213) 639-3900  
 Facsimile: (213) 639-3911  
*joaquin@nilc.org*  
*tumlin@nilc.org*  
*cheer@nilc.org*  
*keaney@nilc.org*

Omar C. Jadwat\*  
 Andre Segura\*  
 Elora Mukherjee\*  
 AMERICAN CIVIL LIBERTIES UNION  
 FOUNDATION  
 125 Broad Street, 18th Floor  
 New York, New York 10004  
 Telephone: (212) 549-2660  
 Facsimile: (212) 549-2654  
*ojadwat@aclu.org*  
*asegura@aclu.org*  
*emukherjee@aclu.org*

Cecillia D. Wang\*  
 Katherine Desormeau\*  
 AMERICAN CIVIL LIBERTIES  
 UNION FOUNDATION IMMIGRANTS'  
 RIGHTS PROJECT  
 39 Drumm Street  
 San Francisco, California 94111  
 Telephone: (415) 343-0775  
 Facsimile: (415) 395-0950  
*cwang@aclu.org*  
*kdesormeau@aclu.org*

Darcy M. Goddard (USB No. 13426)  
 Esperanza Granados (USB No. 11894)  
 AMERICAN CIVIL LIBERTIES  
 UNION OF UTAH FOUNDATION, INC.  
 355 North 300 West  
 Salt Lake City, Utah 84103  
 Telephone: (801) 521-9862  
 Facsimile: (801) 532-2850  
*dgoddard@acluutah.org*  
*egrgranados@acluutah.org*

Bradley S. Phillips\*+  
 MUNGER, TOLLES & OLSON LLP  
 355 South Grand Avenue  
 Thirty-Fifth Floor  
 Los Angeles, CA 90071-1560  
 Telephone: (213) 683-9100  
 Facsimile: (213) 687-3702

**UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF UTAH  
 CENTRAL DIVISION**

Utah Coalition of La Raza, et al.,

Plaintiffs,

v.

Governor Gary Herbert and Attorney General  
 Mark Shurtleff,

Defendants.

**DECLARATION OF SHEILA MILLER  
 IN SUPPORT OF MOTION FOR  
 PRELIMINARY INJUNCTION**

Case No. 2:11-cv-00401-BCW

Judge: Brooke C. Wells

## **DECLARATION OF SHEILA MILLER**

I, SHEILA MILLER, declare as follows:

1. I am employed as a Senior Paralegal with the National Immigration Law Center, counsel of record for plaintiffs in the instant action. I make this declaration based on my personal knowledge (except where expressly noted herein) and, if called upon as a witness, I could and would testify competently as to the matters set forth below.

2. Attached hereto as Exhibit A is a transcription of excerpts of a March 4, 2011 hearing before the Utah State Legislature – Senate floor debate of HB 497 S01 (Day 39), which is available at the following URL

<http://le.utah.gov/jsp/jdisplay/billaudio.jsp?sess=2011GS&bill=hb0497s01&Headers=true>. This transcript was personally prepared by me after listening to the audio recordings of the debate found at the Utah State Legislature website.

3. Attached hereto as Exhibit B is a transcription of excerpts of a March 3, 2011 hearing before the Utah State Legislature – House floor debate of HB 469 (Day 38), which is available at the following URL

<http://le.utah.gov/jsp/jdisplay/billaudio.jsp?sess=2011GS&bill=hb0469&Headers=true>. This transcript was personally prepared by me after listening to the audio recordings of the debate found at the Utah State Legislature website.

4. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed the 4<sup>th</sup> day of May, 2010 at Los Angeles, California.

/s/ SHEILA MILLER\*

(\* I certify that I have the signed original of this document which is available for inspection during normal business hours by the Court or a party to this action.)

# EXHIBIT A

# State of Utah – 2011 General Legislative Session

Senate Floor Debate HB 497 S01 (Day 39)

Hearing Date: March 4, 2010

---

- 1 **Mr. President:** Senator Bramble. You are on a roll. If you'll quit eating we will do  
2 another bill.
- 3 **Sen. Bramble (R):** I am sorry Mr. President?
- 4 **Mr. President:** Would you like to uncircle another one? You're on a roll?
- 5 **Sen. Bramble (R):** I believe the next one is uh, Senator Dayton's 1<sup>st</sup> substitute HB497. I  
6 believe she is the Senate Sponsor but I'd be happy to uncircle if we are  
7 ready to present.
- 8 **Sen. Bramble (R):** Yeah, you uncircled the last one. Uncircle this one too.
- 9 **Sen. Bramble (R):** I move to uncircle HB 497.
- 10 **Mr. President:** Thank you. The motion is to uncircle HB 497 the Utah Illegal Immigration  
11 Enforcement Act. Senator Dayton, are you the sponsor?
- 12 **Sen. Dayton (R):** Thank you Mr. President. I am. Thanks to you and Senator Bramble for  
13 putting my bill up. Senators, as you all know and we have said many  
14 times on this floor. The duties of the federal government are few and  
15 defined. And, one of the few and defined duties of the federal  
16 government is to protect our borders and they are utterly failing to do  
17 their duty. We set an example for them in so many ways, balancing the  
18 budget, listening to the people. There are so many things we do. This is  
19 another example for us setting an example for them. In spite of the fact  
20 that the federal govern is failing us in so many ways and overstepping

## State of Utah – 2011 General Legislative Session

Senate Floor Debate HB 497 S01 (Day 39)

Hearing Date: March 4, 2010

---

1                   their bounds in other areas, we still have people doing everything they  
2                   can to get to this nation. I have great respect and concern for those who  
3                   are going through the long and laborious process of coming here legally.  
4                   It includes my daughter-in-law and others from other places around the  
5                   world who want to be citizens of this nation. The concern is for those  
6                   who come here illegally. This Bill that comes to us from the house with  
7                   54 sponsors addresses illegal immigration enforcement. We need to  
8                   have some kind of illegal immigration enforcement because 75% of illegal  
9                   immigrants that are here have stolen or falsified social security numbers  
10                  and we've had other bills in the past that address the problems and the  
11                  disruption to family lies with the loss and identify theft and the loss of  
12                  security, social security numbers. Nine million people are affected by this  
13                  problem. It's a great concern also that Utah is number two in the 10<sup>th</sup>  
14                  district for criminal illegal reentry. There are some serious issues that  
15                  need to be addressed about illegal immigrants, and this Bill plans to  
16                  address those. What we have in this Bill are federal laws put into state  
17                  statutes so that we can enforce the federal laws since the federal  
18                  government is not. This Bill addresses identifying those who are here  
19                  illegally. It removes reasonable suspicion. It leaves law enforcement  
20                  when they stop people, they shall request verification. In the case of

# State of Utah – 2011 General Legislative Session

Senate Floor Debate HB 497 S01 (Day 39)

Hearing Date: March 4, 2010

---

1                   Class A misdemeanors and felonies they may attempt verification process  
2                   for Class B and C misdemeanors. Meaning that the people who they are  
3                   questioning have to produce either verification of their residency or  
4                   information to show they are living here appropriately. The bill does not  
5                   implement the Federal Real ID Act. The bill does put into place some  
6                   concerns addressing those who are trying to get, come here to get  
7                   welfare. I guess, I am supposed to say public benefits but we are talking  
8                   about welfare. It requires strict social, strict compliance for public  
9                   benefits. And, if those people who are applying for them present false,  
10                  fictitious or fraudulent statements, it is a fraud and felony and it will be  
11                  enforced under our laws in the state. As I said earlier, it clears up the  
12                  concerns of what to do with those criminal reentrants, empowers law  
13                  enforcement to enforce on the state level, federal law. This is a bill that  
14                  has had a lot of writes and rewrites and discussion and I think a lot of you  
15                  are familiar with what we are trying to do on our Utah effort to control  
16                  illegal immigration enforcement and that is the explanation of the bill.

17 **Mr. President:** Discussion of the bill. Senator McAdams.

18 **Sen. McAdams (D):** Thank you Mr. President. I appreciate the efforts that have been made to  
19                  resolve some unintended consequences as it relates to this bill and I think  
20                  that it has come a long way and it is appropriately named, not an Arizona

# State of Utah – 2011 General Legislative Session

Senate Floor Debate HB 497 S01 (Day 39)

Hearing Date: March 4, 2010

---

1                   legislation. Nevertheless, I still have serious concerns with this bill.  
2                   Especially where this is an enforcement only bill and does not  
3                   contemplate other aspects of the challenges of immigration and for that I  
4                   will be voting, No. Thank you.

5   **Mr. President:**       Senator Dayton for summation on the Bill.

6   **Sen. Dayton (R)**     Thank you Mr. President. I would move that under suspension of the  
7                   rules first substitute House Bill 497 be read for the second and third time  
8                   and up for final passage.

9   **Mr. President:**     Did you make two motions or one? The motion is for suspension of the  
10                  rules the first substitute HB 497 to be passed all the way across. The  
11                  second motion is to be considered 497 to be read 2<sup>nd</sup> and 3<sup>rd</sup> time and we  
12                  will call roll. Encircle HB 469: Bill encircled

13                  End of tape

14

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 **Rep. Dougall (R):** We've had a lot of discussion about immigration this session. But one  
2 part of that discussion debate I thought was missing. From my  
3 perspective, the most appropriate way to address illegal immigration  
4 would be to expand legal immigration. I come from the perspective  
5 where we should [be] welcoming the best, the brightest, the most  
6 hardest working, the most entrepreneurial. All those who want to live  
7 and provide for themselves and live the American dream. And that's  
8 what this bill does. It starts to push down that path to push back against  
9 to fence to say, "wait a second, Utahans are welcoming people" and I  
10 believe Utahans would open their arms to immigrants that want to come  
11 and live in Utah. And, so this bill creates a sponsorship program whereby  
12 Utahans can sponsor immigrants, legal immigrants that want to come to  
13 this state and to be part of our communities and that's what this bill  
14 does. This bill also recognizes that historically immigration in colonial  
15 times was a colonial issue and that the states ran immigration for about  
16 the first 100 years of our nation before the feds started assuming more  
17 and more authority over immigration. And, so this recognizes and speaks  
18 to the state's rights issue regarding immigration. Thank you Madam  
19 Speaker.  
20 [Intentionally left blank]

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 **Madam Speaker:** Discussion to the bill. Representative Ivory

2 **Rep. Ivory (R):** Thank you. They keep throwing pictures right where I like to hit 'em. In

3 this bill, I rise in support of this bill. In Article 1, Sec. 8 Clause 4 of the

4 Constitution, it uh...the people delegated to the federal government to

5 establish a uniformed rule of naturalization. And for 100 years that was

6 interpreted *only* as citizenship. The states themselves controlled

7 immigration into their states. And, it wasn't until 1875 that the Supreme

8 Court assumed the power over immigration to the federal government.

9 Having assumed power over immigration, how well has the federal

10 government exercised the power that it's usurped? We see a border

11 that's completely porous. In fact, southern states have a war zone on

12 their borders. We see that the federal government in assuming powers

13 never delegated to it has done, largely what the federal government is

14 good at, and that is destroying things.

15 In fact, when the states have tried to perfect their people and maintain

16 public safety and public order, the federal government sued the states

17 and took the states to the Human Rights Commission. Having usurped

18 power never delegated to it, it would then act to [unintelligible] in public

19 order.

20 [Intentionally left blank]

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 I applaud the sponsor of this in reclaiming rights that were never  
2 delegated to the federal government and creating a bill that does allow  
3 the states, in a manner of self determination to protect public safety, to  
4 protect public order and to do so in a way that as was stated that allows  
5 the best and brightest to come and add to our economy. I think this is a  
6 very critical opportunity to call the question out in a clear manner. If the  
7 fed government intends to assume this power, let it do it in a manner  
8 provided in the Constitution under Art. 5 and propose an amendment  
9 and clearly exercise and undertake to effectively exercise its power that's  
10 assumed. Having not done so, I applaud the sponsor in reclaiming a right  
11 that was never delegated and exercising the power over immigration in  
12 the state of Utah under a process that was set out very well and I  
13 encourage support of this bill.

14 **Madame Speaker:** Rep. Wilcox.

15 **Rep. Wilcox (R):** Thank you Madame Speaker Pro Tem. Representatives, I call your  
16 attention the resolution we passed here last week, last Thursday morning  
17 as it relates to this issue. Both in relation to specifically the federal  
18 government's ignorance of their responsibility in addressing the issue  
19 since their assumed control. I can't help but think as I had gone through  
20 this immigration debate in my mind and thought about what the best

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 creative solutions might be. One of the most impactful speeches upon  
2 my childhood that I had heard on the subject. Mind you it was President  
3 Regan’s farewell speech. The last little bit of it. I’ll quote as I don’t get it  
4 wrong here, but he used to speak fondly of the shining city on the hill and  
5 of how America was that City. I’ll just read exactly what he said here. He  
6 said, “I’ve spoken of the shining city all my political life, but I don’t know if I  
7 ever quite communicated what I saw when I said it. But in my mind it was a tall,  
8 proud city built on rocks stronger than oceans, windswept, God-blessed, and  
9 teeming with people of all kinds living in harmony and peace; a city with free  
10 ports that hummed with commerce and creativity. And if there had to be city  
11 walls, the walls had doors and the doors were open to anyone with the will to  
12 get here.” It’s broken for a couple of reasons. One, we haven’t been  
13 minding our walls and the doors have not been opened as they should  
14 have been. It’s time for us to come up with some of our own creative  
15 solutions to this problem and I applaud this sponsor and appreciate its  
16 original concept as we move forward. This is the ultimate 10<sup>th</sup>  
17 Amendment solution to illegal immigration in our state. Thank you.

18 **Madame Speaker:** Thank you. Rep. Wimmer.

19 **Rep Wimmer (R):** Thank you Madame Speaker. Would the sponsor yield to a question?

20 **Rep (Sponsor):** Yes.

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

- 1 **Rep Wimmer (R):** I am wondering, Representative, what is to happen to those who are here  
2 illegally now. Would they qualify for this? I am looking specifically at  
3 lines 124-125 C and the definition of foreign nationals seems a little bit  
4 unclear and I am just wondering who qualifies under this bill as you  
5 understand it?
- 6 **Rep (Sponsor):** Are you looking at the amendment – amendment no 1? Or just the  
7 original Bill? If you look at Amendment no. 1 this deals with those that  
8 are outside of the country or illegally in the country.
- 9 **Rep Wimmer (R):** I am looking at the amendment.
- 10 **Rep (Sponsor):** So, that’s what the language is that deals with the folks those who are  
11 illegally here already want to come here. It does not deal with those who  
12 are already illegally here in the country.
- 13 **Rep Wimmer (R):** Ok, it says here ‘foreign national does not include an individual who is in  
14 the US but who is not lawfully present.’ So, they would not qualify for  
15 sponsorship. The people that are here illegally?
- 16 **Rep (Sponsor):** That would be correct. Under this program.
- 17 **Rep King (D):** Would the sponsor yield to a question?
- 18 **Rep (Sponsor):** Yes
- 19 **Rep King (D):** Thank you. We have standards from the Office of Legislative Research  
20 and General Counsel regarding constitutional notes. When does our

## State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 Legislative Research in General Counsel place a constitutional note on a  
2 bill?

3 **Rep (Sponsor):** I believe you already know that representative, as stated on the note.

4 **Rep King (D):** I know. I am asking *you*.

5 **Rep (Sponsor):** I'll draw your attention to the notes.

6 **Rep King (D):** Under.....What are the standards for when a constitutional note is placed  
7 on *any* bill?

8 **Rep (Sponsor):** I would suggest that a note is placed there when the, uh, tradition of the  
9 courts are built up in such a way whether correct or incorrect that they  
10 question, uh, how successful you will be in court. But, we also recognize  
11 that on many of these issues we need to continue to push and push and  
12 push because I would contend that the federal government has  
13 overreached. I cannot find, this is a good representation of what Rep.  
14 Jordan has mentioned, "Immigration" within the constitution. And, as I  
15 study the history of immigration law in this country, states were running  
16 it, states were in charge of it, states managed it. It was in the 1875 to  
17 1890 period that that started shifting. That the Supreme Court stated  
18 handing more power to Congress over immigration. And, I would suggest  
19 that we can see the success, and I say it sarcastically, more likely than a

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 failure of that policy as we look at the problems that we face in regards  
2 to a broken immigration process.

3 For better or worse, I think our comments regarding immigration should  
4 be that we as Utahans open our arms to those that want to come here  
5 that come through the legal process to be part of our community. And if

6 that means that we need to push back against the federal government

7 and the tradition that built up in the courts, I would suggest that we push

8 back. I look back at the court's rulings in regards to slavery and I would

9 suggest that many of those were wrong and had to be changed over time

10 to be correct. I would suggest that there is a lot of wrongness, if that is a

11 word, with what the Supreme Court has said in regards to immigration. I

12 believe that states who deal with the frontline benefits and issues,

13 challenges regarding immigration stand in the best position to deal with

14 it. Whether it deals with family law. Whether it deals with employment

15 law. Whether it deals with assimilation and so forth. I think states are

16 situated in a much better position. And, I recognize that this bill swings

17 upstream from the tradition in the past but I think that we need to send

18 that message. Thank you.

19 **Rep King (D):** If I were in court, I would move to strike your answer as nonresponsive

20 and I am *quite* confident that the judge would grant the motion. Let me

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 answer my question. Simple, a constitutional note is placed on a bill  
2 when our Legislative Research and General Counsel determine that it's  
3 highly likely to be held unconstitutional. We refer to it in shorthand as,  
4 the "high bar standard". Madame Speaker Pro Tem, this bill carries such  
5 a constitutional note. And, I think it is disrespectful to the pledge that we  
6 have made as representatives to uphold the principles of the constitution  
7 when we disregard the high bar that has been put in place for placement  
8 of the constitutional note by our leg research and General Counsel and  
9 we just run a bill anyway and vote it, vote for it. So, I voted against, uh,  
10 two, as I recall, bills that have been placed before us before this time  
11 dealing with immigration largely because they both carried constitutional  
12 notes. I am voting against this bill for the same reason. I'd also add a  
13 good reason to vote against it, Madame Speaker Pro Tem, if you take a  
14 look at it, is the existence of a *significant* fiscal note at a time when we  
15 really don't have the funds to fund this bill. So, I'd ask the members of  
16 this body to vote this bill down.

17 **Madame Speaker:** Thank you Representative King. Representative Sumsion?

18 **Rep. Sumsion (R):** Will the sponsor yield to a question?

19 **Rep. (Sponsor):** Yes

20 [Intentionally left blank]

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 **Rep. Sumsion (R):** Ok. I am trying to understand how this kind of works. If I may give a  
2 scenario and help me understand. So, if someone lives outside the  
3 United States, they would have to have a, some type of visa from the  
4 United States government to enter inside the United States and at that  
5 point, that person could find, participate, have a sponsor from the state  
6 of Utah that would bring them into this program. Is that kind of the  
7 steps?

8 **Rep (Sponsor):** That would be one step. Correct. That would be one approach.

9 **Rep. Sumsion (R):** So, if someone has, receives a federal visa. A permanent resident visa, I  
10 am not sure what the title is or what they are called but that they can live  
11 in the United States for a fairly long period of time, would they be able  
12 to, does this legislation require that for them to reside in Utah that they  
13 would have to have a sponsor and be participating in this program?

14 **Rep (Sponsor):** No, that would not. Perhaps, I might give you an example. Let's propose  
15 we had a ..... let me use an example. Let me, uh, choose the good  
16 representative here from Orem? Let's suppose that the good  
17 representative wanted to sponsor a student to come study at a local  
18 university. And that student had a student visa that was expiring and  
19 they wanted to stay and continue on living and being part of our

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 community. This would allow him to sponsor that student to continue to  
2 live, work, study and so forth.

3 **Rep. Sumsion (R):** OK. Even. And so, even if that visa was to expire, and, under the  
4 umbrella of the United States government, they would be illegally here?

5 **Rep. (Sponsor):** According to the federal government, they would have overstayed their  
6 visa. But, what we would say is if they had applied and been granted  
7 sponsorship status then they would continue to live and reside in Utah  
8 under this program. I move previous question.

9 **Madame Speaker:** Previous question has been called. Motion passes. Representative  
10 Dougall, for summation on the bill.

11 **Rep. Dougall (R):** As I mentioned before, one of the key things that we are missing on the  
12 debate is the discussion about legal immigrants. Those that are on the  
13 outside, that really want to come here, that want to be part of the  
14 American dream, they want to have a better life. I suggest that we  
15 should open our doors and we should welcome them. If the  
16 Representative from Provo, for example, wanted to sponsor his mother-  
17 in-law here, why should we be concerned? He should have every right to  
18 do that. As I mentioned, the Representative from Orem wanted to  
19 sponsor a student here. What is our concern? Why wouldn't we open  
20 our arms and welcome that immigrant to our country. I think we all

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 understand our ancestry and our history. And for all intensive purposes,  
2 we're immigrants of descendants of immigrants and that is what has  
3 made our country great. Those that are willing to take the risk to build a  
4 better life. Those that are willing to leave what is tradition for them to  
5 build something anew. To build something that they believe is better.  
6 I, too swore an oath to uphold the constitution. And, what that means is  
7 despite what I believe may be errors from the court we need to do what  
8 the plain and simple language of what the Constitution dictates. And, I  
9 would suggest that we need to send a message to Congress that  
10 immigration reform consists of also allowing us to welcome immigrants  
11 to our state in a straightforward, predictable and legal manner. Thank  
12 you, Madame Speaker Pro Tem.

13 **Madame Speaker:** Voting now open on HB 469:

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 **Rep. Dougall (R):** We've had a lot of discussion about immigration this session. But one  
2 part of that discussion debate I thought was missing. From my  
3 perspective, the most appropriate way to address illegal immigration  
4 would be to expand legal immigration. I come from the perspective  
5 where we should [be] welcoming the best, the brightest, the most  
6 hardest working, the most entrepreneurial. All those who want to live  
7 and provide for themselves and live the American dream. And that's  
8 what this bill does. It starts to push down that path to push back against  
9 to fence to say, "wait a second, Utahans are welcoming people" and I  
10 believe Utahans would open their arms to immigrants that want to come  
11 and live in Utah. And, so this bill creates a sponsorship program whereby  
12 Utahans can sponsor immigrants, legal immigrants that want to come to  
13 this state and to be part of our communities and that's what this bill  
14 does. This bill also recognizes that historically immigration in colonial  
15 times was a colonial issue and that the states ran immigration for about  
16 the first 100 years of our nation before the feds started assuming more  
17 and more authority over immigration. And, so this recognizes and speaks  
18 to the state's rights issue regarding immigration. Thank you Madam  
19 Speaker.  
20 [Intentionally left blank]

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 **Madam Speaker:** Discussion to the bill. Representative Ivory

2 **Rep. Ivory (R):** Thank you. They keep throwing pictures right where I like to hit 'em. In

3 this bill, I rise in support of this bill. In Article 1, Sec. 8 Clause 4 of the

4 Constitution, it uh...the people delegated to the federal government to

5 establish a uniformed rule of naturalization. And for 100 years that was

6 interpreted *only* as citizenship. The states themselves controlled

7 immigration into their states. And, it wasn't until 1875 that the Supreme

8 Court assumed the power over immigration to the federal government.

9 Having assumed power over immigration, how well has the federal

10 government exercised the power that it's usurped? We see a border

11 that's completely porous. In fact, southern states have a war zone on

12 their borders. We see that the federal government in assuming powers

13 never delegated to it has done, largely what the federal government is

14 good at, and that is destroying things.

15 In fact, when the states have tried to perfect their people and maintain

16 public safety and public order, the federal government sued the states

17 and took the states to the Human Rights Commission. Having usurped

18 power never delegated to it, it would then act to [unintelligible] in public

19 order.

20 [Intentionally left blank]

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 I applaud the sponsor of this in reclaiming rights that were never  
2 delegated to the federal government and creating a bill that does allow  
3 the states, in a manner of self determination to protect public safety, to  
4 protect public order and to do so in a way that as was stated that allows  
5 the best and brightest to come and add to our economy. I think this is a  
6 very critical opportunity to call the question out in a clear manner. If the  
7 fed government intends to assume this power, let it do it in a manner  
8 provided in the Constitution under Art. 5 and propose an amendment  
9 and clearly exercise and undertake to effectively exercise its power that's  
10 assumed. Having not done so, I applaud the sponsor in reclaiming a right  
11 that was never delegated and exercising the power over immigration in  
12 the state of Utah under a process that was set out very well and I  
13 encourage support of this bill.

14 **Madame Speaker:** Rep. Wilcox.

15 **Rep. Wilcox (R):** Thank you Madame Speaker Pro Tem. Representatives, I call your  
16 attention the resolution we passed here last week, last Thursday morning  
17 as it relates to this issue. Both in relation to specifically the federal  
18 government's ignorance of their responsibility in addressing the issue  
19 since their assumed control. I can't help but think as I had gone through  
20 this immigration debate in my mind and thought about what the best

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 creative solutions might be. One of the most impactful speeches upon  
2 my childhood that I had heard on the subject. Mind you it was President  
3 Regan’s farewell speech. The last little bit of it. I’ll quote as I don’t get it  
4 wrong here, but he used to speak fondly of the shining city on the hill and  
5 of how America was that City. I’ll just read exactly what he said here. He  
6 said, “I’ve spoken of the shining city all my political life, but I don’t know if I  
7 ever quite communicated what I saw when I said it. But in my mind it was a tall,  
8 proud city built on rocks stronger than oceans, windswept, God-blessed, and  
9 teeming with people of all kinds living in harmony and peace; a city with free  
10 ports that hummed with commerce and creativity. And if there had to be city  
11 walls, the walls had doors and the doors were open to anyone with the will to  
12 get here.” It’s broken for a couple of reasons. One, we haven’t been  
13 minding our walls and the doors have not been opened as they should  
14 have been. It’s time for us to come up with some of our own creative  
15 solutions to this problem and I applaud this sponsor and appreciate its  
16 original concept as we move forward. This is the ultimate 10<sup>th</sup>  
17 Amendment solution to illegal immigration in our state. Thank you.

18 **Madame Speaker:** Thank you. Rep. Wimmer.

19 **Rep Wimmer (R):** Thank you Madame Speaker. Would the sponsor yield to a question?

20 **Rep (Sponsor):** Yes.

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

- 1 **Rep Wimmer (R):** I am wondering, Representative, what is to happen to those who are here  
2 illegally now. Would they qualify for this? I am looking specifically at  
3 lines 124-125 C and the definition of foreign nationals seems a little bit  
4 unclear and I am just wondering who qualifies under this bill as you  
5 understand it?
- 6 **Rep (Sponsor):** Are you looking at the amendment – amendment no 1? Or just the  
7 original Bill? If you look at Amendment no. 1 this deals with those that  
8 are outside of the country or illegally in the country.
- 9 **Rep Wimmer (R):** I am looking at the amendment.
- 10 **Rep (Sponsor):** So, that's what the language is that deals with the folks those who are  
11 illegally here already want to come here. It does not deal with those who  
12 are already illegally here in the country.
- 13 **Rep Wimmer (R):** Ok, it says here 'foreign national does not include an individual who is in  
14 the US but who is not lawfully present.' So, they would not qualify for  
15 sponsorship. The people that are here illegally?
- 16 **Rep (Sponsor):** That would be correct. Under this program.
- 17 **Rep King (D):** Would the sponsor yield to a question?
- 18 **Rep (Sponsor):** Yes
- 19 **Rep King (D):** Thank you. We have standards from the Office of Legislative Research  
20 and General Counsel regarding constitutional notes. When does our

## State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 Legislative Research in General Counsel place a constitutional note on a  
2 bill?

3 **Rep (Sponsor):** I believe you already know that representative, as stated on the note.

4 **Rep King (D):** I know. I am asking *you*.

5 **Rep (Sponsor):** I'll draw your attention to the notes.

6 **Rep King (D):** Under.....What are the standards for when a constitutional note is placed  
7 on *any* bill?

8 **Rep (Sponsor):** I would suggest that a note is placed there when the, uh, tradition of the  
9 courts are built up in such a way whether correct or incorrect that they  
10 question, uh, how successful you will be in court. But, we also recognize  
11 that on many of these issues we need to continue to push and push and  
12 push because I would contend that the federal government has  
13 overreached. I cannot find, this is a good representation of what Rep.  
14 Jordan has mentioned, "Immigration" within the constitution. And, as I  
15 study the history of immigration law in this country, states were running  
16 it, states were in charge of it, states managed it. It was in the 1875 to  
17 1890 period that that started shifting. That the Supreme Court stated  
18 handing more power to Congress over immigration. And, I would suggest  
19 that we can see the success, and I say it sarcastically, more likely than a

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 failure of that policy as we look at the problems that we face in regards  
2 to a broken immigration process.

3 For better or worse, I think our comments regarding immigration should  
4 be that we as Utahans open our arms to those that want to come here  
5 that come through the legal process to be part of our community. And if

6 that means that we need to push back against the federal government

7 and the tradition that built up in the courts, I would suggest that we push

8 back. I look back at the court's rulings in regards to slavery and I would

9 suggest that many of those were wrong and had to be changed over time

10 to be correct. I would suggest that there is a lot of wrongness, if that is a

11 word, with what the Supreme Court has said in regards to immigration. I

12 believe that states who deal with the frontline benefits and issues,

13 challenges regarding immigration stand in the best position to deal with

14 it. Whether it deals with family law. Whether it deals with employment

15 law. Whether it deals with assimilation and so forth. I think states are

16 situated in a much better position. And, I recognize that this bill swings

17 upstream from the tradition in the past but I think that we need to send

18 that message. Thank you.

19 **Rep King (D):** If I were in court, I would move to strike your answer as nonresponsive

20 and I am *quite* confident that the judge would grant the motion. Let me

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 answer my question. Simple, a constitutional note is placed on a bill  
2 when our Legislative Research and General Counsel determine that it's  
3 highly likely to be held unconstitutional. We refer to it in shorthand as,  
4 the "high bar standard". Madame Speaker Pro Tem, this bill carries such  
5 a constitutional note. And, I think it is disrespectful to the pledge that we  
6 have made as representatives to uphold the principles of the constitution  
7 when we disregard the high bar that has been put in place for placement  
8 of the constitutional note by our leg research and General Counsel and  
9 we just run a bill anyway and vote it, vote for it. So, I voted against, uh,  
10 two, as I recall, bills that have been placed before us before this time  
11 dealing with immigration largely because they both carried constitutional  
12 notes. I am voting against this bill for the same reason. I'd also add a  
13 good reason to vote against it, Madame Speaker Pro Tem, if you take a  
14 look at it, is the existence of a *significant* fiscal note at a time when we  
15 really don't have the funds to fund this bill. So, I'd ask the members of  
16 this body to vote this bill down.

17 **Madame Speaker:** Thank you Representative King. Representative Sumsion?

18 **Rep. Sumsion (R):** Will the sponsor yield to a question?

19 **Rep. (Sponsor):** Yes

20 [Intentionally left blank]

## State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 **Rep. Sumsion (R):** Ok. I am trying to understand how this kind of works. If I may give a  
2 scenario and help me understand. So, if someone lives outside the  
3 United States, they would have to have a, some type of visa from the  
4 United States government to enter inside the United States and at that  
5 point, that person could find, participate, have a sponsor from the state  
6 of Utah that would bring them into this program. Is that kind of the  
7 steps?

8 **Rep (Sponsor):** That would be one step. Correct. That would be one approach.

9 **Rep. Sumsion (R):** So, if someone has, receives a federal visa. A permanent resident visa, I  
10 am not sure what the title is or what they are called but that they can live  
11 in the United States for a fairly long period of time, would they be able  
12 to, does this legislation require that for them to reside in Utah that they  
13 would have to have a sponsor and be participating in this program?

14 **Rep (Sponsor):** No, that would not. Perhaps, I might give you an example. Let's propose  
15 we had a ..... let me use an example. Let me, uh, choose the good  
16 representative here from Orem? Let's suppose that the good  
17 representative wanted to sponsor a student to come study at a local  
18 university. And that student had a student visa that was expiring and  
19 they wanted to stay and continue on living and being part of our

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 community. This would allow him to sponsor that student to continue to  
2 live, work, study and so forth.

3 **Rep. Sumsion (R):** OK. Even. And so, even if that visa was to expire, and, under the  
4 umbrella of the United States government, they would be illegally here?

5 **Rep. (Sponsor):** According to the federal government, they would have overstayed their  
6 visa. But, what we would say is if they had applied and been granted  
7 sponsorship status then they would continue to live and reside in Utah  
8 under this program. I move previous question.

9 **Madame Speaker:** Previous question has been called. Motion passes. Representative  
10 Dougall, for summation on the bill.

11 **Rep. Dougall (R):** As I mentioned before, one of the key things that we are missing on the  
12 debate is the discussion about legal immigrants. Those that are on the  
13 outside, that really want to come here, that want to be part of the  
14 American dream, they want to have a better life. I suggest that we  
15 should open our doors and we should welcome them. If the  
16 Representative from Provo, for example, wanted to sponsor his mother-  
17 in-law here, why should we be concerned? He should have every right to  
18 do that. As I mentioned, the Representative from Orem wanted to  
19 sponsor a student here. What is our concern? Why wouldn't we open  
20 our arms and welcome that immigrant to our country. I think we all

# State of Utah – 2011 General Legislative Session

House Floor Debate HB 469 (Day 38)

Hearing Date: March 3, 2010

---

1 understand our ancestry and our history. And for all intensive purposes,  
2 we're immigrants of descendants of immigrants and that is what has  
3 made our country great. Those that are willing to take the risk to build a  
4 better life. Those that are willing to leave what is tradition for them to  
5 build something anew. To build something that they believe is better.  
6 I, too swore an oath to uphold the constitution. And, what that means is  
7 despite what I believe may be errors from the court we need to do what  
8 the plain and simple language of what the Constitution dictates. And, I  
9 would suggest that we need to send a message to Congress that  
10 immigration reform consists of also allowing us to welcome immigrants  
11 to our state in a straightforward, predictable and legal manner. Thank  
12 you, Madame Speaker Pro Tem.

13 **Madame Speaker:** Voting now open on HB 469: