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Implications and Consequences of a Failed Bill: The DREAM Act

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I pledge that I have neither received nor given any unauthorized assistance during the completion of this work.

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Introduction

According to Article 26.1 of the Universal Declaration of Human Rights (1948), every human has the right to receive an education. This includes equal access to higher education, on the basis of merit. However, just like almost every other right listed in this document; millions of undocumented children residing in the United States are denied it, in this case the right to pursuing a degree from a post-secondary institution. Despite the acknowledgement by the United Nations that this right is fundamental, Congress has failed to pass the DREAM Act, a bill that would greatly increase accessibility to higher education for undocumented children. Due to the strong opinions surrounding immigration policy and reform the bill has only passed in altered versions at the state level, in twelve U.S. states. The necessity for this bill to pass at the federal level lies in the significance of obtaining a college degree for this population. Beyond just a pathway to citizenship it would also provide the opportunity for all undocumented children to become assimilated as well as fully contributing members of society, with secured futures.

Legislation Sets the Stage for the DREAM Act

Originally proposed in 2001, the DREAM Act seeks to address a gap in immigration policy or rather the area of legislation that denies enrollment and access to higher education for undocumented children. The precursor of legislation regarding immigrants’ education began in 1982, when the constitutionality of a Texas statute that allowed local school districts to deny enrollment to children on the basis of their status as undocumented was challenged in the case Plyer v. Doe. The Supreme Court ruled that the right to receiving an education at the primary and secondary levels is a fundamental and protected right that all children residing in the United States regardless of citizenship or residency status possess (Lee, 2006).
This was a landmark decision for the lives of illegal immigrants as education is one major pathway for the development of the forms of capital necessary to assimilate into American culture (Kavisto and Faist, 2010). Through schooling, children acquire the necessary social and cultural skills to grow into contributing members of society. As Suarez-Orozco explains, school is where immigrant children learn and form perceptions about where they fit into the social and cultural reality of their new nation (Gonzales, 2011). Without primary and secondary school, immigrant youth would be prevented from developing the same capital as their American peers, placing them at an extreme disadvantage for the remainder of their lives. The Supreme Court recognized the importance of K-12 education but unfortunately this was not inclusive of higher education as they explicitly stated that there is no fundamental right to higher education, setting the stage for a proposal like the DREAM Act further down the road.

Later, in 1996 section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) addressed access to higher education for alien youth by enforcing severe restrictions. The law stated that undocumented persons should not have access to any postsecondary education benefit unless they obtain residency status within that state or if all citizens of the United States are allowed that benefit despite residency (Feder, 2006). This is problematic because in order for a child to qualify for in-state tuition from a public university they must be a legal resident. In order to address this barrier for undocumented students, states have taken on their own versions of the DREAM Act removing this requirement (Baron, 2011).

*The DREAM Act*

The DREAM Act was originally proposed to Congress in 2001 and after being brought back nearly every year since it has yet to receive congressional approval. As proposed, the bill seeks to address two major areas of immigration policy, citizenship and the accessibility of
higher education. If passed undocumented children, those youth who were brought to the United States by their parents illegally, will have a pathway to citizenship as well as increased access to postsecondary education. As outlined in the bill, undocumented youth can gain eligibility to apply for citizenship after meeting a number of requirements and fulfilling necessary steps. The process would begin by potential student-applicants meeting the following criteria. They must have lived in the United States for at least five years and been younger than sixteen at the time of their entry into the country. Next, they must be of good moral character and must not be deportable under the Immigration and Nationality Act. Also, the applicant must have been admitted to college, graduated from high school, or received a General Education Development (GED) certificate in the United States. (Lee, 2006)

After the applicant has proved that they meet these criteria they will receive a conditional permanent resident status for six years. During this time period, the applicant must maintain the previous criteria as well as complete additional requirements. These include obtaining an associate’s degree or completing at least two years of a bachelor’s degree from a college in the United States. While enrolled at that institution the applicant must remain in good status. Instead of pursuing a higher education, the applicant can alternatively serve for at least two years in the Armed Forces of the United States. Once completing either two years of college or service in the Armed Forces, the applicant’s conditional status can be upgraded to unconditional permanent resident status, which would then make them eligible to apply for full U.S. citizenship through the usual naturalization process (Lee, 2006).

In addition to this pathway to citizenship the DREAM Act will remove some of the most significant financial barriers to higher education for undocumented students. This aspect of the Act is what the DREAM Act is most widely known for. First, the bill would make undocumented
youth eligible to apply for and receive federal loans and work-study programs. Next, the Act will repeal Section 505 of the IIRIRA that denies undocumented students from qualifying for in-state tuition. Both of these changes would alleviate some of the financial obstacles to enrolling in a postsecondary educational institution (Lee, 2006). This portion of the bill is also the most highly contested aspect of the DREAM Act. This is because of how much undocumented college bound youth would benefit from having improved access to higher education as well as the potential or perceived impact it would have on American society.

**Obstacles Undocumented Students Face**

Before analyzing why this bill has yet to pass at the federal level, one must highlight the importance behind securing passage of this bill. First, the creation of a pathway to citizenship would positively benefit undocumented youth as many of them have spent almost their entire lives in the United States and know no other culture beyond America. Many consider the United States their home, as they have little to no memories of their native country and the thought of having to return to that nation frightens them. Without United States citizenship they must always live in the shadow of society, with the fear of being deported. However, in order for undocumented students to gain a pathway to securing citizenship they need the Act to pass at the federal level. Since citizenship is a federal issue it is necessary that proponents of the Act continue to push for and fight for passage of the DREAM Act because the state-level versions of the bill do not remove the reality that is a constant threat of being deported (Baron, 2011).

Moreover, as previously mentioned, undocumented youth face a number of barriers to accessing higher education. As noted by the College Board, the three most significant barriers include tuition, admission, and financial aid. Tuition stands as an obstacle to pursuing post-secondary education for two reasons. First, the sheer cost of attending a college or university is
overwhelming for any family (College Board). This is especially true for undocumented students’ families whose illegal status prevents them from obtaining higher paying jobs and economic stability. In addition, without residency status families do not qualify to pay in-state tuition, which is significantly lower than out-of-state prices. This greatly limits the options undocumented students have resulting in the frequency to attend community colleges, which have lower rates of completion and provide fewer post graduate opportunities than four-year institutions (Fitzgerald, 2006).

Further, tied directly to the issue of tuition is the most pronounced obstacle to pursuing a higher education, financial aid. As a result of their illegal status, undocumented students are not legally allowed to receive any federally funded student financial aid. This includes loans, grants, scholarships and work-study money. These are the most popular forms of financial aid that make it possible for thousands upon thousands of American citizens to attend college each year. Without this financial assistance, undocumented students can only feasibly afford to enroll in an associates degree program, which results in fewer and less prestigious postgraduate opportunities. The DREAM Act seeks to remove these financial barriers by allowing illegal students to receive federally funded aid.

Lastly, the College Board points out the obstacles undocumented students face in receiving admission to college. Policies regarding the admission of illegal immigrants vary by school and state. For instance, most four-year public institutions in Virginia require applicants to submit proof of citizenship or legal residency as they refuse to offer admission to students without documentation. However, this is not a state law and just simply a policy schools have chosen to adopt due to a recommendation by the attorney general in 2003. The fact that institutions currently operate with this condition despite it not being required by law suggests
that Virginia should be able to easily drop this policy. Furthermore, admission continues to be an obstacle even when schools willingly admit undocumented students. For example, in a number of other states, public institutions accept students without documentation but treat them as foreign applicants, meaning they are ineligible to receive financial aid or in-state tuition (College Board). In addition, being categorized as a foreign student by admissions means that undocumented students have to compete for the typically limited number of spots reserved for international students (E4FC).

Not only do all of these barriers to higher education exist, many undocumented students are uninformed of what the policies are on financial aid and admission. This can make the process of applying to college more daunting and difficult, resulting in fewer students completing applications to college. The College Board suggests that school guidance counselors assist in the process of exploring post secondary options by reviewing the guidelines and regulations in place with the students who choose to reveal their undocumented status. At each phase in the process of college enrollment undocumented students are faced with obstacles that do not exist for other students in the country who have U.S. citizenship.

Clearly, the DREAM Act is not a solution to eliminating all of the obstacles to post secondary education for the population of undocumented students. However, if passed, they gain eligibility for financial aid; which means that a large amount of the stress of applying to and attending college will be diminished. Undocumented students will have a larger selection of schools to which they may apply to and the risk and fear of revealing their illegal status will be reduced.

**Supporting Arguments**
Supporters of the DREAM Act argue for the passage of the bill not just because of the positive impact it would have on illegal immigrant children but also the benefits it would bring the United States economy. While the DREAM Act has been recognized to be a bipartisan effort it is typically associated as being endorsed by more liberal minded individuals (Lee, 2006). Currently, the bill has received a great deal of support by the education community. At least 29 higher education institutions, including College Board and the United Students Association, and presidents and chancellors at more than 73 colleges and universities have endorsed passage of the Act (Gonzales, 2010).

First and foremost, arguments in support of the Act begin with the belief that children should not be at a disadvantage or suffer because of the actions and decisions that their parents made, in this case bringing them illegally into the country. Since these youth did not make the decision to illegally immigrate to the U.S. they argue that it is wrong to punish them for an action they did not choose to make (Baron, 2011). The punishment that supporters are referencing is the limited opportunity that illegal immigrant youth have to succeed that is a result of denying them access to higher education and citizenship. When the case Plyer v. Doe was brought to the Supreme Court, the argument for educating immigrant youth stated that denying education to these children leads to the creation of an underclass population that resides in the shadow within American society. Ultimately, the court ruled that receiving a K-12 education was a fundamental right of all children in the U.S. stating “such an underclass presents most difficult problems for a Nation that prides itself on adherence to principles of equality under the law” (Kanstroom, 2008). This underclass develops as a result of the fact that immigrants typically hold positions in the secondary sector of the labor market; where jobs are low paying, require low skill levels and are temporary or unstable (Braham, 1996). In Plyer v. Doe, the court believed that access to primary
and secondary education would improve conditions for immigrants and allow the opportunity to move out of the underclass. However, in today’s economy the need for a degree from a higher education institution is at an all time high. Upper-level education is a requirement to secure a well paying job and future, not to mention a chance at upward social mobility. According to College Board, college graduates earn on average 80% more than high school graduates. If one seeks the ability to improve their current class status from the lower class they need a degree from a higher education institution (Gonzales, 2011). The argument from Plyer v. Doe is outdated, now that higher education is just as necessary as basic education was in 1982, the legislation should be changed to include higher education.

On a similar point, supporters argue that our current immigration policies restrict undocumented youth from becoming fully contributing members of our society. We allow them to attend school through high school and then deny them authorization to work. Without citizenship these young adults must make the transition to the realities attached to their illegal status. If an illegal immigrant enters the education system in kindergarten and remains there until they graduate from high school, all they have known is a place where they were given inclusionary status. However, immediately upon graduating they must face the barriers of being illegal, which means the constant threat of deportation and a lack of authorization to work. Unless they apply for Deferred Action for Child Arrivals (DACA) their chances of creating a life for themselves and securing their livelihood are slim (Gonzales, 2010). With citizenship and a college degree these undocumented youth can become participating members of the society and contribute to the economy. In fact, supporters have found that since the DREAM Act targets students with the drive to obtain a college education, they will go on to hold jobs with higher incomes. This will in turn result in positive benefits for the economy with the increase in income
generated by undocumented students with college degrees as well as additional tax payments to the government. As will be discussed next, there is no evidence that the costs to society from passing the DREAM Act will outweigh the contributions made by undocumented immigrants to society.

**Opposition to the DREAM Act**

Just as any other public policy there is another side to the debate over passage of the DREAM Act. The arguments against the Act deal with the perceived negative impacts that its passage would result in. First, opponents claim that we are rewarding illegal activity with passage of this bill. However, the proponents of the bill counter this by saying that the children of illegal immigrants did not make the decision to move to America and therefore do not deserve to be punished. Next, they make the argument that the DREAM Act would result in undocumented youth taking spots at colleges and universities away from American youth and eventually taking jobs from legal Americans. However, supporters counter this argument by explaining that the number of undocumented immigrants who would enroll in college following the passage of the DREAM Act would be too small to have such a noticeable impact on college admissions and job openings. Further, the main argument by the opposition stands that benefits given under the terms of the Act will attract more illegal immigration to the United States (Baron, 2011). Since illegal persons currently immigrate to the U.S. for better opportunities it is believed that the appeal of higher education will attract more persons to take the risk of illegal entering the country once hearing word of such opportunity through the host countries’ networks in the U.S.

As outlined above, strong arguments stand for both sides of the debate over passing the DREAM Act. To highlight how the pro and anti immigration stances prevent passage of the bill
we must look at what it would take for the opposition to agree. In order for opponents of the Act to give approval, they would have to see some extreme cuts in other areas of immigration policy such as polices that allow legal immigration or pathways to citizenship. However, there would be no way that proponents of immigration would accept the loss of such policy. Just as all big-ticket issues in government, an easy solution seems impossible.

The DREAM Act at the State Level

Following the repeated failure of the DREAM Act to pass at the federal level, states decided to take measures into their own hands and pass individual versions of the bill. So far, twelve states had adopted laws with their own take on the original DREAM Act. These include California, Illinois, Kansas, Washington, Utah, Texas, Oklahoma, New York, New Mexico, Nebraska, Rhode Island and most recently Maryland. (E4FC). Due to the fact that citizenship is a federal issue, these states were only able to change the circumstances regarding financial aid for undocumented students. At the state-level the issue of residency is removed and high school attendance becomes the qualifying factor. Under their versions of the DREAM Act, undocumented children are eligible to receive in-state tuition as long as they have both attended high school for at least three years and graduated from high school in that state.

The decision to grant undocumented students better access to higher education raises a number of arguments even at the state-level. For instance, the removal of residency requirements becomes a point of contention for Republicans who argue that undocumented persons should not qualify for in-state tuition if non-resident American citizens are not eligible (Baron, 2011). Another factor complicating passage at the state-level is the impact on the state budget. It becomes a question of whether states can afford to allow more students the eligibility to pay lower rates of tuition at any of their public colleges. Since currently there is only an estimated
7,000 to 13,000 undocumented students enrolled in college it is arguable that the population of undocumented college students is not (currently) large enough to have a huge impact on state budgets (College Board).

On the other hand, there is the case of California where 40% of undocumented students live. This has placed greater pressure on the government to implement policies improving access to higher education for this population. Therefore, in 2001 California allowed undocumented students eligibility for in-state tuition with the passage of Assembly Bill 540. Currently, 3,500 to 5,000 illegal students are enrolled in California’s institutions of higher education. Not only has California realized the importance of in-state tuition they have also become the first state to take it one step further and pass legislation that allows students to apply for financial aid with the passage of AB 131 in 2012 (Tyler, 2013). With this being the first year that undocumented students can apply for federally funded student aid, it will be interesting to watch the impact and effects this new legislation has.

Updates and Looking Forward

Most recently, in 2010 the act failed to pass the Senate, yet again, and this time by five votes (Huffington Post, 2010). As the bill continues to be highly contested it is interesting to analyze the direction it is headed in. Currently, there has been a switch in the approach that the Republican Party has towards the bill. This has been seen after the 2012 Presidential election, in which Republican candidate Mitt Romney received only 27% of the Latino voting bloc. His running mate, Rep. Paul Ryan has recently changed the phrasing used on his website regarding immigration reform. It now states that immigration reform must include finding a way forward for children brought into the country illegally. He even uses the terminology, stating explicitly that we need to “find a path forward for DREAMers.” Further, it is expected that Republicans
will take additional steps forward addressing this issue as Romney has recently told supporters that Republicans need to offer their own version of the DREAM Act (Wallace, 2012). While this does not guarantee passage at the federal level anytime soon, it would mean progress in the right direction for supporters. Romney signaling the need for Republican movement on the bill suggests the possibility that a revised version of the DREAM Act could be in the works and brought back to Congress in the near future.

On the other side of the table, proponents of the bill are looking to President Obama and his administration to see if any movement will occur during his second term. The lack of progress on immigration reform has been regarded the biggest missed opportunity of Obama’s first term. In fact, Secretary Arne Duncan claims that the biggest disappointment for Obama’s administration was failing to pass the DREAM Act. Therefore, many supporters anticipate or at least hope that Obama moves forward with the DREAM Act during his second term (Wallace, 2012).

Currently, immigrants’ rights advocacy groups such as the E4FC have taken on their own initiatives to support undocumented youth. This has included the development of the DREAM conference in which useful guides, packets, and workshops are offered to illegal immigrant families. Step-by-step processes to applying for DACA are outlined as well as the college application process. Also, families are informed on the policies regarding financial aid and in-state tuition in order to ensure that students can receive as much aid as legally available. To assist with the communication barriers and complexity of the processes and laws the organization hands out these pamphlets and “how to” guides to families in both English and Spanish. In addition to this useful information undocumented immigrants can attend workshops that seek to address various social skills and barriers of living undocumented. For instance, the conference
offers a session on how to advocate for oneself both politically and personally. This is important for illegal immigrants who have to face the trauma attached to being of illegal status. The conference also offers drama exercises for children to assist in their coping with the distress of their status (E4FC). Organizations such as E4FC and their work are necessary to reduce the stress of these laws and regulations as well as simplify the complex application processes, and requirements. This is vital so that even when or if laws like the DREAM Act are passed they can be effective and have the intended benefits for undocumented youth.

With a slightly changing landscape in the way the Republicans are approaching immigration reform, it is possible that we see movement around the DREAM Act in the near future. However, as outlined above there are number of factors and arguments involved in the debate that have made it difficult for anything more than a state-level policy about in-state-tuition to pass. While in-state tuition has improved access to higher education to some extent, without financial aid and citizenship opportunities for undocumented youth remain limited. If DREAMers have any hope for a promised future, one in which they can become fully contributing members of American society, then the bill must continue to be pushed for approval at the federal level.
Works Cited


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