DRIVING PRIVILEGE CARDS FOR UNDOCUMENTED MINNESOTANS: ADDRESSING CONSTITUTIONAL CONCERNS AND PROMOTING PUBLIC SAFETY

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I. INTRODUCTION

A. Jovita Francisco and the Impact of Minnesota’s Driver’s Licensure Laws

Although Jovita Francisco was born in a small indigenous community in Mexico, she states adamantly that she considers Minnesota her home.1 Nearly two decades ago, at age fifteen, her aunt brought her to live in Minnesota.2 Under the state’s current driver’s license rules, Jovita cannot legally drive because she cannot provide proof of lawful admission into the United States.3 Despite her inability to obtain a driver’s license in Minnesota, Jovita has established a life in Minneapolis with her husband and her two young children.4 On August 1, 2007, Jovita became fully aware of the impact of her inability to drive. While waiting for her two children to return from a school field trip, she received a call informing her that her children’s school bus had been involved in

2. Id. at 1:33:07–17.
the Interstate 35-W bridge collapse in Minneapolis. Jovita says she felt frantic and helpless, particularly because she could not drive to see her injured children at the scene of the accident.

After the bridge collapse, Jovita found it more difficult to avoid driving. Because her husband was the family’s primary breadwinner, Jovita was tasked with driving the couple’s children to regular physical therapy and clinic appointments in order to help them recover from the injuries they sustained in the bridge collapse. Because she now regularly drives, Jovita has been cited and jailed many times for driving without a license. Since such interactions with the criminal justice system could lead to her deportation, Jovita says her children are constantly frightened that their mother will be separated from them.

B. The Evolution of Senate File 271

Jovita Francisco testified as one of many voices in support of Senate File 271 (S.F. 271), a bill seeking to allow Minnesota drivers to obtain a driver’s license regardless of their immigration status. Senator Bobby Champion, the sponsor of the bill, nicknamed the measure “Driver’s Licenses for All” and promoted the bill as a public safety measure. In addition, Representative Karen Clark

5. *Id.* at 1:34:15; see Libby Sander & Susan Saulny, *Bridge Failure in Minneapolis Kills 7 People*, N.Y. TIMES, Aug. 2, 2007, at A1, available at 2007 WLNR 14798159 (“Television stations showed a school bus on one section of the collapsed slab . . . . Red Cross officials said 60 children were taken off the bus, 10 of whom had injuries that were treated at city hospitals.”).

6. *See April 22, 2013 Hearing, supra* note 1, at 1:34:10 (statement of Jovita Francisco) (“I felt desperate trying to ask myself how to get there with no license. My husband . . . had to first drive to find them at the bridge.”).

7. *Id.* at 1:34:25–45.

8. *Id.* at 1:34:31.

9. *Id.* at 1:35:35–47 (“It has been many times now that my husband and I have been taken to jail for not having a driver’s license. My children suffered and asked themselves, what do we do now?”).

10. *See id.* at 1:35:55–1:35:22 (“When the friends of my children talk about how their parents have been deported because [they have no valid driver’s license], they look at me and give me a big hug, telling me . . . . I hope the government does not separate us.”).


sponsored a companion bill with similar terms in the House during the 2013 Minnesota legislative session.\(^\text{13}\)

With the introduction of S.F. 271, the national debate over driving privileges for undocumented immigrants manifested itself in Minnesota. The bill has spurred vigorous public debate about the benefits and detriments of licensing drivers who cannot prove legal immigration status.\(^\text{14}\) Supporters of the bill cite improved driver safety,\(^\text{15}\) higher rates of insured drivers,\(^\text{16}\) and better law enforcement–community relations\(^\text{17}\) as the foremost reasons to grant driver’s licenses to undocumented Minnesotans. Opponents of the bill, in response, argue that granting driver’s licenses to undocumented immigrants undermines federal immigration laws,\(^\text{18}\) increases voter fraud,\(^\text{19}\) and compromises national security interests.\(^\text{20}\)

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16.  May 18, 2013 Debate, supra note 12, at 2:15 (statement of Sen. Bobby Champion; Ragsdale, supra note 14 (noting that bill proponents say it would increase the number of insured drivers).
19.  See March 18, 2013 Hearing, supra note 17, at 1:13:50 (statement of Sen. David Osmek) (expressing concern that undocumented immigrants could use driver’s licenses to vote under Minnesota’s “motor voter” laws).
In response to these concerns, bill sponsors amended the bill to allow undocumented immigrants to obtain only a “driving privilege card” rather than a traditional driver’s license. Unlike a typical Minnesota driver’s license, the driving privilege card cannot be used for voting, airline travel, or other forms of federal identification. Rather, the card could only be used to prove the individual may legally drive. The driving privilege card would be visually distinguishable from traditional Minnesota driver’s licenses and would contain the words, “FOR DRIVING ONLY.” Additionally, sponsors amended the bill to provide training for election officials to emphasize that the new driving privilege cards could not be used for voting. Supporters of S.F. 271 hoped the amendments would alleviate opponents’ concerns and increase political support for the bill.

While legislative debate over S.F. 271 progressed, hunger strikers and other activists converged on the Minnesota State Capitol, urging legislators and Governor Mark Dayton to support the measure. After heated debates in various committee hearings, S.F. 271 passed the Senate on May 18, 2013. The House, however, did not take up the bill by the May 20, 2013 deadline. Consequently, the bill has been shelved until 2014.


24. Id. at § 1.

25. Compare S.F. 271, 2013 Leg., 88th Sess., 1st Engrossment (Minn. 2013), with S.F. 271, 2013 Leg., 88th Sess., 3d Engrossment § 8 (“Each county auditor must inform all election officials and election judges hired for an election that a driving privilege license must not be used or accepted for voter registration purposes . . . .”).


27. Ragsdale, supra note 14 (“The issue brought hunger strikers and their supports to the Capitol this week, stationing themselves outside the offices of Gov. Mark Dayton.”).


29. Allison Herrera, Hungering for a Driver’s License: Effort by Undocumented
C. The Importance of an Analysis of Senate File 271

Despite the failure of the bill to become law during the 2013 legislative session, the issue of driving privileges for undocumented Minnesotans is likely to resurface in the 2014 legislative session and beyond.30 Driver’s licensure laws have profound effects on immigrant communities and residents in general—insurance rates, law enforcement resources, and public safety are all closely tied to the question of driving privileges. Thus, an analysis of the implications of the bill is both timely and pertinent.

This note examines the policy arguments both for and against S.F. 271. Part II discusses the evolving use of driver’s licenses in both the state of Minnesota and the United States at large.31 Part III discusses how other states have attempted to address the issue of driving privileges for undocumented immigrants, and how such proposals have come up against fervent political and legislative opposition.32 Part IV evaluates the benefits of granting driving privileges to undocumented Minnesotans. Specifically, Part IV posits that S.F. 271 would likely positively affect the following areas: (1) driver safety, (2) reduction of uninsured motorists, (3) cooperation between immigrant communities and law enforcement, and (4) community integration and human rights.33 Part V addresses concerns that opponents to the bill have expressed. In particular, this section evaluates concerns regarding: (1) equal protection violations, (2) immigration fraud, (3) national security, and (4) federal preemption.34 After examining the policy concerns on both sides of the proposal, this note concludes in Part VI that S.F. 271 successfully addresses opponents’ major concerns while promoting driver safety and successful law enforcement strategies in Minnesota.35 This note argues that S.F. 271 represents

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30. Id.
31. See infra Part II.
32. See infra Part III.
33. See infra Part IV.
34. See infra Part V.
35. See infra Part VI.
a sensible, pragmatic compromise between proponents and opponents of expanded driver’s licensure laws.\textsuperscript{36}

II. HISTORY OF THE DRIVER’S LICENSE: FROM DRIVER SAFETY MEASURES TO NATIONAL IDENTIFICATION CARDS

A. The National Context: Early Twentieth Century to September 11, 2001

During the early twentieth century, in response to the growing use of automobiles, states throughout the country began to implement driver’s license laws.\textsuperscript{37} The original aim of driver’s licensure was to license all drivers—regardless of their immigration status.\textsuperscript{38} The stated goal of policymakers was to have as many drivers as possible pass safety tests and procure auto insurance, in order to make roads safer and insurance premiums lower.\textsuperscript{39} Rather than serving as a system of government identification, the purpose of these laws was to extend the privilege of driving to qualified persons who could safely share the road.\textsuperscript{40} The prevalence of driver’s licensure steadily increased thereafter. By 1954, every state in the country required a license to legally drive.\textsuperscript{41}

Over time, driver’s licenses evolved as a primary form of identification throughout the United States. Although the original purpose of driver’s licenses was rooted in public safety, a driver’s license has become a kind of “de facto national identity card.”\textsuperscript{42} A driver’s license has become necessary to participate in many aspects of U.S. society, from opening a bank account to procuring a library

\textsuperscript{36} See infra Part VI.
\textsuperscript{37} Kevin R. Johnson, Driver’s Licenses and Undocumented Immigrants: The Future of Civil Rights Law?, 5 Nev. L.J. 213, 220 (2004) (discussing the evolution of driver’s licenses in modern U.S. society); Maria Pabon Lopez, More than a License to Drive: State Restrictions on the Use of Driver’s Licenses by Noncitizens, 29 S. Ill. U. L.J. 91, 108 (2004) (explaining that since the State of Rhode Island passed the first driver’s license law in 1908, other states have enacted driver’s license laws in order to identify individuals who meet the necessary safety standards to drive).
\textsuperscript{38} Johnson, supra note 37, at 220.
\textsuperscript{39} Id. at 221.
\textsuperscript{40} Id.
\textsuperscript{41} Lopez, supra note 37, at 109.
card, traveling on an airplane, renting an apartment, and interacting with law enforcement.\textsuperscript{43}

The era of easy access to driver’s licenses came to a close as the purposes of driver’s licenses multiplied. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act.\textsuperscript{44} The Act required that all states put social security numbers on state-issued driver’s licenses.\textsuperscript{45} Although this provision was later repealed due to privacy concerns, the Act represented a move toward a federal attempt to make driver’s licenses more uniform and centralized throughout the nation.\textsuperscript{46}

After the attacks of September 11, 2001, heightened concerns about national security led to increased legislative efforts to restrict the availability of driver’s licenses to immigrants.\textsuperscript{47} The 9/11 Commission Report noted the potential dangers of wrongly issued identification documents and recommended that the United States tighten security procedures around obtaining driver’s licenses.\textsuperscript{48} The report described how several 9/11 hijackers had obtained federal identification; some through legal means and others fraudulently.\textsuperscript{49} These documents in turn helped the hijackers rent cars, board flights, and make the other preparations necessary to commit the attacks.

Concerns about security led the American public to support a more uniform, secure national identity card. As Kevin Johnson, Dean of the University of California-Davis School of Law, describes:

National identification cards previously had been rejected on civil liberties grounds, with the primary

\begin{footnotes}
\textsuperscript{43} Johnson, \textit{supra} note 37, at 221.
\textsuperscript{45} \textit{Id.} § 656 (“The license or document shall contain a social security account number that can be read visually or by electronic means.”).
\textsuperscript{46} Johnson, \textit{supra} note 37, at 227–28.
\textsuperscript{47} \textit{Id.} at 217.
\textsuperscript{48} NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT 390 (2004) (“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 drivers licenses.”).
\textsuperscript{49} See \textit{id.} at 539 n.85.
\textsuperscript{50} Garlick, \textit{supra} note 42, at 197; Johnson, \textit{supra} note 37, at 215–16 (“Opposition to the calls for restoration of driver’s license eligibility intensified with the fears generated by the tragic loss of life on September 11, 2001, which was perpetrated by noncitizens, many of whom had state-issued driver’s licenses.”).
\end{footnotes}
concern being that such identifications would give the government undue power to violate the privacy of individuals. In light of the public’s apparent willingness to trade off civil liberties for heightened security, national identity card proposals enjoyed a revival after September 11. In a new world preoccupied with security, a national identity card once again surfaced as a serious policy option. In this context, U.S. lawmakers began to scrutinize existing state driver’s license laws and propose uniform, national solutions.

B. The Enactment of the Real ID Act

One such solution was the Real ID Act of 2005, which directed the states to make certain changes in their provision of driver’s licenses. The House of Representatives attached the Real ID Act to “must-pass appropriations” for military and tsunami relief, so it was passed without committee hearings or debate about the merits of the reform. The Real ID Act prohibits any federal agency from accepting, for identification purposes, any driver’s license issued by a state that is not in compliance with the Real ID Act as of 2008. To comply with the Real ID Act, states must obtain valid documentation ensuring that each driver’s license applicant has permission to reside in the United States. The Real ID Act’s sponsor, Representative James Sensenbrenner, claimed that the Act would help disrupt terrorist plots and enhance border security. Representative Candice Miller echoed this sentiment, saying, “[N]o longer will we allow terrorists free access to state-issued identity documents as a way to use the tools of our freedom against us.”

C. Resistance to the Real ID Act

Despite the arguments of its supporters, the Real ID Act has been criticized on “privacy, cost-benefit, discrimination, technological, federalism, data security, and data access grounds.”

51. Johnson, supra note 37, at 218 (footnote omitted).
53. LEGOMSKY & RODRÍGUEZ, supra note 42, at 1226.
55. Id.
56. Garlick, supra note 42, at 195.
57. Id. at 197.
58. Backgrounder on Drivers’ Licenses and the Real ID Act, 2008 EMERGING
Privacy advocates in several states raised concerns about the implementation of a massive, costly federal database containing extensive personal information about the nation’s residents.\textsuperscript{59} Due to this kind of resistance, Minnesota became the fifteenth state in the nation to refuse to comply with the Real ID Act.\textsuperscript{60} Minnesota’s effort to resist the Real ID Act was remarkably bipartisan; out of the 201 Minnesotan legislators at the time, 200 voted to prohibit the implementation of the Real ID Act in Minnesota.\textsuperscript{61}

As of 2013, over thirty states have refused to comply with the Real ID Act.\textsuperscript{62} Although the federal government had previously threatened to withhold funding for Social Security and other federal programs if states refused to comply with the Act, the widespread resistance to Real ID has forced the federal government to delay enforcement of the Act.\textsuperscript{63}

Additionally, in response to the Real ID Act, several states have explored the option of two-tiered licensing systems, in which one form of state identification complies with the strictures of the Real ID Act and one form of state identification does not.\textsuperscript{64} Under such a system, residents who are able to provide the necessary documents could use their state-issued driver’s licenses for federal purposes, while those who cannot prove legal immigration status


\textsuperscript{60} \textit{April 22, 2013 Hearing, supra} note 1, at 1:45:40 (statement of Sen. Warren Limmer).

\textsuperscript{61} \textit{Id.} at 1:46:30.

\textsuperscript{62} \textit{Id.} at 1:45:40; \textit{see also} Allen, \textit{supra} note 59, at 240 (“State opposition to the licensing provisions of Real ID has burgeoned since the law passed in May 2005. Some [s]tates have passed legislation rejecting the Act outright and refusing its implementation . . . .”).

\textsuperscript{63} \textit{April 22, 2013 Hearing, supra} note 1 (statement of Sen. Warren Limmer); \textit{see Allen, supra} note 59, at 268–69 (characterizing the present situation concerning the implementation of the Real ID Act as “untenable”).

\textsuperscript{64} \textit{April 22, 2013 Hearing, supra} note 1, at 1:42:55 (statement of Pat McCormack, Director, Minnesota Driver and Vehicle Services).
could have a more limited driving privilege card. According to Pat McCormack, director of Minnesota Driver and Vehicle Services (DVS), as of 2013, seven states were considering such legislation, while six states already had a sort of multitiered driver’s licensing system in place. \footnote{65} If the Real ID Act were to be enforced, it appears that states would still be permitted to operate such a two-tiered system. \footnote{66} Real ID Act sponsor James Sensenbrenner explained that the legislation does not set policy for states regarding who can drive; it only determines what kind of driver’s license can be used for federal identification purposes. \footnote{67}

D. Driver’s Licenses and Immigrant Populations in the Minnesota Context

As of 2012, Minnesota’s foreign-born population was about 7.2% of the total population. \footnote{68} While just under half of foreign-born Minnesotans are U.S. citizens, \footnote{69} the Pew Center estimates that there are approximately 85,000 undocumented immigrants in Minnesota, comprising about 1.6% of the population \footnote{70} and 2.4% of the state’s workforce. \footnote{71}

Minnesota is home to many “mixed status” families, in which some members of the family have legal immigration status and others do not. \footnote{72} Of children with immigrant parents in Minnesota,
more than 85% are U.S. citizens by birth.\textsuperscript{73} Driver’s licensure restrictions pose particular challenges for these “mixed status” families, as parents without the legal ability to drive often have U.S.-citizen children who depend on them for transportation to school, medical, and religious functions.\textsuperscript{74}

Like many other states in the nation, proof of immigration status is a relatively new requirement for driver’s licensure in Minnesota. As recently as 1998, DVS required only an original or certified copy of a birth certificate to prove name and identity.\textsuperscript{75} At that time, DVS also accepted an alien ID card or foreign passport if it met the identification requirements.\textsuperscript{76} In 2000, DVS amended the driver’s license regulations to exclude the I-94\textsuperscript{77} as an identification document.\textsuperscript{78} In September 2003, Governor Tim Pawlenty made an administrative rule change barring the state from issuing a driver’s license to individuals who cannot provide proof of legal immigration status.\textsuperscript{79} Since the administrative rule change, DVS cannot issue a Minnesota driver’s license to an undocumented


\textsuperscript{74} See April 22, 2013 Hearing, supra note 1, at 1:37:07 (statement of Monica Vega) (testifying that her U.S.-citizen children could not participate in afterschool programs when busing services were not provided). See generally McFarland & Spangler, supra note 72, at 258–59.

\textsuperscript{75} March 18, 2013 Hearing, supra note 17, at 1:27:30 (statement of Pat McCormack, Director, Minnesota Driver and Vehicle Services).

\textsuperscript{76} Id. at 1:27:52 (providing historical background about the processes DVS has used to verify the identities of applicants, including immigrant applicants).

\textsuperscript{77} An I-94 is the Department of Homeland Security’s arrival/departure record issued to aliens who are admitted to the United States. Traditionally, a border patrol officer attached a paper I-94 to the visitor’s passport upon U.S. entry. The system has since been automated for greater security and oversight. I-94 Automation Fact Sheet, U.S. CUSTOMS & BORDER PROTECTION (Mar. 2013), http://www.cbp.gov/sites/default/files/documents/i94_factsheet_2.pdf.

\textsuperscript{78} March 18, 2013 Hearing, supra note 17, at 1:28:22 (statement of Pat McCormack, Director, Minnesota Driver and Vehicle Services).

\textsuperscript{79} Sasha Aslanian, House Committee Approves Bill Allowing Driver’s Licenses for Illegal Immigrants, MINN. PUB. RADIO NEWS (Mar. 13, 2013), http://minnesota.publicradio.org/display/web/2013/03/13/politics/bill-drivers-licenses-illegal-immigrants (“An administrative rule change under the Pawlenty administration in 2003 added: ‘The department shall not issue a driver’s license, permit, or identification card if an individual has no lawful admission to the United States.’”).
Individuals with short-term visas have driver’s licenses with a “status check” marker, which limits validity of the license to the length of time the individual has legal permission to remain in the United States.

E. The Current Proposal: Senate File 271

S.F. 271 proposes an alternative model, in which the official documents that DVS uses to verify identity may be issued by a foreign country. The applicant must have a valid, unexpired passport and a birth certificate in order to apply for a driving privilege card. Both the passport and the birth certificate must have “security features that make the document as impervious to alteration as is reasonably practicable . . . using materials that are not readily available to the general public.” In addition, “[a]ny document [that is] not in English must be accompanied by a qualified English translation.” The rest of the licensure process would remain intact; drivers would still have to pass a behind-the-wheel test, pass a written test, have proof of insurance, attest to their residence, have their photograph taken, provide personal information, and pay the necessary fees. In order to verify Minnesota residence, DVS does not issue licenses in person, but rather mails them through the U.S. Postal Service.

80. March 18, 2013 Hearing, supra note 17, at 1:29:04 (statement of Pat McCormack, Director, Minnesota Driver and Vehicle Services); see Minn. R. 7410.0410 subpt. 7 (2012).
81. Minn. R. 7410.0410, subpt. 8 (2012); March 18, 2013 Hearing, supra note 17, at 1:28:40 (statement of Pat McCormack, Director, Minnesota Driver and Vehicle Services) (describing the current “status check” system and noting that if S.F. 271 were to be enacted, the current system of having a “status check” for those with short-term visas would be discontinued).
82. Id. at 1:29:10.
84. Id.
85. Id.
86. March 18, 2013 Hearing, supra note 17, at 1:29:40 (statement of Pat McCormack, Director, Minnesota Driver and Vehicle Services).
87. Id. at 1:45:25.
III. COMPARATIVE ANALYSIS: DRIVER’S LICENSES AND UNDOCUMENTED IMMIGRANTS IN OTHER STATES

As Minnesota grapples with the issue of driver’s licenses for undocumented immigrants, it is instructive to examine the successes and failures of other states’ attempts at reform. This note uses the experiences of several states as illustrative examples—Illinois, New Mexico, Washington, and Utah have all adopted measures to provide driving privileges to undocumented immigrants.\(^{88}\) Thus, Minnesota may learn from the experiences of other states. Furthermore, as commentators have contended, looking at other states’ experiences is a beneficial analytical tool because it “allows an opportunity to determine whether the positive effects claimed by licensing proponents have empirical support.”\(^{89}\)

A. Past Attempts at Driver’s License Reform for Undocumented Individuals

1. New York

Historically, the Department of Motor Vehicles (DMV) in New York accepted foreign passports and birth certificates to verify driver’s license applicants’ identities.\(^{90}\) After the terrorist attacks of September 11, 2001, New York instituted a lawful immigration status requirement.\(^{91}\) In 2005, six John Doe plaintiffs sued the Commissioner of the New York State DMV, seeking relief from these new guidelines.\(^{92}\) The plaintiffs won a preliminary injunction against the DMV, but the appellate division reversed and dismissed.\(^{93}\)

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90. Id. at 436.
91. Id. at 437.
93. Id. at 139 (rejecting plaintiffs’ challenge to the DMV’s requirement that Department of Homeland Security documents be submitted by applicants for driver’s licenses who lack social security numbers).
In September 2007, Governor Eliot Spitzer announced that the state would once again be issuing driver’s licenses to undocumented individuals, effective December 2007. Following a meeting with the Department of Homeland Security (DHS) in October 2007, Spitzer announced that the driver’s licenses for undocumented people would be visibly distinguishable from traditional licenses. The New York Senate voted to block the plan. After this defeat, Spitzer negotiated a new “trifurcated” driver’s license plan, which was then approved by the DHS. Despite the backing of the DHS, Spitzer abandoned the plan, faced with intense political pressure opposing the reform.

2. California

The issue of driver’s licenses for undocumented immigrants has been “especially volatile” in California. A 2003 driver’s license reform bill sought to grant the California DMV the power to issue driver’s licenses to undocumented immigrants. In September of 2003, Governor Gray Davis signed the bill into law. The plan was short lived; less than a month later, Governor Davis was subject to a recall election, and Governor Schwarzenegger helped repeal the bill in December 2003.

94. Odegaard, supra note 89, at 438.
95. Id.
96. Id. at 439 (“The entire Republican bloc, joined by eight Democratic Senators, voted down what some called ‘Spitzer’s single most unpopular decision since he took office.’”).
97. Id. Under the trifurcated plan, three driver’s license options would be available: (1) a Real ID Act–compliant license for citizens, legal permanent residents, and some visa holders; (2) an “enhanced license” for citizens that would allow travel to certain specified countries; or (3) a license that would be stamped “not valid for federal purposes,” and could be issued to aliens who did not meet the Real ID Act requirements. Id.
98. Id. at 439–40.
99. Legomsky & Rodríguez, supra note 42, at 1226.
101. Katharine Q. Seelye, The California Recall: The Governor; For Gray Davis, Great Fall from the Highest Height, N.Y. Times, Oct. 8, 2003, at A5, available at LEXIS (describing how the dot-com collapse, the electricity crisis, budget problems, and a poor economy contributed to Governor Davis’ political unpopularity).
102. Frantz, supra note 100, at 533–34.
The issue of driver’s licenses for undocumented immigrants did not stay off California’s legislative agenda for long. In October 2013, California passed a law allowing undocumented immigrants to receive driver’s licenses no later than January 2015. The cards will have a special marking to show that they are not to be used for federal identification purposes.

3. Tennessee

In 2004, Tennessee became the first state to attempt a multitiered licensing system. In that year, the state changed its law so undocumented individuals could no longer obtain traditional driver’s licenses. However, instead of entirely removing driving privileges for undocumented immigrants, the state “created a middle ground” by issuing “driving certificates.” Similar to S.F. 271’s proposed framework for Minnesota, in order to obtain a “Certificate for Driving” (CFD), the applicant had to present two forms of government identification, such as a translated foreign passport and a birth certificate. The CFDs were marked with “For Driving Purposes Only—Not Valid for Identification.”

The plan received vocal opposition from both sides: by certain immigrants’ rights advocates and by those who opposed licensure for undocumented immigrants. In 2004, the League of United Latin American Citizens (LULAC) filed suit against Tennessee’s governor, alleging that the two-tiered system violated the Equal Protection clause by creating an unconstitutional classification based on alienage or national origin. Plaintiffs in the suits were undocumented immigrants whose driver’s licenses would be invalidated under the law and would thereafter only be eligible for a CFD. The U.S. district court denied the plaintiffs’ request for

105. Garlick, supra note 42, at 205.
106. Id.
107. Odegaard, supra note 89, at 442–43.
108. Id. at 443.
110. Id. at *1.
an injunction, explaining the law drew a distinction not between “citizens” and “aliens,” but rather between those with legal immigration status and those without.\footnote{Id. at *3.} Although the suit was unsuccessful, it helped crystallize opposition among those who believed CFDs unfairly created an “inferior subclass of license holders.”\footnote{Odegaard, supra note 89, at 443.}

On the other side, opponents of the plan gained traction when scandals emerged that out-of-state brokers were helping immigrants from other states receive CFDs in Tennessee.\footnote{Id. at 443–44.} Eventually, the political pressure on both sides became too intense for the plan to survive. The CFD was canceled on October 1, 2007.\footnote{Id. at 444.}

\textbf{B. Current States with Driving Privileges for Undocumented Immigrants}

As of March 2014, eleven states have made or plan to make driver’s licenses or driving privilege cards available to undocumented people. Twelve other states have pending legislation.\footnote{Current & Pending State Laws & Policies on Driver’s Licenses for Immigrants, NAT’L IMMIGR. L. CENTER (Mar. 24, 2014), http://www.nilc.org/driverlicenseemap.html. As of March 2014, eleven states—plus Washington D.C. and Puerto Rico—have enacted legislation to allow undocumented people access to driving privileges. Id. Enactment of Oregon’s bill is on hold pending a referendum. Id.} Of the states with driver’s license privileges, there are a variety of statutory approaches. For example, New Mexico and Washington grant traditional driver’s licenses to undocumented immigrants.\footnote{Botelho, supra note 88.} Utah issues driving privilege cards to undocumented immigrants who live in the state for more than six months.\footnote{Id.} Illinois is a recent addition to driver’s licensure reform. In January 2013, Governor Pat Quinn signed a bill into law that would allow the state’s estimated 250,000 undocumented drivers without a license to obtain one.\footnote{Id.} Thus, if Minnesota passed S.F. 271 into law in 2014, it would join several other states in moving towards more inclusive driver’s licensure laws.
IV. EVALUATING THE POTENTIAL BENEFITS OF SENATE FILE 271

There are four primary benefits cited by proponents of S.F. 271: (1) driver safety, (2) reduction of uninsured motorists, (3) cooperation between immigrant communities and law enforcement, and (4) community integration and promotion of human rights. This section provides support for each of these claims in both the national and Minnesota contexts.

A. Driver Safety

A common justification cited by proponents of S.F. 271 is the bill’s potential for ensuring more qualified drivers, thereby making Minnesota’s roads safer and reducing traffic accidents. In floor debates, the bill’s sponsor, Senator Bobby Champion, repeatedly emphasized that driver’s licensure reform is a public safety issue.119 Krystell Escobar,120 chairperson for the Minnesota Chicano Latino Affairs Council,121 urged the Senate Committee on Transportation and Public Safety to view the bill not as immigration reform, but rather as a way to enhance the safety of all drivers.122 Minneapolis attorney Bruce Nestor emphasized that allowing all qualified drivers to receive licenses would allow DVS to focus on its public safety function.123 Speaking to the House Transportation Policy Committee in support of S.F. 271’s companion bill, he said, “[W]hat we’re really asking for in this bill is that the department of motor vehicles perform its core function: . . . identify people . . .

120. Krystell Escobar also owns a Farmer’s Insurance Agency in the Twin Cities metro area. Her biography is available at Board of Director’s, CHICANO LATINO AFF. COUNCIL, http://www.clac.state.mn.us/index.html#!/board-of-directors/cxz3 (last visited Mar. 20, 2014). For her comments regarding the effect of S.F. 271 on insurance in Minnesota, see infra Part IV.B.
[and] make sure that those people know how to drive . . . , not to try to serve as federal immigration agents.”

According to the American Automobile Association (AAA), unlicensed drivers are more likely than licensed drivers to be involved in fatal traffic accidents. The AAA Foundation for Traffic Safety reports that “[o]ver 8,000 drivers involved in fatal crashes annually—nearly one of every seven drivers involved in fatal crashes—have an invalid license, no license, or unknown license status.” The process of receiving a driver’s license itself helps improve driver safety. The licensure process provides access to driver’s education, which informs the driver about the rules of the road and safe driving practices. In order to receive a driver’s license or driving privilege card, a person must show familiarity with the state’s driving laws. Due in part to this oversight and education, individuals with a license tend to be better drivers than those without.

Driver’s education has particular importance for immigrant communities. As scholarship indicates, “Given the international variance of rules and signs, and the fact that many undocumented aliens may not have driven in their home country, allowing the state DMV to test them seems like a prudent safety measure.” In order to meet employment demands, many immigrants settle in rural and suburban areas where public transit options are essentially nonexistent. Only 4.7% of Americans used public transportation to get to work in 2005. Furthermore, many new immigrants lack the community support structures of long-term residents, so finding private transportation can pose a challenge. Given the lack of alternative transit options, it is safe to assume that many undocumented Minnesotans will continue to drive even if

124. Id. at 57:15.
126. Id.
127. See id.
128. Odegaard, supra note 89, at 446.
129. Garlick, supra note 42, at 200.
130. Odegaard, supra note 89, at 446.
131. See Lopez, supra note 37, at 97.
132. Odegaard, supra note 89, at 448.
133. Id.
they are prohibited from receiving driver’s licenses. Because of this reality, supporters of S.F. 271 frame the bill as a pragmatic measure to increase driver safety among a sizable population who will likely drive anyway.

B. Effect on Insurance Coverage and Premiums

Another major benefit cited by S.F. 271 proponents is a reduction in the number of uninsured motorists and lower insurance premiums for Minnesota drivers in general. Unlicensed drivers generally cannot obtain auto insurance. Like other states in the nation, it is illegal to drive in Minnesota without auto insurance. However, as literature reflects, “When unlicensed drivers cannot obtain insurance . . . many will simply continue to drive.” When uninsured drivers are involved in auto accidents, other drivers must foot the bill by paying for damage and by paying higher insurance premiums. As insurance agency owner and S.F. 271 proponent Krystell Escobar explains, “Insurance for all practical purposes is a tax in the state of Minnesota.” Escobar estimates that there are more than 45,000 drivers on Minnesota roads without insurance. In hearings regarding S.F. 271, she testified that all admitted insurance providers in Minnesota have increased premiums since 2008, in part because so many drivers feel they cannot afford to participate in the insurance system. The inability to obtain auto insurance, combined with the fear of being cited for driving without a license, has led to a high hit-and-run rate among undocumented drivers. This in turn feeds rising insurance rates. Thus, allowing undocumented drivers to obtain a license and have access to auto insurance presents an opportunity to help break the cycle of increasing insurance premiums.

134. See id.
135. See March 18, 2013 Hearing, supra note 17, at 1:50:12 (statement of Krystell Escobar, Chairperson, Minnesota Chicano Latino Affairs Council).
139. Id. at 1:50:15.
140. Id. at 1:49:55.
141. See Odegaard, supra note 89, at 446–47; see also March 18, 2013 Hearing, supra note 17, at 1:49:22 (statement of Krystell Escobar, Chairperson, Minnesota Chicano Latino Affairs Council).
Experiences in other states have demonstrated the positive impact of driver’s license reform on insurance rates. After Utah began offering driver’s licenses to undocumented residents, the number of uninsured drivers decreased from 23% in 1997 to 3% in 2006. In New Mexico, uninsured drivers dropped from 33% in December of 2002 to 17% in 2004. New Mexico also saw auto insurance premiums drop and fewer drivers fleeing after accidents. These notable outcomes in Utah and New Mexico provide strong support for the contention that S.F. 271 would have a positive effect on insurance participation and premiums in Minnesota.

C. Cooperation with Law Enforcement

1. Building Relationships Between the Immigrant Community and Law Enforcement

A third major argument in support of S.F. 271 focuses on the relationship between undocumented immigrants and law enforcement. Effective law enforcement requires cooperation and trust between police and immigrant communities. Currently, an undocumented driver who is unable to obtain a license knows that a simple traffic stop might lead to an arrest and possibly deportation. This fear transforms everyday interactions with police into tense and dangerous situations, where the risk of flight is higher than during a typical traffic stop.

As a policy, many police departments throughout the country prohibit police officers from asking about the immigration status of witnesses, victims, or suspects in order to encourage immigrants to cooperate with law enforcement. When undocumented immigrants are arrested for driving without a license, it fuels immigrants’ perception of local police officers as the enforcers of immigration laws. Proponents of the bill argue that providing undocumented immigrants with driver’s licenses would make

143. Id.
144. Id.
145. See Johnson, supra note 37, at 226.
146. See id. at 244.
147. See Garlick, supra note 42, at 201.
148. See Johnson, supra note 37, at 226.
149. Id.
immigrant communities more comfortable interacting with local law enforcement, leading to better relationships between immigrant populations and police officers, which could in turn lower crime rates.\textsuperscript{150}

Additionally, undocumented immigrants may fear reporting crimes to the police and turning to law enforcement when they are the victims of violence or exploitation. As Professor Maria Pabon Lopez writes, “Currenty the undocumented who report violations of legal norms do so at their own peril, since they are living in this country as a shadow population.”\textsuperscript{151} After studying perceptions of law enforcement in the Latino community specifically, Professor Nik Theodore reports:

Many Latinos feel isolated from the law enforcement officers who are sworn to protect them. More than four in ten say that because police are more involved in enforcing immigration laws they have become less likely to volunteer information about crimes because they fear getting caught in the web of immigration enforcement themselves or bringing unwanted attention to their family or friends.\textsuperscript{152}

Unsurprisingly, surveys have indicated that undocumented immigrants are substantially less likely to contact law enforcement authorities if they are victims of a crime.\textsuperscript{153} Thus, undocumented immigrants’ fear of interactions with the police curtails cooperation between immigrant communities and law enforcement.

Arresting and prosecuting undocumented drivers draws significant resources away from other law enforcement efforts. As Krystell Escobar testified, “This has . . . been a drainer of capacity for a lot of . . . the metro area. . . . This has taken up a lot of time for our law enforcement officers . . . .”\textsuperscript{154} Attorney Bruce Nestor argues that a measure like S.F. 271 would conserve public resources, and notes that jailing individuals for driving without a

\textsuperscript{150.} See March 18, 2013 Hearing, supra note 17, at 38:40 (statement of Minneapolis City Councilmember Robert Lilligren); Garlick, supra note 42, at 201.

\textsuperscript{151.} Lopez, supra note 37, at 127.

\textsuperscript{152.} Nik Theodore, Dep’t of Urban Planning & Policy, Univ. of Ill. at Chi., Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement, at ii (2013), available at http://www.uic.edu/cuppa/gci/documents/1213/Insecure_Communities_Report_FINAL.pdf.

\textsuperscript{153.} Id. at i.

\textsuperscript{154.} March 18, 2013 Hearing, supra note 17, at 1:48:15 (statement of Krystell Escobar, Chairperson, Minnesota Chicano Latino Affairs Council).
license diverts tax dollars away from other programs. Nationwide, various law enforcement officials have expressed support for measures similar to S.F. 271.

Because of these factors, some law enforcement leaders throughout Minnesota have publicly pledged their support for providing driving privilege cards to undocumented immigrants. In a letter to the Senate Committee on Transportation and Public Safety, Minneapolis Chief of Police Janeé Harteau expressed her support of S.F. 271, writing, “This is a public safety issue for our city and state that affects us all.” She concluded her letter by reminding senators that “we all win when local governments collaborate with immigrant communities.” Additionally, the Saint Paul Chief of Police and the Sheriff’s office in Winona, Minnesota have expressed public support for driving privilege cards for undocumented immigrants. Reforms such as those proposed in S.F. 271 would provide support for law enforcement as they work to build relationships with immigrant communities.

2. Providing Identifying Information to Law Enforcement

Furthermore, without driver information in a driver’s license database, if law enforcement officers wish to find an undocumented person, they have no reliable database to utilize. As attorney Margaret Stock, a nationally known expert on immigration and national security law, explains, “The collective DMV databases are the largest law enforcement databases in the country, with records on more individual adults than any other law

155. February 27, 2013 Hearing, supra note 123, at 56:50 (statement of Bruce Nestor).
158. Id. at 40:45.
enforcement databases. The collective DMV databases are the only comprehensive internal security database.\textsuperscript{161} Other databases, such as Social Security records, passport records, and IRS records, are all limited in significant ways.\textsuperscript{162} For example, these sources are infrequently updated and do not contain information about undocumented individuals.\textsuperscript{163} The practices of the DHS demonstrate the importance of driver’s license data: DHS primarily relies upon state driver’s license databases when it attempts to locate a person.\textsuperscript{164} Driver’s license databases provide a wealth of voluntarily given biometric data that can be crucial in police investigations.\textsuperscript{165} As Stock further contends:

Those who are opposed to illegal immigration view the granting of driver licenses to illegal immigrants as a sort of reward and acknowledgement of complicity in their violation of the law. In fact, their opposition to granting licenses (and identification documents) to illegal immigrants is quite puzzling if one views the matter from a law enforcement and security perspective. Refusing to give driver licenses to illegal immigrants means taking 20 million illegal immigrants out of the largest law enforcement database in the country. Thus, denial of licenses is a policy prescription that hampers law enforcement far more than it enhances it.\textsuperscript{166}

In Minnesota, allowing undocumented immigrants to voluntarily offer personal identifying information could assist law enforcement efforts when they need to locate an individual in connection with a criminal investigation.

\textbf{D. Community Participation and Human Rights}

The final major argument in support of S.F. 271 is the most difficult to evaluate with concrete data, but is an important part of the justification for the bill nonetheless. Many proponents of S.F. 271 speak of promoting human rights and bringing undocumented immigrants “out of the shadows.”\textsuperscript{167} Minneapolis
City Councilmember Robert Lilligren described an “underlying sense of fear” in immigrant communities for even the most casual interactions with law enforcement.168 Angel Alejandro Gomez, a young man that grew up in Minnesota with undocumented parents, testified about being “tormented” by the constant fear of having his parents deported and going into the foster care system.169 Dean Kevin Johnson argues that “fear of deportation runs especially deep in immigrants with roots in the United States, such as those with U.S. citizen children; if deported, they may face loss of family, friends, and a job.”170 Because driving is a common avenue for immigrants to come into contact with law enforcement, lack of access to driver’s licenses greatly exacerbates these fears.

Mixed-status families testified in support of S.F. 271 about the need for family stability and for their U.S.-citizen children to receive equal opportunities to participate in U.S. society.171 Senator Patricia Torres Ray argued on the Senate floor that parents and women are uniquely affected by driver’s license restrictions, and that preschool children are paying a high price for not being able to get to school.172 The U.S. Supreme Court has upheld the right of the children of undocumented immigrants to receive an equal public education to the children of citizens.173 Some commentators have framed the ability to receive transportation to school as a potential extension of this right.174 The ability to physically access school is closely tied to a child’s ability to receive the equal education to which he or she is constitutionally entitled.

Furthermore, lack of access to driving privileges contributes to human rights abuses in the immigrant community. As Dean Kevin Johnson describes, “[U]nscrupulous employers who do not comply...
with the law may surmise that an employee without a license is undocumented and subject to exploitation.” 175 He further emphasizes that lack of a driver’s license does not prevent an immigrant from getting a job—it simply “relegates a person to the secondary labor market, with low wages and poor conditions . . . . This underground market flourishes, even though such employment is unlawful.” 176 Undocumented immigrants who cannot drive often find themselves in abusive work environments, and more serious reports of “slave-like” conditions for some undocumented workers are on the rise. 177 Because federal labor law does not fully protect undocumented workers who are fired for organizing for better working conditions, there are few effective legal protections against such exploitation. 178

V. EVALUATING THE POTENTIAL RISKS OF SENATE FILE 271

This section addresses four of the common arguments advanced by opponents of S.F. 271: (1) equal protection concerns, (2) immigration fraud, (3) national security, and (4) federal preemption. 179 This section briefly summarizes each of these arguments, and then advances how S.F. 271 addresses these concerns.

A. Equal Protection Concerns

Some have argued that multi-tiered driver’s license systems, like the one proposed by S.F. 271, violate the Constitution’s Equal Protection Clause by creating a separate class of drivers distinguished by alienage. 180 The U.S. Supreme Court has held generally that classifications based on alienage, 181 like those based

175. Johnson, supra note 37, at 227.
176. Id. at 222.
177. Odegaard, supra note 89, at 449–50.
178. Johnson, supra note 37, at 227.
179. See infra Part V.
181. Chemerinsky, supra note 180, at 917 (“Alienage classifications refer to discrimination against non-citizens. This type of discrimination should be distinguished from national origin classifications that discriminate against individuals because of the country that a person, or his or her ancestors, came from.”).
on nationality or race, are “inherently suspect” and therefore subject to strict judicial scrutiny.\textsuperscript{182} However, the Court has also carved out large exceptions to this general rule.\textsuperscript{183} For example, laws related to the democratic process and federal laws that discriminate against aliens need only meet rational basis review.\textsuperscript{184} Thus, voting regulations and federal laws drawing distinctions based on alienage are upheld provided they serve a legitimate interest of the federal government and are not “wholly irrational.”\textsuperscript{185} In contrast to this deference for federal legislation, strict scrutiny is typically used for alienage classifications imposed by state governments.

Equal protection arguments have previously been litigated in regard to driver’s licenses for undocumented immigrants. In \textit{League of United Latin American Citizens (LULAC) v. Bredesen}, the plaintiffs unsuccessfully argued that by creating a distinct driver’s license status for undocumented immigrants, Tennessee created an alienage classification in violation of the Equal Protection Clause.\textsuperscript{187} The court concluded that the classification did not draw a distinction based on alienage, but rather distinguished between “citizens and lawful permanent resident aliens on the one hand, and illegal aliens and those aliens who are not permanent lawful residents, on the other hand.”\textsuperscript{188} Accordingly, the court concluded that the driver’s license law did not distinguish among people based on any protected classification.\textsuperscript{189}

The driver’s licensing system proposed under S.F. 271 would withstand equal protection scrutiny on the same grounds as Tennessee’s law.\textsuperscript{190} S.F. 271 would essentially draw a distinction

\textsuperscript{182} See Graham v. Richardson, 403 U.S. 365, 372 (1971) (holding that welfare laws conditioning benefits on citizenship and imposing longer durational residency requirements on aliens violated the Equal Protection Clause).
\textsuperscript{183} CHEMERINSKY, \textit{supra} note 180, at 918; Odegaard, \textit{supra} note 89, at 463.
\textsuperscript{184} CHEMERINSKY, \textit{supra} note 180, at 926 (“The Supreme Court has ruled that the federal government’s plenary power to control immigration requires judicial deference and that therefore only rational basis review is used if Congress has created the alienage classification or if it is the result of a presidential order.”).
\textsuperscript{185} Id. at 927.
\textsuperscript{186} Id.
\textsuperscript{188} Id.
\textsuperscript{189} See id.
\textsuperscript{190} See Garlick, \textit{supra} note 42, at 212 (“Under this holding, current and
between those who can prove legal residence in the country and those who cannot. 191 Such a distinction between legal residents and undocumented residents is rational when issuing state identification, considering the many applications of traditional driver’s licenses, such as voting and airline travel. Accordingly, S.F. 271 should meet the rational basis test. Since the court in LULAC held that distinguishing between legal and undocumented individuals does not draw a distinction based on a protected classification, S.F. 271 should withstand an equal protection challenge. 192

B. Immigration Fraud

One of the most commonly cited objections to expanding license eligibility to undocumented immigrants is that such licensure would undermine the immigration control efforts and increase document fraud. 193 Opponents of S.F. 271 have expressed concern that despite the driving privilege cards’ narrow intended use, the cards would be used for travel or for employment in violation of the country’s immigration laws. 194

Some researchers have argued, in response, that driving privilege cards are not likely to significantly affect rates of undocumented immigration or employment of undocumented workers. As Dean Kevin Johnson notes:

[...]

future driver’s license legislation based on the same principles that Tennessee used should be able to overcome Equal Protection challenges.”).

191. S.F. 271, 2013 Leg., 88th Sess., 3d Engrossment § 1 (Minn. 2013) (as amended) (indicating that driving privilege licenses are issued to “a person who is unable to demonstrate legal presence in this country”).


193. See Johnson, supra note 37, at 226–27.

194. See March 18, 2013 Hearing, supra note 17, at 1:30:20 (statement of Sen. David Osmeñ) (expressing concerns about “unintended consequences” such as using driver’s licenses to fill out employment paperwork, vote, or pass through airport security).
the country in violation of the law and employers are prohibited from employing them.\textsuperscript{195}

Dean Johnson’s reasoning reflects a common contention that undocumented residents of the United States will continue to drive out of practical necessity, regardless of whether they have access to driver’s licenses.\textsuperscript{196}

Furthermore, acceptance of reliable foreign documents to verify driver identities may help reduce fraud in immigration and identification documents. When undocumented immigrants cannot obtain identification, the document fraud industry rises up to fill this void.\textsuperscript{197} Unscrupulous notarios (notaries) often exploit undocumented immigrants’ desires to have identification by making false promises and providing fraudulent documents.\textsuperscript{198} The availability of legitimate forms of identification could help limit demand for such fraudulent documents, thereby increasing the integrity of legitimate identification and immigration documents.

C. National Security

Related to concerns about immigration document fraud are concerns about national security. Indeed, many of the current laws requiring proof of residency to obtain a driver’s license were developed in the aftermath of the 9/11 terrorist attacks.\textsuperscript{199} Opponents of bills such as S.F. 271 argue that driver’s licenses make it easier for terrorists to get access to resources and function in American society.\textsuperscript{200} While national security has been repeatedly cited as a reason to restrict driver’s license provision, there is little scholarly treatment of the subject. When examining the connection between terrorism and driver’s licenses, commentators have observed that “[w]hile the issue remains a primary topic for politicians and pundits, this seems to have more to do with its resonance with the public than with any real factual basis.”\textsuperscript{201} Attorney Margaret Stock further contends that the national debate about the connection between driver’s licenses and national

\textsuperscript{195} Johnson, \textit{supra} note 37, at 226.

\textsuperscript{196} See Legomsky & Rodríguez, \textit{supra} note 42, at 1228; Johnson, \textit{supra} note 37, at 224–26.

\textsuperscript{197} Johnson, \textit{supra} note 37, at 230.

\textsuperscript{198} Id.

\textsuperscript{199} See \textit{supra} Part II.B.

\textsuperscript{200} Legomsky & Rodríguez, \textit{supra} note 42, at 1227.

\textsuperscript{201} Odegaard, \textit{supra} note 89, at 455.
security “has been characterized by misinformation, and a lack of appreciation of the role that driver license and state identification play in national security and law enforcement.”

Many pundits have cited the fact that some 9/11 terrorists were able to obtain state driver’s licenses that they used to board planes. However, Margaret Stock argues that it is a myth that driver’s licenses helped these terrorists board planes. She notes that a potential terrorist could board a plane using a wide variety of government-issued identification documents, including a U.S. or foreign passport. Furthermore, she notes that information obtained from driver’s license records of the hijackers was invaluable after 9/11 in tracking where the terrorists had been and locating suspects. Information contained in driver’s license databases was “used to prosecute many individuals who would not have been discovered otherwise.” Thus, denying driving privileges to undocumented immigrants could harm national security interests by “depriving law enforcement officials of critical information on substantial numbers of adults who are physically present in the United States.”

D. Preemption

The preemption doctrine, derived from the Supremacy Clause, holds that any state law that interferes with or is contrary to a federal law must yield to federal authority. There are three primary ways to identify preemption: (1) a federal law expressly preempts a state or local law; (2) federal regulation has wholly

203. LEGOMSKY & RODRÍGUEZ, supra note 42, at 1225.
204. Stock, supra note 160, at 424.
205. Id.; see also LEGOMSKY & RODRÍGUEZ, supra note 42, at 1225 (“Those who offer that observation [that several 9/11 hijackers used state driver’s licenses] do not always candidly acknowledge that, even without drivers’ licenses, the same terrorists could easily have boarded by displaying their passports.”).
207. Id.
208. U.S. CONST. art. VI, cl. 2 (“[The Constitution and federal law] shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).
occupied a field, or (3) the state law conflicts with federal law—either because the state law makes it physically impossible to comply with federal law or the state law frustrates the objectives of the federal scheme. Many opponents of licensing undocumented immigrants argue that issuing such licenses falls into this third category of preemption, as such licensure would frustrate the objectives of federal immigration laws.

While the preemption argument has not received extensive attention in the courts, courts have generally “defer[red] to the authority of state legislatures to pass driver’s license laws as they see fit.” Courts have consistently denied preemption challenges to laws that prevent undocumented immigrants from obtaining driver’s licenses. For instance, in LULAC, the court found “no indication that the federal government intend[ed] to completely occupy the field of driver’s licenses issuance for immigrants,” since administering driver’s license standards has traditionally been left to state governments. Thus, when it comes to laws that restrict driver’s license access for undocumented individuals, courts have generally found that federal immigration laws do not preempt state licensing laws.

Conversely, laws that allow driver’s license access for undocumented residents should not be invalidated due to preemption principles. As the Court explained in De Canas v. Bica, “[S]tanding alone, the fact that aliens are the subject of a state statute does not render it a regulation of immigration, which is essentially a determination of who should or should not be admitted into the country . . . .” While the power to regulate

211. Id. at 2501.
212. Id.
213. See, e.g., Franz, supra note 100, at 539–41 (arguing that the 2003 California driver’s license law was “an unconstitutional attempt to usurp power from the federal government”).
214. Odegard, supra note 89, at 461.
215. Kari E. D’Ottavio, Comment, Deferred Action for Childhood Arrivals: Why Granting Driver’s Licenses to DACA Beneficiaries Makes Constitutional and Political Sense, 72 Md. L. Rev. 931, 948 (2013); see supra Part V.A.
217. D’Ottavio, supra note 215, at 949.
218. De Canas v. Bica, 424 U.S. 351, 355 (1976) (holding that a California code prohibiting an employer from knowingly employing an undocumented alien if such employment would have adverse effect on lawful resident workers was not
immigration is certainly an exclusively federal power, “the Court has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus per se preempted by this constitutional power.” Driver’s license reform, such as that proposed in S.F. 271, does not infringe on the federal government’s control over which individuals are admitted to or allowed to remain the country; the reform merely allows states to determine for themselves which drivers can safely share the road. Because there is no complete federal control of state driver’s license laws, the federal government can defer to the state’s power to regulate the safety of its own roads. Consequently, S.F. 271 should not be invalidated on preemption grounds.

VI. CONCLUSION: A PRAGMATIC PUBLIC SAFETY MEASURE ADDRESSING CONSTITUTIONAL CONCERNS

S.F. 271 represents a compromise between proponents and opponents of expanded driver’s license provisions. Rather than focusing on the “black and white” decision of whether to deny or provide full driver’s licenses to undocumented immigrants, S.F. 271 follows the lead of a select number of states choosing a compromise solution: the driving privilege card. Since its inception, amendments to S.F. 271 have made the bill more moderate. In response to opponents’ concerns that full licenses could be used for improper federal identification purposes, bill authors amended the proposal to allow undocumented immigrants to obtain only a “driving privilege card” with a clear notice about its permissible usage. In response to concerns about undocumented immigrants attempting to use the cards for voting, proponents

unconstitutional as a regulation of immigration or as being preempted under the supremacy clause by the Immigration and Nationality Act).

219. Id. at 354–55.
220. See Garlick, supra note 42, at 206; Odegaard, supra note 89, at 461–62.
221. See Odegaard, supra note 89, at 462.
222. See S.F. 271, 2013 Leg., 88th Sess., 3d Engrossment (Minn. 2013) (as amended); Garlick, supra note 42, at 194.
223. Compare S.F. 271, 2013 Leg., 88th Sess., 1st Engrossment (Minn. 2013), with S.F. 271, 2013 Leg., 88th Sess., 3d Engrossment (Minn. 2013) (as amended) (showing amendments to the bill to provide only a “Driving Privilege Card” rather than a traditional driver’s license, and mandating education for election officials about the new driving privilege cards).
224. See supra Part I.B (noting that driving privilege cards must be clearly marked “FOR DRIVING ONLY”).
amended the bill to provide for additional election judge training. In response to concerns that S.F. 271 would somehow hinder law enforcement efforts, proponents elicited the support of Minnesota’s law enforcement leaders and sought their opinions about how the bill could improve community policing.

The amended version of S.F. 271 represents a compromise in which both proponents and opponents of expanded licensing have ceded ground. Like other states looking to ameliorate the financial and safety problems that come with high rates of unlicensed drivers, Minnesota now has the opportunity to allow greater licensure while still complying with the mandates of federal legislation. Such a compromise reaps the benefits of increased insurance coverage and safer communities, while still being respectful of federal identification laws.

S.F. 271 also represents a pragmatic solution that prioritizes safety over ideology. While concerns that licensing the undocumented condones illegality are valid, the fact remains that large numbers of undocumented immigrants continue to live, work, and drive in Minnesota despite the status of federal immigration law. However valid the concern about condoning illegal presence may be, this concern must be balanced against the argument that “since it may not be feasible to deport all undocumented immigrants, it may make more sense to simply recognize this portion of the population.” S.F. 271 is an attempt to confront this reality while expanding driver’s safety education, decreasing the rates of uninsured drivers, and facilitating cooperation between immigrant communities and police officers.

225. See supra Part I.B (discussing amendments that mandate election judge training to ensure that election officials understand that driving privilege cards cannot be used for voting purposes).
226. See supra Part IV.C (discussing law enforcement leaders’ support for the measure in Minneapolis, St. Paul, and Winona).
227. See supra Part III (discussing other states’ efforts at reform to allow undocumented drivers to receive driving privileges).
228. Garlick, supra note 42, at 194 (arguing that driving privilege cards allow states to grant driving privileges to undocumented immigrants while still complying with the mandates of federal legislation).
229. See supra Part IV.A–B.
230. See supra Part II.B.
231. See supra Part IV.D.
233. See supra Part IV.
Furthermore, S.F. 271 is a pragmatic solution because it reduces the need for local police officers and driver’s bureau agents to act as immigration experts in an increasingly complex system. As Minneapolis immigration attorney Susan de Leon noted, immigration laws are tremendously complex and change daily. As Minneapolis immigration attorney Susan de Leon noted, “Immigration laws are tremendously complex and change daily. Her clients—who include those applying for immigration relief as child arrivals, victims of violence, or political asylees—can be undocumented one day and documented the next.” As Attorney Margaret Stock notes, “It is not possible today for a state or local law enforcement official to pick up the telephone and find out immediately if a given person is ‘legal’; it can take hours or even days to figure this out, and often the immediate information provided by DHS about a person’s status can be wrong.” Because it is exceedingly difficult for law enforcement and driver’s bureau officials to make accurate determinations about an individual’s immigration status, it makes practical sense to limit their concerns to identifying the individual and ensuring they can safely drive. By allowing driver’s bureau officials and police officers to focus on their respective core functions rather than the nuances of immigration law, they can more effectively perform their duties for the public. Thus, S.F. 271 is a pragmatic solution because it removes the need for local officials to make determinations about complex national immigration laws.

S.F. 271 also successfully addresses constitutional concerns about equal protection and preemption. Because the proposed licensing laws under S.F. 271 do not draw a distinction based on alienage, no equal protection concerns are implicated. S.F. 271 also helps avoid future equal protection claims by ensuring that the children of undocumented parents have equal access to public


235. *Id.* at 52:30; *see also* Stock, *supra* note 160, at 424 (“Immigration law is extremely complicated, and immigration status is a moving target. A person can be legal one day and illegal the next; illegal one day and legal the next.”).


237. *See id.* at 424 (“DHS often tries to deport US citizens under the mistaken belief that these US citizens are illegal immigrants. If DHS can’t figure out whether someone is a citizen or an alien . . . how is a state DMV employee going to do so?”).

238. *See supra* Parts V.A, D.

239. *See supra* Part V.A.
educational opportunities that require private transportation. Additionally, by limiting the purposes of the card to driving privileges and prohibiting federal use, S.F. 271 avoids preempting federal control of immigration. Thus, considering both equal protection and preemption concerns, S.F. 271 is a constitutionally sound measure.

Regardless of the fate of S.F. 271 in the 2014 legislative session, the question of driving privileges for undocumented Minnesotans will remain both contentious and relevant. If Minnesota is to maintain its reputation for welcoming immigrants and protecting human rights, it should embrace measures that allow immigrants—both documented and undocumented—to safely drive, to contribute to the insurance system, and to interact cooperatively with law enforcement.

240. See supra Part V.A.
241. See supra Part V.D.
242. See Herrera, supra note 29.