

# The Burden of *Plyler v. Doe*

By EDWIN S. RUBENSTEIN

While town hall activists shout down proposals to provide health care to illegal aliens, they are mute on an even costlier entitlement: public education. Because illegal immigrants are relatively young and healthy, they generally don't need as much medical treatment as U.S. citizens. (They account for less than 2 percent of national medical spending.) But their youth, along with above-average fertility rates, means that illegals account for a disproportionately large share of public education costs.

Public education is by far the largest expense state and local governments incur on behalf of illegal aliens. The average low-income immigrant household receives an estimated \$7,737 in kindergarten through grade 12 education services. That's more than twice the combined cost of Medicaid, welfare, and other means-tested benefits for such households (\$2,957.) It also dwarfs the expense of providing them with police and fire protection (\$2,198), transportation (\$572), unemployment insurance (\$488), and sewer and utilities (\$411). [Robert Rector, "The Fiscal Cost of Low-Skill Immigrants to State and Local Taxpayers," Congressional Testimony, May 17, 2007. <http://judiciary.house.gov/hearings/printers/110th/35452.PDF>]

The cost of educating illegal aliens and their native-born children is expected to grow dramatically. A Federation for American Immigration Reform (FAIR) report, "No Room to Learn: Immigration and School Overcrowding," estimates that immigration will account for 96 percent of the increase in the school-age population in the United States over the next 50 years. Illegal aliens will account for as much as half of the increase.

How did it come to this?

Blame it on the Supremes.

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In *Plyler v. Doe* (1982), the Supreme Court of the United States struck down a Texas statute denying funding for education to children who were illegal immigrants. By a 5-to-4 majority the Court ruled that the law violated the Equal Protection Clause of the 14th Amendment, which reads: "No State shall...deny to any person within its jurisdiction the equal protection of the laws."

Texas officials had argued that illegal immigrants were not "within the jurisdiction" of the state and could thus not claim protections under the Fourteenth Amendment.

Chief Justice Warren Burger supported the state's position in his dissenting opinion:

The Equal Protection Clause does not mandate identical treatment of different categories of persons. ....Without laboring what will seem obvious to many, it simply is not 'irrational' for a state to conclude that it does not have the same responsibility to provide benefits to persons whose very presence in the state and this country is illegal as it does to provide for persons lawfully present. By definition, illegal aliens have no right whatever to be here, and the state may reasonably, and constitutionally, elect not to provide them with governmental services at the expense of those who are lawfully in the state...

[http://www.vdare.com/asp/printPage.asp?url=http://www.vdare.com/sutherland/the\\_solution.htm#\\_edn11](http://www.vdare.com/asp/printPage.asp?url=http://www.vdare.com/sutherland/the_solution.htm#_edn11)

Further undercutting *Plyler* is the widely accepted notion that the Equal Protection Clause pertains only to the rights and privileges guaranteed by the Constitution. Those fundamental rights include life, liberty, property, and due process—but not discretionary benefits offered by a state such as 12 years of very expensive schooling, provided free.

Even Justice Brennan, in his majority opinion, admitted that "public education is not a 'right' granted to individuals by the Constitution." [http://www.vdare.com/asp/printPage.asp?url=http://www.vdare.com/sutherland/the\\_solution.htm#\\_edn7](http://www.vdare.com/asp/printPage.asp?url=http://www.vdare.com/sutherland/the_solution.htm#_edn7)

Most legal scholars see *Plyler v. Doe* as a naked

usurpation of congressional powers, an attempt to make up for the legislative branch's inability or unwillingness to deal with the illegal alien problem. Yet it stands as a monument to judicial activism.

## The Fiscal Burden

While the constitutionality of *Plyler v. Doe* is questionable, its fiscal impact is not. For decades illegal aliens have been the key driver of public school enrollment and costs in the United States. A recent study by the Pew Hispanic Center estimates that children of illegal aliens represented 6.8 percent of total K-12 enrollment in 2008. That is up from a 5.4 percent share in 2003. <http://pewhispanic.org/files/reports/107.pdf>



Nearly two-thirds of the children of illegal aliens enrolled in U.S. schools were born in the United States.<sup>1</sup>

Illegal alien enrollment varies greatly among the states. California is widely acknowledged to have the heaviest concentration, with children of illegal aliens comprising more than 15 percent of public school enrollments. In five other states—Arizona, Colorado, Illinois, Nevada, and Texas—at least one in ten students have parents who are illegal aliens. More than 5 percent of students are children of illegals in Florida, Georgia, Kansas, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Utah, and Washington. <http://www.fairus.org/site/DocServer/piggybank05.pdf?docID=2301>

By contrast, in more than a dozen states, less than one in fifty students (less than 2 percent) live with parents who are unauthorized immigrants. <http://pewhispanic.org/files/reports/107.pdf>

The simplest way to estimate the cost of educating

illegal aliens and their U.S.-born children is to multiply the estimated number of such students by average per pupil expenditure. Here are the links in this chain:

Total K-12 enrollment: 49.2 million<sup>2</sup>

Illegal alien enrollment: 3.3 million (6.8 percent of total)

U.S. average per pupil expenditure: \$9,683<sup>3</sup>

Cost of educating children of illegal aliens: \$32.0 billion (3.3 million × \$9,683)

Bottom line: At least \$32 billion is spent educating illegal aliens and their U.S.-born children annually.

In fact, this is undoubtedly too low. It ignores the fact that illegal aliens are more likely than other students to live in urban areas where per student expenses are relatively high. Even in inner city schools, illegal alien students are poorer, are less likely to speak English well, and require more in-school services than their classmates who are children of U.S. natives.

The disproportionate expense imposed by illegal alien students—and the resulting drain on other parts of state education budgets—is highlighted in several studies.<sup>4</sup> We summarize the findings, adjusting dollar amounts for inflation to 2007:

• **California** spent \$8.5 billion educating the children of illegal immigrants in fiscal year (FY) 2007—or nearly 15 percent of that year's total K-12 education expenditures. This amount could pay the salaries of 31,000 teachers for three years and finance the purchase of 2.8 million computers—enough for about half the state's students.

• **Texas** spends about \$4.3 billion educating children of illegal aliens, or about 12 percent of FY2007 education spending. This would more than cover the \$2.5 billion shortfall identified by the Texas Federation for Teachers for textbooks and teachers' pensions.

• **Pennsylvania** spent an estimated \$661 million educating children of illegal aliens in FY2008—about 3.0 percent of all public school spending. By contrast, the 48,500 children of illegal aliens enrolled in Pennsylvania public schools represent about 2.7 percent of total public school enrollment.

• In **New York**, the \$3.4 billion spent educating illegal aliens and their U.S.-born children (8 percent of total K-12 spending) could reduce the city's current fiscal deficit by more than half. Alternatively, it could forestall most of the proposed state budget cuts for hospitals and nursing homes.

- **Illinois** spends \$2.2 billion educating the children of illegal aliens—nearly 11 percent of total K-12 expenditures. This amount would cover nearly one-fifth of the state budget deficit projected for FY2010.

- **Florida** spends \$1.3 billion educating children of illegal aliens—or roughly 5.7 percent of total K-12 expenditures. This amount could fund the public school services eliminated as a result of recent federal budget cuts (estimated by the Center on Budget and Policy Priorities at \$621 million over five years), as well as the \$353 million lost to the state for adult and vocational education.

- In **Arizona**, the \$822 million spent educating illegal aliens and their U.S.-born children is equivalent to 10.5 percent of total statewide K-12 spending. The state, which recently ranked dead last in per pupil spending, could close half the gap with the national average if relieved of this burden.

- **Colorado** spent \$620 million educating children of illegal aliens in FY2007, equal to 9.4 percent of statewide K-12 expenditures. This amount would have replaced all the education funds Colorado lost due to federal budget cuts in FY2006 and FY2007.

## English Language Instruction

As large as they are, these state figures do not reflect the full cost of educating illegals. They ignore the extraordinary costs associated with English language instruction. The federal government requires school districts to place immigrant students with limited language skills (English language learners, or ELL) into English as a second language (ESL) programs.

A 2004 report by the GAO found that the costs associated with ESL can more than double normal instructional costs. The GAO noted:

Bringing ELL-enrolled children up to the grade level of same age non-ELL-enrolled children has been estimated to potentially increase costs by an additional 10 to 100 percent over usual per pupil costs; for students living in poverty (independent of ELL programs), the corresponding range of estimates is 20 to 100 percent. Bringing students characterized by both poverty and limited English proficiency up to average levels of achievement could potentially increase average costs by a larger amount—perhaps 30 to 200 percent over average per pupil costs.<sup>5</sup>

That implies a very broad range. In the case of the

U.S. average (\$9,683 per student in K-12) it implies added costs of between \$2,905 and \$19,366 per pupil.

If all children of illegal immigrants in U.S. public schools were enrolled in ESL programs, this implies an added cost of between \$9.6 and \$63.9 billion annually. If three-quarters were enrolled, the added costs would range from \$7.2 billion to \$47.9 billion.

The worst case scenario—100 percent enrollment in gold-plated ESL programs—implies that a whopping \$64 billion is spent annually teaching children of illegal aliens to speak proper English.

Absent *Plyler v. Doe* those resources would be available for the children of U.S. natives as well as children of legal immigrants.

These enormous expenditures might be tolerable if ESL programs worked—but they don't. The accumulated research of the past forty years reveals almost no justification for teaching children in their native languages to help them learn English or other subjects. California's experience is typical: in 1997 only 6.7 percent of the state's 1.4 million bilingual education students were classified as English proficient when they completed the ESL program. The overwhelming failure prompted passage of Proposition 227, requiring students with limited English skills to be mainstreamed into English immersion classes. Follow-up surveys revealed significant improvement in English and math scores for immigrant students enrolled in Prop. 227-compliant classes.

Even the liberal Brookings Institution has thrown in the ESL towel:

Since the 1960's, the U.S. Department of Education has enthusiastically embraced bilingual education. At the time this love affair began, no research evidence supported bilingual education as the best means for limited-English proficient (LEP) children to learn English and other subjects that a child will be tested on in English. Nor did any agreement exist on the definition of the target population or even on what bilingual education is. Some thirty years later, there still is no consistent evidence available to support bilingual education as the best means for LEP children to learn English and other subjects that they will be tested on in English, nor any agreement on the definition of the target population or bilingual education. Yet, the federal government's enthusiasm for bilingual education seems undiminished.



Christine H. Rossell, "The Federal Bilingual Education Program," *Brookings Papers on Education Policy*, 2000. [http://muse.jhu.edu/journals/brookings\\_papers\\_on\\_education\\_policy/v2000/2000.1rossell.pdf](http://muse.jhu.edu/journals/brookings_papers_on_education_policy/v2000/2000.1rossell.pdf)

## School Construction Costs

More than 50 million elementary and secondary school students are educated in approximately 97,000 public schools in the United States. Neither the quantity nor quality of school building facilities has kept pace with enrollment. About 14 percent of schools exceed their capacity by 6 to 25 percent, and 8 percent are more than 25 percent above capacity. To alleviate overcrowding, more than one-third of schools use portable classrooms and one-fifth hold classes in non-classroom settings such as cafeterias and gyms. U.S. Department of Education, "Condition of American Public School Facilities: 1999," National Center for Education Statistics, 2000. <http://nces.ed.gov/pubs2000/2000032.pdf>

Spending to acquire or construct new public school facilities increased from \$19.5 billion in 1990 to \$43.0 billion in 2002, a 121 percent increase in inflation-adjusted dollars.

Public school capital outlays in the 2005–06 school year are reported at \$57.4 billion. That is equivalent to \$1,168 per pupil. National Center for Education Statistics, "Digest of Education Statistics: 2008," table 32. [http://nces.ed.gov/programs/digest/d08/tables/dt08\\_032.asp?referrer=list](http://nces.ed.gov/programs/digest/d08/tables/dt08_032.asp?referrer=list)

The ultimate driver for new school construction is rising enrollment—and the ultimate driver for enrollment is immigration. In fact, without immigration school enrollment would have declined in recent years:

Enrollment of native-born children of native-born parents fell by 1.4 million, or 3.3 percent, from 1999 to 2007. Over the same period foreign-born enrollment rose by 5.6 percent and enrollment of children of foreign-born parents rose an astounding 18 percent.

The Census Bureau sheds no light on the illegal alien presence in U.S. schools. Data on legal status are not collected by most school systems, making a precise tally impossible. The Pew Hispanic Center estimate—3.3 million children of illegal aliens (6.8 percent of K-12 enrollment) is the best we have.

Multiplying Pew's enrollment figure (3.3 million children of illegal aliens) by average per pupil school construction expenditures (\$1,168), we estimate that \$3.9 billion is spent building schools for the children of illegal aliens. This calculation assumes that school construction costs are allocated in proportion to enrollment.

Alternatively, if we were to allocate such costs in proportion to the *increase* in enrollment, the entire \$57.3 billion school capital expenditure would be attributable to immigrants and their U.S.-born children. Children of illegal aliens account for at least half of the enrollment surge.

Implication: *Plyler v. Doe* is driving school construction budgets through the roof. ■

## Endnotes

1. National Center for Education Statistics (NCES), *Revenues and Expenditures for Public Elementary and Secondary Education: School Year 2006-07*, February 2009, table 6. Fall 2006 student enrollment. <http://nces.ed.gov/pubs2009/2009337.pdf>

2. Ibid, table 6. Current expenditures per pupil, fiscal year 2007.

3. Jack Martin, "Breaking the Piggy Bank: How Illegal Immigration Is Sending Schools Into the Red," FAIR, June 2005. <http://www.fairus.org/site/DocServer/piggybank05.pdf?docID=2301>

Jack Martin, "The Costs of Illegal Immigration to Pennsylvanians," FAIR, July 2009. [http://www.fairus.org/site/DocServer/pa\\_costs.pdf?docID=3041](http://www.fairus.org/site/DocServer/pa_costs.pdf?docID=3041)

4. General Accounting Office, "Illegal Alien Schoolchildren: Issues in Estimating State-by-State Costs," GAO-04-733, June 2004. <http://www.gao.gov/new.items/d04733.pdf>

## K-12 School Enrollment by Nativity (numbers in thousands)

	1999	2007	Increase/(decrease)	
			Number	Percent
Foreign-born	2,697	2,849	152	5.6
Children of foreign-born	11,480	13,547	2,067	18.0
Native-born children of native-born parents	43,015	41,615	-1,400	-3.3
Total enrollment	57,192	58,011	819	1.4

Note: Includes private school and nursery school enrollments.

Data source: Census Bureau, "School Enrollment In the United States," various years. <http://www.census.gov/population/www/socdemo/school.html>