

# Ep 202

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## SPEAKERS

Victor Manjarrez Jr., Nicole Cox, Zac Ziegler, Michael Dauphinais, Lynn Marcus, Steve Jess, Analise Ortiz, Dave Wells, John Kavanaugh, Rafael Carranza

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Michael Dauphinais 00:00

The following is an azpm original production.



Steve Jess 00:10

Welcome to the Fact Check Arizona podcast from AZPM. In each episode this series, we'll look at a particular claim about elections in Arizona. We'll set the record straight and also give a sense of the context surrounding it. I'm Steve Jess. This week, we dive into a debate that azpm aired last week on our TV station PBS six, which features two speakers making the case for and against Proposition 314 also known as the Secure the Border Act. Briefly. This proposition makes it a state crime to enter Arizona from Mexico without documents, empowers state and local police to arrest migrants, empowers state judges to deport them, makes people go through the E verify system in order to qualify for state aid, makes it a state felony to lie about your citizenship on an application for a job or assistance, and makes it a state felony to sell fentanyl that leads to a fatal overdose. And that, believe it or not, is the brief description. The debate featured Republican state senator John Kavanaugh and Democratic state representative Analise Ortiz and joining us to go through some of their claims is our show's producer. Zac Ziegler, hello, Zac.



Zac Ziegler 01:27

Hello Steve.



Steve Jess 01:28

Zac, this debate was a heated one with plenty of accusations thrown around on each side. You pick out some of the arguments that both sides went to multiple times. Let's start with this one that Representative Ortiz made in her opening remarks.

**A** Analise Ortiz 01:42

What this is asking is for local police to do something that is entirely outside of their constitutional authority and enforce federal immigration law.

**S** Steve Jess 01:51

That argument in Arizona goes back to 2010 when a bill known as SB 1070 made its way to the US Supreme Court. The argument's also been pressed again, more recently, with a Texas law similar to SB 1070

**Z** Zac Ziegler 02:06

Yeah, exactly. And AZPM's show The Buzz didn't episode on what states can do at the border back in March during that debate over the Texas bill. This is an excerpt from that show with Lynn Marcus, an immigration law professor at the University of Arizona, College of Law.

**L** Lynn Marcus 02:24

Article One of the Constitution grants to Congress the power to establish, quote, a uniform rule of naturalization. And that's presumably because it would be chaos if individual states could set their own rules as to who's eligible for US citizenship. But since the late 1800s the courts have also found that the federal government has to be able to set and enforced immigration laws and policies generally, because that's inherent in national sovereignty. National sovereignty means not only having control over the territory, but also being able to conduct foreign relations and immigration impacts all aspect of foreign relations, trade, investment, tourism, diplomatic relations. You know how US citizens are treated abroad, and so when you have a patchwork of policies on how immigration is regulated, that creates problems with foreign relations.

**Z** Zac Ziegler 03:18

So that doesn't necessarily mean that all powers are separated between state and federal levels of government, as we heard in that same episode from Victor Manjarrez Jr, a former Border Patrol sector chief who now directs the Center for Law and human behavior at the University of Texas El Paso. There are also some instances where federal law enforcement can arrest people who are committing state felonies if the border patrol officer happens to witness it.

**V** Victor Manjarrez Jr. 03:47

You know, great example. Let's say they're at the 7-11 getting a cup of coffee, and there's guy, there's an armed guy that comes in robbing the place, and he's watching it go down, he would

technically have the arrest authority to arrest him for a felony. Now, of course, the rest would come up, and the local law enforcement would be called, and they would hand that person over.

**Z** Zac Ziegler 04:10

So the federal agent can enforce State law. But the opposite isn't necessarily true. The Supreme Court has ruled that state officials can't intrude into immigration, which is the responsibility of the federal government.

**S** Steve Jess 04:23

Another area of concern that was regularly mentioned in this debate was the cost of this bill. In this clip, we'll hear from debate co moderator Rafael Carranza, first, then we'll hear from Senator Kavanaugh. Then we'll also get a quick rebuttal,

**R** Rafael Carranza 04:39

an analysis by the nonpartisan Grand Canyon Institute estimates that the cost of implementing some of the immigration provisions from Proposition 314 at at least 325 million per year. Where will the money to cover many of these projected spends to enforce proposition 314 come from?

**J** John Kavanaugh 04:55

That is a bogus, absurd analysis by the Grand Canyon institute. It. It is based on the assumption that every time a police officer apprehends one of these people entering illegally, rather than take the option, if they don't have warrants and they weren't previously apprehended, they will take the option. They will not take the option of going back across the border, but instead, will say, No, I want to go to an Arizona prison. This law says that when they're apprehended that they don't have warrants, that they didn't do it before they have the option of being escorted out of the country. If they don't and they're found guilty, then they go to prison.

**D** Dave Wells 05:33

So in the context of Kavanaugh comment, we actually didn't estimate the cost of incarcerating anybody who was caught crossing the border, we estimated the cost of enforcement and the cost of the E verify provision in the ballot on the bill

**S** Steve Jess 05:49

so Zach, who did that last voice belong to?

**Z** Zac Ziegler 05:50

Zac Ziegler 05:52

That was Dave Wells, research director at the Grand Canyon Institute, and the author of that paper, who I called up a few days after the debate. His estimate broke down the parts of what is in Prop 314 the first one making it a state crime to be in the state without federal authorization, which he referenced, would cost an estimated \$185 million a year. He said that number is based on Texas's allocation of about \$825 million for two years, then comparing the percentage of illegal border crossing encounters that happen in each state. It's of note that the number does not include cost for people who opt for jail over returning to their home country. Now, another part of it, the second the cost of stiffening penalties for the possession and sale of fentanyl. The Grand Canyon Institute said that was determined to be unknown. Now the last part, which requires applicants for state assistance get checked in the E verify system before receiving help, and it also makes it a crime to apply for state assistance when you are here illegally, had a price tag of \$140 million the last part of that provision is the most expensive. Initially, when this was written, it was a low level felony. It was downgraded to a high level misdemeanor. The Grand Canyon Institute estimates there would be about 9000 cases per year.

Dave Wells 07:23

Because in Arizona, if you're not here on a documented basis, you're required to serve half of your term, and then you're sent back to Mexico. For a class six felony, that's a minimum of one year for a class one misdemeanor in six months. But we estimated what six months would cost. That's where \$140 million came out,

Zac Ziegler 07:44

and that's part of the increased cost, along with the cost of having county staffers run people through the E verify system.

Steve Jess 07:52

Senator Kavanaugh seems to be delivering a kind of a red herring fallacy by calling the study bogus on terms that it didn't actually address and a bit of moving the goalposts there too. Let's move on to an argument by Representative Ortiz about those same prison costs. Here's the audio.

Analise Ortiz 08:11

The director of our Department of Corrections himself has said that this will cost the Department of Corrections \$250 million each year on top of their billion dollar budget currently.

Steve Jess 08:23

If her claim is true, that would be a lot of money. But it turns out the claim is not true.

Z Zac Ziegler 08:27

Correct? That estimate actually \$25 2 million was for costs over five years. So maybe a misspeak, maybe not. We can't fact check someone's intent. But the statement, as said, is false. The costs are itemized annually with increases for operations, food, health care and recruitment and retention efforts for staff. And corrections would be forced to incur that cost. Some of the language from this proposition says, quote, if a county or local law enforcement agency does not have the capacity to hold a person who is arrested or convicted of an offense included in this article, the director of the State Department of Corrections shall accept arrested or convicted persons, unquote. So the director that's mentioned there that would be Ryan thornell, who issued this estimate. He is a Hobbs appointee.

S Steve Jess 09:24

And it's important to think critically when talking about political appointees,

Z Zac Ziegler 09:29

Yes and again, it is hard to fact check intent, but this much can be said about thornell. He got unanimous approval from a Republican controlled confirmation committee that held up many other Hobbs appointees, and according to the Arizona Republic, various members of that committee thanked him for his candor in that hearing.

S Steve Jess 09:50

Costs are obviously a concern with this, or for that matter, any other government bill. The lack of funding for Proposition 314 has divided law enforcement and county attorneys.

J John Kavanaugh 10:03

Nothing in this bill requires any law enforcement agency to do anything we rely on their basic commitment to enforcing the law.

Z Zac Ziegler 10:14

So it is true that there are no statements that law enforcement shall or must enforce these laws in this bill, so it does have room for discretion, like is often the case,

S Steve Jess 10:25

like much of the legal system.

Z

Zac Ziegler 10:26

Exactly this idea reminds me of something else that Victor manhares Jr said in his interview about what having the mechanism for enforcement did as a chilling effect for cross border crime.

V

Victor Manjarrez Jr. 10:39

You know, there was a time in the 2000s that the district attorney of the state of Arizona would not prosecute a marijuana case if it was under 500 pounds. So if you have 499 pounds, they wouldn't prosecute at the federal level. And so what we ended up doing was going to the state and county's level, and it was great, because they never said, No. The problem, though, is we taxed our resources. You know, the states would come up and said, man, could you beef up some of your prosecution units? Could you beef up those type of things, or even temporarily? Can you bring them from other counties that maybe are at a slower pace, because you'd have enough of a consequence to actually start to turn off that flow that's coming across right now.

S

Steve Jess 11:23

So according to Manjarrez, yes, local law enforcement contributed when it could. Yes, it helped and yes, it overtaxed local capabilities. Let's go to another statement from Representative Ortiz about who would be imprisoned if local law enforcement began arresting people for crossing the border without authorization.

A

Analise Ortiz 11:43

I was just down on the Arizona border touring with Representative Sandoval, and saw women and children detained by Border Patrol, and they were in facilities with the blankets and trying to keep themselves cool and trying to keep themselves entertained, because there are still small babies, toddlers that are crossing the border, and under this law, they would be directed to an Arizona state prison.

S

Steve Jess 12:09

We know women and children routinely end up in Border Patrol custody, and although conditions vary, what Representative Ortiz described is not outside of evidence we've seen. But the question is, would children end up in prisons?

Z

Zac Ziegler 12:23

So there is no mention of how children should be treated in this bill. So I sought to learn more about how such matters are handled for any arrest in the state. I reached out first to the Department of Public Safety to ask what happens when anyone is arrested with a child in their custody. A spokesperson told me that such decisions are made at the county level. So I reached out to the Pima County Attorney's Office and spoke with one of their investigators. He

confirmed that there is no law on the books in Arizona to make this uniform, but standard practice is to find someone like another parent, a family member or a guardian to take the child. If none is available, then the Department of Child Protective Services is contacted. Now we contacted DCPS with questions about how they handle this, but they did not get back to us in time.

**S** Steve Jess 13:18

So let's get back to a statement that is at the crux of this debate over proposition 314 why pass a law that many say is doomed to be ruled unconstitutional? Are we just setting ourselves up to hand money to the attorneys who will build a case with no change? Here's how Senator Kavanaugh responded to that.

**J** John Kavanaugh 13:38

The law clearly says that it's only effective if this law, the law in Texas or a similar law, is ruled constitutional and is enacted.

**S** Steve Jess 13:48

So Zac, what exactly does proposition 314 say about this?

**Z** Zac Ziegler 13:53

Well, to give it to you in some of its legalese here, Steve, I'll paraphrase a little quote. This article may not be enforced in any matter until any part of a big section that basically says the law that we talked about earlier in Texas, or one that's similar, has been in effect for a period of 60 consecutive days at any time on or after the effective date of this article. So that law is one that we've been talking about Texas SB 4, it was referenced by our archived audio from The Buzz and Dave Wells at the Grand Canyon Institute. Now this proposal says that if that law isn't in effect, it does lessen the chance for legal challenges because there are no harmed individuals.

**S** Steve Jess 14:41

So Proposition 314 sets up something that is I've never heard of, at least before, which is a state law in Arizona that depends on a law in another state to go into effect, which is kind of an unusual situation, maybe not unprecedented though. In any case, that's our look at proposition 314 on fact check Arizona. If you have any comments about this or any other of our podcasts, do get in touch with us. Our website, of course, is [news.azpm.org](http://news.azpm.org). My co host and producer for this podcast is Zac Ziegler. Say goodbye to the folks at home. Zach

**Z** Zac Ziegler 15:24

Bye folks.

S

**Steve Jess 15:25**

And join us again for our next fact check. Arizona. Don't forget to subscribe wherever you get your podcasts. And look over the entire list of AZPM podcasts, because some of them are pretty good. I'm not going to tell you which ones. We'll talk to you again next time.

N

**Nicole Cox 15:49**

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