

# NATIONAL REVIEW

## The Perils of Immigration Federalism

**Giving states more control over immigration policy carries some huge risks.**

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Last week, Senator Ron Johnson (R., Wisc.) and Representative Ken Buck (R., Colo.) went to the libertarian Cato Institute to promote a proposal that would, in the name of federalism, give states thousands of new guest-worker visas to distribute as they see fit. Guest workers admitted under this proposal would only be allowed to work in the state that admitted them, so, for instance, a guest worker admitted by Wisconsin would only be able to work in the Badger State. Some on the more libertarian right, such as Ilya Somin, have cheered this measure, but state-based guest-worker programs could pose considerable problems both to creating an opportunity-driven immigration system and to renewing America's civic compact.

Senator Johnson's proposal would allow each state to grant up to 5,000 guest-worker visas to foreign nationals who wished to work within its borders, with an additional 245,000 such visas distributed among the states. The magnitude of this program is considerable. It could allow as many as 500,000 guest workers to enter the country on renewable three-year visas each year, with that number potentially rising over time. These guest workers would be able to bring their spouses and children – who would not count toward the guest-worker cap — along with them. Thus, well over a million people could enter the country each year just under the auspices of Senator Johnson's proposal.

From a civic and conservative perspective, using the states to expand guest-worker programs has many drawbacks. On a basic philosophical level, guest-worker programs drastically undercut civic belonging. It is probably not healthy for a republic to have a large class of residents who are viewed purely as economic resources with no stake in American society. In fact, conservatives interested in modernizing the GOP to face the challenges of the 21st century would in many ways be better off trying to *reduce* guest-worker programs.

As Nicholas Eberstadt noted in a recent cover story for *Commentary* — a piece that Senator Johnson himself referenced in his remarks at Cato — the United States has experienced a growing crisis of work over the past 15 years. Wages in many sectors have stagnated, workforce participation is down, and young people face ever-larger obstacles in trying to make it on their own. Reforming government programs so that they do not disincentivize employment could be part of addressing that problem, but so could tightening the labor market. Guest-worker programs weaken the viability of the average worker, and in so doing they damage the culture of work.

Transferring such programs to the states only compounds the problems they pose at the federal level. The modern administrative welfare state means that, when a state chooses to admit more

residents, its decisions have implications far beyond its borders. Minor children are allowed to go with guest workers, and those children will be able to go to public schools, which in part are financed by federal tax dollars. So, when a state chooses to admit guest workers, it is making decisions that very much have a bearing on the federal coffers. Moreover, an expansive guest-worker program would almost certainly ignite a huge effort to ensure that guest workers and their families have access to at least some federal benefits, health care likely chief among them. The idea that the United States will be able to import hundreds of thousands of long-term guest workers (some of them low-income) and NOT have a debate about whether they should have access to federal benefits is somewhat far-fetched. And that could be a politically damaging debate for Republicans, too: If they tried to withhold benefits from guest workers, they would be smeared as cold-hearted and “anti-immigrant,” while if they supported expanding benefits, they would vitiate the promises made by Johnson, Buck, and others. Thus, decisions made by the states on immigration could have substantial effects on broader federal budgetary commitments.

Birthright citizenship complicates all guest-worker programs in the United States and means that the nation as a whole would be even less insulated from the consequences of a state-based guest-worker program. As the law stands now, the hypothetical American-born child of state-based guest workers would be granted immediate U.S. citizenship and access to federal benefits. At the age of 21, a U.S. citizen can sponsor his or her parents to become permanent residents and, eventually, citizens. And what happens in the first 21 years of this child’s life makes even thornier the problems of state-based guest-worker programs. Because this proposal would limit workers to the issuing state, if the guest-worker parents of an American child could not find work in that issuing state, they could be forced either to either leave the country or break the law by working in another state. That these guest workers would be limited in where they could work means they would be more likely to run into employment challenges and thus to face that difficult choice. (The Johnson proposal might mitigate this danger somewhat by allowing states to form compacts that would permit guest workers to work across state lines, but they would still face fewer economic prospects than those who can move anywhere in the United States to work.)

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The atrocities of optics presented by state-based guest-worker programs would also be legion: tenements swollen with guest-workers and their beleaguered families, young children denied visits to the doctor, companies laying off Americans to hire phalanxes of underpaid guest workers, and tearful U.S. citizens waving goodbye to their guest-worker parents, who have to leave the country because they’ve lost their jobs. In one of the great perversions of the free market, current guest-worker programs often tie visa-holders to a given employer. State-based visas would replace that tie to an employer with a tie to the land. In celebrating bloodlines over much else, current legal immigration policies often exhibit the imperatives of the Romanov dynasty; the serfdom of state-based guest-worker programs would be an unfortunate complement to that model.

The structural imperatives of state-based guest-worker programs are even more troubling. Proponents of superficially federalist immigration policy often emphasize immigration maximalism, the idea that states should be free to admit more people if they want. But an authentically federalist approach to immigration would mean that states could also reduce

immigration if they chose to. In other words, supporters of immigration federalism who argue that states should only have the ability to increase immigration levels might be using federalism less as an animating principle and more as a marketing slogan for increasing immigration.

A radically federalist approach to immigration would probably lead to a more splintered United States. Immigrants would be allowed in some states but not in others. Guest-worker camps might dot the landscape of some states, which would be polarized by inequality; because of a tighter labor market, other states might be filled with middle-class communities. There is a good chance that the American economy would be less dynamic; it would be harder for a slice of the population to move fluidly within the country for work. This is not to say that there couldn't be a role for some applications of the principle of federalism to immigration. But legislators should think especially hard about the complications of allowing individual states to determine the flow of legal immigrants within their borders.

A guiding principle of American policymakers for many decades was that the completely fluid movement of capital, labor, and goods across international borders was a utopian vision, and, like many utopian visions, probably could not be achieved. Instead, it was thought wiser to increase the fluidity of movement within the United States. The absence of trade and immigration barriers between states, the development of federal infrastructure programs, and other efforts were designed to realize that vision of internal fluidity. A radically federalized immigration policy would reverse it, making the internal movement of labor more difficult in order to increase movement across international borders.

Senator Johnson and Representative Buck are not wrong to highlight the problems with the current immigration system, which unfairly privileges dynastic bloodlines and does not take sufficient account of the needs (economic and otherwise) of the United States. There is a very real case for reforming the system so that it gives increased priority to the skills of potential immigrants. Because increasing the overall rate of legal immigration is quite unpopular (only about 21 percent of Americans support increasing it, according to [Gallup](#)), members of Congress who want a more dynamic immigration system might consider calling for legislation that replaces some current chain-migration visas with skills-based ones. A more skills-based immigration system could help cut down guest-worker programs, one of the more retrograde elements of current U.S. immigration law. Such a reform would do a lot more to advance the principles of economic opportunity and national solidarity than splitting the nation into different guest-worker territories.