Driving Too Fast: Spitzer's Failed Experiment at Immigration Reformation

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DRIVING TOO FAST: SPITZER'S FAILED EXPERIMENT
AT IMMIGRATION REFORMATION

KATHERINE LIEBNER

I. INTRODUCTION

On September 21, 2007, former New York Governor Eliot Spitzer made national headlines when he announced a controversial new driver’s license program that would grant licenses to both New York citizens as well as undocumented immigrants.1 Spitzer offered several practical, meritorious reasons for reforming New York policy on driver’s licenses, but his rationale was drowned in the heated controversy that erupted. The focus was not only the issue of immigration but also anger at Spitzer’s unilateral use of executive power to push through the policy without consulting the New York legislature or the general public. The negative repercussions spread to the national level in immigration discussions and presidential debates. His eventual abandonment of the plan left division and bitterness among both supporters and critics. In the end, Spitzer’s bungling of his bold policy may have seriously set back positive dialogue on immigration reform.

II. NEW YORK’S LICENSING REFORMS

In recent years, the New York driver’s license policy underwent a number of changes that were largely unnoticed. Prior to 1995, New York did not require proof of citizenship or a Social Security Number (SSN) for a license application.2 In 1995, the

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New York legislature added an amendment to the Vehicle and Traffic Law § 502, which required each license applicant to provide his or her SSN. The legislature’s purpose in implementing this change was to improve the collection of child support payments by tracking SSNs. Under then-Governor George Pataki, the amendment was interpreted to allow the Department of Motor Vehicles (DMV) to approve non-citizens for licenses if they could produce a letter from the Social Security Administration (SSA) that showed they were not eligible for work and, therefore, could not obtain a SSN. By these rules, almost 500,000 applicants without SSN were registered at the New York DMV. On September 6, 2001, the Commissioner of Motor Vehicles reformed the policy to require non-citizens to submit an SSA letter as well as immigration documents as further proof of their legal residence. Just five days after this rule change, the world was stunned by the 9/11 attacks. Afterwards, it was discovered that the 9/11 terrorists had successfully obtained a total of twenty-eight state-issued identification documents or driver’s licenses. This breach of security led to obvious fears of the consequences of identity fraud and the need to continue enforcing these stricter requirements. In the 2007 case of Cubas v. Martinez, the Court of Appeals upheld the requirement of additional immigration documents for NYS driver’s license applicants as a right of the discretion of the DMV.

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3 Id.
4 Id.
5 Id.
6 Id.
A. Spitzer’s Proposed Reform

During his 2006 gubernatorial campaign, Spitzer promised to reform New York’s immigration policy, which he felt insufficiently dealt with the estimated 500,000 to 1 million illegal immigrants in New York State.\(^{10}\) It seemed impossible to deport all the illegal aliens and Spitzer claimed the federal government had already failed several times at creating a national policy to protect the United States borders and deal with the millions of illegal immigrants already in the country.\(^{11}\) According to Spitzer, states could no longer wait for the national government and had to come up with practical and more immediate responses: “[a]s long as I am governor, we will not pretend that they do not exist, we will not cut them off from participating in our society, and we will not become part of a myth that is propagated at the federal level that they are not here.”\(^{12}\) The administration sought to address this gap in federal action when, just nine months into his tenure, Spitzer followed up on his campaign promise and announced New York’s new licensing plan.\(^{13}\)

According to his plan, Spitzer intended to eliminate the requirement of Social Security Numbers and federally approved immigration documentation and instead allow foreign passports to be used as identification for obtaining driver’s licenses.\(^{14}\) The administration also indicated fourteen documents that it deemed acceptable forms of identification, of which a combination of


\(^{11}\) Schuster & Enriquez, supra note 10.

\(^{12}\) Id.

\(^{13}\) Dinan, supra note 1.

\(^{14}\) See Press Release, supra note 2; New Mexico issues a single license to citizens and undocumented immigrants. New Mexico also accepts as proof documents issued by the Mexican government. See Celeste Katz, States at Crossroads for Illegal Immigrant Driver’s Licenses, DAILY NEWS (N.Y.), Oct. 28, 2007, at 6. Spitzer’s plan would have made New York the largest state to allow undocumented immigrants to legally obtain driver’s licenses. See Schuster & Enriquez, supra note 10, at A3.
several of these documents would be needed in order to prove identity. In addition to these changes, Spitzer also ended the requirement of stamps on licenses of temporary visitors that indicated their status as well as when their visas would expire. This policy meant that temporary visitors would have the license for eight years even if only staying for several months. Spitzer justified eliminating the requirement of SSNs by claiming that it did not provide more secure protection to New Yorkers since any non-citizen could obtain a SSN by proving eligibility for work. In addition, the administration claimed that legal citizens of New York suffered unduly from the accidents committed by uninsured, illegal immigrants. It was assumed that illegal immigrants would continue to drive whether they had licenses or not because they needed to commute to their jobs. By granting licenses to illegal immigrants, it would at least allow them the opportunity to purchase insurance. The Spitzer administration believed that by doing so, traffic safety would improve and estimated that state drivers would save approximately $120 million per year in insurance premiums. It was also estimated that the policy would generate around $6 million in state revenue with new license fees.

In addition, Spitzer maintained that registration of illegal immigrants for driver’s licenses would actually improve security by providing law enforcement with a valuable resource of names, addresses, and photographs of those immigrants who remain

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15 See Press Release, supra note 2.
17 See id.
18 See id.
20 Op-Ed., Immigrant Licenses; Spitzer Plan is Good for All NY Drivers, NEWSDAY (N.Y.), Sept. 25, 2007, at A36.
22 Id.
Supporters of his plan, such as Richard A. Clarke, the former White House counterterrorism expert, saw this result as uniquely advantageous: "it is far preferable for the state to know who is living in it and driving on its roads . . . than to have large numbers of people living in our cities whose identity is totally unknown to the government." The plan also included new technology for scanning and authentication of documents used to obtain a license in order to strengthen security methods. Spitzer noted that these technologies were successfully used in almost half the states. The plan was to be implemented in December 2007 when the DMV was to notify 152,000 persons who had licenses that were not renewable under the Social Security mandate that they could now reapply. By April 2008, Spitzer intended to open the program to all applicants.

B. Support for Spitzer's Plan

The reaction to Spitzer's announcement was immediate and intense. For immigrant advocates, Spitzer's plan was a huge victory. They hailed the driver's license as "a symbol of the hopes and frustrations of undocumented immigrants." Earlier in the year, these supporters had failed to pass a broad national bill that would have legalized illegal aliens. Spitzer's initiative certainly was not as grandiose a scheme, but it was a step in the right direction. By providing immigrants with optimism, they argued

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27 Hammond, supra note 23.
30 Dinan, supra note 1.
that non-citizens, especially those in areas with less readily available public transportation, would be able to improve their lives.\textsuperscript{31}

C. Critics of Spitzer’s Proposal

Critics, however, raised questions of security and the increased danger of terrorists being able to commit fraud.\textsuperscript{32} Easier access to driver’s licenses also meant easier access to voting registration, pistol permits, bank accounts or universities, which often accept licenses as valid identification.\textsuperscript{33} Families of 9/11 victims cried out against the supposed weakening of security: “Obviously one 9/11 isn’t enough for Spitzer . . . People are going to die.”\textsuperscript{34} Republican Assemblyman Pete Lopez stated, “[h]anding licenses out like lollipops to illegal immigrants is an affront to those who are in our country legally and puts our communities at risk.”\textsuperscript{35} Some noted that giving licenses to illegal immigrants made little sense when the New York DMV had the power to revoke licenses of those who miss court, fail to pay fines or child support.\textsuperscript{36} Why did New York need to make such sweeping changes instead of just trying to do better job of enforcing current motor vehicle laws?\textsuperscript{37} Others questioned the reliability in preventing fraud of the new technologies that the administration was planning to implement.\textsuperscript{38} Resistance continued with the New York

\begin{flushleft}
\textsuperscript{31} Id.
\textsuperscript{34} Dinan, \textit{supra} note 1.
\textsuperscript{35} Id.
\textsuperscript{37} Santora & Hakim, \textit{supra} note 32.
\end{flushleft}
State legislature—which had a Democratic led Assembly and a thin Republican majority in the Senate—who felt Spitzer needed legislative approval in order to eliminate the Social Security standard.\textsuperscript{39} Spitzer’s Albany rival, Republican Senate Majority Leader Joseph Bruno, stated that the plan was “yet another example of the governor’s arrogance and his attempt to go around the Legislature and bypass 212 elected representatives of the people.”\textsuperscript{40}

**D. Concerns Over Federal Licensing Standards**

Serious concerns were raised over whether the new license proposal would meet the new federal security requirements of the REAL ID Act of 2005.\textsuperscript{41} Part of an emergency spending bill, REAL ID repealed a cooperative state-federal process law on driver’s licenses passed in December 2004 and established a prescriptive federal standard.\textsuperscript{42} The Act was proposed by the Department of Homeland Security (DHS) after the 9/11 Commission recommended making identity papers less prone to forgery in order to prevent terrorism.\textsuperscript{43} DHS’s REAL ID slogan, “One driver, one license,” conjured up memories of the 9/11 terrorist attacks.\textsuperscript{44} At the time Spitzer proposed his new licensing plan in September 2007, the original drafts of REAL ID required a standardized state license to have a Social Security Number in order to board planes or enter federal buildings.\textsuperscript{45} In addition to the inclusion of Social Security Numbers, some of the more extensive REAL ID proposals included: a series of verification

\textsuperscript{40} Santora & Hakim, *supra* note 32.
\textsuperscript{41} See Schuster & Enriquez, *supra* note 10.
\textsuperscript{45} Hammond, *supra* note 23.
digit numbers or letters printed on the license, laser engraving specific to the license-holder, and mandatory in-person re-licensing/re-credentialing of all drivers. Further, REAL ID only permitted states to have non-complying licenses if those licenses "have a unique design and a clear statement" clarifying that they will not be accepted by the federal government as valid identification. These federal requirements, however, were only in the draft stage and had not been implemented by the DHS. Consequently, Spitzer argued that New York could not wait for the federal government to take action on an issue that required immediate attention. However, critics within New York recognized that Spitzer's single license plan meant that if REAL ID was implemented New York citizens would have to show further documentation to pass federal standards.

Others also had concerns over the Western Hemisphere Travel Initiative (WHTI), which was the product of the Intelligence Reform and Prevention Act of 2004 (IRTPA). Also directed by the DHS, WHTI requires federally approved documentation for travelers crossing international borders. On January 23, 2007, as part of WHTI, DHS required all persons traveling by air to the United States to present valid identity papers, including passports, Air NEXUS card, or U.S. Coast Guard Merchant Mariner Document. By the summer of 2008, DHS plans to implement similar requirements for those traveling across international borders by land or sea. A possible version for acceptable identification would be enhanced state licenses, which would only be available to citizens and would require an imbedded computer chip, a mark of citizenship, and a specifically-defined Machine

\[\text{References:}\]

46 See Press Release, supra note 2.
47 Mansfield, supra note 26.
48 See Press Release, supra note 2.
49 See Schuster & Enriquez, supra note 10.
50 See id.
52 See id.
54 See Press Release, supra note 2.
Readable Zone. Critics of Spitzer's new license plan argued that waiting to comply with these federal regulations would benefit New York since federally compliant, enhanced driver's licenses could serve as an alternative to expensive passports for New York State citizens crossing the border into Canada.

These criticisms could not easily be brushed aside and revealed how hard a sell immigration reform would be. Spitzer, however, was defiant in his response: "[t]he public got what the public should have anticipated, knowing that I was going to push very hard, there would be pushback."57

III. SPITZER'S POLITICAL BATTLES AS GOVERNOR

Spitzer's aggressive approach to the new driver's license policy was not unique to his administration as governor. From 1998 to 2006, Spitzer successfully served as New York's Attorney General and used his image to campaign for governor as the man who would clean up state politics, which had often been derided for its corruption and stagnancy. His campaign slogans included "Day 1: everything changes" and "Bring some passion back to Albany." Spitzer won in a landslide and when he took office on January 1, 2007, he had a plan: "[m]y job is to invest, the way [Alexander] Hamilton did; make sure the rules are enforced, the way T.R. [Teddy Roosevelt] did; and make sure everyone has a chance to play by those rules, which is what Al Smith stood for."61

55 See id.
56 See Barrett, supra note 44, at A2
59 Jacob Gershman, Spitzer, In a Historic Landslide, Vows 'A New Brand of Politics,' N.Y. SUN, Nov. 8, 2006, at 1.
60 Hakim, supra note 57.
Democrats were elated by Spitzer’s victory and hoped his attitude would help push through more Democratic initiatives, including health and education systems as well as to help revitalize the upstate economy. To bring such change required Spitzer to have a firm hand and a willingness to fight the entrenched mediocrity of Albany—something he was more than prepared to do. Yet, while Spitzer voiced his desire to work with Albany, he approached them in the aggressive and often contentious manner that had served him well in his previous role as New York’s Attorney General—evidenced by his infamous self-reference as Albany’s “[f**n] steamroller.”

A. The Bout with Bruno

Clashes with the NYS legislature took place almost as soon as Spitzer took office. Spitzer collided with 78 year old Senate Majority Leader Joseph Bruno when Spitzer broke Albany protocol by appointing a Republican Senator to his cabinet and then campaigning for a Democratic replacement in a special election. This maneuver whittled away at the slim Republican Senate majority and left Bruno with only a two seat majority. Republicans responded by rallying behind Bruno as the legislature, which had not faced such a test in years, scrambled to redefine its identity.

B. Troopergate

The greatest hit to Spitzer’s administration, however, came with the “Troopergate” scandal (also known as “Choppergate,”

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62 See Gershman, supra note 59.
64 See Hakim, supra note 57.
65 Id.
“the Dirty Tricks Scandal,” “the Eliot Mess”) that erupted in July 2007. The scandal started when some newspapers investigated Spitzer’s possible unlawful use of the state aircraft for fundraising purposes. While it appeared that Spitzer had not unlawfully used the aircraft, Darren Dopp, Spitzer’s communication director, decided to extend the search on aircraft usage. Claiming that he expected the media investigation to lead to Freedom of Information requests, Dopp looked up the flight records of other state officials, including Joseph Bruno and lieutenant governor, David Paterson. Dopp, however, did not have complete access to Bruno’s flight records and asked the state police to further investigate Bruno and establish a retroactive record of his flight usage. When the police came up with possible evidence of Bruno’s improper use of state aircraft, Dopp provided the information to a newspaper. Two other members of Spitzer’s staff were also involved in this decision.

The seeming abuse of the state police led to numerous investigations of the Spitzer administration by New York State Attorney General Andrew Cuomo, Albany County District Attorney David Soares, the New York Commission on Public Integrity, and the New York Senate. Cuomo subpoenaed Spitzer’s office, but Spitzer’s aides avoided speaking to investigators. Dopp was placed on unpaid leave and Spitzer published

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67 Paumgarten, supra note 61, at 7.
68 See id.
69 See id.
70 See id.
71 See id.
72 See id.
73 Rob Hart, D.A. clears Spitzer staff in crusade against rival; ‘No illegal conduct’ in compiling data aimed at discrediting Bruno, STATEN ISLAND ADVANCE (N.Y.), Sept. 21, 2007, at A1
74 See Elizabeth Benjamin, Troubles Build for Eliot, Aide Dopp Faces Perjury Rap as Diary, Troopergate Testimony Don’t Jibe, Daily News (N.Y.), Nov. 12, 2007, at 14 (Cuomo’s involvement in the Spitzer investigation was made more intriguing by the fact that he was tabbed to be Spitzer’s rival in the 2010 gubernatorial election.);
Paumgarten, supra note 61, at 7.
75 See Jay Gallagher, Spitzer a moving target for questioners, POUGHKEEPSIE J. (N.Y.), Aug. 19, 2007, at 13A.
an apology in The New York Times in which he admitted the fault of his staff but declared himself innocent.\textsuperscript{76} On July 23, 2007, Cuomo’s final report released the Spitzer administration from any legal liability, but severely criticized them for manipulating the state police for political reasons.\textsuperscript{77} Likewise, in Soares’s report released in September 2007, the Albany DA freed Spitzer and his administration from any charges of illegal activity.\textsuperscript{78}

Despite the exonerations from Cuomo and Soares, the Troopergate scandal continued to haunt Spitzer. Dopp testified during Soares’ investigation that Spitzer gave his personal approval to release the information on Bruno—a story that varied widely with Spitzer’s original claim that he had no knowledge of the situation.\textsuperscript{79} The scandal, obviously, also did irreparable damage to Spitzer’s relationship with Bruno and the Senate Majority Leader refused to speak publicly with Spitzer.\textsuperscript{80} While attending an October memorial service for fallen police officers and firefighters, Bruno showed his disdain for the governor by turning his back to him.\textsuperscript{81} Bruno continued to be the subject of an investigation, but, for the first time, Spitzer had “ceded the moral high ground to Bruno.”\textsuperscript{82} Bruno took full advantage of Spitzer’s first major slip-up by relating childhood stories of bullies and essentially cast Spitzer in the role of a rich, spoiled brat.\textsuperscript{83} Part of Spitzer’s public appeal had been his squeaky clean image as the Attorney General who would clean up the corruption and political nonsense that had arrested the state’s productivity. Tainted with this scandal, it now

\textsuperscript{76} See id.
\textsuperscript{77} See id.
\textsuperscript{78} See Hart, supra note 73.
\textsuperscript{80} Tom Precious, Spitzer angrily resists demands for testimony, BUFF. NEWS, Oct. 10, 2007, at A7.
\textsuperscript{81} Paumgarten, supra note 61, at 2.
\textsuperscript{82} Dan Janison, SPIN CYCLE: Spitzer’s fighting spirit answered, NEWSDAY (N.Y.), July 9, 2007, at A18.
\textsuperscript{83} Rick Karlin, Spitzer, Bruno clash part of high-stakes game, TIMES UNION (N.Y.), July 8, 2007, at B1.
appeared that Spitzer was just another disappointing Albany politician.

C. Loss of Democratic Support

Spitzer’s scandal and continued aggressive manner began to annoy more than his opponents. Democrats had been energized by his gubernatorial victory, but Spitzer began to squander their support almost as soon as he took office. In February 2007, Spitzer voiced harsh criticisms to the constituents of those Democrats responsible for replacing Democratic comptroller Alan Hevesi—who resigned for improper use of state employees—with another Democratic Assemblyman, Thomas DiNapoli. Spitzer had wanted to pick a candidate that he felt was qualified rather than allow the usual favoritism often displayed in Albany. Democratic Assemblyman Jack McEneny observed that “[t]he temper tantrum that occurred after the DiNapoli affair did almost irreparable harm to the relationship between the Governor and the Democrats in the Legislature.” Democrats, however, were even more upset by the revelations made in Troopergate, which tainted Spitzer’s reputation as well as his Democratic party. All this drama made them further baffled and confused by Spitzer’s failure to consult them or the public on the new licensing issue. Democratic Assemblyman J. Gray Pretlow stated: “I really don’t know what his strategy is . . . . There’s nothing wrong with standing on principle, but when you have to come to consensus with other individuals of various ilks, you have to back down a bit.” It seemed that, despite Spitzer’s apology, he had not learned any lessons from Troopergate and his Democratic supporters were tired of continually smoothing the wrinkles and feelings shaken up by Spitzer’s defiant attitude.

84 Paumgarten, supra note 61, at 6.
85 Id.
86 Id.
87 Id.
88 Hakim, supra note 57.
89 Id.
D. The Rebellion of County Clerks

Spitzer’s license battle with New York representatives further continued in the October 2007 rebellion of the county clerks, most of these from Western New York. Many of these county clerks also handled DMV documents and, despite the fact that Attorney General Andrew Cuomo stated that Spitzer was within his legal rights, they believed that Spitzer’s directive ordered them to break the law. In defiance of the governor, the Monroe County legislature ordered its county clerk to require a Social Security Number for license applications. The clerk from Rensselaer County, Frank Merola, filed a lawsuit against Spitzer in Albany County to block the DMV from giving licenses to illegal aliens. Then, twenty-nine clerks statewide (all but one was Republican) voted to oppose Spitzer’s plan with thirteen saying that they would disobey the governor even if ordered to comply. In total, more than seven counties said that they would not follow Spitzer’s plan. In response to clerk rebellion, a spokeswoman for the governor said that “[i]t would be dangerous for local authorities to self-deputize themselves as [immigration] agents. It would only serve to continue to drive people into the shadows, spread fear and do nothing to improve the safety and security of New Yorkers.” The administration further stated that by statute the clerks must abide by the governor’s new rule or they would violate the law. The county clerks, however, continued to defy the governor’s new licensing plan.

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90 Precious, supra note 16.
91 Joe Mahoney, Silver Steers License Plan Past GOP Roadblock, DAILY NEWS (N.Y.), Oct. 24, 2007, at 16; Precious, supra note 16.
94 Curl, supra note 92.
95 Precious, supra note 16.
96 Precious, supra note 36
97 Janison, supra note 7.
In mid-October, Erie County Clerk Kathleen Hochul, a Democrat who was a year-old Spitzer appointee and who faced reelection in November 2007, joined forces with Niagara County Clerk Wayne Jagow, a Republican. Together, they set up a plan with local and federal law enforcement to notify them of any illegal immigrants attempting to apply for driver’s licenses with the hope of deterring illegal immigrants from applying for licenses by making them subject to arrest and deportation. Concern over possible voter fraud also led Hochul to insist that the New York legislature pass a law mandating the sharing of data between county clerks’ offices and local election boards. In October, the state had overturned a policy that Social Security Numbers be required for voter registration. Without the requirement of a Social Security number or the sharing of information from the DMV, Hochul feared that election boards would be vulnerable to voter fraud since many only require driver’s licenses for voting registration. Through these expressions of displeasure and defiance, Hochul and the county clerks added to Spitzer’s troubles.

E. Continued Legislative Battles in Albany

The political battle continued in Albany when, on October 22, 2007, the State Senate voted 39-19 (with eight Democrats) to require immigrants to provide a Social Security Number as proof of authorized residency. During the debates, Republican Senator John Flanagan criticized the governor for proposing his plan under “the cloak of darkness . . . without public discourse or legislative input[.]” He also declared that Spitzer’s plan

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98 Precious, supra note 36.
99 Id.
100 Precious, supra note 16.
101 Id.
102 Id.
103 Rick Brand and Melissa Mansfield, IMMIGRATION DRIVING DEBATE: THE POLITICS OF ALBANY; Spitzer, Senate collide head-on; Lawmakers pass legislation that would block governor’s license plan, vow legal action if assembly fails to vote into law, NEWSDAY (N.Y.), Oct. 23, 2007, at A7.
104 Id.
undercuts the 317,000 legal immigrants who had legally received their licenses in the past four years. The debate intensified with accusations of racism and discrimination. If the legislation did not pass the Democratic majority in the New York Assembly—which it did not—Bruno vowed to take the fight into the courts. Following the passage of this legislation in the Senate, Spitzer released the following statement:

Despite many areas of potential agreement, the Senate today placed pending matters on the back burner to debate the recent administrative change at the Department of Motor Vehicles that will bring undocumented immigrants into the system. While constructive discussion is always welcome on any issue, my hope is that we can set aside the demagoguery surrounding the national immigration debate and pragmatically evaluate this important policy for its impact on the safety and security of New Yorkers.

Spitzer responded to legal threats by stating his belief that he was well within his power to unilaterally enforce the change in licensing policy. Republican Assembly members, however, continued to provoke the governor by holding a three-hour emergency hearing on October 24, 2007. There they criticized Spitzer’s licensing plan, mostly for its perceived security flaws, while immigrant rights groups, clergy members, and union organizers protested outside.

\[105\] Id.
\[106\] Mahoney, supra note 93.
\[107\] Brand & Mansfield, supra note 103.
\[108\] Id.
\[109\] See generally id.
\[110\] Marcus, supra note 29.
\[111\] Id.
F. Criticism and Spitzer's Reactionary Mindset

As the argument intensified even into the national level, the rhetoric became harsher as both sides threw verbal barbs. Lou Dobbs, the host of CNN's "Lou Dobbs Tonight," mercilessly expressed his disapproval of the license plan and called Spitzer "arrogant, spineless and 'a spoiled, rich kid brat[].'"\(^{112}\) But critics of Spitzer's plan were recipients of equally harsh language from the governor. Spitzer emphasized that he had every legal right to make this administrative policy change without the legislature's consultation and that his opponents were being run by partisan politics: "The rabid right that wants to pile on and use this to demagogue the issue will not carry the day in New York state."\(^{113}\) When Mayor Michael Bloomberg, who usually had a cordial relationship with Spitzer, voiced some concern over the new plan, Spitzer's reaction was severe: "He is wrong at every level—dead wrong, factually wrong, legally wrong, morally wrong, ethically wrong."\(^{114}\) This sort of rhetoric shut down any meaningful dialogue between Spitzer and his opponents.

IV. A COMPROMISE: INTRODUCTION OF MODIFIED THREE-TIERED PLAN

By this point, an October poll showed Spitzer's approval rating was at an all-time low of 41%\(^{115}\). According to another survey of 718 voters, 65% of New Yorkers were against Spitzer's proposal including 45% of Democrats and 92% of Republicans.\(^{116}\) New York was clearly not seeing eye-to-eye with the governor on

\(^{112}\) Associated Press, Spitzer: Help from a friend; Governor says new licensing plan cooked up in long chats with old chum Chertoff; critics seek changes, NEWSDAY (N.Y.) Oct. 29, 2007, at A14; Lou Dobbs did eventually apologize for calling Spitzer an "idiot."

\(^{113}\) Curl, supra note 94.

\(^{114}\) Kirsten Danis, Eliot Lets Loose After Bloomy Frowns On His Licensing Plan, DAILY NEWS (N.Y.), Sept. 28, 2007, at 75.

\(^{115}\) Hakim, supra note 57.

\(^{116}\) Curl, supra note 94.
the license issue. On October 27, 2007, Spitzer seemed to finally recognize this when he announced a modified three-tiered licensing plan that appeared to address the security concerns raised by both state and federal authorities. The plan, which had been structured through talks with the Bush administration and the DHS in order to comply with REAL ID, offered a federally compliant license that would only be available to U.S. citizens and legal immigrants and could be used to board domestic flights and enter federal buildings. The second "enhanced" license would only be available to U.S. citizens and could be used to cross the Canadian border in lieu of a passport. The third license would be available to all applicants, including illegal immigrants, and would not mark the holder's immigration status but would not be considered a valid form of federal identification for boarding planes or entering federal buildings. By agreeing to comply with the new federal regulations, New York became one of four states to follow the drafted regulations of REAL ID.

The three-tiered plan drew the praise of several high officials. Mayor Bloomberg called it "a clear step in the right direction." The heads of the state troopers' union and New York's association of police chiefs voiced support for the plan. The Secretary of the Department of Homeland Security, Michael Chertoff, appeared with Spitzer to express his approval along with continued reservations of the modifications made. While Chertoff backed the plan's compliance with federal regulations, he also stated four times during the conference that he was not happy

117 Associated Press, supra note 112.
119 Id.
120 Id.
121 Associated Press, supra note 112. The other states are Arizona, Vermont and Washington. Id.
123 Id.
124 Meek & Katz, supra note 118.
with the continued incorporation of illegal immigrants into the plan: "I do not endorse and I do not think it's a good idea to give undocumented workers [driver's] licenses or IDs of any kind." His only support for the plan came from his understanding that it would now abide by the newest federal security regulations and help prevent terrorism.

**A. New Criticism of the Three-Tiered Plan**

The support that Spitzer received from those who had previously expressed reservations did not prevent critics—some old and some new—from finding fault in the newest version of New York's licensing program. Republican legislators continued to express security concerns in giving illegal immigrants licenses. New York Democrats felt angry and betrayed by Spitzer's continued failure to consult with them over this more moderate plan. Democratic Senator Ruben Diaz was livid because he had strongly supported Spitzer's original plan that allowed illegal immigrants to apply for regular driver's licenses: "[Spitzer] let me go on the Senate floor and make a fool of myself. Now I have to take the time to stand up, eat crap and apologize. Eat my pride." Democratic Assemblyman Adriano Espaillat characterized this tiered system as "separate but unequal." Democrats also lamented its possible ill effects on the national stage because of its compliance with President Bush's Real ID regulations. State Democratic Senator Eric Schneiderman stated, "He is helping Chertoff and the Bush administration rescue a failed public policy that was about to go down to defeat." Immigrant advocates who

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125 Id.
126 Id.
127 Confessore, supra note 122.
128 Id.
130 Id.
131 Confessore, supra note 122.
132 Id.
133 Id.
had wholeheartedly supported his original plan felt betrayed by Spitzer’s change in policy. The New York Immigration Coalition held a protest outside of Spitzer’s office where Chung-Wha Hong, its executive director, expressed her disapproval of the new plan: “He’s kidding himself if he thinks this will bring people out of the shadows . . . . It’s a double whammy and a double betrayal.”

Clearly, the driver’s license plan was becoming more important—nationally and symbolically—than Spitzer ever intended or expected.

B. Other State Experiments With a Tiered License Program

The concept of Spitzer’s proposed tiered license program was not without precedent. Eight other states issue licenses to illegal immigrants in varying forms. In 2005, Republican-led Utah created a two-tiered license system that issues regular driver’s license to citizens as well as driver privilege cards for non-citizens. These privilege cards are clearly marked by a red “P” to indicate that the cards are not regular driver’s licenses. Such a mark, some in Utah feared, would lead to discrimination and racial profiling. So far, Utah officials claim that these fears have been unfounded as 35,000 illegal immigrants are legally driving in Utah with privilege cards. Recent statistics from Utah also seem to support Spitzer’s contention that allowing undocumented aliens to register for licenses would increase the number of insured drivers as well as the safety on roads. According to a study by the National Highway Traffic Safety Administration, the number

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134 Id.
135 See Op-Ed., Policy right, politics poor; Spitzer’s decision on driver’s licenses is correct, but poorly timed and handled, NEWSDAY (N.Y.), Oct. 24, 2007, at A28. The other eight states are Hawaii, Maine, Maryland, Michigan, New Mexico, Oregon, Utah, and Washington. See Bernstein, supra note 1.
136 Katz, supra note 14.
137 Id.
138 See id.
139 See id.
140 Brand & Mansfield, supra note 103.
Driving Too Fast

of uninsured Utah drivers dropped from 28% in 2000 to 6% in 2005-06. Likewise, the number of deaths per 100,000 drivers dropped from 25.5 in 2000 to 17.2 in 2005-06.

Utah’s success, however, is not universal. Tennessee eventually abandoned the same two-tier licensing program, which Utah had adopted from them, because of corruption and abuses. DMV workers were caught creating illegal documents while others would bus illegal immigrants to the DMV for a significant price. North Carolina, who also experimented with a similar tiered system, stopped issuing licenses because of similar abuses. In New Mexico, where Social Security numbers were made an option in 2003 when applying for licenses, the number of deaths per 100,000 drivers actually increased from 34.9 in 2000 to 37.4 in 2005-06.

C. Repercussions on the National Level

The fact that other states also experiment with various reforms for driver’s licenses is just one indication that immigration pervades the national conscience. In making his own plans for New York reform, Spitzer may have underestimated how America’s love-hate relationship with immigration would affect his plans. Political analyst, John Pitney, attempted to explain why immigration remains one of the most volatile topics in the political arena: “Immigration is about who we are as a people . . . . [The issue] will help determine what each party is about. It forces each side to determine what it is to be an American.” In 2006, there was much hope that a bipartisan solution could be reached.

141 See id.
142 See id.
143 Katz, supra note 14.
144 Id.
146 Brand & Mansfield, supra note 103.
concerning immigration issues, particularly on how to deal with illegal immigrants. A 2006 comprehensive immigration bill, co-sponsored by Republican Senator John McCain and Democratic Senator Edward Kennedy, proposed legalization of illegal immigrants who met the conditions of paying back taxes and speaking proficient English. Many hoped that this immigration legislation would pass by the beginning of 2007. McCain, however, “faced a barrage of criticism from conservatives who oppose his support of the legalization of illegal immigrants.” As a presidential candidate, McCain withdrew his support for the bill with the hope of reestablishing his base, but also succeeded in delaying its further discussion.

Continued pressure from conservative bases led to other responses from Republican leaders. A faction of Republican Senators, led by Arlen Specter, presented its own bill to compete with that sponsored by Kennedy. It contained many contentious provisions, including not allowing guest workers the ability to attain citizenship as well as forcing all illegal immigrants to leave the country prior to eligibility for residence in the U.S. In addition, the Republican-led House passed a bill that proposed “to build 700 miles of new fence along the border.” These immigration bills failed to pass, but other reforms continue to be introduced. In March 2008, Senate Republicans proposed a fourteen part immigration package which, among other things, would make English America’s official language and would not allow illegal

150 Id.
151 Id.
152 Id.
153 Id.
154 Id.
immigrants to obtain credit cards. Such provisions continue to fuel the immigration debate.

D. The License Plan in the Presidential Debates

The intensity of the national immigration scene soon became perfectly clear during the recent presidential debates for the 2008 election, particularly among Democrats. While they continue to debate among themselves, Republican candidates have it relatively easier when answering immigration questions since most conservatives favor a harder stance on illegal immigrants. Democrats, however, struggle to find satisfying answers that navigate the political minefield. Nominally, the Democrats have made immigration reform one of their platforms, but the how and when to perform such reformation continues to be disputed within the party. Prior to the primaries in Iowa and New Hampshire, about three in ten Democratic voters in those states indicated that they viewed the candidates’ stance on immigration as “very important.” Democrats recognized that their rhetoric must be moderate enough to satisfy the majority of voters, but also strong enough to differentiate themselves from the Republicans. They feared offending immigrant advocates, especially Latino voters, who are leaving the Republican ranks and turning towards the Democrats to offer them a better and more compassionate plan for immigration reform. These Latinos make up about nine percent of the electorate.

157 Scott Helman, Position on immigration testing Democrats—GOP may try to exploit divisive issue, BOSTON GLOBE, Nov. 16, 2007, at A32.
158 Olvera, supra note 147.
159 Helman, supra note 157.
160 Id.
162 Olvera, supra note 147.
163 Id.
The issue of driver’s licenses became a means of ferreting out the presidential candidates’ overall positions on immigration and Spitzer’s new plan provided an opportunity to question the Democratic candidates about their views during the presidential debates.\(^\text{164}\) The issue first came up during a debate in Philadelphia held the night before Halloween on MSNBC.\(^\text{165}\) When Tim Russert asked New York Senator Hillary Clinton to define her position on Spitzer’s new licensing program, she fumbled. At first she said Spitzer’s plan “‘makes a lot of sense. What is the governor supposed to do? He is dealing with a serious problem.’”\(^\text{166}\) Clinton then stated, however, that she did not feel that the governor’s plan was the best option.\(^\text{167}\) By contrast, Democratic presidential rivals Barack Obama and John Edwards both clearly offered their support for giving licenses to undocumented immigrants.\(^\text{168}\)

The Halloween Eve debate was Clinton’s first major gaffe during the presidential debates and it proved to be a costly one.\(^\text{169}\) Her Democratic presidential rivals, Senators Barack Obama and John Edwards, jumped on her mistake and attempted to expose her as evasive and dishonest.\(^\text{170}\) Performing in a Saturday Night Live skit that weekend, Obama mocked Clinton’s supposed double-talk by donning a Halloween mask while declaring, “I have nothing to hide.”\(^\text{171}\) Edwards told Clinton in


\(^{165}\) Id.

\(^{166}\) Id.

\(^{167}\) Id.


\(^{171}\) Id.
Iowa that she should stay in "tell-the-truth mode all the time."\textsuperscript{172} The day after the debate, Clinton attempted to control the damage by releasing a statement to The New York Times, in which she stated her general support of Spitzer's plan, but still refrained from commenting on specific details.\textsuperscript{173} She also attempted to draw attention away from her blunder by characterizing the debate as "The Politics of Pile-On" on her website.\textsuperscript{174} In the subsequent weeks and presidential debates, Clinton tried to clean up her image by explaining her position on Spitzer's proposal, but it was clear that this issue had become a major thorn in her political campaign.\textsuperscript{175}

V. THE RETREAT AND ITS AFTERMATH

Following these presidential debates, it became clear that the strain on Spitzer's license plan, from both a local and national perspective, had become too great. On November 14, 2007, before another presidential debate on November 15 in Las Vegas, Spitzer held a press conference in which he officially dropped his driver's license plan.\textsuperscript{176} He noted that while he believed that his policy was based on the right principles, he no longer thought that New York was capable of implementing such a change by itself and that only the federal government would have the ability to succeed in immigration reform.\textsuperscript{177} Following the announcement, Clinton released her own statement in which she stated her support for Spitzer's withdrawal of the plan and that as president, she would "not support driver's licenses for undocumented people and will press for comprehensive immigration reform that deals with all of the issues around illegal immigration, including border security and

\begin{footnotes}
\item[172] Id.
\item[173] Condon, supra note 164.
\item[174] Id.
\item[175] Glenn Thrush and John Riley, Spitzer's Plan: Driver's Licenses, NEWSDAY (N.Y.), Nov. 15, 2007, at A15.
\item[176] Ward, supra note 8; Kenneth Lovett and Geoff Earle, Hill's 'Stand?' Well, Today is Thursday... , N.Y. POST, Nov. 15, 2007, at 6
\item[177] Ward, supra note 8.
\end{footnotes}
fixing our broken [immigration] system." While the sudden reversal of policy from both the Spitzer and Clinton camps looked planned, Spitzer insisted that Clinton did not pressure him to pull the plug for the sake of her campaign. Rather, Spitzer said that the overwhelming public outcry was the main reason for reversing his policy.

A. Spitzer's Reflection on His Failure

When Spitzer later reflected on his license failure, he admitted that his aggressive tactics during the early months of his proposal had left him isolated: "It was a remarkably successful political maneuver that left me standing in the middle with enemies on both sides . . . I had a tsunami coming from one side and a hurricane coming from the other, and it was not a healthy situation to be in." Spitzer also admitted the difference between his role as Attorney General and as Governor: "[As Attorney General] you are, by and large, the actor who determines pace, timing, substance, et cetera . . . In this job, a great deal comes at you, and so you’re thrust into positions where you’re reacting. And just the scale, obviously, makes it more likely that you’re going to have decisions go awry." Such a statement suggested that Spitzer was becoming more aware of the greater diplomatic challenge he faced as a governor.

Despite Spitzer's withdrawal of his unpopular licensing program, a Siena College survey taken from December third through sixth revealed that only twenty-seven percent of New Yorkers gave Spitzer a positive rating, down from fifty-seven percent.

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178 Jerry Zremski and Tom Precious, Clinton Pivots with Spitzer as Governor Abandons Driver's License Plan, Senator Clarifies Stance, BUFF. NEWS, Nov. 15, 2007, at A1.


180 Id.

181 Paumgarten, supra note 61, at 84.

182 Id. at 85.
percent approval rating in May. Spitzer’s bright star had certainly fallen from his successful, almost uncontested victory as governor. Notwithstanding his defeat, however, Spitzer still remained defiant when Republicans demanded that the administration recall an estimated 23,000 licenses that were issued to noncitizens without the “temporary visitor” stamp. The administration refused because it argued that these stamps were unnecessary for proving lawful status.

B. The Division of Immigrant Reform
Supporters

Perhaps the greatest victims of Spitzer’s licensing fiasco were immigrant advocates. Immigrant leaders who had demanded immediate reform and had wholeheartedly supported his original plan felt betrayed by Spitzer’s caving in to public demands. Their one advocate who appeared willing to take the political bruises for their cause had abandoned them. As Democratic Senator Ruben Diaz said, “The governor failed me; the governor failed the immigrant community.” To make matters worse, Spitzer’s aggressive and rough manner created more enemies and skeptics of immigration reform than ever before. Following Spitzer’s announcement, Democratic Assemblyman Adriano Espaillat stated, “We need to regroup and come up with a new strategy . . . . We are very concerned that many of our Democratic colleagues have thrown immigrants under the bus.”

183 Joe Mahoney, Gov Hits A Low of 27% In Polls, DAILY NEWS (N.Y.), Dec. 11, 2007, at 2.
184 Id.
185 Mahoney, supra note 179, at 5.
186 Id.
187 Lovett & Earle, supra note 176.
188 Id.
inability to succeed caused unintended damage, division, and confusion within the immigration movement that will take a long time to heal.

C. Possible national immigration reform: REAL ID

While New York’s hope for any immigration reform in the near future now seems minimal, Spitzer’s professed desire that the federal government achieve a national immigration program seems closer to becoming a reality. On January 11, 2008, the Department of Homeland Security announced the final security regulations of the REAL ID Act of 2005, a law intended to prevent terrorism. Some of these regulations include requiring both Social Security Numbers and immigration documents as identification when applying for federally approved licenses. It also demands the embedding of filament and holograms into licenses so as to prevent forgeries. Those with driver’s licenses from states that do not comply with REAL ID would need further forms of identification or undergo additional verification to board planes or gain access to federal buildings. The DHS set a 2011 deadline when they hoped that all states would be in compliance. The new regulations apply to all Americans born after December 1, 1964, and by 2014, all people under fifty years old would be required to present a REAL ID license to board a plane or enter a federal building. The fifty year old limit was intended to give the states more time to comply. By 2017, even those over fifty will be expected to have a REAL ID license for federal purposes.

190 Barrett, supra note 44, at A1.
191 See id.
192 Editorial, Chertoff’s Trump Card New ID’s safety features outweigh its cons, DALLAS MORNING NEWS, Jan. 15, 2008, at 14A.
193 See Stewart, supra note 43.
194 See id.
195 Id.
196 Id.
197 Id.
Yet, despite the progress made by the Department of Homeland Security in achieving these reforms, REAL ID is continuing to face stiff resistance from critics and state governments. The regulations were ill-received by civil liberties activists who contend that these policies represent a severe invasion of privacy because of the personal data that would be shared between government agencies. Hackers and infiltrators could possibly access this information. Critics also feared that this system represented a national identity card system and that those who are not approved would automatically be labeled as suspects for terrorism. As such, there would be the possibility of more intrusive identity checks. For state governments, the biggest problem with the DHS program is the fact that the new REAL ID regulations and the cost of driver’s license applications would increase despite the fact that the DHS is providing about $360 million to those states that modify their programs. Their complaints also continued despite the fact that DHS’s latest modifications have reduced the expected cost of state compliance by seventy-three percent from $14.6 billion to $3.9 billion. Legislatures from seventeen states have passed resolutions that challenge REAL ID. As Spitzer had recognized when he began his New York initiative, a federal program would be ideal, but it would also be nearly impossible to achieve a national program that would be universally accepted by all states and implemented within a reasonable time frame.

198 See id.
199 See id.
200 See id.
201 Id.
202 Id.
203 See Barrett, supra note 44, at A2.
204 Dan Goodin, US.gov Sets Real ID Rules in Stone, REGISTER, Jan 14, 2007, http://www.theregister.co.uk/2008/01/14/relid_changes_issued/.
VI. CONCLUSION

When Spitzer introduced his driver’s license plan in September 2007, he threw down a gauntlet that proved more of a challenge than even he could handle. Following through on a campaign promise to open up the doors for undocumented immigrants, Spitzer either naively or recklessly believed that unilateral use of his executive authority would solve the highly charged issue of immigration. By announcing the implementation of this plan without consulting the legislature or engaging in discourse with the New York State public, Spitzer looked arrogant. When he refused to dialogue with those who dared criticize or question the program, he looked almost dictatorial. His aggressive and often hostile approach left little room for any reasonable, level-headed discussion of the merits of the program. His attitude had an isolating effect that seemed to suggest that it would be his way or nothing. The resulting reaction was too intense to be patched through small policy changes. Both sides of the New York legislature were left in confusion and with bruised egos. When New York’s own Senator and presidential hopeful, Hillary Clinton, became tainted by her response to Spitzer’s policy, the administration realized it was time to pull the plug on the ill-fated program.

Spitzer maintained that his license failure was not a huge defeat but it has left immigrant advocates bitterly disappointed. His plan to grant licenses to illegal immigrants showed a compassionate sensitivity to the undocumented “shadows” of New York, but the opportunity to promote the program in this light was lost to the public primarily because of Spitzer’s contentious, in-your-face attitude. Not only did Spitzer succeed in angering his opposition but also those advocates who believed that Spitzer would follow through on his original promises. When Spitzer finally dropped the plan, his critics triumphed while the advocates for immigration reform were left deeply disappointed. Nothing had been achieved but more division, more anger, and more distrust. Some of Spitzer’s rhetoric in the weeks following the defeat of his plan reveals a regret at failing to gain more political
allies in his quest for immigration reform.\textsuperscript{205} It is too late to tell how much acceptance Spitzer would have achieved in New York for his licensing program if he had presented it in a manner that took into account the criticisms and concerns of his opponents and supporters. Now, with his recent resignation on March 17, 2008 following his shocking sex scandal, it will be left to Spitzer’s successors to decide if they will test the immigration waters again.\textsuperscript{206} One thing remains certain; however, the volatile nature of immigration on both the national and state levels ensures that future reform will continue to face an uphill battle within the coming years.

\textsuperscript{*} AUTHOR’S NOTE: On March 17, 2008, Eliot Spitzer was forced to resign as New York’s governor following his sex scandal and possible illicit use of government money. This article was written and edited just before Spitzer’s resignation. Although Eliot Spitzer is no longer in office, the issues raised by his attempt to provide driver’s licenses to all immigrants are still important. The fate of many of Spitzer’s initiatives is uncertain and the question of whether immigration reform will be raised in the near future will have to be determined by Spitzer’s successors.

\textsuperscript{205} See Paumgarten, supra note 61, at 12.

\textsuperscript{206} See generally Erik German, Taking Office: Patterson; Some Lessons to Remember, NEWSDAY (N.Y.), March 17, 2008, at A20.