



## Quick Links

### When Pesticide Becomes the Pest

The Evanston City Council recently became the first Illinois municipality to adopt a municipal-wide policy restricting the use of pesticides on public property.

The purpose of the "Sustainable Pest Control and Pesticide Reduction Policy" is to reduce pesticide use in Evanston through the use of sustainable pest control practices on city owned and leased property and to educate the general public and the private sector about these practices. [\[Read the full article\]](#).

### Natural Lawncare Advocates Applaud New York's Anti-Pesticide Bill

Natural lawncare advocates are celebrating the signing of a tough anti-pesticide bill by New York Governor David Paterson. The Child Safe Playing Fields Act, which bans the use of chemical pesticides on school playing fields and playgrounds, is being called "historic" by the founder of SafeLawns.org, North America's leading natural lawncare advocacy group. [\[Read the Full Article\]](#)

**Editors Note:** It is obvious the wind is shifting on pesticide reform. It is ILCA's duty to watch for regulation that places unneeded regulation on landscape and turf professionals. At the same time, ILCA must further educate our members, using partners like the Illinois Professional Lawn Care Association (IPLCA), MELA and the Safer Pest Control Project, to prepare our members for this alternative approach to lawn care.

## Battle Lines at the Border

unless otherwise noted

The two main political dodge balls that are being tossed about right now involve illegal immigrants and oil leaks. A hamhanded political writer would say both are threats amassing outside the border that the federal government seems unable to stop. In reality, I don't know what any President, Republican or Democrat could do in response to the oil leak. It is obvious the Department of the Interior does not possess the technology to intervene. Really, the role of the Obama administration has been to get angrier and angrier with BP. Is the criticism that they should have gotten angrier with BP sooner? Anger isn't going to fix the leak. The Feds may be able to stop the next problem through legislation and rule-making but the solution to this one is all on BP (gulp!). Fix the leak and then finger point and roll heads. Any effort made pointing fingers at this point seems misdirected.

The second major issue captivating American politics is illegal immigration. Arizona's Senate Bill 1070 still garners national attention. An estimated 20,000 people marched in Phoenix on Saturday to protest SB1070.

On Sunday, Luis Gutierrez (D-IL, 4<sup>th</sup> District) was on NBC's "Meet the Press" which is still the best political talk show on television. If you enjoy Glenn

Beck or Rachel Maddow you are essentially watching partisan pep rallies. The entertaining hosts make you feel good but they rarely inform or even offer both sides of a debate. "Meet the Press" always offers both sides and buttresses the politicians with members of the press corps. The elected officials launch into their talking points and it's the job of independent host David Gregory and the members of the press to call them out for sounding like mindless cyborgs.

I have my issues with Luis but was impressed by his appearance. He approached the issue pragmatically as opposed to ideologically. How he is re-molding the Latino Caucus' stance on immigration may mean we are closer to reform than ever before.

When most people hear that Luis Gutierrez was arrested in front of the White House during an immigration protest and heads something called "The Latino Caucus" we expect him to be draped in the Mexican flag shouting "viva la raza." Luis is too smart for that. He knows that most Americans are sprinkled around the political center. Left wing rhetoric may play with his base but his base isn't going to get immigration reform passed. Luis has been using his position to speak to the middle and it may be working.

Luis started with the familiar "we aren't going to deport 12,000,000 people" argument and that illegal immigrants aren't just Latinos. Two familiar talking points. However, he followed that up answering the question of just what is "amnesty." Luis said he wants to create a path to citizenship that requires an undocumented worker to come forward, pay a fine, learn English, and go through the citizenship process. Luis basically read off the conservative wish list. A good play when trying to build consensus. Further, Luis has already written a piece of legislation (HR4321). This isn't pie in the sky, it's a bill that can be voted upon. With a change in the far left's tone and tactics, they are calling the right onto the mat.

Law-making is the science of compromise. Before we can move forward, each group has to produce its villains. These villains will be the "common enemy" that allow a bipartisan bill to be passed into law. Villains are the groups that each side in a political debate doesn't want to own. Republicans and Democrats alike distance themselves from these political pariahs.

In the early stages of a political debate, each side labels the other as universally good or bad. It does not matter if it's immigrants, gays in the military, big banks, uninsured Americans, etc. The left or the right will say that all members in a certain group are "good" and the other side is "bad." That is capricious and general but it's the first step in a political compromise. The worst aspect is that we need to spend three months listening to each side make false, sweeping claims about the other.

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### Illinois Employee Classification Act Challenged As Unconstitutional

By Julie Proscia and Jon Hoag, SmithAmundsen, LLC (ILCA Members)

Rhonda and Jack Bartlow, doing business as Jack's Roofing, might have set the wheels in motion for the Illinois Employee Classification Act to be declared unconstitutional. The court proceedings came after the Illinois Department of Labor (IDOL) declared that Jack's Roofing had misclassified contractors and assessed a penalty of **1.6 million dollars** against Jack's Roofing. If this case is successful, it will be extremely helpful for the landscaping industry as they have been targeted at a higher rate and no end is in sight.

By way of background, The Illinois Employee Classification Act became effective on January 1, 2008 and imposes harsh penalties when companies in the construction industry (defined very broadly) are deemed to have misclassified workers as independent contractors. The difficulty for contractors is that the Act presumes that contractors are employees and places the burden on the contractors to prove the contractors are independent contractors. The Department has the discretion to fine companies up to \$1,500 per violation (i.e. for each day the contractor is misclassified). Based on our experience, it seems the Department has started applying the maximum penalty for every case.

Jack's Roofing filed a complaint for declaratory judgment and injunctive relief alleging that the Act violates the Illinois and United States Constitutions. The Circuit Court denied the TRO request. Jack's Roofing appealed the decision and the Fifth District Appellate Court ruled in favor of Jack's Roofing.

The good news for landscape contractors is that the Appellate Court's decision indicates that the Act and its accompanying administrative procedures do not provide the accused with a meaningful opportunity to be heard. The Court acknowledged that the Act allows a party to request an informal conference, but the Court declared that such a procedure is inadequate because it does not permit the contractor to confront accusers, examine witnesses, or inspect the evidence offered against it. **-PL-**

## Battle Lines<sup>(cont.)</sup>

In the immigration debate, the left implies that all illegal immigrants come here to work, obey the law, and fill jobs that Americans don't want. The right implies that all illegal immigrants are criminals and even the ones who don't commit felonies still usurp the law to steal jobs that Americans desperately need. Both sides are wrong. On the employer side, the right implies that all employers who hire illegals are duped into hiring undocumented workers but still treat them with the respect and fairness owed to any worker. The left implies, that all employers are robber barons who exploit illegal workers to save a buck. Both sides are wrong again. Yet those are the polarized sides of the debate. It is from these two opposing viewpoints that villains are identified.

### The Villains

These are the diabolical mustache twirlers who will feel the sting of a comprehensive immigration reform bill. These villains will be made an example of and both state and federal law will offer them no protection.

#### *Illegal Immigrants Who Commit Crimes.*

The left will distance themselves from illegal immigrants who commit crimes. If an illegal is arrested for drugs, rape, murder, robbery, or another felony that person will feel the swift vengeance of the law. I would not be surprised to see that person, and any illegals in his family or extended family, summarily deported.

#### *Employers who knowingly hire illegals and exploit them.*

Gutierrez mentioned sending employers who hire and exploit workers to jail. He said this at least three times during the broadcast. Make no mistake, these employers will be targeted and punished. The right will say that the only crime of these employers is giving people jobs and that is a far cry from peddling drugs or rape, but it will not matter. This group will be the villain and the right will not lose political leverage to defend employers who exploit illegal immigrants.

Exploitation will include substandard working conditions, excessive hours, fear and intimidation, underpayment, and withholding payment. Stiff penalties (likely including jail time) will be given to these employers.

### The "Guilt by Association" Villains

This is the second group that will be unfortunately heaped in with the first. This is the "grey area." These are the stories that will make "60 Minutes" and each side will use these groups to say that the law has gone too far.

*Illegals who commit petty crimes and illegal family members of illegals who commit serious crimes.* Arizona's SB1070 gained momentum because a prominent cattle rancher was murdered by an illegal immigrant. The law now extends to traffic stops. The purpose of SB1070 is to stop an illegal immigrant from committing a big crime by arresting and detaining them for a small crime. This grey area is where the firestorms of controversy swirl and why 20,000 people gave up their Memorial Day weekend to march on Phoenix.

#### *Employers who knowingly employ illegals but treat them fairly.*

There are some employers who hire illegals and treat them like any other worker. They pay the same wage but keep the person "off the books" at the request of the laborer. The immigrant does not want to be found, wants to be paid in cash, does not have a checking account, and intends to stay for a short period of time. Additionally, there are many illegal immigrants who work for legal immigrants or Hispanic citizens. Legals hire illegals because they are family or friends. This will be another grey area but more often than not, these employers will be penalized.

### The Good Guys

I am not implying that they are legal and moral but members of this category will possess the ideals that the law is trying to uphold.

#### *Illegal Immigrants who Come Forward and Assimilate.*

Illegal immigrants who come to this country, abide by the law, earn money, support a family, and attempt to become assimilated will be given a slap on the wrist. They will need to come forward, be subjected to a background check, pay a fine, become citizens, and be encouraged to learn English. After that, they will be treated

like every other citizen. They'll even be applauded for their willingness to come forward to begin the path to citizenship.

*Employers who unknowingly hired illegal immigrants.* Employers who go through the I-9 process and receive fraudulent information will be protected. It does not make sense to lump employers who unknowingly hire illegals in with those who knowingly hire them. An employer would not bother with an I-9 if it wanted to hire truckloads of illegal labor. It is very common in the landscape trade for employees to present employers with:

1. a fraudulent form of identification.
2. a real social security card or driver's license for someone else.
3. the social security card of someone who is related to that person or may even be the person's legal child or relative.

Most of these problems are only identified when the IRS comes knocking to know why five Jose Sanchezes at the same address received paychecks from five different employers or a 6-year old boy reportedly made \$30,000 last year. By that time, the laborer is gone and the company has some explaining to do. Employers within this group will be admonished but I doubt stiff penalties will be enacted to punish them.

Illegal immigrants are drawn to the landscaping and nursery field because of the seasonality of the job, high turnover, and the similarity of work from company to company. It is easy for an illegal employee to leave one company and join up with another before the taxman or ICE arrives. E-Verify was supposed to be the answer but anyone with a database will tell you it's never 100% accurate and the cultural complexities of Hispanic, eastern European, and Asian names and surnames further complicate matters.

That is the thumbnail sketch of the villains and good guys of the immigration debate. As the issue lurches forward, look for these groups to splinter. The national discourse will change from us vs. them, legals vs. illegals, labor vs. employers and inch towards compromise. Luis Gutierrez will play the middle to achieve the goals of the Latino Caucus. Landscaping companies must tread carefully and make sure they stay one of the good guys. Mistakes will happen but blatant disregard for the law will expose landscape contractors to great risks and there will be no political side left to protect them. **-PL-**