

STALEMATE: UNITED STATES IMMIGRATION REFORM EFFORTS, 2005 TO 2007

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The author discusses national immigration reform efforts in the United States from 2005 to 2007. The new laws proposed during these three years ranged from enforcement strategies, which focused on removals and deterrence, to comprehensive reform, which would provide a pathway to citizenship for many existing unauthorised (also known as illegal) immigrants. While the Republicans controlled both chambers of Congress in 2005 and 2006, the party was split between pro-migration business interests and more sceptical grassroots constituencies. After 2007, the Democrats had majorities in the House and Senate but encountered their own internal divisions and electoral concerns. In addition, procedural issues—particularly the need for a sixty-vote supermajority in the Senate—helped prevent a compromise from emerging. Immigration sceptics opposed legalisation, which they termed ‘amnesty’, while others criticised enforcement-only approaches as unworkable as well as problematic for the economy. While President Bush favored a comprehensive approach, the only legislation to ultimately pass was a 700-mile extension of the border wall between the U.S. and Mexico.

INTRODUCTION

This article examines recent efforts to reform immigration policy in the United States. America is in the midst of a fourth great wave of immigration, and the nation is seeing major demographic change, which is leading to cultural and political transformations—and in some quarters, nativist reaction. Legislators considered a variety of proposals, ranging from the restrictionist to the comprehensive to the generous. In the end, after two years of negotiation and debate, the only result was a 700-mile extension of the border wall between the US and Mexico. This decision to incrementally extend previous efforts at restriction satisfied few, but it reflected the challenges of immigration policy, which some are now calling a new ‘third rail’ of American politics.

There is little doubt that the United States is undergoing a demographic transformation because of immigration. Over the last four decades, the Anglo (non-Hispanic white) share of the population has been in decline, while the Latino¹ and Asian-American populations have increased in a manner foreseen by few. For instance, census data² in 2007 showed that Anglos were

66 per cent of the population, followed by Latinos (15.1 per cent), African-Americans (13.5 per cent) and Asian-Americans (five per cent). Four states now have ‘majority minority’ populations—Hawaii, New Mexico, California and Texas. Three additional states are 42 per cent minority—Nevada, Maryland and Georgia.

Immigration politics is now best understood as a function of the growing Latino presence in America. Since the 1990s, the American public has become increasingly aware of Latino population growth and its dispersion across the nation. This is largely the result of recent immigration from Mexico, Latin America and the Caribbean. However, many Latinos trace their ancestry from the annexation of Mexican territory following the Mexican–American War (1848) as well as migration waves in the early and middle 20th century. In other words, Latinos are both a new and an old population. As you read this essay, a migrant is somewhere crossing the border, but her destination may be San Antonio, Los Angeles, or San Francisco—names that indicate the long-standing Hispanic presence in the United States. The economic, cultural and political futures of the US

and Mexico are increasingly intertwined, but this does not sit well with some in the United States.

To understand contemporary immigration politics in the United States, we must return to 1965 and the Immigration and Nationality Act (INA). This law replaced the Immigration Acts of 1921 and 1924, which not only limited immigration numerically but also imposed racial and national restrictions. These laws, building on previous racial exclusion provisions (for instance, the Chinese Exclusion Act of 1882), were designed to ‘discriminate without appearing to do so’.³ They created immigration quotas equal to two per cent of the overall US population in 1890, thereby greatly reducing the share from Eastern and Southern Europe and significantly advantaging those who wished to migrate from the UK and other parts of Europe. However, no restrictions were placed on immigration from the Western Hemisphere, including Canada, Mexico and Latin American nations. This was largely the result of economic and diplomatic concerns.

In the decades that followed, the Great Depression and World War II further served to reduce and discourage immigration. However, immigration pressure built after World War II, when the Displaced Persons Acts, which added 400,000 migrants from Europe, and the Cold War changed the political climate on immigration issues. These developments led to a political interest in admitting refugees from communist nations, such as Hungary and Cuba. In addition, the 1924 restrictions no longer reflected the potential source countries of migration and the racial restrictions were an embarrassment in the context of the Cold War.

The 1965 Act largely abolished the existing racial–ethnic restrictions and established a new system based on family reunification as well as skills. According to President Lyndon B. Johnson: ‘This

bill that we will sign today is not a revolutionary bill. It does not affect the lives of millions. It will not reshape the structure of our daily lives’. How wrong this statement would prove to be. For instance, in the four decades after the INA, only 14.25 per cent of migrants came from Europe.

In addition, the number of unauthorised⁴ immigrants—often called ‘illegal immigrants’ in everyday political discussion—increased considerably. The US Department of Homeland Security (DHS) estimates the number of unauthorised immigrants in the US at 11.8 million.⁵ Almost sixty per cent of these individuals are from Mexico. Of the top ten sources of unauthorised immigrants, six are from the Western hemisphere (Mexico, El Salvador, Guatemala, Honduras, Brazil and Ecuador). The remaining nations in the top ten are from Asia: China, the Philippines, Korea and India. The Pew Hispanic Center estimates that the number of unauthorised entrants was approximately 800,000 per year from 2000 to 2004 and then 500,000 per year from 2005 to 2008.⁶

Immigration reform began to percolate in the early 1980s. After six years of effort, Congress passed and President Ronald Reagan signed the Immigration Reform and Control Act (IRCA) in 1986. This law was designed as a compromise between those who wanted to legalise the unauthorised population and those who favored increased immigration enforcement. The law specified a new legalisation process as well as employer sanctions. While enforcement never quite materialised, three million individuals were legalised—almost two million more than anticipated. This bill haunts immigration restrictionists, who worry that a contemporary compromise will lead to a similar result. As will be discussed, this makes any comprehensive compromise difficult.

Additional legislation was passed in 1996. This affected immigrant eligibil-

ity for federal social programs, increased enforcement efforts, added penalties and increased workplace screening. These laws include the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). However, none fundamentally altered the immigration landscape. By the mid-2000s, the immigration system was routinely described as ‘broken’, ‘failing’ and in need of reform.

THE SENSENBRENNER BILL: 2005

Although immigration legislation was considered in 2004 and early 2005, these were efforts to attach amendments to Iraq war funding bills. Some members of Congress questioned whether this was the right approach. For instance, Senator John Cornyn (R-TX) observed that the supplemental spending bill might get ‘bogged down and diverted in an immigration debate, which I think frankly, we’re not ready for’.⁷

As immigration reform efforts restarted in 2005, the most notable political dynamic was the split within the Republican Party. GOP members of Congress, particularly in the House of Representatives, advocated greater enforcement efforts—encompassing new legislation as well as the more vigorous enforcement of existing laws.

According to political analyst Stuart Rothenberg, House Republicans wanted a two-step process, first border security and then a guest worker program, ‘But you don’t have to speak with many House Republicans to understand that many of them wouldn’t care if they ever get to the second bill’.⁸

By contrast, many in the Senate advocated a more comprehensive approach, including a guest worker program, a path to legislation for the unauthorised, and renewed border and workplace enforcement. President Bush was generally sympathetic to immigrants. He had hoped to address

immigration reform early in his presidency, but was thwarted by the events of 9/11 and the subsequent war in Iraq.

Because both chambers and the White House were controlled by the Republicans, Republican divisions were on display for all to see. Two core GOP constituencies—the business community and grassroots social conservatives—held very different opinions. Democrats, by contrast, were more united, although this began to change with an enlarged and more diverse caucus after their victories in the 2006 congressional elections.

A key player in the initial immigration drama was James Sensenbrenner (R-WI), chair of the House Judiciary Committee. He represented the viewpoint that favoured enforcement, with further measures delayed until the border was secured and the unauthorised removed. His bill, H.R. 4437, was adopted in committee on December 8, 2005 by a party-line vote, 23–15. It was passed by the House 239–182 on December 16th. Again, the vote was highly partisan, with only 36 Democrats voting yes and only 17 Republicans opposed.

In addition to a mix of additional border enforcement provisions, HR 4437 contained two particularly controversial features. First, it would criminalise ‘illegal presence’ in the United States, which under the existing law is a civil violation, and mandate a penalty of 366 days in jail. Second, it contained language that would ‘make it a federal crime to offer services or assistance to illegal immigrants’.⁹ Critics said it would criminalise humanitarian assistance and lead to jail sentences of up to five years for priests, nuns, health providers and social workers. Senator Hillary Clinton (D-NY) said it would ‘literally criminalise the good Samaritan and probably even Jesus himself’.¹⁰ Others responded that Section 202 was concerned with providing a new enforcement tool in the fight against criminal smuggling rings.¹¹ In addition, the

bill mandated employer use of the ‘Basic Pilot’ program, which allows companies to assess the legal status of potential employees, and an amendment ended the ‘diversity lottery’ program.¹²

The bill was strongly supported by the House Immigration Reform Caucus, an organisation with almost 100 members and led by Representative Tom Tancredo (R-CO). From the start of the debate, however, alternative voices advocated more comprehensive approaches. As is often the case in US immigration politics, the business community was a strong advocate for immigrants. According to the US Chamber of Commerce: ‘Most people recognise that the overall system isn’t working. We have 6 to 8 million undocumented workers here who are not going to be deported. Most contribute to our society and should be given some sort of legal recognition’.¹³ In addition, Grover Norquist, president of Americans for Tax Reform, said: ‘We need more people in the United States to remain a world power and simply to function as an economy. Our immigration rates are below what our job requirements are. We need 500,000 people more than we allow...’¹⁴ Such support reflects the understanding that approximately one in 20 workers in the US is an unauthorised immigrant and the share is much higher in particular fields, such as insulation workers (36 per cent) and dishwashers (23 per cent).¹⁵

The US Senate never passed an equivalent bill, however. Without the approval of both chambers, the Sensenbrenner approach had no chance of enactment. The bill did precipitate the ‘immigrant marches’ in the spring of 2006, where hundreds of thousands, if not millions of people, including many non-citizens and students, protested against the Sensenbrenner bill in particular and restrictionist reforms more generally. While the marches generated a great deal of media attention and controversy, it is difficult to ascertain the effect on members of

Congress. One possibility is that they reinforced existing perspectives. However, the *New York Times* reported that: ‘Lawmakers central to the immigration debate acknowledged that the televised images of tens of thousands of demonstrators, waving flags and fliers, marching in opposition to tough immigration legislation helped persuade the panel to find a bipartisan compromise’.¹⁶

COMPREHENSIVE REFORM IN THE SENATE: 2006

In the following year, the Senate took up immigration reform, but as *Congressional Quarterly Weekly* (hereafter *CQ*—one of the most respected publications that cover congressional politics) noted: ‘there are no simple solutions to an issue that divides Republicans and the nation’.¹⁷ Senator Arlen Specter (R-PA), chair of the Judiciary Committee, began the process with a markup of his draft bill on March 2nd. In addition, Senators Edward Kennedy (D-MA) and John McCain (R-AZ) were drafting their own legislation. Both bills were comprehensive efforts featuring legalisation of the unauthorised, a guest worker program and additional enforcement. Committee members were working under the shadow of Senate Majority Leader Bill Frist (R-TN), who planned to bring to the floor an enforcement-only bill if the committee did not come to an agreement.¹⁸ The Frist bill, S. 2454, was similar to the Sensenbrenner bill—primarily enforcement provisions without guest workers or legalisation.

Almost from the start, the key issue of amendments arose. They would bedevil an agreement that could gain the sixty votes necessary for passage in the Senate.¹⁹ As is often the case in the Senate, many members want to introduce amendments. During this debate, many of the amendments had restrictionist goals. For instance, Senator Tom Coburn (R-OK) favored an amendment that would deny citizenship to the children of unauthorised immigrants. As this example

suggests, a carefully crafted compromise bill could lose substantial support if an amendment moved the bill substantially to one side or the other. As individual senators have a great deal of power, it is difficult to prevent such efforts. Democrats, like Senator Barack Obama (D-IL), argued that Republicans wanted ‘to put up a flurry of amendments as a tactic to collect string against Democrats in an election year, as well as to kill the measure itself’.²⁰

With the Senate about to begin voting on immigration measures, Bush tried to set the tone with the following comments: ‘It’s important that we have a serious debate, one that discusses the issues. But I urge members of Congress and I urge people who like to comment on this issue to make sure the rhetoric is in accord with our traditions. When we conduct this debate, it must be done in a civil way. It must be done in a way that brings dignity to the process. It must be done in a way that doesn’t pit one group of people against another’.²¹

However, some criticised Bush for initially proposing a guest worker program ahead of a renewed enforcement plan.²² A *CQ* columnist argued that: ‘Once again, Bush’s political advisors have failed to calculate the passions of his conservative base’.²³

Majority Leader Frist then proposed to bring his enforcement bill straight to the floor, thereby bypassing the Judiciary Committee.²⁴ However, he offered the Senate the opportunity to first consider a committee bill—if any agreement could be reached—as a substitute amendment.

On 27 March 2006, Specter’s committee passed a comprehensive reform bill by a 12–6 vote—all eight Democrats and four of the ten Republicans voted yes. Significant sections of the bill derived from the efforts of Kennedy and McCain. First, it created a guest worker program that would admit up to 400,000 people annually. Second, it allowed a path to legalisation for unau-

thorised immigrants who had lived in the country since 2004, although it would take at least eleven years to obtain citizenship. In addition, applicants would have to pay fines and back taxes, pass a criminal background check, stay employed, show evidence of learning English and civics and have their visa applications processed behind all others. Third, certain agricultural workers would ultimately be eligible for a Green Card. Lastly, the bill contained a variety of additional security and enforcement measures, such as increasing the number of Border Patrol agents, expanding border fencing and adding detention facilities.²⁵

This bill was then offered as a substitute amendment to the Frist bill, as promised. Frist himself announced his opposition, however, as he said it provided unauthorised immigrants with ‘what most Americans will see as amnesty’.²⁶ Specter responded that: ‘There is an effort far and wide to try and denigrate the committee bill with the smear of amnesty. And it simply is not amnesty’. In the view of supporters, the bill provided ‘gates’ that must be successful negotiated and did not simply confer citizenship on the unauthorised.

When it became apparent that the bill would not attract enough Republican votes, Republicans who favored comprehensive reform worked to create a compromise. A new version, crafted by Senators Chuck Hagel (R-NE) and Mel Martinez (R-FL), would have created three tiers. Unauthorised immigrants who had lived in the US for more than five years (about seven million people) would have had the most opportunity to obtain a Green Card and eventually citizenship. Those in the United States between five and two years (about three million) would face greater hurdles. For instance, they would have had to return to their nations of origin before applying for a visa. This was called the ‘touchback’ provision, which John McCain sarcastically referred to as ‘report to deport’.²⁷ Those

who had been in the US less than two years (about one to two million) would have had to return home with no provisions for their return.²⁸ However, this effort failed, too, and both sides blamed each other for reasons involving both substance and process.²⁹

Comprehensive reform came back from the dead in late April 2006, when President Bush convened a bipartisan meeting at the White House. He signalled his acceptance of some form of earned citizenship and, in a speech the previous day, noted that the deportation of large numbers of unauthorised immigrants was ‘unrealistic’.³⁰

The result was S-2611, the Frist-Reid bill, which was very similar to the previous Hagel-Martinez effort to rework the Judiciary committee bill. It was essentially endorsed by Bush in a prime time speech on May 16: ‘An immigration-reform bill needs to be comprehensive because all elements of this problem must be addressed together, or none of them will be solved at all’. Mindful of the security dimension to the political debate, Bush also announced a plan to deploy about 6,000 National Guard soldiers along the border in June.³¹

This bill survived a cloture vote on May 24th, 73–25 and passed the next day 62–36. However, this was the end of the line. For the president to sign a bill, it must be passed in identical form by the Senate and the House. Because the two chambers passed very different bills, a conference committee—composed of members chosen by chamber leaders—would be needed to iron out differences and create a further compromise. This did not happen, which effectively killed the bill.

This outcome was largely due to House opposition to the Senate measure. For instance, the Republican House leadership referred to the measure as the ‘Reid-Kennedy Senate Democrat Immigration Bill’. According to Representative Walter

Jones (R-NC): ‘The majority of people that I know, I don’t think we are going to bend at all on this amnesty that is known as a “pathway to citizenship”’.³²

Instead of appointing conferees, House Republicans decided instead to hold additional hearings across the country. Senate leaders then announced their own hearings. As *CQ* noted: ‘the move was clearly a gamble for both chambers, each of which is betting that the process will show that public opinion is on their side and give them ammunition going into conference’.³³ Senate Democrats charged that House Republicans wanted to use immigration as a campaign issue and were not serious about finding solutions. At the end of about two dozen field hearings, House Republicans announced that key elements of the Senate bill were not acceptable—to the surprise of nobody.

THE BORDER SECURITY FIRST ACT

In the end, only one immigration bill would pass in 2006. This was HR 6061, an extract from the Sensenbrenner bill, which passed the House 283–138 and the Senate 80–19. It would build about 700 miles of additional fencing along the US–Mexico border. Discussing the need to proceed with enforcement first, Speaker Hastert said that: ‘If you’ve got a patient that’s dying and is also bleeding to death, the first thing you want to do is stop the bleeding. We have a border that is bleeding to death. And we have to make sure we can stop that bleeding and get the patient well enough to fix other things’.³⁴

It was enacted before members left Washington to begin campaigning in the November 2006 midterm elections. According to *CQ*: ‘with Election Day near, many Senate Republicans who voted for the comprehensive bill acknowledged the need to demonstrate that they were serious about border security’.³⁵

COMPREHENSIVE REFORM IN THE SENATE: 2007

The 2006 midterm elections were a significant victory for congressional Democrats. In what President Bush called a ‘thumpin’, Republicans lost control of both chambers, although this was of greater practical benefit to the Democrats in the House than the Senate. This did not mean that comprehensive reform would automatically pass, however.³⁶ Not only did divisions exist among Democrats, but Senate negotiators still needed to assemble a coalition of sixty to avoid a filibuster.

House Democrats decided to let the Senate move first. If senators could not reach a compromise, there was little point in the now more liberal House considering immigration legislation. The first Senate bill was S. 1348 and negotiators were working on a ‘grand bargain’ that would ultimately lead to a more conservative approach. Along with the usual mix of border security items, a new Z visa would legalise almost all unauthorised immigrants. However, it would require that certain enforcement ‘benchmarks’ or ‘triggers’³⁷ be met before unauthorised immigrants could start to receive these visas;³⁸ create additional criminal liability for employers who hired the unauthorised; not provide guest workers with a path to citizenship; replace the sponsorship of relatives other than spouses and children with a new admissions points system, similar to that used in Australia and Canada;³⁹ and require the use of the ‘Basic Pilot’ employee screening system.⁴⁰ An amendment also terminated the non-agricultural component of the guest worker program after five years.

The change in family sponsorship—which was designed to break chain migration—and the adoption of a points system would be significant changes to the 1965 Act. However, a key challenge was, once again, dealing with the many amendments that had the potential to derail

the compromise. The Senate failed to end cloture, and therefore failed to end debating and amending, three times on June 7th.

On June 26th, however, the Senate voted to proceed with a revised version of the failed legislation. Key to this revival was a plan to commit \$4.4 billion for security and enforcement efforts. As *CQ* noted, some Republicans thought that: ‘so much of what has been promised in previously enacted legislation has yet to be paid for and delivered’.⁴¹ These funds were designed to reassure those in Congress sceptical about whether the enforcement aspect of the compromise would ever come to pass. Under the plan, devised by Senators Kyl, Graham and Martinez, the fees and fines imposed on immigrants would be dedicated to such efforts.

Nevertheless, the cloture vote failed 46–53 on June 28th, thereby defeating the new compromise and ending the long immigration reform process. It had gained only one vote since the June 7th defeat. About two-thirds of Republicans and one third of Democrats voted no. In addition to substantive concerns, some senators were worried about switching from a ‘no’ vote in 2006 to a ‘yes’ in 2007. In American politics, to change your vote is to ‘flip-flop’, not to learn or grow. In addition, with Democrats in charge of Congress, Republicans now worried about what a conference committee might devise.

While some legislators hoped the new administration would revive immigration reform in 2009, Obama announced in the summer of 2009 that it would have to wait until 2010. With the administration busy with health care reform, economic recovery efforts and the war in Afghanistan, immigration was too controversial to simultaneously consider.

THE RESULT

Despite significant investments in time and political capital, comprehensive reform legislation failed to pass in both the 109th and

110th congresses. This failure took place despite (1) three years of intense efforts, (2) with Republicans and then Democrats in charge of the House and Senate, and (3) despite the results of the 2006 election, which saw the defeat of several prominent anti-immigration hawks and generally revealed that immigration did not function as a wedge issue.

It also failed despite a president in the White House who favored comprehensive approaches. Because of low public opinion ratings, largely due to the decreasingly popular war in Iraq, Bush was unable to use the power of his office to convince reluctant Republicans to support a comprehensive reform package. Contrast this outcome to the 2003 prescription drug bill, where Bush successfully leaned on congressional Republicans to pass an extensive and expensive new entitlement program. In addition, if we consider the lack of action during 2009, and the recent announcement by Obama that immigration reform cannot be considered until 2010, then the failure continues even in a Democratic administration with a Democratic Congress.

During the years to 2009, the only legislation to pass was the expansion of the border wall. This can be seen as a continuation of the symbolic politics of immigration control noted by Andreas.⁴² As with previous enforcement efforts, it too will likely fall short of achieving its stated goals. As long as the invisible hand of Adam Smith continues to wave migrants across the border, government policies can only have limited—and sometimes counterproductive and unanticipated—effects.⁴³

However, it is important to note that many will not consider this overall outcome a policy failure. For restrictionists, the lack of comprehensive reform was indeed a victory; as they saw it, comprehensive reform would have acted as a de facto amnesty. Furthermore, the additional 700 miles of wall could be seen as a small but useful addition

to growing enforcement efforts.

Was this a victory for the right? Media commentators like Lou Dobbs and Rush Limbaugh certainly claimed victory. For instance, Dobbs said the failure of reform was: ‘A crushing defeat for President Bush and the Senate’s Democratic leadership on amnesty, a glorious victory for the American people’.⁴⁴ However, a more extensive victory for immigration sceptics would have fundamentally altered the 1965 Act in a way that revisited the composition and number of legal immigrants and devised a more effective enforcement strategy.

WHY NO REFORM?

A number of explanations can be found for the failure of comprehensive reform. In this section, we consider the most prominent. While no single explanation will suffice, several factors stood out, and several that were predicted to be important may not have been.

Public Opinion

While a full analysis of public opinion would require a separate paper, one theme is that the American public was somewhat mixed and inconsistent in its views. Given the difficult nature of the issue, this might come as no surprise. According to Roll Call reporting of the first Senate Judiciary Committee efforts: ‘Opinion polls give these central players little advice on how to handle the issue beyond a general public unease about the level of illegal immigration and a general uncertainty about what to do’.⁴⁵ CQ similarly reported that: ‘Public opinion is murky’.⁴⁶

There were, however, indications that the general public may have been willing to consider some types of comprehensive reform. According to a 4 June 2007 story in the *Washington Post*: ‘Public opinion polls seem to support Kyl’s contention that Americans are far more open to the deal than the voices of opposition would indicate’.⁴⁷

By contrast, Fred Barnes wrote next month that: ‘Democratic pollster Stan Greenberg found that a majority of Republicans and independents opposed the immigration bill. Democrats were split evenly’.⁴⁸ According to Morton Kondracke: ‘Despite massive agitation for a restrictionist immigration policy, a new poll shows surprising support for proposals to allow foreigners and illegal immigrants to obtain work permits and earn their way to citizenship’.⁴⁹ He later cited a Tarrance Group poll showing that earned legalisation was almost twice as popular as the enforcement and deportation option—even for likely Republican voters.⁵⁰ Reading these contending polls and interpretations, members of Congress may have found little clear guidance.

Talk radio

With polls providing no unambiguous signal, members of Congress likely looked to other factors to help determine their votes. One commonly claimed influence was talk radio and television. Senate Republican Whip Trent Lott (R-MS), who supported the revised Senate compromise in June, said that: ‘Talk radio is running America. We have to deal with that problem’.⁵¹ Grover Norquist of Americans for Tax Reform argued that a majority of House members would have supported comprehensive reform, but ‘radio talk-show hosts got out there and poisoned the atmosphere’.⁵²

The intensity generated by talk radio was directed at members of both parties. As the *New York Times* reported, for some Republicans: ‘This is among the first time, several of them said, that they have felt the full brunt of an advocacy machine built around conservative talk radio and cable television programs that have long buttressed Republican efforts to defeat Democrats and their policies’.⁵³

As noted in *CQ*, ‘After the immigration bill died and the Senate turned out its lights for the July Fourth recess, in the quiet you could almost hear the sound of the conserva-

tive talk-show hosts slapping one another on the back and clinking their champagne flutes’. The story further noted that while immigration constituted about nine per cent of mainstream media time, it received 19 per cent of talk-show time.⁵⁴

Kondracke argued that poll results: ‘ought to encourage President Bush to push for immigration reform against concerted opposition from radio talk show hosts and some GOP conservatives who denounce his work-permit proposals as “amnesty for law-breakers”’.⁵⁵ He similarly denounced ‘a loud clique of radio and TV talk show hosts who rail against an “invasion” of foreigners flooding across “porous” US borders in flagrant violation of the law’. According to Tamar Jacoby of the Manhattan Institute: ‘Polls show that the overwhelming number of Americans can accept a solution much like what was on the table. But a small number of naysayers have been able to become the tail wagging the debate’.⁵⁶ In this account, talk radio crowded out more reasoned debate as well as public opinion. However, Fred Barnes challenged these accounts with the argument that: ‘Immigration reform was defeated by a conservative revolt that spread to the wider public’.⁵⁷

CQ also noted that while media experts found that ‘conservative talking heads’ deserved ‘plenty’ of credit for derailing reform, another dimension was the ‘lack of an equally fervent group of supporters’.⁵⁸ The debate was reminiscent of the gun control issue, where a key factor has been the intensity of those opposed to reform. For this group, opposition to gun control is intense and very influential in vote choice. This is not the case for advocates of gun control, who are less likely to be single-issue voters. For instance, William Schneider noted that while a CNN poll found that 43 per cent of reform opponents said the immigration issue would be ‘very important’ to their vote in 2006, the corresponding figure for reform supporters was 24 per cent.⁵⁹

Primary and general election worries

Congressional Republicans may have been worried about primary challenges from the right. This is particularly the case in the House, where redistricting and gerrymandering have created districts that are highly partisan, favor the election of more ideologically extreme candidates, and may have led to an increasingly polarised Congress.

Stuart Rothenberg noted that immigration ‘carries considerable risk for the GOP. Rank-and-file Republicans are up in arms over illegal immigration in the United States and they are demanding legislative action’.⁶⁰ He also reported that two Republican incumbents in Arizona and Utah faced anti-immigrant primary challengers. *Roll Call* observed in November of 2005 that: ‘the most hotly contested races involving immigration appear to be in primaries in safe Republican districts’. By contrast, Democratic campaign officials said few candidates had raised the immigration issue.⁶¹

Roll Call reported that while GOP leaders and consultants claimed they did not fear losing seats in the 2006 midterm elections because of the immigrant issue, it ‘could influence the outcome of Republican primaries for open House and Senate seats next year’. In addition, such officials were concerned about ‘a backlash of Republican and like-minded voters’ if immigration was not addressed in the right way.⁶²

Nevertheless, anti-immigration primary challengers did not win. Representative Chris Cannon (R-UT) faced a challenger focused on immigration and won 56–44. While such a relatively close margin is rare in party primaries featuring an incumbent, a spokesman for the Republican Congressional Campaign Committee noted both the power of incumbency and the difficulty of running a single-issue campaign.⁶³

Some thought that the immigration issue could be a useful general election

‘wedge issue’ for the GOP. *CQ* reported in March of 2006 that: ‘Many [Republican] members are facing tough reelection bids at a time when Republicans are sagging in the polls. Policies that speak to the public’s frustration with porous borders might help overcome growing discontent with the war in Iraq and other unpopular policies’.⁶⁴

As Leal et al. noted, however, there is little evidence that House or Senate candidates were able to use the immigration issue to win general elections. In fact, several well-known incumbents and candidates who advocated strict enforcement approaches were defeated on Election Day, including J.D. Hayworth (R-AZ), Jim Hostettler (R-IN) and self-proclaimed ‘Minuteman’ Randy Graff.⁶⁵ While one can argue that the war in Iraq and the declining popularity of President Bush were the key factors, immigration did not appear to distract voters or function as a wedge issue.

As Senator Charles Schumer (D-NY) said in 2006, Republicans ‘thought this almost jingoistic approach would work. They thought it would be the gay marriage or Willie Horton of 2006’.⁶⁶ For instance, during Governor Tim Pawlenty’s (R-MN) reelection campaign in that year, he called his opponent—in an amalgam of familiar conservative themes—‘one of the big-spendin’, tax-raisin’, abortion-promotin’, gay-marriage-embracin’, more-welfare-without-accountability-lovin’, school-reform-resistin’, illegal-immigration-supportin’ Democrats’.⁶⁷

Notwithstanding this outcome, some Democrats may have also thought they had reasons to worry about the 2006 election and for this reason muted their support of comprehensive immigration reform. Even after the Democratic victories in the 2006 mid-term elections, many members of the caucus were still nervous about the electoral implications of a vote for comprehensive reform. As observed in *CQ*: ‘it turns out that the Democrats have their own members

who think that those ideas [in comprehensive reform bill] sound like, well, amnesty. They're senators from red states and House members from red districts who know that, even though some of the most vocal Republican opponents of last year's bills were voted out of office, it's still not a good idea to be on the wrong end of an attack ad about rewarding lawbreakers'.⁶⁸

Roll Call noted in March of 2007 that both parties may prefer a 'rhetorical draw' that avoids 'compromises that may upset base voters'. One GOP aide said Republicans may wish to 'avoid facing the ire of single-issue conservative base voters come Election Day', while a Democratic aide worried that passing comprehensive reform over Republican objections might increase Republican turnout.⁶⁹ In light of such possibilities, perhaps many members of Congress thought that opposition to comprehensive reform was the risk-averse choice, regardless of their private views.

This account suggests that Members of Congress may have overestimated public opposition to amnesty, or at least the likelihood that it could lead to primary or general election defeat. However, members of Congress are cautious and, while they may not always run scared, they often think in terms of worst-case scenarios and therefore tend to avoid votes with career limiting potential. Similarly, according to Lindsey Graham (R-SC): 'I think it was a situation where they knew we weren't going to make it, and people felt like a "no" vote was in their best interest'.⁷⁰

Public response

Media accounts frequently mentioned that the immigration reform issue generated an unusual level of public outcry. Senator John Warner (R-VA) noted that: 'In my 29 years, I've experienced all the events in that time period, but this is clearly the high-water mark'.⁷¹ There are multiple references to the large volume of calls received by member

offices. During the final consideration of the compromise Senate bill in June of 2008, for instance, *CQ* reported that: 'Hours before the demise of the complex and highly contentious bill, a deluge of phone calls from constituents, mostly clamoring for the measure's defeat, tied up the lines to several Senate offices'.⁷² As *CQ* reported, 'the anger of those callers apparently had some resonance in the Senate, because in the end only 46 lawmakers stood behind the compromise measure'.⁷³

Some public reaction to the legislation was even threatening. *The New York Times* reported that a number of members, including Republicans, had received threatening or menacing letters and calls.⁷⁴ At least part of the vitriol likely reflected racial animosity. As Senator Lindsey Graham (R-SC) noted: 'There's racism in this debate. Nobody likes to talk about it, but a very small percentage of people involved in this debate really have racial and bigoted remarks'.⁷⁵

Lack of adhesive

According to Angela Kelley of the National Immigration Forum, enforcement and regularisation need to be enacted simultaneously: 'To do one without the other, it's like a Band-Aid without adhesive. It's not going to stick; it ain't going to work'.⁷⁶ The chief lobbyist of the US Chamber of Commerce used a similar metaphor: 'The glue that is keeping this process going is the absolute agreement by all the disparate groups that the currently system is absolutely dysfunctional'.⁷⁷

In this debate, did any policy items have the capacity to act as 'adhesive' or 'glue'? In particular, could any item convince enough 'amnesty' opponents to support some form of legalisation? The answer appears to be no. Given deep suspicion that any new compromise would be a repeat of IRCA, immigration sceptics largely stuck with the mantra of enforcement first. More generally, Stuart Rothenberg observed that

creating an immigration compromise was as difficult as creating a health care bill in the early 1990s; every change meant to gain supporters ended up losing other supporters.⁷⁸

One possible source of glue was the points system incorporated into the final version. As Freeman, Leal and Onyett concluded: ‘At first glance, it was plausible to contend that the merit-based points system was necessary to any compromise between the Bush administration and Republican and Democratic senators’. However, the law was ultimately opposed by many in the business community, especially the high-technology industry, which saw it as replacing the H1-B program and thereby ‘creating a government-imposed limitation on employer flexibility to respond quickly to their labor market needs’.⁷⁹ With business opposition, combined with liberal opposition, the issue failed to help craft a compromise.

The word ‘amnesty’ also played an important role. Not only did it give opponents a sound-bite that easily encapsulated their opposition to legalisation, but it also made compromise more difficult. Flip-flopping is always risky in politics, and particularly so on a position loaded with such emotional resonance.

It also annoyed reform advocates, who devised phrases like ‘earned citizenship’ to make the case that any legalisation would come with conditions. Representative Jim Kolbe (D-AZ) asked if Congress was serious about reform or ‘stuffed itself full with empty promises and bumper sticker rhetoric?’ He continued that ‘calling everything “amnesty” makes for a great sound bite, but it doesn’t make it true’.⁸⁰ Senator Mel Martinez (R-FL), in arguing against deportation of the unauthorised, noted that: ‘the punishment has to be proportionate to the crime committed … what we have to do is understand that we have been operating an illegal system and that everyone’s been

participating and benefiting by that’. However, advocates found such reasoning was difficult to convey in a sound bite.⁸¹

Senator Specter defended the Senate’s comprehensive approach as one of ‘attrition’. Immigrants who meet specified conditions will be allowed to legalise, but those who cannot, will not. In addition, he argued that employment opportunities would dry up due to the mandatory employee verification system, and many of the unauthorised would return home.⁸²

Immigration sceptics were clearly not buying these arguments. They saw comprehensive reform as providing citizenship to millions of lawbreakers, regardless of various hoops and conditions. In addition, the stick to balance the carrot was comprised of security and enforcement measures that—in the view of many sceptics—might prove ineffective, or might not ultimately be funded or implemented. This is why the promise of a guaranteed \$4.4 billion toward enforcement helped to revise the Senate process, but ultimately even this was not enough.

Governance and capacity questions

As *CQ* noted, efforts to craft compromise legislation were difficult because Congress and the president were out of practice. Congressional leaders were not used to passing legislation that received an overall majority but risked significant defections from each party—and certainly not from the majority party. As Frank Sharry of the National Immigration Forum noted, to do so in 2007 would require ‘a different set of muscles’. Not since the No Child Left Behind education bill in 2001 had the White House and Congress negotiated a truly bipartisan deal.⁸³

Concerns were also raised about the capacity of the federal government to administer significant immigration reform. Given the criticism leveled against the INS during the previous legalisation (IRCA) as well as the current bureaucratic incarnations,

it is unclear whether a mass legalisation program could be done without at least some fraud. *The Washington Post* reported that: ‘As the nation debates whether, and how, to legalise as many as 12 million illegal immigrants living here, the agency that would spearhead the effort has a legacy of shoddy service, years-long delays and susceptibility to fraud’. Furthermore, it is ‘confronting its reputation as a broken bureaucracy whose inefficiency encourages more illegal immigration and paradoxical disincentives to change’.⁸⁴ Some doubted that the immigration bureaucracies could cope with perhaps ten million new applications. As the Senate was considering a bipartisan compromise in May of 2006, Mark Krikorian of the Center for Immigration Studies observed that: ‘They’re choking on immigration as it is’. One activist, who was employed by the INS in the 1980s, observed that: ‘The only way it could be done is with a rubber stamp. Every fraudulent document producer in the country is dancing with joy right now’.⁸⁵

Religious divisions

In addition to splits within both parties, a new religious split was visible. Some religious alignment was predictable; for instance, the Roman Catholic Church has long provided one of the few strong, national voices against enforcement-oriented measures and in favor of legalisation. In fact, the Sensenbrenner bill was denounced by the US Conference of Catholic Bishops. As Bishop Gerald Barnes of San Bernadino (CA) wrote, it would ‘place parish, diocesan and social service program staff at risk of criminal prosecution for performing their jobs’.⁸⁶ The Catholic Church also opposed temporary guest worker programs, the ‘touchback’ provision and the restriction of family reunification provisions.

However, Cochran and Zeller observed that ‘a core constituency of the [Republican] party—religious voters—is itself fractured over the moral questions of how the United

States ought to respond to the wave of illegal immigrants’. Some evangelical organisations and leaders favored a humane approach or did not address the issue.⁸⁷ *CQ* reported that ‘many evangelical churches now support comprehensive immigration legislation complete with some form of legalisation’.⁸⁸

The *New York Times* noted ‘evangelical leaders’ increasingly visible efforts to push for what they say is a more humane policy in keeping with biblical injunctions to show compassion for their neighbors, the weak and the alien’. However, the typical evangelical is less likely to support comprehensive reform, according to a poll by the Pew Forum on Religion and Public Life—‘largely based on concerns that immigrants threaten the American way of life, rather than economic worries’.⁸⁹ These emerging divisions within religious communities did not serve to derail comprehensive reform, but they likely complicated already difficult political calculations among opponents and perhaps emboldened some supporters.

The Latino vote

Some analysts thought that reform would be easier to pass because both parties were interested in attracting Latino voters. President Bush and Karl Rove believed that a sustained GOP winning coalition in the 21st century would require higher levels of Latino support. *CQ* noted that ‘Some Republicans openly worry that the party will be branded as “racist” and “anti-Hispanic” if Congress deals with the issue as most House Republicans prefer’.

However, it was unclear to what degree comprehensive reform would in fact bring more Latinos to the GOP. Research shows that Latinos are not wholehearted advocates of liberal reform, as is often assumed. In addition, while Bush received about 40 per cent of the Latino vote in 2004, a record high, it became clear that not everyone in his party was on board with his outreach plan.

In fact, it can be argued that opposition to comprehensive reform reflected not only genuine concerns about law and order and border security, but also worries about cultural change—particularly given that most post-1965 immigration, legal and illegal, is from Latin America and Asia. As the *Economist* asked: ‘And why should congressional Republicans change their minds on this most emotive of issues? The vast majority of these members represent white conservative voters who regard immigration reform as a reward for breaking the law and a guarantee of the “Mexification” of American culture’.⁹⁰

THE FUTURE

By some measures, 2005 to 2007 were ideal years for comprehensive reform. The economy was expanding and a Republican broadly sympathetic to immigrants was in the White House. However, the events of 9/11 derailed Bush’s early plans for immigration reform, and when he returned to the issue in his second term, his declining public approval gave him less influence with his congressional party and the public at large. Grass-roots opposition was strong, often expressed through (and fanned by) talk radio, and reflected not only law and order concerns but also worries about the larger cultural transformations wrought by immigration.⁹¹ Public passions may have been more intense than many in Washington anticipated and polling did not show the unambiguous support for comprehensive reform that might have counterbalanced opposition by a vocal minority. In addition, the last major reform effort, IRCA, suggested to many that a similar contemporary compromise could lead to 12 million new legal residents and citizens but little change in terms of enforcement and border security.

In the end, many risk-averse members of Congress were unwilling to support what was pejoratively labeled as ‘amnesty’, especially as no adequately compensating policy

was on the table. Arguments in favor of comprehensive reform were not sufficiently compelling in this difficult political environment. These included that enforcement alone would not work; that the economy needed additional workers; that bringing people ‘out of the shadows’ was right for both humanitarian and security reasons; and that a combination of legalisation and renewed enforcement would ultimately shrink the unauthorised population. When reform efforts concluded in June of 2007, a discouraged Senator Ken Salazar (D-CO) predicted that: ‘It might be the year 2015 before people have the courage to deal with this’.⁹²

On the other hand, while some might be discouraged by almost three years of immigration reform efforts that led to little change, one lesson of IRCA is that patience may be rewarded. Former Senator Alan Simpson (R-WY) and his colleagues spent six years before finding success.

Nevertheless, the state of the economy provides mixed signals at best for the future of reform. Traditionally, nativism is connected to economic conditions and what we might call ‘cultural change’—particularly when the foreign-born population percentage rises, and especially when it differs racially and ethnically from the majority population. To the degree that such concerns are still present, a renewed effort to reform immigration could lead to similar responses.

In addition, the declining economy complicates efforts for comprehensive reform. With unemployment in the US rising, any plans that brings additional guest workers or legalises the unauthorised may leave politicians vulnerable to attacks in subsequent elections. On the other hand, while the current recession is continuing and a jobless recovery waits in the wings, immigration is barely on the political agenda. With arrests along the US Mexico border down by about a quarter this year,⁹³

the issue is less visible, and already some politicians are claiming that renewed enforcement efforts are working.⁹⁴

Ultimately, the near term future of immigration reform depends on President Obama—his priorities, his public approval ratings and his political capital after the health care debate. In addition, the usual economic and political factors—namely, the state of the economy and the approach-

ing 2010 mid-term elections—will play a role. An additional factor is how the Republican Party interprets its fall from power, and whether it sees the immigration reform debate as a contributing factor. While the Democrats hold large majorities in both the House and the Senate, an expanded caucus means a more diverse caucus. Republicans will still be key to the passage of any comprehensive reform package.

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