

Immigration: New Faces, Better Odds

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June 1, 2009

Barack Obama has established an undeniably ambitious agenda for this year, including overhauling the health care system, imposing limits on carbon emissions, fixing the economy, remaking the financial regulatory structure, winding up one war while winding down another and enacting a budget.

While that would seem to be more than enough, it's altogether possible that Obama will try to plant one more flag on that mountain by rewriting the nation's immigration laws to fix something that virtually everyone agrees is badly broken, yet until now has evaded a broadly accepted solution.

Twice in the past three years, Congress made a run at making comprehensive changes in the rules that govern who can enter the United States, who can work here, what penalties are imposed on those who ignore the law and hire undocumented workers, and what to do about the 12 million people – give or take – believed to be in the country illegally.

Both times, the effort ran up against strenuous opposition from forces that oppose open borders, from those who fear that citizens will be supplanted in the workforce by legal, not to mention illegal immigrants, and from those on the other side who are opposed to putting too much enforcement of the law ahead of a humanitarian result for those already here.

But Obama, who pledged during the presidential campaign to bring back the immigration debate during his first year in office, is taking a tentative first step in that direction. On June 8, much as he did with health care this spring, the president will host the first of what is expected to be a series of talks with a bipartisan group of Senate and House leaders to set the stage for a legislative accord on overhauling immigration policy.

It's a gamble, and he isn't committing to the challenge just yet. As Congress readies itself for its third attempt this decade at tackling this issue, many lawmakers and political observers are forecasting a familiar-sounding fight, and the president appears unwilling to engage in an effort that might fall short. The immigration debate, after all, has been reduced, at least rhetorically, to a legislative lexicon of well-known themes, most prominently "amnesty" – an epithet so potent that it has been enough to scuttle comprehensive immigration overhaul proposals in the past. But while the rhetoric may sound static, the political stakes have changed.

Not only is there a new administration, and a new voting lineup on Capitol Hill, but new bulwarks are in place along the border, and the economy's collapse has shifted the financial stakes.

To many in the trenches, the potential for getting a bipartisan, sweeping deal is within grasp. "We can and must try to find a way to enact significant improvements to our

immigration system now," said Charles E. Schumer, the New York Democrat who will be in a critical position to press the issue from his seat as chairman of the Senate Judiciary Immigration, Refugees and Border Security Subcommittee. "I think the time is right."

With next week's White House immigration summit, Obama will have fulfilled his promise to raise the subject, but he will not have committed to a timetable. That will await clear signs that the battle lines are changing.

On and off Capitol Hill, advocates of an overhaul have taken up the challenge to bring a bill to the House and Senate floors by the end of the year. "Obama's leadership is critical, but it's going to be the Democrats who have to step up on this," said Frank Sharry, executive director of America's Voice, a pro-immigration advocacy group. "It's not like Obama has to deliver the votes – they do."

It won't be easy. In the past, lawmakers have had to launch multiple legislative assaults before being able to carry comprehensive immigration bills across the finish line, regardless of whether Democrats or Republicans have been in charge of Congress or the White House. The last comparable overhaul, in 1986, was five years in the making.

Comprehensive immigration bills – combining border and work site enforcement with a plan to grant some form of legal status to undocumented immigrants and manage future flows of immigration – fell apart twice, as President George W. Bush pressed the issue as a cornerstone of his legacy. In 2006, with a Republican-led Congress, the Senate passed a bipartisan, comprehensive bill, but the House balked. In 2007, with a Democratic Congress, the Senate fell far short of passing a bipartisan measure, though the politics had changed and there was little likelihood that the House would act, making difficult votes in the Senate on immigration even tougher.

The differences this time around are many. In the Senate, a new cast of characters, led by Texas Republican John Cornyn, may hold the balance of power. Though he opposed the 2006 and 2007 bills, he appears interested in finding a compromise. In the House, Illinois Democrat Luis V. Gutierrez is now carrying the standard in support of an overhaul. Front and center for the administration stands Homeland Security Secretary Janet Napolitano, who was previously on the front lines of the immigration fight as governor of Arizona. And then there are the labor unions, whose members previously were at odds with one another on the issue, but have reconciled their differences and banded together in a new coalition that offers the potential for supporting a comprehensive overhaul.

Together, changes like these have eroded the prevailing wisdom that declared immigration to be moribund. In the Senate, Democratic and Republican supporters already say they have "90 percent agreement" on the main elements of an overhaul bill even prior to the discussions that Obama is about to inaugurate. If lawmakers can close that final gap, immigration's third time in the legislative arena may prove to be the charm.

Tallying the Numbers

The unavoidable dilemma for all attempts to overhaul immigration law is that the issue divides Democrats and Republicans against themselves, pitting border state lawmakers against those in the interior, for instance, and those with large immigrant constituencies or a high dependency on immigrant labor against those without.

There is no clearer evidence of that than in the Senate. As a result, even though the Democratic caucus is approaching 60 votes, the number needed to invoke cloture and break

a filibuster, overhaul supporters will almost certainly need some Republican votes to pass a bill because not every Democrat will vote yes. On the final, unsuccessful, cloture vote on the 2007 immigration bill, 15 Democrats voted no, and 12 Republicans voted yes.

Although the 2007 measure isn't regarded as comparable to the previous year's – and 16 senators from both parties who had voted "yea" in 2006 switched sides the next year – supporters say the arithmetic remains roughly the same.

What is changed is that the Senate has lost at least one, and maybe both, of its chief stewards on the issue. Massachusetts Democrat Edward M. Kennedy is grappling with a brain tumor and has turned his legislative attention entirely to health care. And the defeated GOP presidential candidate, John McCain of Arizona, has so far been sitting on the sidelines.

With no obvious heirs to their leadership on the issue, the balance of power may rest with a still-forming cadre of Republicans who have moderate views on immigration and have expressed a willingness to set aside their rhetorical assault with its references to "amnesty" and stitch together a workable bill.

Among them are several faces familiar in past immigration fights. One is Arizona's Jon Kyl, who helped draft the 2007 "McCain-Kennedy" immigration bill and whose influence has increased considerably since he joined his party's leadership as minority whip. Others include South Carolina's Lindsey Graham and Florida's Mel Martinez, a Cuba native and the only immigrant in the Senate. He is retiring at the end of this Congress.

Their support for immigration legislation stands in stark contrast to the more conservative wing of their party – led by Jim DeMint of South Carolina and Jeff Sessions of Alabama, among others – which brought down the 2007 bill by lambasting its provisions for limited grants of legal status as amnesty.

But Republicans who have moderate views on immigration are likely to matter when the votes are counted. One leader of this cadre is Cornyn, the senior GOP member of the Judiciary's Immigration panel, who at first supported but ultimately voted against the 2007 bill.

Cornyn sits between immigration's clear proponents and opponents, willing to discuss options for a comprehensive measure. And as chairman of the National Republican Senatorial Committee, he is in charge of preserving his party's tenuous hold on 40 Senate seats and working to restore the majority that the GOP lost in the 2006 election.

Cornyn is keenly aware of the political stakes. Immigration has traditionally been considered too incendiary an issue for lawmakers from conservative areas to support close to an important election – and 2010 will be especially critical for GOP Senate candidates, given their losses in the past two cycles. So, he would like to move forward.

"I don't think anyone benefits from the status quo, and I've never understood the idea that you should put something on the back burner because there's going to be an election," Cornyn said. "I think it would be good to get this addressed and get it behind us."

One reason he may feel that way is that in 2008 the number of Hispanic voters grew to 7.4 percent of the electorate, from 5.4 percent in 2000. Experts say many were motivated to register to vote for the first time by the immigration fights of 2006 and 2007.

More important was how they voted: Hispanic voters helped provide the margin of victory for Democratic Senate candidates in several states where the GOP lost its hold, including New Mexico, Colorado and Virginia. Moreover, some Republican senators, such as Graham,

who were warned that they might lose their seats because they had previously supported an immigration overhaul sailed through their primaries and general elections unscathed.

For Cornyn, who comes from an immigrant-heavy state where local law enforcement officials have been clamoring for an overhaul, the desire to reclaim the potential power of the Latino voting bloc is urgent if his party is to reverse its losses.

Being pro-immigration “may lose you conservative primaries, but it wins you elections,” said Sharry of America’s Voice.

Others, chiefly opponents of a comprehensive immigration bill, say the electoral calculus isn’t so clear-cut. They contend that any increase in pro-immigration Hispanic voters may be overwhelmed by opposition from other voters who are worried about losing jobs, especially with the unemployment rate still rising.

For every one Hispanic vote gained, Republicans might lose 10 other votes, said Stephen A. Camerota, director of research at the Center for Immigration Studies, a think tank that advocates for limits on immigration but says it wants better treatment for those allowed into the United States. “So, even if they go from 35 [percent] to 40 percent of the Hispanic vote, but lose 1 percent of the white vote, that could create a bad situation.”

Searching for a Majority

Finding bipartisanship in the House is generally harder than in the Senate. In 2007, House Speaker Nancy Pelosi demanded that Bush guarantee 70 Republican votes for a comprehensive immigration bill before she would schedule it for a floor vote. And Bush couldn’t deliver.

But this year, with a Democratic caucus that numbers 256 and a Democratic president, proponents are focused on getting just 218 votes in the House, which constitutes a simple majority of the chamber’s 435 lawmakers. If they are all Democrats, Pelosi and her fellow leaders aren’t concerned.

Gutierrez – head of the Congressional Hispanic Caucus’ Immigration Task Force and arguably Congress’ most dogged activist on the issue – says he can deliver that number. He is so devoted to winning enactment of immigration overhaul that he recanted on a promise to retire in 2008 in order to give the issue one more try. For the past two months, Gutierrez has been criss-crossing the country, meeting with religious leaders to rally churches and other congregations in support of an immigration bill.

“Overall, most Democrats in Congress don’t want to vote on this. You’ve got to hand it to Gutierrez, he’s lobbying his party,” said Roy Beck, executive director of NumbersUSA, a pro-enforcement lobbying group. “He’s out there making life miserable for Democrats.”

Gutierrez recounts a conversation he had with former Illinois House member and current Obama Chief of Staff Rahm Emanuel in late 2007, in which they counted 187 Democrats and 11 Republicans in favor of a comprehensive immigration overhaul. Those totals have undoubtedly increased, Gutierrez contends. “So, there are more than 200 votes for this right now,” he said, and the House “can get this done by Labor Day.”

Regardless of his estimates, it won’t be an easy task. Peter T. King of New York, the senior Republican on the House Homeland Security Committee, counts most Republicans and conservative Democrats as opponents. “I don’t think right now they have the votes,” King

said. "I would say the overwhelming majority of Republicans would oppose him, and many of the 'Blue Dog' Democrats would oppose him."

Lawmakers on both sides of the debate are haunted by the aftermath of the 1986 immigration fight, which ended with enactment of the Simpson-Mazzoli Immigration Reform and Control Act. That law created a framework for controlling immigration through a combination of limited grants of amnesty to those already in the country illegally, as well as stepped-up enforcement to block future increases in the number of undocumented workers. But the enforcement measures lagged, and over the course of two decades, the illegal immigrant population grew to an estimated 12 million from 1.3 million at that time.

As a result, many moderates from both parties say enforcement should take precedence over any proposal that would allow illegal immigrants to stay. They have formed the pro-enforcement House Immigration Reform Caucus. For their leader, Republican Brian P. Bilbray, the immigration debate boils down to one thing: E-Verify, the government's Internet-based system that allows companies to check the immigration status of potential employees using Social Security records.

"E-Verify is so effective, so non-obtrusive and so easy that the only justification for opposing it is that you really don't want the system to work," said Bilbray. "If you don't meet at E-Verify, if that's not a middle ground, then it shows that you're so far to one extreme or the other that you can't even see the other side."

Even before the economy crashed last year, E-Verify had become a focal point of the immigration debate. It's predicated on a simple argument: If you remove the magnet – illegally attainable jobs – you solve the problem of illegal immigration. E-Verify is currently a voluntary system; backers want to mandate it nationwide, which would also allow the government, for the first time, to hold employers criminally liable wherever undocumented workers were found.

Almost every member of the House supports at least the concept of work site enforcement and has voted to extend E-Verify as a voluntary program in the past. But E-Verify has now become a pawn in a game of political leverage: Pro-immigration activists know that moderates will need to balance any new proposals to relax the rules for undocumented immigrants – such as a program of legalization – with stepped-up enforcement measures, such as the nationwide use of E-Verify. The program's authorization lapsed in March, but it's funded through Sept. 30, giving Congress an excuse to reopen the issue soon.

That enrages opponents of a comprehensive overhaul, who want to keep enforcement issues separate from legalization. "You will not be able to build a fence tall enough, you will not have enforcement hard enough if you have an open employment system," said Bilbray. "Once we have shut down illegal employment, once we have eliminated that situation, then there's all kinds of things we can talk about. But you can't sell amnesty again with a promise of enforcement."

But advocates of a wide-ranging bill say there is no justification for delay. "The more people ... who want comprehensive immigration reform have moved to the center, and taken the argument of the right that wants less immigration reform, the less they have moved," Gutierrez said. "We can't just wait."

Reasserting Control

The difficulty of enforcing immigration rules has been a central issue for decades. The Bush administration combined the Immigration and Naturalization Service and Customs and the Border Patrol in one new Cabinet department – Homeland Security – in a bid to make them more efficient. And the department undertook a series of ambitious enforcement initiatives, including building 670 miles of fence along the U.S.-Mexico border, and conducting aggressive work site raids to arrest and deport undocumented workers.

But by the end of the Bush administration, the new department's standing with Congress was lower than ever. Democrats complained that Homeland Security's heavy-handed tactics were infringing upon immigrants' basic human rights. Republicans were angry about the apparent bumbling of projects that delayed work orders and busted budgets.

To restore the department's credibility, Obama appointed Napolitano to run it. A Democratic governor and former attorney general from a nominally Republican border state with significant immigration concerns, Napolitano had earned the respect of lawmakers from both parties. She was a vocal critic of the border fence, yet demanded that Bush extend the period the National Guard would be deployed to assist the border patrol so that the fence could be completed on schedule. She led a coalition of border-state governors in support of comprehensive immigration reform, but also pushed for a law that made Arizona the first state in the country to require all employers to use E-Verify.

That legacy earned her early praise from moderate Republicans. But others aren't so enamored with her. Napolitano has made only one formal change in immigration policy so far, announcing that Immigration and Customs Enforcement (ICE) would shift from rounding up illegal workers to prosecuting their employers – suggesting that ICE will at least slacken the pace of high-profile raids that conservative Republicans have praised as effective deterrents. Napolitano has also faced criticism for dispatching ICE troops from non-border areas to points of entry along the U.S.-Mexico border, possibly weakening internal enforcement. And finally, the Obama administration has repeatedly delayed a Bush administration rule requiring all federal contractors to run their hires through E-Verify, a program that is now set to begin June 30.

"My concern at this point with the new administration is that they may be pulling back from things that worked really well under President Bush," said Sessions, the top-ranking Republican on the Senate Judiciary Committee, which has prime jurisdiction over immigration. "The whole key to immigration is creating a lawful system, and that requires demonstration of lawfulness first."

It's too soon to judge whether Napolitano's actions indicate a particular approach that she is likely to take as secretary. But when Obama convenes his advisers to hash out the parameters of a new immigration bill, her assessment of what can and should be done in the realm of enforcement is likely to hold sway.

"We have to have the confidence of the American people that the immigration law is enforced," Napolitano said at a hearing before the Senate Judiciary Committee three weeks ago. "I believe my charge is to enforce the law that we have and to do it intelligently and effectively."

Unions Unifying

If the challenge for Democrats is to forge a new accord among different factions, then U.S. labor unions recently demonstrated that it can be done. In April, the AFL-CIO and the Change to Win federation announced a joint proposal for overhauling immigration policy, bridging a longstanding gap between the service employees' movement and the industrial labor unions over future flows of immigrants.

While Change to Win's flagship member, the Service Employees International Union (SEIU), has taken an active lobbying role in favor of comprehensive immigration legislation in the past, the AFL-CIO stayed on the sidelines, regarding temporary-worker programs – a must-have for businesses that have been a part of every immigration overhaul proposal – as a threat to the jobs and wages of American citizens. But in the framework presented last month, the two unions hit on a compromise: an independent commission to monitor the labor force and raise and lower the quota of special work visas accordingly.

The effort started as an internal initiative ordered by John Sweeney, president of the AFL-CIO, to look at ways to increase the union's influence in the coming round of immigration discussions. With former Carter administration Secretary of Labor Ray Marshall spearheading the process, the AFL-CIO then joined with SEIU to develop a set of common principles for temporary workers, including full legal protections and the ability to transfer a visa from one job to another to evade abusive work situations.

"We think if you do all of these things, what happens is you not only have a workforce that will come, you'll also find that the future flow program works in a way in which things will balance out, because there will be some people who will want to come and just work for a year and go home," said SEIU vice president Eliseo Medina.

But others – most important the U.S. Chamber of Commerce, which has worked with SEIU on immigration in the past – aren't sure about the substance of the proposal, or the permanence of this new unity among the unions. "We've talked about a commission many times in McCain-Kennedy and rejected it," said Randy Johnson, a vice president of the Chamber. "Last time around, we worked closely with the SEIU, and the AFL-CIO walked out of the room because of their opposition to temporary-worker programs. The unions had to work with us then, but now the Democrats are in the majority, so they may feel like they don't have to."

The significance of the unions' proposal isn't so much in its substance, since few lawmakers seem eager to use it as a blueprint, as in the political magnetism it could create for Democrats who previously withheld support for immigration bills in the name of protecting American citizens' jobs.

Labor unions aren't the only groups finding new accord on the issue. Religious organizations, state and local governments, and law enforcement associations have also expressed more support for an immigration overhaul. For instance, many evangelical churches now support comprehensive immigration legislation complete with some form of legalization. And local law enforcement agencies are calling on Washington to stop ratcheting up enforcement laws without giving states and municipalities the money they need to carry them out. Such moves have helped calm the grass-roots clamor for enforcement without amnesty.

"The union labor movement, and the emergence of some new players in this year's debate, is hugely important, and should give confidence to many Democrats that this is the year and now is the time," said Sharry.

A Question of Timing

Those diverse interests with a desire for enacting a comprehensive bill may be inching toward compromise, but the window for concluding an agreement may also be closing fast. Congressional leaders have effectively set a deadline already: In addition to E-Verify, lawmakers have timed most of the visa categories and enforcement programs that need reauthorization to expire on Sept. 30.

Getting an immigration bill ready by that time will be largely up to lawmakers themselves. Obama has committed most of his political capital to pursuing legislation on health care, clean energy and measures to right the economy – the issues Democrats hope to use to expand their majorities in 2010. While some would like to put immigration on that list as well, even its staunchest advocates are wary of debating a bill too close to the election.

“We really need to get it done this year,” said Gutierrez. “The later it gets into next year and the closer it gets to the general election, the less political appetite there is here to get anything done that is of the breadth and the scope of comprehensive immigration reform.”

In the meantime, the economic downturn continues to change the equation as well. Because jobs are drying up, the flow of undocumented workers into the country appears to have at least slowed, and perhaps reversed, with many returning home. But at the same time, the spike in unemployment has made the idea of letting in more workers anathema to Americans already out of work – even if immigrants are by and large not entering the country for jobs that would put them in direct competition with Americans.

From a purely political standpoint, picking up the mantle of immigration at a later date and time might behoove the Obama administration; Democrats, who must still make up the better part of any coalition, are expected to gain more seats in the 2010 midterm elections, and economists predict that by 2011 the country will start to experience the early stages of an economic recovery – all potentially smoothing the way for a complicated bill with many potential pitfalls.

“My view is that it’s going to happen during this presidency but not necessarily during this year,” said Doris Meissner, a senior fellow with the Migration Policy Institute and former commissioner of the U.S. Immigration and Naturalization Service. “[Obama] said that he wants to see the process move forward. That’s very different from saying he wants a bill this year.”

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