

IMMIGRATION REFORM BULLETIN

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Immigration in the New Congress

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If past is prologue, then we can expect an eventful two years in immigration policy. The stars are aligned in ways similar to 1995–1996, when a Republican-controlled Congress passed major new immigration restrictions, which were signed into law by a Democratic president.

Will 2010 be a repeat of 1994 on immigration? In 2010, Republicans made large gains in Congress and although immigration was not the key electoral issue, an anti-immigration measure passed at the state level inflamed emotions on both sides of the debate. Sound familiar? That description matches what happened in 1994, when Republicans took control of the House and Senate and California's Proposition 187 rocked the politics of immigration. While 2011–2012 may be different than 1995–1996, many of the same players and the emotions surrounding the issue remain.

IMMIGRATION ISSUES LIKELY TO ARISE IN THE NEW CONGRESS

In the Republican's *Contract with America*, published during the 1994 election campaign, immigration received little attention, except in the context of limiting public benefits and the deportation of criminal aliens. The *Pledge to America*, published by House Republicans during the 2010 election campaign, featured four specific references to immigration:

Our borders are a vital part of our security, so we will act decisively to ensure that the federal government fulfills its constitutional duty to protect our citizens and our nation, working closely with our state and local governments.¹

Establish Operational Control of the Border—We must take action to secure our borders, and that action starts

with enforcing our laws. We will ensure that the Border Patrol has the tools and authorities to establish operational control at the border and prohibit the Secretaries of the Interior and Agriculture from interfering with Border Patrol enforcement activities on federal lands.

Work with State and Local Officials to Enforce Our Immigration Laws—The problem of illegal immigration and Mexican drug cartels engaged in an increasingly violent conflict means we need all hands on deck to address this challenge. We will reaffirm the authority of state and local law enforcement to assist in the enforcement of all federal immigration laws.

Strengthen Visa Security—To stop terrorists like Omar Farouk Abdulmutallab, the Christmas Day bomber, we will require the Department of Homeland Security to review all visa applications at high-risk consular posts and prevent aliens from attempting to avoid deportation after having their visas revoked.²

“Key House Republicans may attempt to attach reductions in legal immigration to any new legislation aimed at controlling illegal immigration.”

Even before Election Day, Republicans who are expected to play key roles on immigration policy discussed a plan for new restrictive measures. Steve King, the Iowa Republican projected to become chair of the House's subcommittee overseeing immigration, told a Tea Party gathering in June that he would support legalization as part of comprehensive immigration reform only if “every time we give amnesty for an illegal alien, we deport a liberal.”³

In an interview with *POLITICO* the week before the election, King cited bills he hoped to push in the next Congress. The bills would include:

- attempting to change the interpretation of the

Fourteenth Amendment to prevent the children of illegal immigrants from becoming citizens of the United States if born on U.S. soil;

- affirming a state's right to enact its own immigration laws, as did Arizona;
- denying tax deductions to employers found to have hired illegal immigrants; and
- preventing cities from refusing to cooperate with federal authorities on immigration enforcement.⁴

NEW ATTEMPTS TO REDUCE LEGAL IMMIGRATION?

One can anticipate that key House Republicans may attempt to attach reductions in legal immigration to any new legislation aimed at controlling illegal immigration. Why would anyone think that would be the case? Because it's exactly what happened in 1995-1996, when Republicans took control of the House and Rep. Lamar Smith became chair of the House Immigration and Claims Subcommittee. In 2011, Smith is slated to become the new Judiciary Committee chair, placing him in control of the House's immigration agenda.

In 1995, Smith and Alan Simpson, his Republican counterpart in the Senate, produced large bills that contained numerous provisions aimed at controlling illegal immigration. Both the original House and Senate bills also sought to reduce legal immigration. Immigration restrictionists hoped to use support for provisions cracking down on illegal immigrants to achieve the long-standing goal of eliminating important legal immigration categories. Both bills would have slashed legal immigration and prohibited American citizens from sponsoring for immigration adult children, siblings and, in practice, their parents. Refugee admissions would have fallen and, in the Senate version, employment-based immigration would have been reduced and made much more difficult.

The primary reason the efforts to reduce legal immigration failed in 1996 was that pro-immigration groups and legislators adopted a strategy known as "split the bill." This was a

strategy designed to remove from the legislation any reductions in legal immigration, which would leave only provisions aimed at controlling illegal immigration in the final bill. Former Cato Institute economist Stephen Moore is credited with the idea to "split the bill" as way to save legal immigration.⁵

The strategy likely would have fallen short if the most junior man in the U.S. Senate, newly elected Sen. Spencer Abraham (R-MI), had not decided on his own to oppose cuts in legal immigration. Motivated by the immigrant heritage of his four grandparents, all born in Lebanon, Abraham's worldview was in sync with former President Ronald Reagan. Abraham decided he would take on fellow Republican Alan Simpson.

Sen. Abraham's opposition brought other Republicans along, particularly fellow freshman Sen. Mike DeWine (R-OH), who argued against Simpson's family restrictions by asking: Why, for immigration purposes, would DeWine's 19-year-old daughter be a member of his family but under the bill his 22-year-old son would be considered some type of outcast? DeWine also opposed the bill's provisions on businesses and, in particular, the proposed refugee and asylum restrictions. Another benefit of young Republican senators like Abraham and DeWine opposing the bill was that it prevented Simpson from cutting a deal with key Democrats, who would have been embarrassed if Republicans had proved to be better allies of civil rights and ethnic organizations than Democratic lawmakers. With the possibility foreclosed of reaching a deal with Sen. Ted Kennedy (D-MA), who aligned himself with Abraham, Simpson was mostly on his own.

In the key procedural vote in the Senate Judiciary Committee to "split" off all legal immigration provisions from the bill Simpson lost 12 to 6. He tried to reattach his legal immigration restrictions on the Senate floor but lost by an even larger margin 80 to 20.

A few weeks later, in March 1996, Smith moved his bill to the House floor. If his legal immigration reductions made it through the House it would still have been possible to combine them with the Senate's illegal-immi-

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gration-only bill when the two bills would be reconciled in a legislative conference. For that reason, the effort to “split the bill” continued on the House floor in the form of amendments. Similar to the Senate, it was Reagan-oriented freshmen Republicans who led the effort, in this case Rep. Sam Brownback (R-KS) and Rep. Dick Chrysler (R-MI). California Democrat Rep. Howard Berman joined them in the bipartisan effort.

The Chrysler-Berman-Brownback amendment was straightforward; eliminate the measures on legal immigration reductions from the bill, while leaving the new provisions to crack down on illegal immigration intact. An educational effort inside and outside of Congress explained how negative the bill would be towards family and other elements of legal immigration if enacted.⁶ The Chrysler-Berman-Brownback amendment prevailed by a vote of 238 to 183. The new restrictions on legal immigration were defeated.

A SMALLER OR A MORE INTRUSIVE GOVERNMENT?

Most Republicans campaigned in 2010 on the theme of a smaller and less intrusive government, one with fewer regulations on business and less interference in people’s lives. However, much of the expected agenda from House Republicans on immigration appears likely to be filled with bigger and more intrusive government policies.

To cite two examples, mandating that employers receive permission from the federal government via mandatory use of the E-Verify system for every hiring decision will likely be more intrusive than policies Republicans campaigned against this year⁷

and changing the Fourteenth Amendment so that parents will need to prove their baby was not born to an illegal immigrant will insert the federal government into all births in America, and prove enormously costly both to the federal government and American families.

While the U.S. Senate, where Democrats still hold the majority, may be an engine for compromise on measures emanating from the Republican-controlled House, it remains unclear what role President Obama will play. In 1995, President Clinton, with an eye on the 1996 presidential election, signaled a willingness to sign almost any bill Congress passed on immigration. He even voiced support for the reductions in legal immigration proposed by the U.S. Commission on Immigration Reform, chaired by Barbara Jordan. Will Obama threaten to veto immigration legislation he finds distasteful or will perceived electoral considerations lead him to support even ill-advised immigration measures?

More certain is how key House Republicans plan to use their new power. Lamar Smith, expected to become chair of the House Judiciary Committee, has announced plans to emphasize tighter immigration policies. Smith said the committee would “enact policies that will better secure our border and discourage illegal immigration, human smuggling and drug trafficking.”⁸ The irony is that the policy that would most discourage illegal immigration and human smuggling would be legislation to open the door to more legal channels for low-skilled foreign workers—the exact opposite of the policies the committee plans to pursue.

¹ The *Pledge to America* is available at <http://pledge.gop.gov/resources/library/documents/pledge/a-pledge-to-america.pdf>, p. 7.

² *Ibid.*, p. 39.

³ Simmi Aujla, “Immigration Hard-Liners to Lead Judiciary?” *POLITICO*, October 26, 2010.

⁴ *Ibid.*

⁵ For a more detailed description of this history see Stuart Anderson, *Immigration* (Santa Barbara, CA: Greenwood, 2010).

⁶ John Heilemann, “Do You Know the Way to Ban Jose?” *Wired Magazine*, August 1996.

⁷ See *Cato Immigration Reform Bulletin*, April 2010.

⁸ Gary Martin, “Smith to Push Enforcement of Immigrant Laws,” *San Antonio Express-News*, November 4, 2010.