

THE CONGRESSIONAL STALEMATE ON IMMIGRATION REFORM

by Katherine Fennelly, Humphrey School, University of Minnesota

The U.S. immigration system cries out for reform – on this many politicians, pundits, and citizens can agree, even if they differ sharply on what needs to be done. The 2012 election season features much finger-pointing all around, with Republicans proclaiming that President Obama has “failed” to deliver comprehensive reform, while Democrats say that Congressional Republicans are blocking action. In fact, since the U.S. Congress must play a central role in enacting either comprehensive or piecemeal immigration rules, it is important to see what the House and Senate have done in recent times. My research associates and I have taken a close look at all policy activity in Congress between 1993 and 2010, examining all of the 363 immigration-related votes taken on laws, amendments, and procedures over that period.

This has been a period of fierce competition between Republicans and Democrats for electoral and policy advantages. Although both parties have internal divisions on immigration issues, Republicans have become increasingly committed to restrictionist measures and opposed to any steps that would seem to offer “amnesty” to undocumented people already in the United States. With overall polarization between the parties on the increase, bipartisan cooperation has been increasingly difficult and rare on any issue, including immigration. We tracked policymaking about immigration in periods of Democratic and Republican control of the White House and the two chambers of Congress. The big picture is one of little substantive action, but lots of symbolic gestures meant to signal each party’s position and to stymie efforts by the other party.

Not Many Substantive Steps

Although Congressional attention to immigration issues has waxed and waned, relatively few immigration-related bills were actually voted upon during the 18 years from 1993 to 2010, and only 22 out of 363 (6%) of the immigration-related votes taken were about the possible final passage of an immigration bill. If we include immigration-related amendments proposed during consideration of bills about other subjects, the total rises to 41 out of 363 (or 11%).

Among the significant laws were three passed in 1996: the Welfare Reform Act that limited immigrants’ access to federal social benefits; the Illegal Immigration Reform and Immigrant Responsibility Act that increased penalties for unauthorized immigrants; and the Anti-Terrorism and Effective Death Penalty Act making it easier to arrest, detain, and deport noncitizens who commit crimes.

Unity Only on Restrictive Measures

Terrorist attacks on September 11, 2001 also spurred legislation that significantly affected immigrants, although many of the reverberations were long-term. The combined chambers voted on immigration three times between January 1 and September 11 of 2001, but took 16 immigration-related votes between September 12, 2001 and the end of 2002. Even so, the

crescendo of votes occurred a few years later. Overall, the 109th and 110th Congresses during the George W. Bush presidency accounted for over half of all immigration votes during the period we studied.

Tellingly, restrictive measures accounted for almost two thirds of the 227 votes that actually passed between 1993 to 2010 – and a quarter dealt with border screening and security. The largest number were proposed and passed during Republican control of Congress and the White House in 2005-6, although the next highest number happened while Democrats held Congress and Republican George W. Bush was still president during 2007 and 2008. The modest bipartisan unity created, albeit briefly, by the attacks of September 11, 2001 extended to immigration policymaking and resulted in the passage of increasingly punitive proposals. Bipartisanship on immigration faltered before long, but the focus on punitive measures persisted.

The parties also parted company on many aspects of immigration regulation. In several of the Congressional sessions we surveyed, votes on immigration issues were even more likely to pit a majority of Democrats against a majority of Republicans than the entire set of Congressional votes on all topics. The tendency toward partisan division grew over the period we studied.

Procedural Votes as Political Weapons

Congressional maneuvers after 1993 have led to stalemates that block comprehensive reforms, with the two parties resorting to procedural votes to control legislative agendas and stifle major changes. Both Republican and Democratic presidents have called for comprehensive reforms that might marry tougher enforcement at the nation's borders with new routes to legal status for undocumented immigrants already living or working in the country – or at least for their offspring brought to the United States as small children. But Democrats only briefly had enough votes or unity to pass such measures on their own, and the Congressional GOP has recently shifted toward almost unanimous opposition to reforms that include amnesty.

As Congress has become more polarized, both Democrats and Republicans have used procedural votes or poison-pill amendments as weapons to shape legislation, prevent the other party from offering their proposals, or kill legislation altogether. Of the 363 votes in our data set, 211 (58%) were votes on amendments, and 130 (more than a third) dealt with Congressional procedures. Such votes increasingly take up Congressional time, but do not further compromise or significantly reform America's immigration system.

Read more in Katherine Fennelly, Kathryn Pearson and Silvana Hackett, "The U.S. Congressional Immigration Agenda: Partisan Politics, Policy Stalemate, and Political Posturing," presented at the Political Studies Association, Belfast, Northern Ireland, April 5, 2012.