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Congress Enacts Intelligence Reform, But Not Homeland Security

Under Intense Pressure, Conference Committee Strips Key Immigration Provisions from 9/11 Reform Bill

After weeks of intense lobbying from the White House and the Senate, House Republicans were forced to accept a final version of the 9/11 Homeland Security bill that did not include key immigration reform provisions. The version of the bill approved earlier by the House of Representatives, H.R. 10, had included provisions aimed at implementing the 9/11 Commission's extensive recommendations for reforming weak immigration policies that were exploited by the terrorists who attacked our country.

Led by House Judiciary Chairman James Sensenbrenner (R-WI), House Republicans held firm on preserving language that would have prevented illegal aliens from obtaining driver's licenses; barred the acceptance of foreign consular ID cards; limited judicial reviews of orders of deportation; and denied political asylum to individuals with ties to terrorist organizations. In its report, issued last July, the 9/11 Commission specifically cited each of these immigration related issues as a threat to homeland security.

Senate negotiators, led by Susan Collins (R-ME) and Joseph Lieberman (D-CT), were equally adamant about excluding the immigration language from the final bill. The bill that had been passed by the Senate did not include the immigration reforms contained in H.R. 10. The Senate position was backed by the White House and House Democrats as a conference committee met to iron out the differences between the two versions.

While opponents of including immigration reforms in the Homeland Security bill would have preferred to have done so without drawing attention to themselves, FAIR and 9/11 family support groups prevented them from stripping these crucial provisions quietly. An intense media effort by FAIR and other immigration reform organizations ensured extensive media coverage of the debate over these provisions. FAIR's spokespeople appeared on dozens of local and national radio and television programs, presenting the urgent need to include immigration reforms in the legislation.

After weeks of stalemate, the conference committee met one last time during the week of December 6 to try to resolve the differences over immigration and budgetary control of U.S. intelligence operations. With the clock running out on the lame duck session of Congress, immigration reform advocates in the House were promised White House support for reintroduced immigration reform provisions early in the new Congress. The 600-page conference bill was approved by the House by a 336 to 75 vote, while the Senate approved it by an 89 to 2 margin.



Dan Stein, president of FAIR, appearing on MSNBC regarding immigration and homeland security.

Sensenbrenner announced that he had received assurances from House Speaker Dennis Hastert (R-IL) and Majority Leader Tom DeLay (R-TX) that the immigration provisions stripped from the conference bill could be attached to the first "must-pass" bill that comes before the 109th Congress. That legislation could likely be a supplemental appropriations measure to fund the war in Iraq.

What Got Cut From the Homeland Security Bill, and What Got Left In

The following is a list of the key immigration reform provisions that were passed by the House of Representatives but stripped from the final version of the Homeland Security bill by the House-Senate conference committee. Each of these provisions had been included in the recommendations of the 9/11 Commission.

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Driver's license ban for illegal aliens. Specific language that would have required all states to verify that driver's license applicants are legal U.S. residents was dropped by the conference committee. In its place, the conference committee stipulated that the federal government "may not infringe on a state's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from a state." In other words, on matters that can affect the lives and safety of all Americans, the federal government has decided to leave the question of whom to issue official ID documents up to 50 state legislatures.

Ban on the acceptance of consular IDs. Language barring the acceptance of foreign consular IDs by all levels of government and government-regulated businesses was also dropped. Such documents are needed exclusively by illegal aliens, and the most popular such card, the Mexican *matricula consular*, has been cited by the FBI and Department of Homeland Security as lacking important security features. These cards have also been discovered in the possession of non-Mexicans, including illegal aliens from Middle Eastern countries. Again, in the final bill, decisions about acceptance of these cards is left up to local governments and businesses that profit from dealing with illegal aliens.

Expansion of expedited removal. Provisions that would have allowed for quicker removal of criminals and illegal aliens who have been in the country less than five years were struck from the final version of the bill.

Tougher standards for gaining political asylum. The conferees removed language that would have made it more difficult for terrorists to gain entry to the U.S. by pressing a claim for political asylum. Instead, the final version of the bill calls for more study of the issue.

Limits in judicial review of deportation orders. A provision intended to curb the use of endless appeals to avoid deportation was dropped from the conference bill. This tactic has been used to tie up the system and buy time for those seeking to remain here, and could potentially be used by terrorists for the same purpose.

Broader exclusion of those with ties to terrorist organizations. The House language, which would have expanded terrorist related grounds for inadmissibility, was removed.

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The conference bill also included a few provisions that make minor improvements to our immigration enforcement capabilities, but they are far outweighed by those that were removed:

Increased immigration enforcement personnel and detention facilities. The conference bill calls for additional border enforcement agents and interior enforcement officers. It also calls for the addition of detention facilities to hold illegal aliens who have been apprehended. However, even these small improvements come with an important caveat: "subject to appropriations" to pay for them. As yet, none of these additional personnel and facilities have been funded, and there is no guarantee that they will be.

Expedited implementation of the entry/exit system. The final version of the bill also includes a provision calling for full implementation of the US VISIT program, which collects and matches biometric data on visitors entering and leaving the U.S.

Arizona Governor Signs and Attorney General Vows to Defend Prop. 200

Opponents Seek to Strike Down or Limit Scope of Voter Approved Initiative

Arizona Governor Janet Napolitano has signed a proclamation authorizing the implementation of Proposition 200, the initiative that requires state and local government to verify the immigration status of people seeking public benefits and registering to vote. The measure, which was opposed by Napolitano and other state leaders, was overwhelmingly approved by Arizona voters on Nov. 2.



The state's attorney general, Terry Goddard, also an opponent of the measure, has vowed to defend the proposition against legal challenges by illegal alien rights groups. The Mexican American Legal Defense and Educational Fund (MALDEF) filed suit in a U.S. District Court in Tucson on Nov. 30 claiming that the measure usurps federal authority over immigration matters and would deny illegal aliens benefits to which they are entitled.

In response to the MALDEF suit, U.S. District Judge David C. Bury issued a temporary restraining order (TRO) barring the implementation of Prop. 200, and set a Dec. 22 hearing date for opponents to present evidence for why the measure should not go into effect. Attorney General Goddard responded to the suit by filing an opinion of his own with Judge Bury stating that Prop. 200 is consistent with federal law and that the MALDEF challenge is without merit. (The current issue of the newsletter was completed before Dec. 22.)

While vowing to defend the decision of 56 percent of the state's voters, Goddard is also seeking to implement the measure as narrowly as possible. According to an opinion issued by Goddard, the denial of public benefits to illegal aliens should be limited to welfare payments. FAIR, along with Yes on Proposition 200 Chairman Randy Pullen, have filed a suit in Maricopa County (Phoenix) challenging the attorney general's narrow interpretation of public benefits. (See sidebar story.) FAIR is also seeking to intervene in the federal case brought by MALDEF to ensure that the law and the will of Arizona voters is properly defended.

Gov. Napolitano's proclamation means that state and local governments can begin implementing Prop. 200 once the TRO is lifted. The governor is also seeking guidance from the U.S. Department of Justice about how to implement the provisions of Prop. 200 that requires new voter registrants to prove citizenship and present identification at polling places.

Proposition 200 Supporters Challenge Narrow Definition of "Public Benefits"

Responding to Arizona Attorney General Terry Goddard's opinion that Proposition 200 only limits direct welfare payments to illegal aliens, FAIR, together with the Yes on Proposition 200 Committee filed a lawsuit in Phoenix on Nov. 18 seeking to have the term "public benefits" interpreted according to the definition set forth in federal law. Proposition 200, which was passed by a 56 percent to 44 percent majority on Nov. 2, requires the state and local governments to deny "public benefits" to illegal aliens.

According to the suit filed in Maricopa County Superior Court, the definition of "public benefits" that should be applied in implementing the clear will of the voters is the one set forth in Title 8 Section 1621 of the United States Code, adopted by Congress in 1996. That federal law defines a "public benefit" as any grant, contract, loan or professional or commercial license, as well as any retirement, health, disability, public housing, post-secondary education, food assistance, unemployment, or other similar benefit that is funded by a state or local government.

The suit argues that federal and state courts have consistently interpreted "public benefits" to mean those benefits and services listed in Title 8 of the U.S. Code as expressly intended by Congress. No action has been taken yet on this lawsuit.

Illegal Immigration Now Costs California \$10.5 Billion a Year Finds New Report from FAIR



A new study by FAIR finds that illegal immigration to California now comes with a \$10.5 billion a year price tag, or about \$1,183 a year for every native-born household in the state. The report, [The Costs of Illegal Immigration to Californians](#), looks only at the costs of education, health care and incarceration of criminal aliens. If all benefits and services provided to illegal aliens and their families were calculated, the cost to the state could be significantly greater.

The largest cost associated with illegal immigration to California is K-12 education for the children of illegal aliens. These costs alone now total \$7.7 billion annually, as the kids of illegal aliens now constitute 15 percent of the student body. Another \$1.4 billion a year is spent on providing health care services to illegal aliens, a large percentage of whom have no private health insurance. A similar amount is spent on incarceration of criminal illegal aliens at state and county correctional facilities. The costs for these three programs alone far exceed the estimated \$1.6 billion a year that illegal aliens contribute in state and local taxes each year.

The Costs of Illegal Immigration to Californians analyzes the latest Census data as well as documented costs for maintaining these essential services and programs in California. A similar analysis conducted by the Urban Institute in 1994 found that the cost of these programs and services for illegal aliens was about \$1.1 billion, meaning that there has been a tenfold increase over the past decade.



FAIR's Jack Martin (left) discusses the costs of illegal immigration on Fox News with John Gibson.

Fasten Your Seat Belts: Immigration Policy Could be in for a Bumpy Ride in '05

Before the new Congress has even convened, or President Bush sworn in for his second term, battle lines are already being drawn for what is expected to be an intense struggle over immigration policy. Analysts predict that the battle over this policy issue could cause fissures within the president's own party.

While President Bush was once again talking about turning illegal aliens into guest workers and allowing an unlimited number of new guest workers to enter the country, key congressional Republicans were digging in their heels demanding tighter enforcement of U.S. immigration laws, particularly passage of a federal law that bars illegal aliens from receiving driver's licenses.

With some key battles over immigration policy looming in early 2005, FAIR is gearing up for what promises to be a very significant session of Congress. All through the congressional recess, FAIR's government affairs staff has been working with congressional allies to plan strategy for the effort to enact driver's license and other reforms left out of the final version of the Homeland Security bill, and to oppose the expected onslaught of amnesty and guest worker bills that will be introduced in the new Congress.

FAIR will also be reaching out to members and activists all across the country to exert grassroots pressure on members of Congress and the Bush Administration in the coming months. The ability to enact driver's license and other reforms, and to block amnesty efforts will require the continued involvement of people who respond to alerts about key votes on pending legislation.

Congress Balks at Limiting Appeals of Deportation Orders; Courts Report Being Swamped by Appeals of Deportation Orders

While Congress, at the urging of the Bush Administration, stripped provisions from the 9/11 bill that would have limited appeals of orders of deportation, the U.S. Department of Justice reports that federal appeals courts are being overwhelmed by a surge in the number of people fighting deportation. Forty percent of the caseload in the New York-based 2nd Circuit Court of Appeals is now appeals of immigration decisions—quadruple the number of such cases in 2002. The 9th Circuit Court of Appeals, based in San Francisco, reports similar staggering increases in immigration cases.

The 2nd Circuit now has more than 4,000 immigration cases pending, with only 10 attorneys assigned to handling them. Many of these appeals are filed purely as stalling tactics, as deportable aliens and their attorneys know that the longer deportation can be delayed the greater the likelihood that they will ultimately be allowed to remain in the U.S. Nationwide, there are 33,000 deportation cases being contested in federal appeals courts.

Congress and the Bush Administration had an opportunity to put an end to this sort of abuse that a spokeswoman for the 2nd Circuit Court said has "created havoc everywhere." Instead, under pressure from special interest groups, including the immigration bar, whose members profit from drawing out the appeals process, they ignored the recommendations of the 9/11 Commission and removed provisions from the Homeland Security bill that would have curbed the abuse of the judicial system.

Immigration Reform Activists Bring Us to the Brink of a Real Breakthrough

Countless phone calls, faxes and emails from immigration reform activists all across the country sent a clear message to Congress that action must be taken in 2005 to address the serious problems and security threats posed by mass illegal immigration.

Activists, responding to real-time updates from the FAIR [Legislative Action Center](#) and other immigration reform advocacy groups, demonstrated that organized public pressure can have a real impact on policy decisions in Washington. The growing public demand for real immigration reform nearly forced negotiations over the 9/11 Homeland Security bill to collapse, as House and Senate conferees worked long into December to complete their work on the legislation.

It required the full lobbying force of a newly re-elected president to finally defeat efforts to include immigration reform provisions in the 9/11 reform bill. If not for the urgency in reforming America's intelligence system, the bill might have died over the immigration reform provisions.

While the White House and other immigration reform opponents may have succeeded in holding immigration reform hostage to the clear need to reform our intelligence services, they were put on clear notice that this issue and the millions of Americans who have been demanding immigration reform for years are not going to go away quietly.

That same activism and enthusiasm must be marshaled again as we begin the legislative process in the 109th Congress. The display of strength in the closing months of the last session of Congress provides us with the best opportunity for meaningful immigration reform since 1996. FAIR urges all members to join our growing list of activists who receive regular email updates of the latest developments in Congress and respond with calls, faxes and emails to key legislators.

2005 Promises To Be An Extremely Important Year For Immigration Reform

Be sure to stay up-to-the-minute on critical events and legislation in this rapidly changing arena by receiving FAIR [Action Alerts](#) and News Flash messages as political events are happening. If you aren't already receiving these important messages send us your e-mail address at membership@fairus.org. FAIR will not sell, rent, distribute or otherwise share your e-mail address with any person or organization.

Bush Puts Amnesty/Guest Worker Program Back on the Legislative Agenda

With the election safely behind him, President Bush has renewed his calls for legalizing millions of illegal aliens living in the U.S. and allowing unlimited numbers of additional guest workers to enter the labor force. The call for an amnesty and guest worker program is essentially identical to the plan the president proposed in January 2004. That plan was so unpopular with voters that the White House shelved it for the duration of the campaign.

One week after his re-election, President Bush dispatched out-going Secretary of State Colin Powell to Mexico City to re-open discussions with Vicente Fox about the size and scope of an amnesty/guest worker program. In the final presidential campaign debate in October, President Bush asserted his opposition to amnesty for illegal aliens. Although the Bush plan calls for turning millions of illegal aliens into legal guest workers for up to six years, the White House continues to deny that it is an amnesty for lawbreakers.

The president, who spoke after the election about spending his "political capital" during his second administration, seems prepared to spend some of it trying to enact his immigration proposal. Though the Bush plan was never formally drafted into legislation in 2004, the White House publicly supported immigration liberalizing measures such as a bill in Congress that would have granted amnesty to illegal alien farm workers. Due to intense public opposition and impending elections, these bills did not pass last year. However, without the prospect of having to face the voters again, and with enhanced Republican majorities in both houses of Congress, President Bush can be expected to wage a vigorous effort to enact his immigration agenda.

Most everybody else in Washington, however, will have to face the voters again. Over the coming months FAIR will replicate the intense opposition effort to amnesty and unlimited guest workers that helped derail such legislation in the last session of Congress. Working with our members and activists, and communicating to the general public through the media, FAIR expects to conduct an intense educational campaign to inform the country of the potentially devastating consequences of the president's immigration plan.

Illegal Alien Nanny Sinks Another Cabinet Appointee

President Bush's choice for Secretary of Homeland Security, Bernard Kerik, was forced to withdraw himself from consideration for the post when it was revealed that he had employed an illegal alien nanny and failed to withhold taxes from her paycheck. The former New York City police commissioner would have been responsible for enforcing the immigration laws he violated had he been confirmed by the Senate.

Kerik is not the first cabinet appointee to be derailed by violations of immigration and tax laws. President Clinton's first two choices for Attorney General, Zoe Baird and Kimba Wood, and President Bush's first choice for Secretary of Labor, Linda Chavez, were scuttled by revelations that they had employed illegal immigrants in clear violation of the federal laws they would be required to enforce in those jobs.

According to news reports, Kerik employed the illegal immigrant from Mexico in his New Jersey home for about a year, during which time he also failed to comply with laws requiring him to pay federal withholding and Social Security on behalf of his employee. Though Kerik denies that he knew that the nanny was an illegal alien, attorneys who were preparing him for his confirmation hearings told the New York Post the woman's documents "didn't pass the smell test."

Kerik Case Could Be Used to Promote Amnesty/Guest Worker Program

The demise of yet another cabinet appointee over the employment of an illegal alien nanny and housekeeper is certain to be heralded as one more reason to grant amnesty to illegal aliens and create a massive new guest worker program. Proponents of amnesty and guest worker programs will inevitably point to the Kerik case the latest example of an experienced public servant having his career short-circuited over an "insignificant" violation that many others are guilty of as well.

Angela Kelley, the deputy director of the National Immigration Forum, an open immigration advocacy group, was quick to cite this as an example of how "pervasive" the use of illegal immigrant workers has become in our society. According to Kelley and others, this case indicates the "need to create legal channels for people to come to this country."

In fact, the Kerik case illustrates the divide between the elites and ordinary Americans that FAIR has repeatedly noted. This failed cabinet appointee is indicative of how a small group of upper income Americans take advantage of low wage illegal immigrant labor and saddle their fellow taxpayers with enormous costs for the social services these illegal workers and their families consume. While millions of American families wrestle with the problems of finding affordable child care, a small percentage of people in the upper income brackets have come to view a low-wage live-in domestic servant, subsidized by the rest of the population, as an entitlement.

Rather than indicating a need for an open-ended guest worker program, the Kerik case presents a compelling argument for the establishment of a mandatory national employment verification system that requires all employers to verify the eligibility status of the workers they hire, and enforcement of employer sanctions laws.