

## Immigration reform is far from a done deal in 2014

Last June, the U.S. Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act, a bill which included a pathway to citizenship for undocumented immigrants. The Speaker of the House of Representatives, John Boehner, however, has refused to take the bill to the floor of the House, instead advocating a more 'step-by-step' approach to immigration reform. [Tom K Wong](#) looks at the potential for reform in 2014, saying that much depends on how the House looks after the mid-term elections in November, and on the efforts of reform advocates who are working outside of the realm of D.C.-based politics.



Despite hopes that 2013 would be the year of comprehensive immigration reform, legislation stalled in the House and the year ended without a bill. By the time the House reconvened on Tuesday, 427 days had passed since the November 2012 elections and 194 days since S.744, the Senate [comprehensive immigration reform bill](#) that includes a path to citizenship, passed by a vote of 68 to 32. As immigration remains one of President Obama's top second-term priorities, many are wondering whether comprehensive immigration reform will happen in 2014?

One way to think about whether 2014 will be the year of comprehensive immigration reform is the question of whether S.744 will ever make it to the floor of the House? After the passage of S.744 in the Senate, reform advocates stepped up their pressure on a number of key Republican Representatives. Comprehensive immigration reform was always going to be an uphill climb and, from the very outset, it was clear that the House was the sticking point. Last Spring, I created statistical models to forecast legislative support and opposition to a comprehensive immigration reform bill that included a path to citizenship. Three months prior to the Senate vote on S.744, my analyses suggested that 67 Senators would vote "yea." I was off by 1 vote. My analyses for the House, on the other hand, suggested that only 203 Representatives would vote "yea," which is 15 votes shy of a majority in the 435-member chamber. Showing Republican support for comprehensive immigration reform has thus been one of the strategies advocates have used to convince leadership in the GOP-controlled House to bring S.744 up for a vote. By some counts, as many as 29 Republican Representatives now support a path to citizenship.

But while the votes may very well be there, the political will to bring S.744 up for a vote in the House has not been. Speaker of the House [John Boehner has been steadfast in his position](#) that immigration reform legislation should be taken up in a step-by-step manner. Moreover, throughout all of 2013, Boehner continued to adhere to the so-called Hastert rule on the issue of immigration reform legislation – in short, nothing was going to be debated unless it had majority support among House Republicans. Recent events, however, have provided cause for optimism that this political dynamic may be changing. While the preference among



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Republicans to take a piecemeal approach remains, Boehner's recent stand against the Tea Party faction within

the GOP during the budget debate creates an opening, albeit a small one, for S.744 to survive in the House. The last major legalization of undocumented immigrants in 1986 provides an instructive example.

The history of the Immigration Reform and Control Act (IRCA), which led to the legalization of nearly 3 million undocumented immigrants, provides a potential blueprint for S.744. Like S.744, IRCA was first introduced and passed in the Senate (it passed by a vote of 69 to 30). The Senate voted on passage of IRCA on September 19, 1985. It was not until October 9, 1986, or 1 year and 20 days later, that the House voted on the bill. The House used what is referred to as a voice vote – do the “yeas” sound louder than the “nays”? This method provides legislators with a sort of cover for how they voted, as no formal roll call is taken. Boehner has stated that the House would not take up a 1,300-page Senate bill (referring to S.744) that “no one had ever read.” Should a voice vote ever becoming a possibility, this particular line of argumentation will be increasingly untenable, as Representatives have already had over 6 months to read the bill and will have more time to do so as each month passes.

Another way to think about whether 2014 will be the year of comprehensive immigration reform is to think about how comprehensive a step-by-step approach can be? In other words, can a piecemeal approach result in a path to citizenship? In addition to Boehner, another key Republican gatekeeper is House Judiciary Committee (HJC) Chairman Bob Goodlatte. As Chairman, he has allowed a series of piecemeal bills to be voted on in the HJC. When combined, these piecemeal bills add up to a package of reforms that appeals to conservative legislators – tougher interior immigration enforcement, mandatory employment verification, more visas for high-skilled immigrants, and an agricultural guestworker program. This package does not include a path to citizenship for the 11 to 12 million undocumented immigrants currently in the country, though discussions continue about a legalization program for undocumented youth (the “Kids Act”).

Because these piecemeal bills appeal to conservative legislators, they are likely to be approved if voted on by the Republican-led House – my own simulations support this. Moreover, because these piecemeal bills do not include a path to citizenship, they are likely to be non-starters for many in the Senate. On this point, some have suggested that a conference committee will eventually lead to a bill that includes a path to citizenship. I am not as convinced as others. First, leadership in the respective chambers selects conference committee participants. Second, what results from a conference committee, called the conference report, ultimately has to be voted on by both chambers. In other words, the House must ultimately vote on what the conference committee decides.



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Here is one potential bargaining scenario. In conference, Senate conferees call for a full path to citizenship and House conferees respond with the “Kids Act.” What we have heard from Senator Chuck Schumer is that no compromises will be made to the path to citizenship in the Senate bill. Taking Schumer at his word, this means that no legislation will result. This, as a matter of politics, benefits Republicans as much as it benefits Democrats. Democrats will be in a position to place blame on Republicans. However, Republicans will also be able to counter with the argument that they negotiated with Democrats and that these negotiations included an expedited path to citizenship for undocumented youth. This, in my opinion, is [why Goodlatte has expressed support for a “Kids Act” type of bill](#). Ultimately, what results from this potential scenario is likely to be continued stalemate.

A third way to think about whether 2014 will be the year of comprehensive immigration reform is to look forward to the November 2014 midterm election results. Recent political history suggests that Republicans will gain seats in the House of Representatives. A shift in control of the House from Republicans to Democrats after the 2014 midterm elections is unlikely. The party of the President tends to lose seats during midterm elections. In 15 out of the last 17 midterm elections, the party of the President has lost seats. Political scientists explain this trend, in part, by describing midterm elections as opportunities for those who lost during the previous presidential election to voice their dissatisfaction. Thus, while many Republican representatives may be vulnerable in 2014, there are many Democrats who are also vulnerable.

There are, however, some key races that may impact the future prospects of comprehensive immigration reform. First, Representative Steve King's (R-IA) re-election race should be followed closely. King, perhaps more than any other person, has been the face of anti-reform efforts in the House. King won his seat in 2012 by only 7.9 points (30,593 votes). A successful re-election campaign by King will signal to other Republicans that being anti-immigrant is not political suicide. However, if King loses – and assuming that advocates can make the case that his hard-lined positions on immigration contributed to his loss – then this can go a long way towards propelling reform efforts forward after the midterm elections. Second, Representative Jeff Denham's (R-CA) race is also an important one. In 2012, he won by only 5.4 points (11,331 votes). If he wins, and wins big, Denham and his public support for comprehensive immigration reform – he is one of three Republicans who have signed on as a co-sponsor of H.R. 15 – can be held up as an exemplar for other Republicans. Representative Gary Miller's (R-CA) race is also an important one to watch. Miller has an A+ grade from NumbersUSA, a group that is staunchly opposed to reform efforts that include a path to citizenship. After the latest round of redistricting, Miller finds himself in a district that is overwhelmingly Hispanic/Latino and Asian. Lastly, three Republican Senators who voted for S. 744 are up for re-election in 2014. These are Lamar Alexander (R-TN), Susan Collins (R-ME), and Lindsey Graham (R-SC). Alexander and Graham, in particular, faced Tea Party criticism after the Senate vote. Their respective re-elections can serve to further marginalize the Tea Party on the issue of immigration in two traditionally red states.

Lastly, whether 2014 will be the year of comprehensive immigration reform may hinge on the efforts of reform advocates who are working outside of the realm of D.C.-based politics. These individuals and groups have grown increasingly weary of the political stalemate and legislative inaction that has characterized immigration politics in recent years and have become more vocal in calling on President Obama to use his executive authority to halt deportations. The activism of these individuals and groups may amplify in 2014, particularly around the summer, if legislative solutions are not reached. September 2014 marks the first month that undocumented youth who received temporary relief from deportation via President Obama's policy of Deferred Action for Childhood Arrivals (DACA) will have to renew their DACA status. While these youths knew from the outset that their DACA status had to be renewed every two years, many advocates thought that a permanent solution in the form of legislation would have been reached before we reached this stage. The act of having to renew a temporary status may very well embolden activists to seek new, more creative, and perhaps even more aggressive means to achieve a permanent fix to our nation's broken immigration system.

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