

"Taking Our Medicine: Pressing Need for Immigration Reform," New Jersey Law Journal, December 2010

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The recent elections brought with them both the threat and the promise of change.

In January, a GOP majority will take hold in the House of Representatives with a new speaker, John Boehner. The question is, "Will 2011 be the year that ushers in comprehensive immigration reform?" We've been asking that question every year since Ronald Reagan was president.

With a Republican majority in the House and a slim Democratic lead in the Senate, few expect Congress to enact immigration reform in the next two years. The consensus is that it is too far out of arm's reach and neither party has enough influence to overcome the stubborn objections of the other side. Any legislation that makes it through the House will be knocked down in the Senate and vice versa.

And it is not because the need for reform isn't great. As a result of our outdated system of visa quotas, I have seen successful businesses shuttered for failing to show profit within their first year (by that standard, Apple and IBM would have been abandoned long ago). I have seen CEOs refused visas for having majored in the wrong subject, and Oxford-educated doctors turned away because of quota limitations.

Next year will mark the 25th year since the last substantive immigration reform. Can you think of any aspect of American life that hasn't changed dramatically in the past 25 years? And yet our system of immigration is still rooted in the era of Atari computers and "Crocodile Dundee."

The American public knows that our system of immigration is broken and wants to know why there are more than 11 million undocumented aliens living in the United States.

Immigration practitioners know that the often arbitrary and unequally enforced existing laws do a disservice to clients and needlessly waste government resources. For example, we know that the same petition, presenting the same facts, might be denied in one government service center but approved in another. All the while, our government representatives see there is a public outcry for change, but nobody is willing to risk his or her political career to make it happen.

Why has it taken so long? For one thing, politicians taking a hard-line approach on immigration seem to be almost equally countered by politicians arguing for more liberal solutions. Mention "amnesty" or "border fence" in the wrong camp and you might be in for a heated debate.

For a multitude of reasons, tempers run high when discussing immigration in this country, perhaps because it hits so close to home. We know that nearly all of us owe our presence here to the immigration process of one generation or another.

For some, that means placing a premium on integration and assimilation into American culture. A perception — whether real, imagined of both — that new immigrants are less motivated to adopt American customs fuels a fear that we are losing our national identity. For others, denying newcomers the opportunity to share in our immigrant heritage is antithetical to American values. Both arguments are valid and they are but one example of why immigration reform has become such an incendiary debate.

As a result, the public rhetoric on immigration tends to fall into three generic areas of talking points: improving border security, enforcing the existing laws and strictly prosecuting employers who knowingly hire undocumented workers. It's hard for any politician to be criticized for differing on these three points and the fear of straying from the pack is what has led us to the impasse in which we find ourselves today.

Arizona's controversial *SB1070* law is a direct response to the inaction in Washington. A border state, seemingly fed up with broken promises of reform, opts to take matters into its own hands by deputizing its police officers to enforce federal law. The legality of the measure has been placed under intense scrutiny (on which the jury is still out) but regardless of one's opinions on the matter, it is a localized symptom of a systemic disease.

Other states, like Nebraska, have similar laws of their own also in the pipeline. They will risk scarce state resources to defend legislation that will likely also be knocked down. The federal government should take heed: states, too, have had enough.

So who will get it done? Against the backdrop of the struggling economy, immigration reform will likely continue to be delayed until Washington can simply do so no longer.

The health care overhaul caused so much collateral damage that pushing through another controversial, unpopular piece of legislation will be like convincing a petulant child to take its medicine. It certainly won't taste good at the time but it's the only way this unpleasant situation will ever improve.

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