

Case Story: Legislation from the Basement of the National Council of La Raza

Since 1986, all employers in the U.S. are required to keep a permanent file for each new employee, including the completed I-9 and photocopies of the employee's identity documents. It is required by a law that consists, in part, of language drafted by a coalition of nonprofits meeting in the basement conference room of a §501(c)(3) nonprofit advocacy group called the National Council of La Raza.

The policy is a key provision of the Immigration Reform and Control Act of 1986 (IRCA). Initiation of that policy began in the year 1949, at a time when organized labor was increasing its political and economic power. That year, Peter Rodino, a New Jersey Democrat, was elected to the U.S. House of Representatives with strong union support. One of Rodino's first acts in office was to propose legislation to penalize employers who hired undocumented immigrant workers, an issue important to organized labor. Adamantly opposed by lobbyists for the U.S. Chamber of Commerce, the National Association of Manufacturers, and other employer groups, the bill was defeated in committee, without being reported out for consideration by the rest of the House of Representatives.

By the 1970s, the pattern of political actors and interest groups supporting and opposing the proposed employer sanctions bill was more complex. The AFL-CIO, an umbrella group of national and international unions that had always favored Rodino's bill, pressed again for its passage. The U.S. Chamber of Commerce, the National Association of Manufacturers, and other employer groups, opposed it yet again. But this time, African-American civil rights and anti-poverty advocacy groups also supported the bill, reasoning that the growing number of immigrants, and especially undocumented immigrants in the U.S., worsened the above-average unemployment rates experienced by African-Americans due to limited education and opportunity, and continuing racial prejudice in the labor market.

By this time, proposed employer sanctions also had new opponents. Latino advocacy groups, including the Mexican American Legal Defense and Education Fund (MALDEF), the National Council of La Raza, the League of United Latin American Citizens (LULAC), and a Mexican-American veterans group called the American G.I. Forum, all opposed employer sanctions. The leaders of those organizations feared that if new laws levied fines for hiring undocumented workers, employers would have an incentive to avoid hiring anyone who "looked foreign." Latino advocates in Washington feared that Spanish-speaking Latinos who were native-born U.S. citizens or legal immigrants, but spoke English with a Spanish accent, might suffer increased employment discrimination as a result of employer sanctions.

In the mid-1980s, Senator Alan Simpson, a Wyoming Republican, and Rodino introduced yet another version of the employer sanctions bill. It included two major provisions designed to reduce opposition by Latinos, the U.S. Catholic Conference, and a growing number of immigrant and human rights advocacy groups. First, the bill provided that if employers kept copies of employees' identity documents (e.g., drivers licenses and birth certificates) on file for inspection by the U.S. Immigration and Naturalization Service (INS), employers would be immunized against employer sanctions, even if they inadvertently hired undocumented workers. That reduced the incentive to discriminate against "foreign looking" job applicants. Second, the bill included "amnesty" or adjustment of status to undocumented workers who had lived continuously in the U.S. for a period of years without breaking any laws (other than the immigration law). Those two steps toward compromise led to division and disagreement among Latino advocates who were previously united in their opposition to employer sanctions. It looked as though employer sanctions might pass Congress, at last.

But there was one more obstacle yet to be overcome. Over the past several decades, agricultural employers had come increasingly dependent on low-wage undocumented migrant farm workers to produce their crops. The American Farm Bureau Federation and other nonprofit associations representing agricultural interests mounted an extraordinarily intensive and expensive lobbying campaign against employer sanctions. They relented only after the Simpson-Rodino bill was amended yet again, this time to weaken sanctions applied to agricultural employers, and to accelerate adjustment of status provisions and widen eligibility to include undocumented workers recently arrived in the U.S., but ONLY for undocumented *farm* workers.

Thus amended, the Immigration Reform and Control Act of 1986 (IRCA) finally was passed by both the House and the Senate, and was signed into law by President Reagan.

Lessons for Nonprofit Advocates

1. Interest groups and other “unofficial participants,” as well as elected and appointed public officials, all play major roles in the initiation of public policy.
2. Policy problems can be redefined during the initiation, estimation, and selection stages of the policy process. Policy problems are redefined as additional advocacy groups and other organized interests become involved, and their interests and values change over time.
3. Initiation of policy sometimes takes a long time. It took 37 years for Rodino’s employer sanctions initiative to be adopted. Initial defeats were merely a prelude to the sorts of problem redefinition and compromises involving additional politicians and advocates, without whom the bill would never have passed. What started out as a simple and straightforward conflict between two politically organized interests (labor vs. employers) ended decades later with adoption of a complex public policy embodying compromises involving multiple interests.

Adapted with permission from Michael Cortés, “Policy Analysts and Interest Groups: The Case of Immigration Reform,” Ph.D. diss., University of California, Berkeley, 1992.

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