



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRST SESSION

Vol. 151

WASHINGTON, MONDAY, APRIL 18, 2005

No. 46

Senate

The Senate met at 1 p.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God, who causes our hearts to overflow with beautiful thoughts, You are so glorious, so majestic. We think of the gifts of life, of love, of meaningful work. We think of the blessings of the gift of friendship, of family, of fertile fields. We think of the power of Your throne which endures forever and ever. Grant that these beautiful thoughts will be transformed into loving service to those who need it most. Inspire our Senators to labor for a harvest that will transform lives and provide a shield for freedom. Teach them to disagree without being disagreeable and to safeguard friendships regardless of the issues. May they seek to understand before being understood. Make them quick to listen, slow to speak and slow to anger. Give them the wisdom to love what is right and hate what is wrong. May their work so honor Your name that nations will praise You forever. We pray this in Your blessed Name.

Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. MCCONNELL. Mr. President, today we open with a 1-hour period for morning business. At 2 today, we will resume consideration of the emergency supplemental appropriations bill. As we announced at the close of last week, Members can expect one or two votes this evening in relation to the appropriations bill. Chairman COCHRAN will be here when we resume the bill, and we will be consulting with the two managers and the Democratic leader as to exactly what votes we can expect today at approximately 5:30.

On Friday, cloture was filed on the two pending amendments relating to AgJOBS. In addition to these two cloture votes, we have cloture votes scheduled on the Mikulski amendment on visas, as well as the underlying bill. To remind all of our colleagues, the two AgJOBS cloture votes are scheduled for 11:45 a.m. tomorrow. The cloture vote on the Mikulski amendment and the cloture vote on the bill will occur later tomorrow afternoon. I hope we can invoke cloture on the bill tomorrow. That will be the only way to ensure that we finish our work this week on this extremely important funding legislation. Therefore, Senators can expect votes each day this week as we work our way through the issues related to the supplemental appropriations bill.

I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business until the hour of 2 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Georgia.

BLUE CARD ALTERNATIVE TO H-2A GUEST WORKER PROGRAM

Mr. CHAMBLISS. Mr. President, I rise to discuss an amendment that I, along with my friend from Arizona, Senator JON KYL, have introduced. This amendment represents a practical alternative to S. 359, which has been introduced by Senator CRAIG, commonly known as the AgJOBS bill. My hometown of Moultrie, GA, is located in Colquitt County. It is one of the most diversified agricultural counties in the country and often referred to as the most diversified agricultural county east of the Mississippi River. During my 26 years of practicing law, before I came to Congress I represented farmers who grow almost every kind of crop there is. These farmers, as do most farmers in America, depend very heavily upon migrant labor for their means of planting, harvesting, and getting their crops to market.

Up the road from my hometown is the Georgia peach growing area, which also produces most of the pecans that are grown in the country today. So, firsthand, I recognize the need for a stable and legal agricultural workforce.

From my perspective as a former member of the House Permanent Select Committee on Intelligence and my present position as chairman of the Senate Agricultural Committee, I understand that our country's need for a secure and reliable domestic food supply is an issue of national security. This legislation addresses those needs without providing amnesty to our current illegal agricultural workforce. Instead, we take a two-pronged approach. First, this legislation modernizes and streamlines the current H-2A program. Secondly, it creates a temporary agricultural guest worker program called the blue card program.

- This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper.

Let me give a little background on the present H-2A program and why so few agricultural employers utilize it.

The H-2A program is a program for non-immigrant, work-related, temporary visas authorized by the Immigration and Naturalization Act. It is regulated and administered by the United States Department of Labor. Although its purpose is to allow producers to have access to an adequate legal seasonal workforce when domestic workers are unavailable, participation in the H-2A program is time consuming, bureaucratic, and inefficient.

A producer must complete a complicated application process which involves sequential approval by a State agency and three Federal agencies. As presently designed, administered, and enforced, H-2A employers must complete a great deal of paperwork during the application process. They must then coordinate and track their workers through a Bureau of Customs and Immigration Services and State Department visa approval system. Once the workers are present on the farm, these employers must also comply with all aspects of the Immigration and Naturalization Act, the Migrant Seasonal Protection Worker Act, the Fair Labor Standards Act, and various OSHA regulations regarding housing and field sanitation.

Redtape aside, another serious issue with the current H-2A program is that it requires employers to pay the Adverse Effect Wage Rate, which is determined by an archaic survey conducted since the 1930s. This survey was never designed to capture prevailing wages within a specific geographical area nor does it specify the type of work that is being done for that wage. In my home State of Georgia, the present wage an employer must pay for an unskilled farm worker is \$8.30 per hour. This wage is in addition to free housing and reimbursement for all transportation costs. All of these expenses make it very difficult for these H-2A employers to compete with producers who do not or cannot use the program and who then pay workers they are able to find between \$5.15 and \$6.15 per hour.

We have millions of illegal workers on farms in this country. We have a program that will allow growers to use legal workers. The fact so few agricultural employers take advantage of H-2A is simple. It is too complicated, too costly, and much too litigious.

The legislation that Senator KYL and I have introduced simplifies the H-2A program by streamlining the application process to involve fewer Government entities in the final approval. Under this bill, employers who wish to use H-2A workers will go through an attestation process, rather than a lengthy bureaucratic labor certification process. Employers will be allowed to attest to the Department of Homeland Security that they have conducted the required recruitment and were unable to find an adequate number of domestic workers to fill their

labor needs. The Department of Labor will maintain its roll as an auditor to punish those employers who willfully violate the conditions that must be met in the attestation process to obtain H-2A workers. We have increased the penalties to ensure those who continue to employ illegal workers rather than utilize this updated program will pay the costs.

This legislation also addresses the Adverse Effect Wage rate, which many contend has discouraged employers from using the H-2A program. Instead, we move to a wage rate that is more market-oriented and a prevailing wage for each region of the country.

Another important aspect of this legislation is it clearly states that the Legal Services Corporation cannot represent or provide services to a person or entity representing any alien, unless that alien is physically present in the United States. This clarification is needed because of the longstanding and well-documented abuses by the Legal Services Corporation in filing frivolous lawsuits against producers who employ H-2A workers.

By streamlining and modernizing the H-2A program, we can make it easier and more attractive to U.S. agricultural employers and minimize the attraction of using illegal labor.

The second part of our legislation targets the illegal population in this country with the creation of a blue card program. The blue card program is an innovative, new temporary guest worker program. The idea of it is to allow employers who cannot find an adequate domestic workforce to petition on behalf of an immigrant who is currently illegally here to receive a blue card or a temporary status in this country. The petitioning process will require the alien to submit his or her biographical information along with two biometric identifiers to the Department of Homeland Security. This way, we can be sure we are not bestowing the blue card status on a potential terrorist or an alien with a criminal past.

The blue card itself will be a machine-readable, tamper-resistant document that will be capable of confirming, for any immigration official who needs to know, the person holding the blue card is who the card claims he or she is, and the blue card worker is authorized to work in agricultural employment in the United States and the authorization has not expired.

Because the blue card workers will maintain these secure identification documents, they can freely travel between the United States and their home countries. This will allow the blue card workers to maintain ties to their lives and families at home.

It is important to note that by setting the Blue Card Program up on an employer-petition basis, the program has a natural cap built in—one that responds to the U.S. market and our agricultural labor needs. Employers will only petition for as many workers as

needed to fill their labor needs. This is unlike the AgJOBS bill which allows illegal aliens to self-petition.

Once an alien receives a blue card, he or she is eligible to work in the United States for up to three years. The blue card may be renewed up to two times, each at an employer's petitioning. At the end of the second renewal, the blue card worker must return to his or her home country, or country of last residence. This is important. The blue card provides no path to U.S. citizenship, which is contrary to what the AgJOBS bill does. Any blue card worker who wishes to become a U.S. citizen is certainly allowed to do so. All that worker has to do is revoke his or her blue card, return to his or her home country or country of last residence for at least 1 year and apply through the normal process just like everyone else.

An approved blue card worker will receive all the protections U.S. workers will receive. While blue cards are available only to those aliens who work in the agricultural field, this legislation expands a traditional definition of agriculture in recognition of the interdependence on various occupations within the field of agriculture. By including packagers, processors, and landscapers, we not only encourage a larger percentage of our illegal population to come forward, submit to Homeland Security background checks, and get legal work authorization, we also provide some relief to those occupations that have traditionally relied on H-2B visas for foreign workers. As we all know, H-2B visas are in short supply and high demand.

This legislation is important, and I urge the support of my colleagues.

The PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I first wish to express appreciation to the Senator from Georgia for explaining very well both the need for and the description of the legislation on which we will be voting tomorrow, which is our version of the legislation that will help employers in our agricultural sector by including immigration reform which will make it easier for them to obtain workers from both the illegal immigrants who are in the country today as well as those legal immigrants who would be applying under our legislation.

Let me go back to kind of a 30,000-foot elevation view here and describe the reasons we put this legislation together and are offering it at this time. As we have said before, the supplemental appropriations bill, which will be debated again tomorrow as well as later today and which will help pay for our war efforts in Iraq and Afghanistan, is not the appropriate place to be debating immigration. Unfortunately, some of our colleagues saw fit to bring amendments to the Senate floor which related to that subject. One of those amendments is this amendment that deals with agricultural labor. It was at that point that Senator CHAMBLISS and

I had no alternative but to present the alternative view of how to serve those agricultural needs.

The basic difference between the bill Senator CHAMBLISS just described and the other bill, the bill that is primarily offered by Senators KENNEDY and CRAIG, is the difference between a bill that provides amnesty, in the case of their legislation, for illegal immigrants here, and our bill, which provides the workforce within the legal construct of the law but does not grant amnesty to the illegal immigrants who are here. There are a lot of other differences, but that is the prime difference.

Both of us recognize that there is a significant need for a workforce in this country, willing and able to work in agriculture and related occupations, and that cannot be satisfied solely with people who are American citizens today.

The difference is in the way we treat those people who are here illegally today. What the Craig and Kennedy legislation does is to grant those people, very early on, a legal status which permits them to become legal permanent residents. "Legal permanent residents" is a term of art under our immigration law. Some people refer to it as a green card. As little as 100 hours' work for 3½ months entitles someone under their legislation to get a green card. A green card is like gold because it enables you to live for the rest of your life in the United States of America and work here.

But it also means something else. If you have a green card, you can also apply to become a citizen of the United States of America. It is a wonderful thing for people from other countries to get to be citizens of the United States of America. We are very much in support of immigration to this country. As my grandparents came here and as almost all the rest of us have relatives who came to this country from another country, we all support legal immigration. But we do not believe that great opportunity to become a citizen of the United States should be granted to someone on the basis of their illegality; because they came here illegally, because they used counterfeit documents, because they got a job illegally—that on the basis of those factors they should get an advantage over those who are abiding by the law and who want to become U.S. citizens. It is that with which we disagree.

What we say is if a person who is in the country illegally today wants to work in U.S. agriculture or related industries, and the employer needs that person—and there are certainly a lot of them in that category—the employer petitions and that individual can get a different kind of status, a blue card, as Senator CHAMBLISS said. That blue card status enables them to work here, to live here, to travel back and forth to their country of origin. They can go back and forth every weekend, if they desire. There are no restrictions there.

They are in the Social Security system. They are protected by our laws. They have to be paid a specific kind of wage, and they have all of the other kinds of protections one would think of in this context, but their status is different from that of a legal permanent resident, a green card holder.

Not only are they not entitled to live here the rest of their lives—eventually they are going to have to return home—but if they want to become citizens they have to go home and apply for it just like anybody else. What does that mean? They have to be petitioned for by somebody, by an employer in this country. It takes about a year for them to acquire this status of legal permanent resident. That is how long it takes to get it. But once you get it, you can apply to become a U.S. citizen.

We are not punishing people for having violated our laws. Some would say you should not give them the opportunity to become citizens because they broke our laws. As Senator CHAMBLISS pointed out, we are not saying that. If they want to become legal permanent residents and apply for U.S. citizenship, they would have that right. All we ask is that they be treated just like anybody else who wants that right, which is to say they apply from their own country, not from the United States; that they wait the same period of time you would have to wait otherwise, a year; and then, if it is granted, they can apply for citizenship, and all the rest of it works just the same as it would for anybody legal.

What we say is that you cannot use the fact that you came to the United States illegally to get to stay here and stay here during the entire process that you are applying for legal permanent residency and U.S. citizenship. That gives you a big advantage, a leg up over those who are abiding by the law and who did not violate the law and come here illegally in the first place. There are other differences, but that is the most critical difference.

From our colleagues' standpoint, what we are saying is you can vote for a bill which grants a very simple, convenient, economical way for us to get the agricultural labor we need in this country, with all the protections for the laborers which one would expect, without having to grant amnesty to these individuals, and that is a big deal.

The second way the Kennedy-Craig legislation provides for amnesty is that it even provides for someone who came to this country illegally and is employed illegally here and who then went back to their home country to come back into the United States and get those same advantages as those who would otherwise have to wait a year for legal permanent residency and then later for citizenship. So it not only would apply to those who are here illegally today but those who claimed they worked in the United States illegally in the past. And who knows what kind of claims we are going to get

there? Because, of course, the counterfeit documents, Social Security cards, driver's licenses, and other kinds of documents used to gain employment in the first instance can also be used to demonstrate the previous status of having illegally worked in the United States of America.

(Mr. CHAMBLISS assumed the chair.)

Mr. KYL. One of the reasons I believe our bill has more support is that it is more likely to become law, whether it is a stand-alone provision that relates only to agricultural workers or is part of a broader kind of immigration reform. I do not think many people believe the House of Representatives is going to pass a bill with amnesty, so we are trying to be practical about it. We would like to get something done, not simply run an ideological position up the flag pole in order to get a vote on it here in the Senate. That is why the American Farm Bureau is so strongly in support of our legislation and in opposition to our colleagues' legislation.

I ask unanimous consent to have printed in the RECORD a letter from the American Farm Bureau Federation dated April 13 to the Presiding Officer and myself.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN FARM BUREAU FEDERATION,
Washington, DC, April 13, 2005.

Hon. SAXBY CHAMBLISS,
U.S. Senate,
Washington, DC.

Hon. JON L. KYL,
U.S. Senate,
Washington, DC.

DEAR SENATORS CHAMBLISS AND KYL: The American Farm Bureau Federation strongly supports the Chambliss-Kyl Amendment and urges its adoption when it is considered on the Senate floor.

This amendment would provide U.S. agriculture a clear, simple, timely and efficient H-2a program to fill seasonal and temporary jobs for which there is a limited U.S. labor supply. In order to recruit a worker from abroad, an employer would first have to make every reasonable effort to find an American worker. This is exactly the kind of meaningful reform that is necessary to provide all sectors of agriculture with a workable program while protecting American workers.

The measure also deals sensibly and fairly with illegal immigrants who are now working in agriculture, who meet strict criteria and who pose no security threat. Employers would petition to have such workers granted "blue card" temporary worker status. Once granted, a blue card would be valid for three years and could be renewed a maximum of two times (exceptions may be considered for supervisory employees.)

This amendment does not grant amnesty to illegal aliens. Blue card workers would have the right to change jobs, earn a fair wage and enjoy the same working conditions the law requires for American workers. Blue card workers would be protected by all labor laws. Blue card workers could travel freely and legally back and forth to their home country.

The Chambliss-Kyl proposal strikes a reasonable balance among employers, hard-working employees who are striving to better themselves and the need and obligation

of our country to control the flow of immigrants.

AFBF supports the Chambliss-Kyl amendment and we urge your fellow Senators to vote for this proposal when it is considered in the Senate.

Sincerely,

BOB STALLMAN,
President.

Mr. KYL. Let me read the opening to give a flavor of what the American Farm Bureau Federation is saying:

The American Farm Bureau Federation strongly supports the Chambliss-Kyl amendment and urges its adoption when it is considered on the Senate floor. This amendment would provide U.S. agriculture a clear, simple, timely and efficient H-2a program to fill seasonal and temporary jobs for which there is a limited U.S. labor supply. . . .

This measure also deals sensibly and fairly with illegal immigrants who are now working in agriculture, who meet strict criteria and pose no security threat.

This amendment does not grant amnesty to illegal aliens. . . .

The Chambliss-Kyl proposal strikes a reasonable balance among employers, hard-working employees who are striving to better themselves and the need and obligation of our country to control the flow of immigrants.

The American Farm Bureau Federation supports the Chambliss-Kyl amendment and we urge your fellow Senators to vote for this proposal when it is considered in the Senate.

In summary, we are going to have two proposals before us, one offered by the Senators from Massachusetts and Idaho. We urge you reject that proposal because it is not something that is ever going to become law. It provides amnesty for illegal immigrants here. The other is our proposal, which enables us to have a good, workable system for agricultural labor. It can pass both bodies, and it does not include amnesty.

I note when we begin debate on the supplemental appropriations we will have more of an explanation of what we have offered to our colleagues, but at least this way we have opened up the subject.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

CHANGING SENATE RULES

Mr. NELSON of Florida. Mr. President, I have had the pleasure of working with the Senator from Arizona in the finest tradition of the Senate, in bipartisanship. We are working together on an issue that is of great concern to the country, and that is the estate tax and whether it should be eliminated; if not totally eliminated, we are working on the prospect of having a significant exemption and doing something about the balance of a taxable estate as to what would be the actual rate at which the remainder of the estate would be taxed.

I raise this issue, although this is not the subject of my statement to the Senate, because I am following the distinguished junior Senator from Arizona. It has been my privilege to work with him in trying to achieve a bipar-

tisan consensus. What I wish to talk about is achieving consensus in a town that is increasingly polarized by excessive partisanship and excessive ideological rigidity. This is a town in which it has gotten to the point, as told by Lesley Stahl, the CBS reporter, the other night, of an experience she had at a dinner party with nonelected officials—just normal folks at a dinner party in New York. The discussion turned to matters having to do with the subjects we are dealing with here in the Congress, and all of a sudden the mood in that salubrious dinner party turned hostile. People were starting to shout at each other, and any sense of civility was suddenly gone.

I worry about that here in the most collegial of all parliamentary bodies in the world—this one, right here, the Senate. It has been such a great privilege for me to be a part of it. Yet, as I see, as the debate is approaching, everything is so partisan and everything starts to take on the tinge of “it’s either my way or the highway.” That is not only not how this Nation has been governed under the Constitution for 217 years, that is, indeed, the very birth-right we have had in this Nation—compromise, compromise, and bringing together consensus in order to have a governing ability to function. That was how we came out with the Constitution that we did in that hot summer session of the Constitutional Convention in Philadelphia back in 1787. Yet I wonder if we are losing some of that glue that brings us together and has us start drawing up consensus by reaching out to the other Senators and molding our ideas together in order to govern a very large country, a broad country, a diverse country, a complicated country.

You can’t do it with just one opinion.

I have heard some of the statements when I have been interviewed on programs such as CNN and FOX. There were other Senators on these programs with me. I shake my head, wondering how someone could say those things.

It is this question this Senate is going to face, whether the rules of this body are going to be changed in order to cut off the ability of a Senator to stand up and speak for as long as he or she wants on a subject of importance to that Senator, and whether that ability, known as a filibuster, is going to be taken away from us.

What is the history of the filibuster? If you think about how the filibuster works in the Senate, 217 years ago there was no limitation on a Senator being able to stand up and speak. For over a century, the rules provided a Senator could not be cut off. Early in the last century, that was changed so that if 67 Senators voted to cut off debate, then the debate would be closed. That was a supermajority.

Later on—sometime, I believe, in the 1960s—that threshold of 67 was lessened to 60. That is the rule we operate under now. A Senator can stand up and talk and talk and talk. The ability to speak

in this body is such that the filibuster helps to encourage compromise. It is saying to the majority that because they have an idea, they can’t force that idea unless they get 60 votes, and that causes the majority to have to listen to the minority. It brings about encouragement of compromise.

I don’t think we ought to do away with the filibuster. Yet that is what the Senate is about to do, if the rules are amended.

Interestingly, the rules of the Senate say it takes 67 Senators to amend the rules. But we all have been told of a plan whereby the Presiding Officer, the Vice President of the United States—and the majority leader would make a motion and the Chair, the Vice President, the President of the Senate, would rule, and a 51-vote majority would change the rules of the Senate. It is my understanding that the Parliamentarian of the Senate has in fact stated you can’t change the rules that way. Yet it looks as though the majority leader, encouraged by the majority, is going to try to change the rules—not according to the Senate rules. In other words, it seems the majority is breaking the rules in order to change the Senate rules.

I don’t think that is right. I don’t think we ought to be changing the rules in the middle of the game. I don’t think it is right to overrule the Parliamentarian of the Senate, who is not a partisan official.

I think this starts to verge on the edges of riskiness, if we start operating this Senate under those kind of rules, rules that are breaking the rules in order to change the rules.

Another way you could put it is that we talk about the majority is threatening to break the rules to win every time. Is that what the Senate is all about? Isn’t the Senate about the majority having to consult the minority, because under the rules of the Senate, minority rights are protected so the majority cannot completely run over the minority? Isn’t that what is the history and precedent of 217 years in the Senate? I think the history of this body would show that is the case, especially if we get to the point that this body is going to overrule the Parliamentarian. I think that is verging on an abuse of power of the majority.

Remember also a truth—that today’s majority will be tomorrow’s minority, and the minority should always be protected.

There is another reason; that is, this group of political geniuses who happened to gather in Philadelphia back in that hot summer of 1787 created a system that had indeed separation of powers—that no one institution or one person in the Government of the United States could become so all powerful as to mow over other persons in the institution.

In that separation of powers of the executive from the legislative and from the judicial, they also created checks and balances inherent in the Constitution so that power cannot accumulate