



How Will Congress React to Obama Immigration Executive Action?

Since President Obama delivered his plan on TV on November 20 to use executive actions to grant protection from deportation to millions of illegal immigrants, Republicans in Congress have considered the best way to respond legislatively. Among the options that GOP legislators have proposed are removing funding from U.S. Citizenship and Immigration Services, a Senate filibuster of immigration-related funding bills, and a government shutdown.



Under the Obama plan, two groups of illegal aliens would qualify for executive amnesty — those who have been in the United States for more than five years; and those who have children who are American citizens or legal residents.

A report from Politico on November 26 noted that the House Republican Conference will hold a closed meeting on the morning of December 2, when it returns from the Thanksgiving recess, to hash out what the GOP response to the Obama plan should be. If the conference reaches a consensus early in the week, a bill could come to the floor as early as Thursday, a congressional aide told Politico.

The current government spending bill runs out on December 11, giving Congress just 10 days to pass a new bill and avoid a shutdown. House Republicans are leaning towards toward passing two bills: one that would fund the government through September 2015, and another that would extend immigration-related funding for a shorter period of only a few months.

Speaker of the House John Boehner (R-Ohio), House Majority Leader Kevin McCarthy (R-Calif.), and incoming Senate Majority Leader Mitch McConnell (R-Ky.) have all said they want to avoid a government shutdown, notes Politico.

One of Congress's most outspoken opponents of the Obama administration's immigration policies has been Sen. Jeff Sessions (R-Ala.). In a statement posted on his website the day of the president's announcement, Sessions wrote:

The President's unconstitutional action is a direct threat to our Republican system of government and will have catastrophic consequences for the American people. It must be stopped. And the way to stop it is by using Congress' power of the purse.

The House should send the Senate a government funding bill which ensures no funds can be spent for this unlawful purpose. If Reid's Senate Democrats vote to surrender their own institution to an imperial decree and block the measure, then the House should send a short-term funding measure so the new GOP majority can be sworn in and pass a funding bill with the needed language.

Sessions got into more specifics in a November 21 interview with Megyn Kelly on *The Kelly File*:

I think our Congress ... wants to be very careful. They want to handle this challenge through the constitutional order in a responsible way. Nobody wants a shutdown, certainly not I. Congress



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should fund the government of the United States, but Congress has a duty not to fund programs that we believe are bad, unlawful or unworthy of financial support. And I think we will fund this government. I think we should not fund the proposal that the President wants to carry out.

When Sessions asked the nonpartisan Congressional Research Service (CRS) to produce a report about which powers Congress has to stop Obama's executive actions on immigration, CRS said that lawmakers have the power to defund the actions, stating:

In light of Congress's constitutional power over the purse, the Supreme Court has recognized that "Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes."

Breitbart News reported that the CRS report was issued a week after House Appropriations Committee Chairman Hal Rogers (R-Ky.) said legislators could not block funding for Obama's executive amnesty because U.S. Citizenship and Immigration Services (USCIS) operates primarily on fees it collects rather than from tax revenue collected by the federal government.

The CRS report has determined, therefore, that Rogers is wrong. The *New York Times* reported in a November 27 editorial that when Rogers made his statement in the House asserting that congressional defunding wouldn't stop Obama's plan, he was shouted down by House leaders, who said that he was not speaking for them.

One GOP senator who advocated taking a less confrontational approach with the president is Jeff Flake (R-Ariz.) Speaking to the *Washington Post's* Dana Milbank, Flake said, "Rather than poke him in the eye, I'd rather put legislation on his desk."

Flake, of course, was one of the "Gang of Eight" senators that crafted the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (S. 744.) passed by the Senate in June 2013.

Obama has pressured Speaker Boehner ever since to bring the "Gang of Eight" bill up for a vote in the House. The president said in a September 2013 interview with the Latino-focused Telemundo network:

What I've said is that there's a path to get this done and that's through Congress and right now everybody should be focused on making sure that that the ["Gang of Eight"] bill that's already passed out of the Senate hits the floor of the House of Representatives.... The only thing that's preventing it is that Speaker Boehner has decided he doesn't want to call it right now.

With Obama being so strongly supportive of the bill that Flake helped write, there is little wonder that the Arizona Republican does not want to "poke Obama in the eye." He evidently would like to reserve that figurative indignity for his more constitutionalist-minded fellow Republicans.

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