Written by Warren Mass on February 26, 2018

Supreme Court Declines to Hear Trump Appeal of DACA Case

The U.S. Supreme Court declined Monday to consider the Trump administration's appeal of District Judge William Alsup's injunction preventing the administration from ending DACA. Alsup, a judge at the San Francisco-based U.S. district court, granted the injunction on January 9 at the request of the state of California and other plaintiffs. The injunction prevents the administration from ending DACA while their lawsuits plays out in court.

The Supreme Court justices did not explain their reason for refusing to take the case, but said the appeal was "denied without prejudice." This indicates that they will open to future consideration of the underlying legal issue still being considered by the San Francisco-based 9th U.S. Circuit Court of Appeals. The Supreme Court also said it expects the lower court to "proceed expeditiously to decide this case."

Justice Department spokesman Devin O'Malley said in a statement that "while we were hopeful for a different outcome," the Supreme Court rarely agrees to take up cases before a lower court has ruled, "though in our view it was warranted for the extraordinary injunction requiring the Department of Homeland Security to maintain DACA."

Attorney General Jeff Sessions announced last September 5 that the DACA program will end in six months (March 5), giving Congress time to find a legislative solution for people enrolled in the program. DACA (Deferred Action for Childhood Arrivals) was originally created through an executive order issued under the Obama administration.

DACA recipients are commonly referred to as "Dreamers," because former President Obama initiated DACA through executive actions after Congress failed to pass the Development, Relief, and Education for Alien Minors Act (DREAM Act). DREAM was first introduced in the Senate in 2001 and reintroduced in the 107th through 111th Congresses. It never passed both houses, but Obama was determined to implement it anyway, even if that meant brazenly usurping legislative power. So on June 15, 2012, he announced that his administration would stop deporting young illegal immigrants who met certain criteria previously proposed under the DREAM Act.

While campaigning for the presidency, candidate Trump promised that he would "immediately terminate" DACA after being elected. However, in recent months, he has increasingly demonstrated a willingness to compromise with Democrats by supporting legislation that would offer the same protection from deportation and extended work authorization that the Obama administration granted by means of executive actions taken by former Secretaries of Homeland Security Janet Napolitano and Jeh Johnson.

Despite these concessions, several federal judges have intervened in what by rights should be a matter for Congress to decide, and have blocked Trump from rescinding a program established not by

Congress, but by former President Obama's end run around Congress. Judge Nicholas G. Garaufis of the U.S. District Court for the Eastern District of New York issued an order on February 13 that the Trump administration must accept renewal applications for DACA.

Last September, Alsup was assigned four cases brought by parties suing to halt the administration's decision to end the DACA program. On December 20, the Supreme Court unanimously issued an opinion urging Alsup to consider arguments by the Trump administration that ending DACA was within executive authority and is not reviewable by federal courts.

Finally, as previously noted, on January 9 Alsup granted a temporary injunction halting the administration's rescission of DACA.

In an unusual move, the administration appealed directly to the Supreme Court instead of going first to a federal appeals court. The administration initially filed an appeal in the U.S. 9th Circuit Court of Appeals, based in San Francisco, but the solicitor general then decided to go directly to the Supreme Court to seek a quick reversal.

The action the administration sought was highly unusual, observed a writer for the *Los Angeles Times.* It has been nearly 30 years since the Supreme Court granted review of a district judge's ruling before an appeals court could rule on it.

The Trump administration has continuously been hamstrung by federal judges who have blocked its efforts to deal with matter related to immigration, not only DACA, but also Trump's executive orders to block immigration from foreign nations where terrorism is rampant. Other judges have blocked the administration's attempts to withhold federal aid to so-called "sanctuary" cities that refuse to cooperate with federal immigration agents who have issued detainer requests to local law enforcement officials.

All of these issues should be addressed by federal laws passed by Congress. However, Congress is now bogged down in trying to pass legislation settling the DACA dilemma because of obstructionist tactics waged by not only by Democrats but by some liberal-leaning Republicans, as well.

However, Congress does have a constitutional tool that would allow it to take back its proper legislative role from activist judges who would rather write the law instead of interpreting it. That tool is found in Article III, Sections 1 and 2, of the Constitution, which state:

Section 1:

> The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish….
>
> Section 2:
>
> … In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

In Section 1, we find that Congress has the power to establish inferior courts, meaning that it also has the power to abolish those courts. Obviously, this would be a rash move, but it does create a relationship indicating that the inferior courts exist subject to the pleasure of Congress.

In Section 2, we find that even jurisdiction of the Supreme Court is subject to "exceptions, and under such regulations as the Congress shall make."

In an article in *The New American* a year ago, writer Selwyn Duke talked about Article III, Section 2 and observed that "Congress could simply have prevented federal courts below the SCOTUS from ruling on marriage (and other issues) to begin with and the SCOTUS from reviewing lower-court decisions on those issues. This would, essentially, have left marriage where it belongs: in the states."

Duke then asked: "Why was this not done?"

His answer was: "Cowardice."

Duke also made the same observation that we did, that "Congress also has the power under Article III to eliminate any and every federal court except the SCOTUS," and nominated the Court of Appeals for the Ninth Circuit as a likely candidate for removal.

The Constitution provides Congress with all of the power it needs to maintain the separation of powers, but it requires members of Congress to have the will to use that power. If they refuse to muster up sufficient courage and will power, we will continue our slide into becoming a kritocracy — a government of judges.

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