



Written by [Michael Tennant](#) on November 29, 2010

GOP Congress Hopes to Overturn ObamaCare Regulations

Because of President Barack Obama's veto power, it is very unlikely that Congress could successfully repeal ObamaCare for at least another two years. However, there are substantive things that can be done to prevent ObamaCare's implementation, such as state nullification of the legislation and congressional defunding of its provisions. There are also symbolic things — things that might pass one or both houses of Congress but, if they do pass both houses, will almost certainly be vetoed by Obama. One of the symbolic measures being considered by Republicans is the use of a 1996 law that gives Congress the power to overrule regulations issued by executive branch agencies.



Congressional Quarterly reports that GOP congressmen and senators have both indicated a desire to fight ObamaCare by using the Congressional Review Act, a section of the Small Business Regulatory Enforcement Fairness Act of 1996 that “allows senators to hold an up-or-down vote on a regulation within 60 calendar days of its publication in the *Federal Register* or after the administration sends the rule to Congress. Floor debate is limited to 10 hours. No filibusters, amendments or motions to proceed to other business are allowed.” *CQ* adds: “If Congress passes a disapproval resolution and the president signs it, the executive branch is then banned from trying to get around lawmakers' wishes by issuing a new rule that is ‘substantially’ similar to the one that was overturned.”

In fact, Sen. Michael B. Enzi of Wyoming, the top Republican on the Senate Health, Education, Labor, and Pensions Committee, has already tried to use the CRA to overturn a regulation that, says *CQ*, “would have exempted insurance plans that were in existence when the health care law was passed from some, but not all, insurance market changes. Enzi said more health plans should be eligible and that they should enjoy broader protections. His proposal (S J Res 39) was rejected, 40-59, on a party-line vote Sept. 29.”

Sen. Orrin Hatch of Utah, senior Republican on the Senate Finance Committee, told *CQ* that the GOP is looking to use the CRA to block implementation of ObamaCare regulations in the next Congress.

Of course, as *CQ* notes, Obama isn't likely to sign any congressional resolutions overturning his administration's rules, especially those stemming from his signature achievement. Any such resolutions would, therefore, be entirely symbolic, though not without some merit in drawing a distinction between the two parties (assuming there is one). They could even, as one-time health adviser to former Senate Majority Leader Bill Frist (R-Tenn.) Dean Rosen put it, “highlight real concerns and perhaps force the administration to make some changes that they would otherwise not be willing to make.”

CQ also points out that the CRA could end up as a major Republican weapon over the next two years because Obama is likely to govern more by regulation than by legislation since he expects little



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cooperation from the House of Representatives. Congress has only itself to blame for giving the President the ability to perform such an end run around the legislature. For the past century or so it has been delegating its powers to various executive branch agencies, violating the Constitution's separation of powers and saddling the country with reams of regulations over which legislators, not to mention their constituents, have little to no control. If not for this unconstitutional delegation of powers, the CRA would not even be necessary; the fact that it has been used successfully only once, to block a 2001 Occupational Safety and Health Administration ergonomics rule, only demonstrates how little power Congress has, or even seems to desire, over the massive Washington regulatory apparatus.

Therefore, if congressional Republicans are really serious about halting ObamaCare and otherwise curbing the growth of the leviathan state, they need to employ every weapon in their arsenal. Symbolic things like CRA resolutions and ObamaCare repeal bills can serve the purpose of educating the public (and possibly winning a few concessions from the administration). They could also try shuttering the agencies responsible for promulgating the myriad ObamaCare (and other) regulations, although, again, that will probably fail as long as Obama wields the veto pen. There is, however, one thing they can do over which Obama has no control: defund these agencies. The executive branch can't spend a dime without Congress's first appropriating it, and, e.g., an Internal Revenue Service with no money will of necessity have to close up shop. Let the President bluster all he wants and threaten to veto other legislation in retaliation; he can't veto a spending bill that never arrives on his desk.





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