

Stepping around Congress

President Obama's executive actions now in the hands of the courts | BY R. MARK FREY

Comprehensive immigration reform continues to languish in Congress and it now appears unlikely that this contentious issue will be addressed before the 2016 elections. For those enthralled with such matters in this country of immigrants, President Obama's executive actions will have to suffice. Rest assured, however, there's plenty to hold our attention.



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COLUMNIST

President Obama announced in late November 2014, right after the elections, that he would implement a series of actions through the executive power granted him by the U.S. Constitution to address some of the more troublesome aspects of our immigration system. These included a provision for some out-of-status immigrants to temporarily stay in the U.S. if

they met certain criteria, and modernizing our immigrant visa system. Other provisions continued enhancing border security, and making foreign nationals with criminal records, gang members, and those apprehended at our borders the priority for deportation.

The response was swift and livid in Congress and elsewhere with accusations that President Obama had overstepped his power and violated the Constitution. Since then, the courts

have been asked to review the matter.

This new phase of the executive action saga commenced on December 3, 2014 when 17 states (plaintiffs) filed a complaint with the U.S. District Court for the Southern District of Texas seeking relief, enjoining President Obama from carrying out his executive actions, and declaring that those actions are in violation of the U.S. Constitution (with the exception of that portion devoted to prioritizing the deportation of the aforementioned suspected terrorists, those apprehended at our borders, gang members, and certain foreign nationals with criminal convictions).

The plaintiff states include Texas, Alabama, Georgia, Idaho, Indiana, Kansas, Louisiana, Maine, Mississippi, Montana, Nebraska, North Carolina, South Carolina, South Dakota, Utah, West Virginia, and Wisconsin. On December 24, 2014, the Administration fired back with a response opposing the plaintiffs' motion for a preliminary injunction. On December 29, 2014 and January 12, 2015, several organizations (American Immigration Council, American Immigration Lawyers Association, Define American, National Immigrant Justice Center, National Immigration Law Center, New Orleans Workers' Center for Racial Justice, Service Employees International Union, Southern Poverty Law Center, United We Dream), 12 states (Washington, California, Connecticut, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Mexico, New York, Oregon, Vermont), and the District of Columbia filed friends-of-the-court briefs supporting the Obama Administration's executive actions and opposing the plaintiffs' motion for a preliminary injunction.

On January 28, 2015, the mayors of New York City and Los Angeles as well as 31 other cities, the U.S. Conference of Mayors, and the National League of Cities followed suit by filing their own friends of the court briefs supporting the Obama Administration and opposing the plaintiffs' motion for a preliminary injunction.

On February 16, 2015, U.S. District Court Judge Andrew Hanen granted a preliminary injunction enjoining the Obama Administration from implementing its executive actions. On February 23, 2015, the

Administration filed an emergency motion to stay that preliminary injunction with the District Court in Texas, seeking to continue its efforts to implement the executive actions.

By March 12, 2015, following some back and forth by both sides with the District Court, the Administration filed an emergency motion at the next level of judicial review, the Fifth Circuit Court of Appeals, to stay Judge Hanen's preliminary injunction pending resolution of an appeal. The District of Columbia and 14 states joined in support with friends of the court briefs.

On March 23, 2015, the plaintiffs filed a motion opposing the Obama Administration's emergency motion for a stay of the preliminary injunction and were joined by 26 other states with friends of the court briefs. That same day, 14 states countered by supporting the Administration's emergency motion for a stay of Judge Hanen's preliminary injunction by filing their own friends of the court briefs.

On March 25, 2015, the Fifth Circuit Court of Appeals issued a notice, in a bit of an unusual move, for a hearing on April 17, 2015, giving each side an opportunity to argue its position on the preliminary injunction and whether it should remain in place. The Fifth Circuit's decision is especially critical at this point in the process and may very well play the deciding role in whether the executive actions will succeed in the future. There are key issues here involving the extent of a president's power, especially in an area (prosecutorial discretion) where the executive has traditionally been given due respect.

And, what will happen after this hearing? Will the U.S. Supreme Court be asked to weigh in? Or, will it simply decline and let the Fifth Circuit's decision stand? More fireworks are sure to follow in this ongoing saga of immigration reform, immigrants, and the dynamic tension existing between President Obama and Congress. ●

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