

## Minority Views

H. Res. 639, authorizing the Speaker to file an amicus brief on behalf of the House of Representatives in *U.S. v. Texas*, is at best an unfortunate misuse of the House's time and resources.

Congress has the constitutional power if not the obligation to enact legislation making sense of our broken immigration system. The system, as it stands, cruelly fails to distinguish between hardened criminals and hard-working taxpayers who entered the country simply to build a better life for their families. It simultaneously fails to meet the needs of American businesses and our economy. Instead of putting the interests of the country first and bringing up the bipartisan, comprehensive immigration reform bill passed by the Senate 68-32 last term when they had the opportunity, House Republicans blocked it.

When the President sought to temporarily address some of the most significant problems in our immigration enforcement regime by exercising prosecutorial discretion and authority granted to him explicitly by Congress, Republicans voiced their objection.

But instead of opposing the Administration's policies using the powers committed to the Legislative Branch by the Constitution -- including passing laws and overriding vetoes, engaging in oversight and carrying out investigations, or leveraging the power of the purse -- Republicans have reached for a tool not in their constitutional toolbox: running to the courthouse. Rather than allow Congress to do its job, Republicans insist on telling the other branches of government how to do theirs.

House Republicans will file an amicus brief pursuant to this resolution and it will masquerade as expressing the position of the institution of the House of Representatives in an inter-branch, separation of powers conflict. But the fact is, this is nothing more than a partisan fight about elections and immigration policy. Democrats, who represent half of the country, were not consulted. We were

denied an opportunity to present an alternative. The Speaker's amicus brief does not speak for the Democratic Members of the House.

President Obama's executive actions on immigration -- Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) -- are common-sense, lawful exercises of executive discretion, consistent with the actions of presidents from both parties over the last half dozen decades.

For example, from 1987 to 1990, Presidents Reagan and Bush implemented a "Family Fairness" policy that deferred deportation of an estimated 1 million spouses and children of people who qualified for legal status. As President Obama is doing today, President Reagan used his discretion to grant work authorization to beneficiaries of deferred action, a longstanding practice that was later codified by Congress in the 1986 Immigration Reform and Control Act. Presidents from at least Eisenhower to Clinton have done similarly, and there are numerous laws on the books going at least as far back as 1952 explicitly instructing the Executive Branch either to exercise prosecutorial discretion or prioritize enforcement in immigration matters.

Even the Supreme Court, including Chief Justice Roberts and Justice Anthony Kennedy, has acknowledged the legitimacy of Executive Branch discretion in immigration. In *U.S. v. Arizona*, the Court recognized that this broad discretion is a "principal feature of the removal system" and that it extends to the question of "whether it makes sense to pursue removal at all."

Indeed, such prioritization is necessary in light of the fact that Congress appropriates only enough money for the Department of Homeland Security to remove approximately four percent of the undocumented immigrants already in the country.

But there is something more troubling here than the misuse of the House's time and resources, the weakness of the Republicans' legal argument, or the

harm to the country and the economy that would result from the implementation of their preferred policies on immigration. Bringing this resolution to the floor of the House at this particular moment says something worrisome about the state of the Republican Party and its leadership.

It is quickly becoming clear that this is a dangerous moment in our country and in our political system. The Republican presidential primary field is resorting to demagoguery and nativism, fanning the flames of dangerous anti-immigrant anger, and anger in general. What the President rightly called “vulgar and divisive rhetoric” in the Republican contest is a logical and foreseeable consequence of the anger and fear carefully and deliberately cultivated by decades of Republican campaign strategy, as Republicans went beyond principled advocacy for smaller government to the outright encouragement of people to think of government as the problem and an enemy to be hated. In an effort to delegitimize President Obama, they indulged conspiracy theories about our first African American president being a foreign-born “secret Muslim” who aspires to be a dictator and take away our freedoms. And capping what the New York Times Editorial Board characterized on March 15 as “decades of pandering to intolerance,” Republicans have used hateful slurs to describe Latino immigrants, saying they have “calves the size of cantaloupes,” calling them “wetbacks,” “dogs,” “livestock,” and saying they come from a “violent civilization.” All of those things Republicans did and said to win elections and score political points have helped prime the electorate for this year’s candidates.

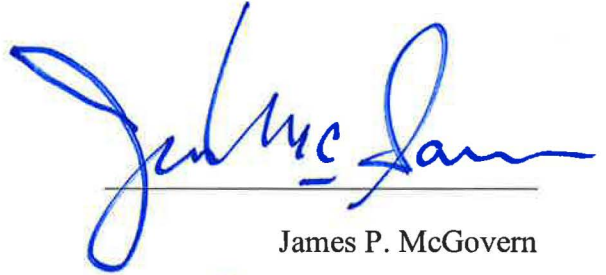
Now that Republican leaders see what they have created, do they take this opportunity to back off of the rhetoric? No, they forge ahead with more anti-immigrant, anti-Latino legislation, with more accusations that the President is a lawless tyrant who violates the Constitution and makes his own law.

If ever there were a moment for responsible leaders to take a step back and use their positions of influence and power to encourage level-headedness, this would be the time.

Our country of immigrants desperately needs its legislators to reform its badly broken immigration system. Doing so would create jobs, align the labor force with the needs of employers, reduce our deficit, strengthen our economy, keep families together, and make our communities safer by bringing millions of people out of the shadows. That Republican leaders continue instead to send to the floor of the House legislation designed to appeal to people's fear and hatred, even as our political system comes closer and closer to the edge of a crisis brought about by the deliberate sowing of that same fear and hatred, says something very worrisome indeed.



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