

Will Americans Go to War With Obama Over Immigration?

The morning after President Obama announced his sweeping action to overhaul the U.S. immigration system, conservative groups and states were already pulling together legal strategies to dismantle the plan.

Opponents said there will likely be a three-pronged legal approach to stymie Obama's moves: Congress could sue the president for constitutional overreach, states could file lawsuits arguing the action strains local finances, or individuals could try to prove they've been harmed by the order. Just hours after the speech, an Arizona sheriff filed suit arguing the reform is unconstitutional.

"There is going to be massive litigation all over the place because there is tremendous legal confusion about what the administration is doing and what the states' obligations will be," said Dan Stein from the Federation for American Immigration Reform (FAIR), which calls for restrictions on immigration.

While law scholars say the president is on strong legal footing, a flurry of lawsuits will cause headaches for the Obama administration in its final two years and may stir public opinion against a policy meant to be one of his signature triumphs.

Obama's health care plan, another major political victory for the President, has also been mired in legal challenges with opponents taking suits all the way to the Supreme Court. Just on Friday, Republicans in the U.S. House of Representatives filed a long-anticipated lawsuit challenging Obamacare.

States are already lining up to sue over Obama's immigration action, under which he plans to grant temporary legal status to some 4.4 million undocumented immigrants who are parents of U.S. citizens and legal permanent residents.

Republican governors Scott Walker of Wisconsin, Rick Perry of Texas and Pat McCrory of North Carolina have all voiced support for taking legal action without giving further details. Oklahoma Attorney General Scott Pruitt also announced his intention to sue.

Still, making a legal case will be an uphill battle. Presidents historically have had wide discretion to act alone on immigration and under a concept known as "prosecutorial discretion," can decide to not enforce every violation of federal law when resources are limited.

In a 33-page legal memo, the Department of Justice said the action falls within the bounds of the constitution and that Congress has supported favorable treatment of law-abiding immigrants with deep U.S. ties.

The main hurdle for any lawsuit will be proving "standing," a requirement under U.S. law that for someone to be able to sue, they have to show they have been directly harmed.

The hardest case to win would be one filed by Congress, legal experts say, since lawmakers would struggle to prove standing. Republicans have vowed to act in other ways and could try to pass laws to take away the President's authority to act on immigration or slash funds for his initiatives.

States might have a stronger argument if they can prove financial harm from the program.

One ongoing case challenging Obama's previous executive action in 2012 to grant deportation relief to immigrants brought to the United States illegally as children, could serve as a model.

The suit was filed by a group of Immigration and Customs Enforcement officers upset by White House directives. The state of Mississippi attempted to join the action.

To prove standing, Mississippi argued illegal immigrants

drained state resources and the ICE agents said they were

being forced to violate their oaths to enforce the law.

Even though a federal judge dismissed the case, he found the ICE agents had standing. Mississippi was dropped from the case but only because its economic analysis showing harm was outdated. The agents are appealing.

Conservative groups also said U.S. workers might be able to bring a case if they can prove they were displaced by immigrants granted new work permits.

“We will be looking for people who can demonstratively prove that aliens who are getting work documents are working in similar fields,” Stein from FAIR said.

The suit filed Thursday by Maricopa County Sheriff Joe Arpaio – whose police force has been sued for racial profiling of immigrants – is short on legal reasoning and is likely to be dismissed, said Kari Hong a Boston College Law School professor.

“At this point it’s all rhetoric. It’s not based in strong legal analysis,” Hong said.

Short of legal action, states could move to withhold benefits to recipients of the new status. But immigration advocates are likely to counter those moves with their own suits, potentially clogging the courts with more cases related to Obama’s order.

After the deportation relief was announced in 2012, Arizona, Nebraska and Michigan all blocked young recipients from obtaining drivers licenses. Immigrants sued in all three states.

Additional reporting by Lawrence Hurley in Washington and Gabriel Denedetti in Boca Raton; editing by Alexia Garamfalvi and Martin Howell