



Is a Deal in the Works to Avoid a DHS Shutdown?

A lawsuit against the president may hold the key to avoiding a funding shutdown for the Department of Homeland Security.

By Gabrielle Levy

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After weeks of deadlock, House Republicans are considering a potential compromise to fund the Department of Homeland Security and save face on a doomed effort to block the Obama administration's executive actions on immigration.

Publicly, the GOP leadership has refused to consider any other scenario than one in which either Senate Democrats bend and support a House bill that funds the department and rolls back President Barack Obama's directives providing deportation relief to some immigrants, or else send DHS over the funding cliff.

But members within the caucus have begun quietly floating a plan to pass a clean bill to fund DHS alongside a resolution to file a lawsuit against the president for what they say was an illegal overreach of his authority by issuing executive orders to defer deportation of entire groups of people in the U.S. illegally, rather than using prosecutorial discretion on a case-by-case basis.

Congressional staffers, speaking anonymously because no deal has been finalized, suggested that a deal to pair a clean funding bill with a lawsuit resolution – much like the one last year to sue the president over the implementation of the Affordable Care Act – may be enough to appease the group of about 30 immigration hard-liners in the House who have driven the current impasse.

In December, Republicans stripped the DHS appropriations from an omnibus continuing resolution funding the rest of the government, hoping to use it as leverage to stop the immigration policies. Then in January, they were able to insert amendments to the House version of the new bill to defund and otherwise block those actions over the objections of a unified Democratic caucus and even some defections from the moderate wing of their own party.

The gambit seems to have backfired, as Republicans lack the votes to overcome a Democratic filibuster in the Senate, nor do they have the numbers in either chamber to override Obama's promised veto. They also don't appear to be winning the messaging war, as a CNN poll released this week shows 53 percent of Americans would blame GOP lawmakers in the event of a DHS shutdown, compared to just 30 percent who would blame Obama.

Even as it became increasingly obvious that the House bill was dead on arrival in the Senate, Majority Leader Mitch McConnell, R-Ky., has scheduled a fourth vote to open debate on the legislation after the first three failed. And House Speaker John Boehner, R-Ohio, last week refused to rule out a shutdown, saying the House had “done its job” already.

Members will return from a week-long recess next week, with the Senate scheduled to be in session Monday, while the House is back Tuesday. Any serious work on moving a deal in the House, which must originate all funding legislation, won’t get underway until at least Wednesday after the weekly caucus meetings.

Alex Nowrasteh, an immigration policy analyst at the libertarian Cato Institute’s Center for Global Liberty and Prosperity, says the math has not added up for Republicans and has been urging the parties to use a federal judge’s ruling blocking Obama’s “executive amnesty” as an opportunity to de-escalate the situation.

“That would be an acceptable political compromise,” he says.

“Some of the hard-liners in the House are going to see it as a capitulation, surrender and endorsement of the president’s executive actions,” he says, but such a deal “is the best argument they have right now, to outsource this to the courts.”

Many experts wrongly predicted leadership would use this week’s ruling to urge their members to accept passage of a clean funding bill, but instead, conservatives have dug in their heels and said that the court victory means they are right to refuse to fund the implementation of those policies.

The intransigence has left political watchers scratching their heads, as there appears to be little upside for Republicans and almost no downside for Democrats or Obama.

Should the department shut down, only about 30,000 of its 200,000 employees would be furloughed, and the important security functions of DHS would continue. But sending the rest, including Secret Service, the Coast Guard and even the immigration and customs agents responsible for carrying out Obama’s executive orders, to work without pay provides for particularly poor optics.

Ironically, one program that would be suspended is E-Verify, the database against which employers check potential hires for illegal immigration status. Republican lawmakers support E-Verify and have pushed to make the program required nationwide.

Democrats, meanwhile, see the situation as a political win-win. Either they get DHS funded – although not at the level they would like – and take their chances on immigration in the courts, or Republicans get the blame for a department shutdown that damages the GOP’s efforts to prove it can govern without putting the security of the country at risk.

“Is there a downside for Democrats? I don’t think there is,” says Marshall Fitz, the vice president for immigration policy at the liberal Center for American Progress.

“It was a gross miscalculation [on the part of Republicans] to think that the way to go after these directives was to use DHS funding as their hostage,” he says. “This doesn’t work for them on any level.”