

The Street



Supreme Court Ruling on Obama Immigration Order Won't Make Anyone Happy

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Supreme Court Chief Justice John Roberts has said that he doesn't want to politicize the judicial branch. But now, the court is getting ready to deliver a huge ruling on the hottest issue in the 2016 election, and the ruling, whatever is decided, is likely to determine the tenor of debate until election day.

How's that for not getting political?

Sometime before November, probably in June, the Supreme Court will rule on whether President Obama had the right to issue an executive order to allow about five million out of an estimated 11 million undocumented immigrants who are the parents of citizens or permanent residents to avoid deportation and be given a temporary work permit.

Obama has defended the November 2014 order as essential instructions to government agencies on how to deal with millions of undocumented immigrants given that the Department of Homeland Security says it only has funds to deport about 400,000 people a year. Congress, the president has said, could stop the program by passing legislation, but has chosen not to.

Yet even as the court's decision will narrowly focus on the parameters of presidential powers, Democrats and Republicans are certain to use the ruling to raise the ire or enthusiasm of supporters on a most contentious issue.

"If the president wins the ruling, activists will see this as a down payment on a legalization program that's part of immigration reform passed through Congress," Daniel Costa, director of Immigration Law and Policy Research at the Economic Policy Institute, said in a phone interview from Washington. "As for Republicans, it's doubtful they could be more against it than they already are."

Republican frontrunner Donald Trump has made border enforcement and deportation a cornerstone of his campaign. The New York real estate developer catapulted to the top of the Republican race with comments about Mexicans that sparked accusations of racism. Trump was further bolstered in December when he called for a temporary ban on Muslims entering the U.S. along with building a wall across the 1,989 mile long U.S.-Mexico border.

Conversely, immigration reform has dogged the campaign of Florida Senator Marco Rubio for having co-sponsored the comprehensive 2013 Immigration Modernization Act. That legislation passed the Senate but failed in the House of Representatives amid opposition to citizenship provisions for some unauthorized immigrants.

The leading Republican candidates -- Trump, Rubio and Texas Senator Ted Cruz -- argue that Obama's order was an illegal use of presidential power. Weeks after it was issued, Texas Attorney General Ken Paxton joined with 25 other states to sue the federal government, charging Obama with taking a backdoor route to ensure amnesty for millions of undocumented immigrants.

"That rule of law theme has played and will certainly play a large part on the Republican side, and be part of the continuing campaign against President Obama," [Ilya Shapiro](#), senior fellow in Constitutional Studies at the Cato Institute, said in an interview from Washington.

Ultimately, the court will rule on whether Homeland Security followed proper administrative channels in instituting its policy, and whether the president violated his constitutional duty by seeking to enforce current laws. But whatever it decides, the court's ruling will set the tone of the debate over immigration for the remainder of the campaign.

"The Tea party and the Conservative movement has been talking about Obama acting like an imperial president for quite a while, so they'd probably be very upset if this conservative Supreme Court rules in favor of the president," Costa said. "But even this order only covers some immigrants, and everyone will know it could be repealed by the next president."

The ruling may also provoke accusations that the court is playing politics.

"Roberts wants to keep the court away from the election debate," Cato's Shapiro said. "But it's inevitable that the Supreme Court will become even more of an issue than it otherwise would be."

Whichever way the Supreme Court rules, it will likely also be used by candidates on both sides as a reminder that the next president could have the opportunity to appoint as many as four justices. Ruth Bader Ginsburg, Antonin Scalia, Anthony Kennedy and Stephen Breyer will all be over 80 by the time the next presidential term ends on Jan. 20, 2021.