



Written by [Raven Clabough](#) on September 11, 2014

Judge Napolitano Explains Possible Jeopardy of Obama's Immigration Plans

Though the Obama administration has been vocal about moving forward on immigration reform without Congress, Obama's latest plan is to wait to enact immigration reform until after the midterm elections. However, according to Judge Andrew Napolitano, a Fox News contributor, Obama's plans could be permanently halted if the Republicans gain control of the U.S. Senate.



Appearing on *Fox and Friends*, Napolitano outlined a "poison pill" scenario wherein the Republicans take back the Senate in November, and the newly GOP-controlled Senate nullifies actions taken on immigration reform.

Napolitano notes that the House and Senate could include language regarding immigration in a large, must-pass bill, a tactic that takes power away from Obama, who does not have line-item veto power.

"He can't cross out something that he doesn't like and sign the rest. So if there's legislation he really needs and the country really wants and must have — like funding the Defense Department — they could sneak in there legislation nullifying these executive orders [and] he'd be forced to sign it," said Napolitano, adding that President Obama remains devoted to an "ideological view of transforming American society."

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It does not seem likely that President Obama envisions a scenario wherein the Democrats lose control of the Senate after November.

Obama had been considering executive action on immigration that would allow a path to legal status for millions of illegal aliens. Earlier this month, however, the president announced he would wait to take executive action on immigration until after the midterm elections. Speaking to NBC's Chuck Todd, Obama said,

What I'm saying is that I'm going to act because it's the right thing for the country. But it's going to be more sustainable and more effective if the public understands what the facts are on immigration, what we've done on unaccompanied children and why it's necessary.

Faced with criticism from immigration advocates, Obama admitted that his decision was heavily political, though he denied that his decision was intended to protect Democratic candidates in tough Senate races. Pointing to the backlash that resulted from the influx of unaccompanied minors at the border that created a crisis this summer, the president said,

The truth of the matter is — is that the politics did shift midsummer because of that problem. I want to spend some time, even as we're getting all our ducks in a row for the executive action, I



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also want to make sure that the public understands why we're doing this, why it's the right thing for the American people, why it's the right thing for the American economy.

Republicans responded to the president's decision to delay action with harsh criticism.

"There is a never a 'right' time for the president to declare amnesty by executive action, but the decision to simply delay this deeply-controversial and possibly unconstitutional unilateral action until after the election — instead of abandoning the idea altogether — smacks of raw politics," House Speaker John Boehner said.

Senate Minority Leader Mitch McConnell added that Obama is simply waiting to "go around the law once it's too late for Americans to hold his party accountable in the November elections."

Similarly, New Hampshire Senate candidate Scott Brown said in a statement, "Make no mistake: President Obama plans to grant amnesty; it's just that he will cynically wait until after the election so as not to harm Senate Democrats like Jeanne Shaheen." Brown, who trailed Democratic Senator Jeanne Shaheen by more than 12 points in July, is now just two percentage points behind his Democratic opponent.

A White House official, speaking on condition of anonymity, told CNN that he will delay any move to "take this issue away from those who would use it to score points as a kind of grandstanding issue": "It's too big of an issue to allow it to be used as a tool for people trying to get votes," the official said. "It isn't about votes for any particular candidate; it's about dealing with this issue in an environment that avoids the grandstanding we've seen in the past." Democrats are also hopeful that if the Democrats retain control of the Senate in November, Republicans will feel compelled to take a different approach, the official added.

What happens, however, if Republicans gain control of the Senate? Marlene Hincapié, executive director of the National Immigration Law Center, considered this scenario. "A Republican-controlled Senate could mean they will actually try to push through legislation and bills to challenge the president's authority," Hincapié said.

If that does not happen, the Republicans could use funding as an excuse to stop reform, according to Hincapié. "They could, for instance, push to prove that funding simply isn't there for the reforms he announces," she said.

Further, Republicans could also work to draft their own immigration reform proposal, which would likely encourage Obama to further postpone unilateral action. "If they win both the Senate and the House, it's very likely they will at least try to make an attempt at immigration reform," Hincapié said. "The concern is whether the White House will decide to delay any executive authority reforms in order to wait and see what the Senate and House do in terms of legislation."

The *Washington Post* also noted that a Republican-led Senate would ultimately make any action taken by the Obama administration "appear particularly rogue" because neither the House or Senate would likely endorse it.

Tamar Jacoby, president and CEO of ImmigrationWorks USA made similar assertions. "It could be Obamacare all over again. It won't even be about immigration — it will turn into a question of constitutionality."



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