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[H. Res. ___, Authorizing the Speaker to appear as amicus curiae on behalf of the House of Representatives in the matter of United States, et al. v. Texas](#)

FLOOR SITUATION

On Thursday, March 17, 2016, the House will likely consider [H. Res. ___](#), a resolution authorizing the Speaker to appear as amicus curiae on behalf of the House of Representatives in the matter of United States, et al. v. Texas, under a rule. H. Res. ___ was introduced by Rep. Paul Ryan (R-WI).

SUMMARY

H. Res. ___ authorizes the Speaker to file an amicus brief on behalf of the House in the court case *Texas v. U.S.*

BACKGROUND

On November 20, 2014, the Obama Administration announced that it was taking a number of actions to “fix” what the President has repeatedly described as a “broken” immigration system. These actions addressed various issues, from border security to legal immigration to enforcement priorities and policies, as well as providing certain relief from removal to some of the approximately 11 million aliens who are present in the United States without a legal immigration status.¹

Over 25 states or state officials have filed suit (which is referred to as *Texas v. U.S.*) challenging the Administration's expansion of Deferred Action for Childhood Arrivals (DACA) and the creation of a DACA-like program for aliens who are parents of U.S. citizens or lawful permanent residents, known as the Deferred Action for Parents of American (DAPA).²

The states allege that these programs run afoul of the Take Care Clause and separation of powers principles of the Constitution, the Immigration and Nationality Act, and substantive and procedural

¹ See CRS Report, [“The Obama Administration’s November 20, 2014, Actions as to Immigration: Pending Legal Challenges One Year Later.”](#) November 20, 2015.

² See CRS Report, [“State Challenges to Federal Enforcement of Immigration Law: Historical Precedents and Pending Litigation in Texas v. United States.”](#) January 27, 2016.

requirements of the Administrative Procedures Act (APA). After finding that the states have standing, and that DAPA and the DACA expansion are judicially reviewable, a federal district court enjoined implementation of these programs on February 16, 2015, on the grounds that the states are “likely” to prevail in their argument that the programs run afoul of the Administrative Procedure Act’s (APA’s) procedural requirements. The court’s decision forestalls, at least for now, the Administration’s plans to expand its earlier Deferred Action for Childhood Arrivals (DACA) program and create a new Deferred Action for Parental Accountability (DAPA) program that would, if implemented, permit some aliens to obtain relief from removal, authorization to work in the United States, and certain public benefits.³

Subsequently, on November 9, 2015, the U.S. Court of Appeals for the Fifth Circuit affirmed the lower court's finding as to the procedural violation of the APA, and also found for the states on their claim that DAPA and the DACA expansion substantively violate the APA because these programs are "not in accordance with law" and "in excess of statutory ... authority." The federal government then sought review from the Supreme Court, which granted its petition for certiorari on January 19, 2016. In so doing, the Court indicated that it would also consider the plaintiffs' Take Care Clause claims. The Federal government maintains that the plaintiffs lack standing, and that the challenged programs represent an exercise of enforcement discretion and, as such, are immune from judicial review.⁴

The U.S. House of Representatives rarely files amicus briefs on court cases. On Tuesday, March 1, 2016, the Office of the House Majority Leader, Kevin McCarthy, announced the protocol by which the House is permitted vote on the House Floor to file an amicus brief. The protocol prohibits the House from filing such briefs, in such a manner, unless: (1) the case is pending before the Supreme Court; (2) the case involves Executive Branch actions that intrude upon, or threaten to intrude upon, the powers, functions, or duties entrusted to Congress by Article I of the Constitution; (3) the case does not exclusively involve issues of statutory interpretation.⁵

COST

A Congressional Budget Office (CBO) cost estimate is currently not available.

STAFF CONTACT

For questions or further information please contact [John Huston](#) with the House Republican Policy Committee by email or at 6-5539.

³ Id.

⁴ Id.

⁵ See Majority Leader Kevin McCarthy Website, [Protocols](#)