

COMMENTARY -- founding principles at stake in White House initiative

Written by Sen Chuck Grassley
Tuesday, 06 December 2011 13:07

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Constitutional Principles at Stake in President's Actions, Rhetoric

by U.S. Senator Chuck Grassley

President Obama's latest media campaign is built around the tag line *We Can't Wait for Congress*. Under this banner, he has announced executive actions for everything from mortgage and student loan relief, job placement for veterans, grants for health care workers and stricter funding requirements for Head Start programs. The new slogan highlights the President's frustration that Congress did not pass his latest economic stimulus proposal in its entirety. Instead, Congress has passed pieces of the President's proposal where there is bipartisan agreement and put forward other approaches.

A President being frustrated with Congress is nothing new. What's more remarkable is the notion that the President will act completely independent of Congress. "Where they won't act, I will," he said.

Article I, Section 1 of the Constitution of the United States says, "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." Having had their rights violated by a King, our Founding Fathers intentionally put the power to make laws in the branch of government that is most directly accountable to the citizens. Under our Constitution, the President's role is not to make policy

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unilaterally, but to, “take Care that the Laws be faithfully executed.”

So is the President overstepping his constitutional authority? In some cases, the *We Can't Wait* slogan is simply being appended to actions implementing laws already passed by Congress. For instance, job placement services for veterans have been around for a long time. The health care worker grants were authorized under the 2010 health care law, and the Head Start reforms the President touted were actually included in a law passed by Congress way back in 2007. On the other hand, the President's authority to change the rules for refinancing of certain mortgages and to offer more generous student loan terms to select borrowers is much less clear. In fact, I wrote a letter to the President asking him to explain to Congress and the American public the legal authority he is claiming to implement the student loan changes.

If the President isn't usurping the legislative powers vested in the duly elected representatives of the citizens of the 50 states, he's certainly talking like he is. The President should show leadership, which has been lacking when it comes to working with Congress on the politically difficult decisions needed to reduce the deficit, such as entitlement reform. However, no President should even pretend to have the authority to unilaterally implement policies not authorized by law. This attitude is particularly concerning given this President's history of bypassing Congress to implement his agenda.

For instance, the House and Senate have considered various proposals to regulate greenhouse gas emissions, but no climate legislation was able to achieve sufficient support to pass Congress. Nevertheless, in the Obama administration, the Environmental Protection Agency has moved forward with regulations for greenhouse gases under a law Congress never intended to be used for that purpose. While a Supreme Court ruling cracked open that door, the fact that Congress pointedly did not authorize this step should have given the administration pause. The President's *Race to the Top* education program is another significant overreach. Congress bears responsibility for writing a \$5 billion check to the Secretary of Education in the 2009 stimulus bill with minimal guidelines attached, but the administration blew past even those broad guidelines to implement an unprecedented federal intervention into state education policy. The resulting program offered the possibility of big dollar grants to cash strapped states, provided they first changed state laws to implement specific policies favored by the Secretary of Education. Most states, like Iowa, implemented the Secretary's preferred policies and applied for the funds yet never saw a dime in return. In a similar move, with states clamoring for relief from the ever tightening requirements of the No Child Left Behind Act, the President has announced that he would grant waivers. The catch is that states will have to adopt key components of his education reform agenda. This is despite the fact that Congress is currently considering legislation to update federal education policy and may not adopt all aspects of the President's proposal. Moreover, current law allows for waiving existing requirements on a case by case basis, but does not authorize the

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Administration to add new requirements in return.

We Can't Wait for Congress isn't just a bad PR gimmick, it contradicts the philosophy underpinning the American Revolution, as expressed in the Declaration of Independence. It violates the Declaration's concept of "unalienable Rights" and the principle "That to secure these Rights, Governments are instituted among Men, deriving their just powers from the consent of the governed." By contrast, the French Revolution was inspired by the philosophy of Jean-Jacques Rousseau, who wrote that claims of natural rights must be abandoned in favor of submission to the authority of the "general will" of the people as a whole, as expressed through a ruling elite. This philosophy allows for a more active government, but has also led to some of history's worst tyrannies. Our system of separation of powers, federalism and checks and balances, designed to protect individual rights, results in a more deliberative form of government. This can be frustrating. It means that the President cannot expect Congress to just pass his proposals without reading them. However, America's founding principles have kept us free for over two centuries and the President shouldn't blithely dismiss them, whether in word or deed.

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