

Immigration reform; time for Congress to act

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ABSTRACT

During the terms of the last four U.S. presidents, immigration has been a continuing problem. President Clinton, Bush, Obama, and Trump were all faced with a huge tide of illegal immigration and all four Presidents had a clear message from the voters that immigration was an important issue. The U.S. Congress has been unable to, or more aptly put, unwilling to deal with this problem. The reason of course is because it is such a “hot” political problem. Those that want to stem the flow of illegal immigration are instantly labeled as racists or at the least, uncompassionate or uncaring. Those who wish to do nothing about the current situation are labeled as anti-American and soft on crime. There does not seem to be any political middle ground on this issue.

It is currently an issue in which no one wants to take the risk of being politically incorrect or willing to put their job on the line. What really seems to be lost is the purpose of our legislative bodies; they are to serve the will of the people so long as the will of the people does not contravene the U.S. Constitution.

This paper will research the existing immigration laws, presidential executive orders attempting to solve illegal immigration issues, and possible solutions to the existing problem brought on by illegal immigration. This paper will also research what body of the U.S. government is responsible for immigration laws and for the administration of immigration laws.

Keywords: U.S. Constitution, presidential executive orders, undocumented alien, citizens, citizenship, illegal aliens, illegal immigration, original intent.

INTRODUCTION

Immigration reform has been the talk of politicians and voters alike for the past few decades. Clear back on November 6, 1986, President Reagan signed into law the Immigration Reform and Control Act (IRCA). The IRCA is known as the Simpson–Mazzoli Act or the Reagan Amnesty law. This act was supposed to be the answer to the illegal immigration problem that the United States was facing. “The act:

- required employers to attest to their employees’ immigration status
- made it illegal to hire or recruit illegal immigrants knowingly
- legalized certain seasonal agricultural undocumented immigrants, and;
- legalized undocumented immigrants who entered the United States before January 1, 1982, and had resided there continuously with the penalty of a fine, back taxes due, and admission of guilt; candidates were required to prove that they were not guilty of crimes, that they were in the country before January, 1, 1982, and that they possessed at least a minimal knowledge about U.S. history, government, and the English language" (IRCA, 1986, p. 2-5)

This act was supposed to be a compromise between the Democrats and the Republicans. The act gave up to 3 million unauthorized immigrants a path to legalization if they had been “continuously” present in the U.S. since January 1, 1982 (Noferi, 2014, p. 1). Clearly the act was not the answer to the immigration problems in the United States as every president since Reagan has had to deal with the problem. When a duly elected president campaigned on immigration reform, the voters expect the president to fulfill his promises. That can be very difficult when there is a conflict between the President and Congress. As proven in President Trumps case, even when both houses are controlled by the same party as the president, getting immigration reform is extremely difficult.

President Bill Clinton was no exception to this political issue. Back in 1996, during his State of the Union address, Clinton on immigration stated, “We are a nation of laws” (Schwartz, 2016, p. 1). Based on the track record of the current Democratic party of today, the authors have made the assumption that this current Democratic party would not have aligned with one of their favorite and most admired presidents. Clinton was way too conservative in taking this stance. Or was he really? Just maybe, like most politicians, his State of the Union address was targeted towards the voting populace that brought him into office for a second term.

During President George W. Bush’s presidency, the issue of immigration was once again in the limelight amongst both voters and politicians. During his presidency, President Bush supported the Secure Borders, Economic Opportunity and Immigration Reform Act of 2007, Senate Bill 1348 (SB 1348, 2007). This bill was touted as a compromise between the two parties and supposedly would address the concerns of both parties. The bill was introduced by Senator Harry Reid, Democrat, on May 9th, 2001, and supported by President George W. Bush, Republican. Congress never even voted on the bill. Several votes on amendments to the bill were introduced and cloture took place. The last vote on cloture was on June 7, 2007, which proved to be the bill’s demise.

Like the previous presidents, President Barack Obama was not left off the hook in this hotly debated topic. During his 2008 presidential campaign he promised to enact immigration reform (McCarthy, 2014, p. 1). It did not happen. In May 2008, at an appearance in Denver he promised Univision host Jorge Ramos that in his first year he would have an immigration bill that he would strongly support (McCarthy, 2014, p. 1). In his January 2010 State of the Union

address, President Obama again addressed the immigration problem in stating “We should continue the work of fixing our broken immigration system – to secure our borders and enforce our laws, and ensure that everyone who plays by the rules can contribute to our economy and enrich our nation,” (McCarthy, 2014, p. 1).

The next president to try and tackle immigration would be President Donald Trump. President Trump, of course, faced an even greater problem than did all the previous presidents. President Trump had almost zero support from the major media. The only major news network that gave any support to President Trump was the Fox news network. All other major networks showed a clear bias against Trump, even though Trump had demonstrated his commitment to get immigration reform passed as he had promised in his campaign for the presidency (Media Bias, 2018, p 1).

The problem seems to stem from a perspective on ideology rather than an issue that can be confronted and dealt with. Conservatives may not want to enforce existing laws to promote big business in their effort to hire cheap labor. Liberals may not want to enforce immigration laws based on the “rights” of the illegal immigrants, which many believe to be in support of gaining more votes for their party. Whatever the reasons, both the Democrats and Republicans have been unable to come up with a workable solution in passing immigration reform. Part of this problem lies in the perception politicians have about their constituents. No politician wants to go against the will of the voters who put them in office. And, sadly, many of them are driven by polls that may not reflect the true concerns of the voting public. Anybody who has been polled or has read polling questions knows that the polling questions can be written in such a way as to get the desired result of the poll taker (Charney, 2007, p. 1). Politicians must be aware of this so why are polls driven? Maybe the answer is that they are not poll driven, but rather they use the polls to support their own agenda and to deceive their constituents to maintain their support. If your agenda is to allow illegal immigration to continue so that the menial jobs can be filled by illegal immigrants to help support businesses, you are not going to conduct polling that shows these jobs being filled by illegal immigrants are actually harmful to the economy and job market. Likewise, if your agenda is to gain a larger voting bloc, or protection of the illegal immigrant, you are not going to support or conduct polling that shows the negative impact on the safety of our communities caused by illegal immigration or that there may be massive voter fraud in allowing illegal immigrants to vote. According to research done by Dionne and Mann (2003), polling is a tool and not a principle. They further indicate that it matters greatly how pollsters ask their questions and why people are deeply skeptical of polls (p. 1). The clear indication is that polls can ask the right questions in the right way to manipulate people to their way of thinking. The take away from this is that people should not interpret polls to be a true representation of what they claim to represent. The source of the poll might be a great indicator as to the validity of the poll.

The problem with illegal immigration is going to continue until the people who vote the politicians into office have a clearer and more accurate understanding of the actual impact of illegal immigration. This understanding must also be based on the knowledge of who is responsible and the roles of the responsible parties. The intent of the authors is for this paper to educate and help clarify the issues so the reader will be more capable of understanding this crisis and to take the proper action to try and help solve the crisis.

METHODOLOGY

The research in this paper was basic research and through secondary data analysis. The secondary data was collected through various journal articles and published opinions. Data was also collected on existing federal law, congressional legislation (enacted law or not), and presidential executive orders. The authors also used the application of existing law and the role of the executive branch and the legislative branch. The purpose of this research is for the enhancement and knowledge of the reader so they may better understand why immigration has been a problem in the past and the present. The presentation of this research is based on factual knowledge of existing laws and rules so the reader may better understand who is responsible for the current illegal immigration crisis in the United States.

LITERATURE REVIEW

One of the issues touted by President Trump in his campaign was the promise to build a wall on the Mexican/American border. He was not only going to build a wall, but it was going to be a beautiful wall and the Mexicans were going to pay for it. That agenda has not been executed as planned, despite President Trump having a Republican majority in the House and in the Senate, during his first half term. An immigration bill has yet to be passed. In September 2017, USA Today took on the laborious task of surveying every member of Congress to determine their position on Trump's wall. At the time, the White House was requesting \$1.6 billion to begin wall construction. The survey found that just 69 of the 292 Republicans in Congress said they supported Trump's funding request (Itkowitz, 2019, p. 1). The question that needs to be asked here is why would his own party not support him and his promise to the American people to build a wall? Could it be that his own party does not trust the American people? When looking at polls, that just might be the case. "In 2013, an ABC News/Washington Post survey found that nearly two-thirds (65 percent) of Americans supported building a 700-mile fence along the border with Mexico and adding 20,000 border patrol agents" (cite). Recent polls show that support has eroded to only 4 in 10 Americans support building a wall. In addition, polls show that Americans are now divided on their support of fence versus a wall. In the past 13 years the analysis of over 150 polls showed that 49% of Americans supported building a fence as opposed to 38% support for building a wall. "Emily Ekins gave four reasons why Americans change their minds about building a wall: 1) Harsh Rhetoric Makes People More Sympathetic to Immigrants, 2) People Feel Differently About a 'Wall' than a 'Fence', 3) The Border Wall Has Become a Symbol, and 4) Democrats Will Oppose What Trump Supports" (Ekins, 2019, p. 1).

Whatever the polls might indicate, one thing is perfectly clear, most Americans realize there is an immigration crisis facing the nation. It has become familiar with the daily news that there is some report related to the U.S. Immigration and Customs Enforcement (ICE) and the problems they are facing. Or maybe it's about the latest victim of crime committed by an illegal immigrant. There has actually been a call by House Democrats to abolish ICE (DeBonis, 2018, p. 1). House Republicans of course were delighted with the Democrats position on ICE, believing this would be very detrimental to the Democratic party (cite). They apparently were not alone in their thinking. Numerous House Democrats expressed their reservations about the bill stating it was the wrong strategy and is not the right effort to take. There is not only division between the two major parties, there is divisions within the Democratic party.

So, who is responsible for the current illegal immigration crisis? To understand that question, and to be able to give an educated answer, one must have knowledge of the existing laws and roles of the individual branches of government. In *Who Does What in U.S. Immigration*, Davy, Meyers, and Batalova (2005), stated “The U.S. Congress — the legislative branch of the federal government of the United States — develops and passes legislation, which the president signs into law, and federal agencies (executive branch) implement legislation” (p. 1). Our Federal Government is divided into three branches; the Executive, the Legislative, and the Judicial branches. It has long been recognized that this separation of powers was meant to be a control over each branch of government so as to not exceed their authority. The President has the veto power as a checks and balance on the legislative branch. The Legislative branch has impeachment power over both the legislative and judicial branches. The Judicial branch has the authority of judicial review over the legislative and executive branch. This was established in *Marbury v. Madison*, 1803 (*Marbury v. Madison*, 1803). One would think with the power struggle that continues to exist between all three of these bodies that the law isn’t so clear. But it is very clear that most of the flexing of power when they do not have it is political manipulation. The old saying that if you say it often enough, it will be true is the example to be used here. If a Congressman repeats it often enough that the president does not have the authority to take certain action, his/her constituents will begin to believe it is true, even when it is not.

Authority of Congress:

Surprisingly, the U.S. Constitution is not very specific on U.S. Immigration Policy. The most often cited Constitutional reference is Article I, Sections 8, which states “The Congress shall have Power..... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof” (U.S. Constitution Article I, Section 8). In the U.S. Supreme Court case of *Ping v. U.S* the Supreme Court rejected the challenge, upholding the authority of the Federal Government of the United States to set immigration policy and pass new legislation that would override the terms of previous international treaties (*Ping v. U.S.*, 1889). The authority of Congress to control immigration law was confirmed again in *United States v. Wong Kim Ark*, in which the Supreme Court ruling determined the 14th Amendment to the U.S. Constitution granted birthright citizenship to all persons born in the United States regardless of race or nationality (*United States v. Wong Kim Ark*, 1898). Although this case was about the authority of the 14th Amendment, the ruling clearly gave Congress the authority to regulate immigration. There are of course many that would argue that the meaning of the 14th Amendment was not what the court ruled on; they only ruled on the authority of Congress.

The primary immigration law today is Immigration and Nationality Act of 1952. This act sets some criteria for immigration that is still in effect today. Some of the criteria established in this act were a preference system which determined which ethnic groups were desirable immigrants and placed great importance on labor qualifications. The Act defined three types of immigrants: immigrants with special skills or who had relatives of U.S. citizens, who were exempt from quotas and who were to be admitted without restrictions; average immigrants whose numbers were not supposed to exceed 270,000 per year; and refugees (*Nationality Act*, 1952).

In going along with the Trump administration's decision that immigration is a national security problem, Senator Pat McCarran (D), one of the bill's primary sponsors argued that the law's provisions were necessary in order to preserve national security. Section 212 of the Act granted the President of the United States the following authority: "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate" (Nationality Act of 1952, p. 26). This would appear to be either ignored by several members of Congress or they are unaware that a sitting president has this authority.

Congress has tried to make some reforms in immigration law. In 1986 they passed the Immigration Reform and Control Act (IRCA) which was signed into law by President Ronald Reagan (R) on November 6, 1986. The law made it illegal for employers to knowingly hire individuals unauthorized to work in the United States and established a system for verifying the legal status of employees (Immigration Reform and Control Act, 1986, p. 2). The Immigration and Naturalization Service and the U.S. Border Patrol were provided increased funding for the purpose of enforcing immigration law. The IRCA also created new, separate visa categories for temporary agricultural work (H-2A) and temporary nonagricultural work (H-2B). The IRCA granted legal status to individuals residing in the United States without legal permission who met certain conditions; this provision of the law applied only to individuals who had entered the country before January 1, 1982. Ultimately, 2.7 million individuals were granted legal status under the law (NPR Staff, 2010, p. 1).

Under the George H. W. Bush administration, Congress again tried for immigration reform by passing the Immigration Act of 1990 (Title 8 U.S. Code, Immigration Act of 1990). It was signed into law by President George H. W. Bush (R) on November 29, 1990. Its stated purpose was to "Sets forth formulas to divide such worldwide level into worldwide levels for the following categories: (1) family-related immigrants; (2) employment-based immigrants; and (3) diversity immigrants" (Title 8 U.S. Code, Immigration Act of 1990, p. 1). The law increased annual limits on immigration to the United States, revised visa category limits to increase skilled labor immigration, and expanded and revised the grounds for removal and inadmissibility. The law also created the Diversity Immigrant Visa Program as well as four new categories of nonimmigrant (temporary worker) visas (Immigration Act of 1990, 1990).

The last major immigration act to be introduced by Congress was the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The Illegal Immigration Reform and Immigrant Responsibility Act was passed by Congress in 1996 and signed into law by President Bill Clinton (D) on September 30, 1996. The law authorized greater resources for border enforcement, such as the construction of new fencing near the San Diego, California border, and enacted civil penalties for attempting to cross the border illegally. It amended regulations regarding the removal of individuals residing in the country without legal permission by prohibiting legal reentry for a certain period of time and introducing a process for expedited removal. The law also applied new restrictions to the asylum application process (Reform and Immigrant Responsibility Act of 1996, 1996).

To fully comprehend the direction taken by Congress one should look closely at the legislation that was passed. None of the acts were meant to weaken the Nationality Act of 1952, but rather reformed some of the details and actually strengthened the enforcement of illegal immigration. Under the Democratic leadership of President Clinton, the Act of 1996 not only

authorized greater resources for border enforcement, but allocated money for border fencing (Reform and Immigrant Responsibility Act of 1996, 1996). One would have to ask, “what has changed?” since the Clinton presidency to try and understand the resistance by the Democratic party today for border security. Is the difference actually between calling the security measure a ‘fence’ or a ‘wall’?

Probably the most significant immigration related change was to the structure of the agencies that oversee immigrant related functions in the United States (Davy, Meyers, and Batalova, 2005). The Homeland Security Act was signed into law by President George W. Bush in November 2002 (Homeland Security Act of 2002, 2002). This act was cosponsored by 118 members of Congress, clearly showing strong support for the act. The act abolished the INS and placed the former responsibility of the INS into one of three bureaus of the newly created Department of Homeland Security (DHS). Some of the departments that play a role in immigration are 1) U.S. Citizenship and Immigration Services (USCIS), 2) U.S. Customs and Border Protection (CBP), 3) U.S. Immigration and Customs Enforcement (ICE), 4) US VISIT, and 5) Office of Immigration Statistics (OIS), (Davy, Meyers, and Batalova, 2005).

In reviewing all the acts passed and signed into law by past presidents, it appears evident the authority to establish immigration law lies solely within the powers of Congress. This authority, as previously indicated, has the full backing of the U. S. Supreme Court. The President is limited to the enforcing of these laws or in signing executive orders that effect immigration, but only as those orders apply to national security. The answer then as to who is responsible for immigration reform is Congress. Politicians can point their fingers at presidents and claim the president is doing nothing about the immigration problem, but that is done to appease their constituents. The only control the president has is in how those legislative acts regarding immigration are enforced.

Authority of the President:

Article II of the U.S. Constitution address’ the executive power of the President of the United States. Simply stated, executive power shall be vested in the President of the United States of America (U.S. Constitution Article II, Section 1, p. 9). The Article also states “Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:--"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States" (U.S. Constitution Article II, Section 1, p. 11). The U.S. House of Representatives website states that “The executive branch consists of the President, his or her advisors and various departments and agencies. This branch is responsible for enforcing the laws of the land. The following are executive branch organizations and agencies:

- Executive Office of the President (White House)
- The President's Cabinet (Federal Agencies)
- Independent Federal Agencies and Commissions
- USAGov
- The Federal Information Center (FIC)
- USA Jobs” (U.S. House of Representatives, p. 1).

Stephanie Reid in “What are the Duties of the Executive Branch?” states; “The executive branch of the U.S. government is responsible for enforcing laws; its power is vested in the President. The President acts as both the head of state and commander-in-chief of the armed

forces. Independent federal agencies are tasked with enforcing the laws enacted by Congress. The President's Cabinet is an advisory body made up of 15 leaders from each agency. The President works closely with a Vice President, who must take over leadership of the United States in the event the President is unable to continue" (Reid, n.d., p. 1). Regarding the duties of the President, Article II Section 3 of the U.S. Constitution states:

He shall from time to time give to the Congress information of the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States (U.S. Constitution Article II, Section 1, p. 12).

The President's duty is to enforce the laws passed by Congress, among many other duties.

Presidential Executive Orders:

An executive order is a directive from the President that has much of the same power as a federal law (NCC Staff, 2014). Executive Orders are also referred to as Presidential Orders, Presidential Proclamations, and Presidential Memoranda. President Lincoln used an executive order in the well know Emancipation Proclamation. Executive actions play an extremely important role in the President's ability to enforce the laws of the United States but have also become more controversial as Presidents continue to use the device more frequently and in unprecedented ways. There are three sources that the President can draw on to execute an executive order. They are the Constitution in Article II, from the legislative branch when Congress grants authority to the President, and from the President's inherent authority as having the "power that necessarily derives from an office, position, or status." (The Power of the President, 2019, p. 1).

The following are some of the Presidential Executive Orders that President Trump has issued:

- Presidential Proclamation 9645 of September 24, 2017: Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats, Referred to as "Travel Ban 3.0."
- Executive Order 13802, This executive order deletes section 2(b)(ii) of President Obama's Executive Order 13597 of January 19, 2012, which had directed DOS and DHS to "ensure that 80 percent of nonimmigrant visa applicants are interviewed within 3 weeks of receipt of application."
- Executive Order 13788: Buy American and Hire American, Seeking to "create higher wages and employment rates for workers in the United States, and to protect their economic interests," this executive order: Commits the executive branch to "rigorously enforce and administer the laws governing entry into the United States of workers from abroad"
- Executive Order 13780: Protecting the Nation from Terrorist Entry into the United States. Known as "Travel Ban 2.0.", 90-day bar for 6 countries
- Executive Order 13769: Protecting the Nation from Terrorist Entry into the United States by Foreign Nationals. Known as "Travel Ban 1.0."

- Executive Order 13768: Enhancing Public Safety in the Interior of the United States, Hire additional enforcement and removal officers, Revise enforcement priorities and reinstitute Secure Communities program
- Executive Order 13767: Border Security and Immigration Enforcement Improvements, Plan, fund, and begin building of southern border wall, Expand detention facilities, Expand expedited removal program, Detention for illegal entry, Additional Border Patrol agents, Encourage federal-state agreements, Tighten parole, asylum, and removal programs (Immigration Executive Actions, 2019, p. 1-6).

All the above Executive Orders have been met with resistance from Congress and several have been challenged in court. Most all the executive orders by President Trump have been upheld by the U.S. Supreme Court, some of them after the Trump administration made minor changes to the orders.

RECOMMENDATIONS

In order to be able to make an informed decision on a political candidate, a bill, or the actions of an administration, it is our civic duty as “we the people of the United States,” research the facts behind the actions and not base our thoughts on the opinions of the media, polls, or our family and friends. The younger generations watch commercials, see mail propaganda, and most importantly overhear adult conversations. Many adults base their decisions on the opinions of others. This has a trickle-down effect on our younger generations to take opinions as fact, rather than learning how to research the facts themselves. They form opinions on political parties and presidential administrations years before they are even eligible to vote.

Only pieces of what an administration is doing gets released to the public. Of those pieces, much of it is filtered by the media, and we hear what the media wants us to hear. Once a presidential administrative term has come to an end, we can step back and look at the whole picture and determine that president’s legacy.

Con conversationally, it would seem that for every one citizen who seems in favor of President Trump, you will find two others who are not in favor. Here is what is known about the Trump Administration: he is half way through his first term as president, his professional past is that of a businessman and not a politician, he has a Twitter account and does not hold back his opinions, he has addressed most of his agenda items that he proposed during his campaign, and as his three predecessors experienced, he does not seem to be getting the congressional support for immigration reform.

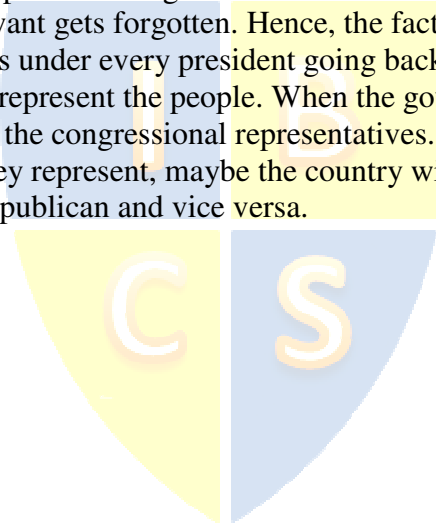
We can gather facts and form an opinion on each decision or statement he posts on Twitter. However, to determine the effectiveness of the Trump administration, we need to wait until the term is over to be able to look at the big picture on a national and global scale. We need to ask ourselves the question, why is one of the most of powerful nations in the world, have one of the easiest borders to get across? The data needs to be further analyzed as to how much criminal activity, particularly along the Mexican border is committed by a non-resident. If we travel to another country, we are expected to follow the laws of those countries. This is the United States and there are laws. All visitors and citizens should be expected to respect and follow those laws.

CONCLUSIONS

Media bias has a strong influence over the directions in which the public opinion sways. Political party lines are becoming increasingly more divided. And controversial topics, such as immigration reform, aid in that divide and continue to cause national duress. Presidents Clinton, Bush, and Obama met congressional resistance during their terms in office over immigration reform. President Trump has made significant efforts to address the promise he made to the people during his presidential campaign to build a wall along the Mexican border to help keep illegal immigrants out, and thus far has met the same resistance as his predecessors.

Why is it, that while the voters request reform, the presidents make attempts to address those requests, but Congress shuts it down? Nearly 30 years of efforts by the president on this one topic, and yet, our immigration reform efforts have seen little to no change. It seems to be common place that if the president is a Democrat, the Republicans vote against him, regardless. The same holds true if the president is a Republican. The game is further carried out when the people have a tendency to vote out the house majority so that the party lines run opposite of the president.

The fundamental principles of voting for what one feels is the right decision or truly representing what the people want gets forgotten. Hence, the fact there have been 1 or more major governmental shutdowns under every president going back to Carter. We elect representatives to do just that, represent the people. When the government shuts down, the employees get furloughed, not the congressional representatives. When our three bodies of government remember who they represent, maybe the country will feel a greater sense of unity instead of Democrat versus Republican and vice versa.



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