

HUMANITIES & SOCIETY

Republican push for REINS Act could backfire, says congressional expert

Bill would spark filibuster battle in Senate, make Obamacare more difficult to repeal

By *Gerry Everding* • November 28, 2016



Conservative columnist [George Will](#) is encouraging Republicans to have the Regulations from the Executive in Need of Scrutiny (REINS) Act passed through the U.S. Congress and ready for President-elect Donald Trump's signature on his first day in office.

While some see the REINS Act as a way for Congress to reassert its power to

control the regulatory rulemaking process, an immediate push for its passage could force the first big battle over Democrats' use of the filibuster and make it more complicated for Republicans to repeal Obamacare, says Steven S. Smith, a congressional expert at Washington University in St. Louis. More complicated than perhaps they realize, Smith added.

The REINS Act would require Congress to vote on all "major" regulations with an annual economic impact of at least \$100 million. It also would allow legislators to grasp more control on an ongoing basis over the rules that executive branch agencies make as they implement regulations Congress passes into law.

Smith, the Kate M. Gregg Distinguished Professor of Social Sciences in Arts & Sciences and director of the Weidenbaum Center on the Economy, Government, and Public Policy at Washington University, is a leading authority on congressional rules and parliamentary procedures. He has written extensively on congressional use of the filibuster and the "nuclear option."



Smith

Smith expects the U.S. House will give easy passage to the REINS Act in early 2017, most likely in a form similar to the REINS Act they passed in 2015. A Democratic minority in the Senate used obstruction to kill that effort in the Senate, Smith said.

While Trump committed to signing the REINS Act during the Republican primaries, it's not clear he'll get that opportunity.

"There is no reason to think that the Democrats, with two more seats, both held by strong liberals, will be any more supportive of efforts to bring the REINS Act to a vote in the Senate than they have been," Smith said. "The Democrats' ability to block action on the REINS Act will put tremendous pressure on the Republican leadership to force filibuster reform."

Early passage of the REINS Act also might pose problems for Republican efforts to repeal Obamacare, Smith said, because the 2015 version discriminated against regulations developed under the Affordable Care Act by making them all "major" rules, whatever their cost.

"Obamacare reform efforts will become more complicated if the REINS Act is enacted first. Republicans have hardly come to grips with this," Smith said.

The REINS Act also bars Senate filibusters against a joint resolution to approve a major rule.

“Oddly, this provision encourages broad policy making by regulation,” Smith said. “It is tempting to think that the courts would limit this abuse, but a resolution of approval passed by Congress would stand as an endorsement of such a regulation. A president and an agency, maybe even the House, will see regulation as a means for circumventing Senate filibusters of authorizing legislation.”

The REINS Act would place a huge burden on Congress and agencies because it requires that major rules be approved in 70 days or considered killed. This requirement could squeeze out regular legislative activity by committees and the two chambers, produce inadequate reviews or lead to deference to the president and interest groups. “If a joint resolution of approval lost by one vote in one house of Congress, regulatory agencies would have to restart the whole processes for developing a rule,” Smith said.

Editor's note: Members of the media interested in interviewing Smith can reach him by email at smith@wustl.edu or by phone at 314-935-5630.

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