

Presidential Power

Has President Obama overstepped his authority?

President Obama's recent moves to shape U.S. policy, ranging from taking executive action on immigration to beginning to restore diplomatic ties with Cuba, have stirred new controversy over the limits of presidential power. Congressional Republicans accuse him of usurping the Constitution, and Democrats defend his actions as legitimate responses to the partisan gridlock on Capitol Hill. Every president has stretched the constitutional boundaries separating the executive branch from the legislative and judicial, using executive orders, recess appointments, vetoes and other tools to accomplish policy goals. But the debate over executive power has become more heated in recent years, partly because congressional gridlock has made it harder for presidents to carry out their agendas through legislation. The U.S. fight against global terrorism since the Sept. 11, 2001, attacks has led some observers to question whether the Obama and George W. Bush administrations exceeded their authority in the interest of national security.



President Obama signs an executive order raising the minimum wage for federal contractors to \$10.10 on Feb. 12, 2014. Critics say Obama overstepped his authority in taking action requiring expenditures; others note presidents throughout history have exercised broad powers over federal agencies.

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Presidential Power

BY CHRISTINA L. LYONS

THE ISSUES

It was President Obama's way of telling Congress to put up or shut up.

As he announced last November that he would unilaterally halt the deportation of nearly 5 million undocumented immigrants, Obama said he had "one answer" for those in Congress who question his authority to do so: "Pass a bill."¹

The response from congressional Republicans was swift. Obama "cemented his legacy of lawlessness and squandered what little credibility he had left," House Speaker John Boehner of Ohio declared. Sen. Rand Paul of Kentucky, a possible 2016 presidential candidate, said Obama's moves "blatantly ignore the separations of powers and the principles our country was founded on."²

The fight over Obama's action on immigration is part of a larger debate over the limits of presidential power and the boundaries separating the executive, legislative and judicial branches of government. The debate has roiled nearly every administration since George Washington's in the 1790s but has become louder and more boisterous in recent years.

While the controversy over presidential power is "nothing new," says American University history professor Allan Lichtman, it has taken on new visibility, partly because partisan gridlock in Congress has made it harder for recent presidents to carry out their agendas without relying on executive actions. Moreover, the growing global threat of terrorism has spurred recent presidents to act quickly to protect national security.



Getty Images/Chip Somodevilla

A demonstrator near the White House on Nov. 21, 2014, protests President Obama's executive action halting deportation of nearly 5 million undocumented immigrants. Opposition to Obama's actions on immigration, the minimum wage and other policies reflects the ongoing debate over the limits of presidential power.

"Right now we've got both [partisan gridlock and global terrorism] going on, and we had both going on with [President George W.] Bush as well," says David Cole, a professor of law and public policy at Georgetown University Law Center. "It's not surprising there's a lot of this kind of debate."

Determining the legality of presidential actions hinges on how the Constitution is interpreted. The document's framers sought to balance authority among the three branches of government. But Article II, which addresses presidential power, says only that the

president is the "commander in chief" and must ensure that laws are "faithfully executed."

Under those broad guidelines, presidents have used such unilateral tools as executive orders, vetoes, presidential memoranda, signing statements and recess appointments to deal quickly with emergencies or attain their policy goals. In the most recent example, Obama on Feb. 24 vetoed legislation authorizing construction of the controversial Keystone XL oil pipeline, which would transport heavy crude from Canada to Port Arthur, Texas.³

"Some presidents are reluctant to act without clear constitutional or statutory authorization, but most presidents have not viewed their authority as restricted to the plain text of the Constitution or the explicit approval of Congress," said Chris Edelson, an assistant professor of government at American University. Added Edelson, "When asked to review presidential actions, the Supreme Court has been unable to develop a magical formula to define the scope and limits of presidential authority."⁴

Without such a formula, debates over presidential power increasingly have become politically and ideologically charged. "One of the things that is hard to get by is the set of political conflicts of the moment," says Phillip Cooper, a professor of government at Portland State University. "For Republicans to suggest Obama is making greater use of [presidential power] than [Republican George W.] Bush did bears no relationship to reality. Bush used it dramatically."

So did Republican President Ronald Reagan and Democratic President Bill

Obama Uses Executive Powers Less Often

President Obama has vetoed just three bills during his six years in office, though congressional Democrats blocked many Republican bills from reaching him during his first term, and Republicans expect more vetoes in Obama's final two years in office. Republican Ronald Reagan leads all recent presidents in executive orders, while Democratic President Bill Clinton leads in signing statements.

(No. of Actions)



* In first six years.

Source: Todd Garvey, "Presidential Signing Statements: Constitutional and Institutional Implications," Congressional Research Service, Jan. 4, 2012, <http://tinyurl.com/mu8kjqp>; Gerhard Peters, "Presidential Vetoes," The American Presidency Project, Feb. 24, 2015, <http://tinyurl.com/d6lasq9>

Clinton, both of whom issued more executive orders and signing statements than Bush or Obama so far. (See graph, above.)

Louis Fisher, a scholar in residence at The Constitution Project, a nonpartisan Washington-based think tank, says presidential scholars and the media have glorified the presidency over the past 50-plus years, creating pressure for presidents to be active on the policy front.

Recent polls indicate the American public is divided on the issue of presidential power. A *Wall Street Journal*/NBC News poll last November indicated that 56 percent of those surveyed wanted Congress, not Obama, to take the lead role in setting policy. And 48 percent said they disapproved of Obama taking executive action to change immigration laws, compared with 39 percent who said they approved. ⁵ (See graph, p. 221.)

On both the domestic- and foreign-policy fronts, critics contend the Obama White House meddles too much in Cabinet-level affairs by issuing regula-

tions through executive order or directing policy through memoranda to agency heads. In areas ranging from climate change and education to immigration and diplomatic relations with Cuba, Obama "has usurped an extraordinary amount of authority within the executive branch," charged Sen. Mike Lee, R-Utah. ⁶

Politico, a Washington-based political publication, said the "White House has micromanaged practically every move" at the Food and Drug Administration, "well before rules are submitted to the White House Office of Management and Budget for review." ⁷

Some of the most contentious conflicts have focused on presidential actions to fight terrorism and deploy military forces.

Bush came under harsh criticism for exercising what some said was "unconstitutional" authority in the aftermath of the Sept. 11, 2001, terrorist attacks. Citing national security concerns, he defended a wide-ranging electronic surveillance program, the formation of

military tribunals to try suspected terrorists, the use of the Guantánamo Bay, Cuba, military prison to incarcerate such suspects and the deployment of drones to attack suspected terrorists in foreign territories. ⁸

As a presidential candidate, then-Sen. Obama of Illinois criticized Bush's unilateral military actions. "We've paid a heavy price for having a president whose priority is expanding his own power," he said in October 2007. ⁹ Yet Obama continued — and some say expanded — many of the Bush programs, including domestic surveillance and drone attacks.

Many conservatives defend the exercise of executive power to respond to terrorist threats, but Fisher disagrees. "It's nothing new to have people around using violence against the U.S.," he says. After taking immediate defensive actions, presidents still should seek congressional approval before acting further, he says.

The rise of global terrorism and the resulting ongoing military conflicts point to a longer-running constitutional debate over presidential power to wage war. Since 1950, presidents typically have avoided using the term "war" when referring to military conflicts and frequently have deployed forces unilaterally, even though the Constitution says only Congress can declare war.

But others say the president has wide leeway as commander in chief to dispatch the military, absent a congressional declaration of war. ¹⁰ Madeleine Albright, secretary of State in the Clinton administration, defended Clinton's unilateral decision in 1998 to authorize airstrikes against Iraq when that country refused to cooperate with NATO chemical weapons inspectors. "We are talking about using military force, but we are not talking about a war," she said. "That is an important distinction." ¹¹

Obama used a similar rationale when he ordered the bombing of Libyan dictator Moammar Gadhafi's regime in 2011 and, beginning last September,

airstrikes against the Islamic State terrorist group, also known as ISIS or ISIL.*

Many observers say the legislative and judicial branches need to be more involved in such decisions. “Of great concern is the unwillingness of Congress and the judiciary to independently check executive actions that violate statutes, treaties and the Constitution,” Fisher wrote last year.¹²

But Harvard law professor Jack Goldsmith has argued that the constitutional system of checks and balances is working. Congress, the courts and the press, he says, “have pushed back far harder against the commander in chief [since 9/11] than in any other war in American history.” Congress, for example, has imposed limits and oversight on interrogation, detention and intelligence surveillance activities by the executive branch.¹³

Five months after the administration began bombing ISIS, Obama sought congressional authorization to use force against the group for no more than three years and said he would not deploy ground forces. He said he already had authority, under a broad 2001 law, to use military force but that “we are strongest as a nation when the president and Congress work together.”¹⁴

Obama’s request ignited a divisive debate in Congress over the details of his plan to eradicate the Islamic State and how much authority to grant the president.

As the broader debate over presidential power continues, these are some of the questions under discussion:

Should presidents be allowed more national security power in a post-9/11 world?

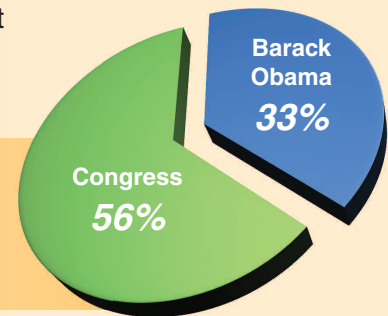
On a September morning in 2011, American drones took off from a CIA airstrip in southern Saudi Arabia, crossed into Yemen and targeted a

* The acronyms stand for the Islamic State of Iraq and Syria and the Islamic State of Iraq and the Levant.

Majority of Americans Want Congress to Lead

Fifty-six percent of Americans said they want Congress rather than President Obama to take the lead in setting U.S. policy, according to a Wall Street Journal/NBC poll conducted last November among 1,000 adults.

Poll: Who do you want to take the lead role in setting policy for the country?



Source: Reid Epstein, “Americans Don’t Want Obama Leading on Policy — WSJ/NBC Poll,” The Wall Street Journal, Nov. 19, 2014, <http://tinyurl.com/q4cgqjf>

group of trucks clustered in the desert. The drones fired, killing several men, including two U.S. citizens — among them New Mexico-born Anwar al-Awlaki, a Muslim cleric who was accused of helping to instigate attempted terrorist attacks against the United States.¹⁵

The episode heightened debate about whether presidents should be able to order military strikes against U.S. citizens — without congressional knowledge — to protect national security, or whether such actions endanger Americans’ civil liberties.¹⁶

Administration officials justified the attack under the 2001 Authorization for Use of Military Force (AUMF), a law that gives presidents the power to use “all necessary and appropriate” force against anyone who had planned or assisted in the Sept. 11, 2001, terrorist attacks or harbored the perpetrators.¹⁷

In 2004, the Supreme Court said the AUMF authorizes the capture and detention of U.S. citizens abroad. But Justice Sandra Day O’Connor, writing the majority opinion, said U.S. citizens must be allowed to appeal their detention. “[A] state of war is not a blank check for the President when it comes to the rights of the nation’s citizens.”¹⁸

Georgetown University’s Cole says the president has latitude in national security and foreign policy. But he ar-

gues that taking action such as the drone attack against Awlaki without notifying Congress violated a U.S. citizen’s rights.

Similarly, civil-liberties and human-rights advocates were alarmed by reports in 2010 that Obama would recommend continued use of military tribunals, rather than civilian courts, to try suspected Sept. 11 terrorist plotters jailed at Guantánamo Bay.¹⁹ And watchdog groups, lawmakers and legal experts objected to the National Security Agency’s expanded use of electronic surveillance of American citizens, which was revealed by defense contractor Edward Snowden in 2013.²⁰

The Bush and Obama administrations consistently defended their actions by stating their duty to protect national security. “I believe in a strong, robust executive authority, and I think that the world we live in demands it,” Dick Cheney, vice president in the George W. Bush administration, said in defending the administration’s expansion of electronic surveillance under the USA PATRIOT Act. In wartime, he said, the president “needs to have his constitutional authority unimpaired.”²¹

Roger Pilon, director of the Center for Constitutional Studies at the libertarian Cato Institute, a think tank in Washington that leans to the right on

policy issues, says the president should be able to act quickly in foreign affairs and to protect national security. He cited Alexander Hamilton's argument in the *Federalist Papers* that the chief executive should be able to act with secrecy and dispatch. "That's why we have a unitary executive," Pilon says. "The framers thought of the possibility of a three-headed executive, and that was soon abandoned."

Congress cannot make quick decisions, Pilon says, because it is composed of 535 people, "each with their own idea about how that authority should

authorization for military force to take defensive actions during an emergency, but for continued actions presidents should seek congressional approval.

Cole says the argument that presidents should have broad, unilateral national security authority in today's world "can be overstated." Presidents need to act quickly in certain situations, "but that's not the case in most of what went on after 9/11," he says. "There was plenty of time to debate AUMF, adapt it, change it."

Congress granted presidents broad national security authority in 1947,

agency presidential power in almost every emergency situation we have had," he says. "Presidents use [that language] to ratchet up authority, and it doesn't get ratcheted back down" by the courts or Congress.

The public, Congress and the courts have shown they believe the president's authority should be limited in national security. The Bush administration, for instance, was forced to retreat "on some of its most aggressive executive initiatives" as Bush neared the end of his second term, says Cole, such as its aggressive interrogation of Guantánamo prisoners and its use of warrantless wiretapping.

Harvard's Goldsmith likewise argued that Congress has successfully limited the president's national security powers by urging oversight of intelligence surveillance and blocking Obama's move to close the Guantánamo prison.

Can presidents legally engage in overseas military conflict without congressional authorization?

Legal scholars widely agree presidents may order U.S. troops to fight when the country is attacked or an attack appears imminent, yet they disagree on whether presidents must seek congressional approval to undertake military action in other situations.

While Obama as a presidential candidate criticized Bush for committing military forces overseas without congressional approval, Obama did not consult Congress in 2011 before ordering military strikes against Libya to help rebels overthrow Gadhafi, a move authorized by the U.N. Security Council.²²

The Office of Legal Counsel, a Justice Department office that helps the attorney general advise the White House, had concluded that a "war" involves "prolonged and substantial military engagements."

"Under that analysis, . . . the operations in Libya did not meet the administration's definition of 'war,' " so it did not require congressional approval,



A sign in Hailey, Idaho, on June 1, 2014, celebrates the release of Sgt. Bowe Bergdahl, who was held prisoner in Afghanistan for five years before his release in a prisoner exchange. The House voted in 2014 to condemn President Obama for not giving Congress 30 days' notice that he was going to exchange five terrorist suspects for Bergdahl. Republicans said the secret decision to swap the prisoners violated the National Defense Authorization Act. The White House said it needed to act quickly and that the president is required to protect U.S. soldiers.

be described. That alone tells you a lot about why [the framers] wanted the executive to have a somewhat free hand" in national security and foreign affairs.

But some political observers say the argument that presidents should have expanded national security authority amid today's terrorism threats is made too freely. The Constitution Project's Fisher says a president doesn't need

when it created the CIA and granted it control over covert operations. Then, within weeks of the 9/11 attacks, Congress expanded presidential powers — particularly electronic surveillance authority — with passage of the PATRIOT Act and then the AUMF.

Cooper, of Portland State, says Congress should not have granted the president such expansive authority. "People make such a broad statement of emer-

said Marvin Kalb, a nonresident senior fellow at the Brookings Institution think tank in Washington.²³

In Senate Foreign Relations Committee hearings on Obama's action, Temple University law professor Peter J. Spiro said that "because the [Libya] operation is limited in nature, scope and duration, it fits comfortably within the practice relating to the use of force short of 'real war.'" To commit U.S. forces in such "less significant engagements," he said, "the president is constitutionally empowered to deploy U.S. forces without congressional authorization."²⁴

But, Fisher told the committee: "Fundamental to the Constitution is the framers' determination that Congress alone can initiate and authorize war."²⁵

The GOP-controlled House passed a measure disapproving of Obama's action in Libya without congressional authorization, saying it violated the 1973 War Powers Resolution. Several members sued the president, but a federal judge dismissed the case, saying the members had no standing to sue because they weren't injured by the decision.²⁶

Georgetown University's Cole says, "The framers clearly contemplated a divided power with respect to war and gave Congress a substantial amount of authority to declare war, negotiate terms of engagement and organize the military."

However, The Constitution Project's Fisher points to a growing assumption of power that began with the Cold War and the fear of communism. As a result, the past seven decades saw the United States become involved in what Fisher called "presidential wars" — declared without congressional consultation and doing "substantial harm to the nation, particularly the Korean War, the Vietnam War and military actions against Iraq in 2003."²⁷

Cooper, of Portland State, says the growth of such assumed powers has resulted from presidents following precedents set by previous administrations. When Obama sought authorization in February to use force against ISIS, he

declared authority under NATO, a precedent set by President Harry S. Truman in 1950 when he sent U.S. forces into the Korean War.²⁸ And, like Bush, Obama claimed authority under the 2001 AUMF to attack ISIS.²⁹

"Like many presidents, Obama has taken as broad a view of authorities Congress has given him as possible," Cole says. "In this case, he's taken too broad a view."

Cato's Pilon says that throughout its history the United States has been involved in "upwards of 200 foreign military actions," only five of which have been declared wars. Presidents may feel they can avoid going to Congress in compliance with the War Powers Resolution by calling an action a "military conflict rather than a war," Pilon says. "But once you get Congress involved in statutes, you turn a political matter into a legal matter and invite litigation in courts, and that is no way to conduct foreign policy."

Nevertheless, it remains unclear how to balance the president's authority when military conflicts may result in lengthy battles without a defined end — an issue being debated in Congress as it considers the president's resolution for war authority against ISIS.

"The question many have raised is what to do when there is conflict with a nonstate actor [terrorist group] with whom there is no likelihood there will be any formal truce" as in traditional wars, Cole says.

Do presidents have authority to direct policymaking by federal agencies?

In late 2014, just after raising questions about Obama's legal authority to stop deporting certain categories of undocumented immigrants, Republicans took issue with his announcement that he was easing a 54-year-old trade and travel ban against Cuba.

"We cannot have a president of the United States that believes that he can make up the law as he goes," said Rep. Steve King, R-Iowa.³⁰

The charges followed a series of Republican criticisms of the administration for issuing executive orders and mandating new policies or rules in areas not addressed by Congress.

In addition to changing immigration rules, the Obama White House has announced rules aimed at:

- reducing carbon emissions;
- creating jobs for veterans;
- preventing drug shortages;
- raising fuel economy standards;
- curbing domestic violence;
- delaying the employer mandate provision of the Affordable Care act;
- ignoring enforcement of marijuana laws; and
- ignoring enforcement of the Defense of Marriage Act.³¹ (*See sidebar, p. 228.*)

"Everyone I talk to at the federal agencies says, 'The White House is micro-managing everything,'" said Marion Nestle, a consumer advocate and professor of nutrition, food studies and public health at New York University.³²

Dan Epstein, executive director of the civic watchdog group Cause of Action, says Obama has "politicized the bureaucracy" by dictating agency actions. In August 2014, the group sued the Obama administration, alleging that White House attorneys interfere with the release of public documents in violation of the Freedom of Information Act (FOIA). The practice is based on an April 15, 2009, White House memo directing general counsels at all executive agencies and departments to consult with White House counsel before complying with FOIA requests.³³

Epstein says the memo "allowed the White House to assert more control over the ways agencies control documents that let the public know what the government is up to. It has chilled democracy, and done so in ways that have gone unchecked by Congress and the courts." As a result, he says, agencies "are following laws dictated by the president rather than laws dictated by the people."

A Guide to Presidential Actions

Presidents can use a number of tools to react to emergencies, change federal policies, appoint officials without congressional approval or block bills passed by Congress.

Action	Purpose
Executive Order	Directs government officials and agencies to change a policy or carry out a specific task; has the force of law but can be negated by Congress.
Memorandum	Carries out routine decisions or directs agencies to perform duties consistent with existing law or presidential priorities; does not become law unless it imposes a penalty or obligation, confers authority or immunity and is applicable to the general public.
Proclamation	Directs government agencies in implementing a policy change that affects activities of “private individuals,” or people outside of federal agencies; does not become law unless it imposes a penalty or obligation, confers authority or immunity and is applicable to the general public.
Recess Appointment	Temporarily appoints an official to a federal agency position; appointment is made when Congress is in recess, bypassing Senate approval process. The appointment expires at the end of the Senate’s next session or when the recess appointee or someone else is nominated, confirmed and permanently appointed to the position.
Signing Statement	Provides presidential interpretation of a bill being signed into law; includes president’s constitutional objections to certain provisions.
Veto	Returns a bill passed by both houses of Congress to the house in which it was proposed; includes president’s reasons for not signing the legislation into law. A veto effectively kills a bill unless two-thirds of the members of both houses agree to override the veto.

Source: Vivian S. Chu and Todd Garvey, “Executive Orders: Issuance, Modification, and Revocation,” *Congressional Research Service*, April 16, 2014, <http://tinyurl.com/ox3uavk>; Todd Garvey, “Presidential Signing Statements: Constitutional and Institutional Implications,” *Congressional Research Service*, Jan. 4, 2012, <http://tinyurl.com/mu8kjqp>; Henry B. Bogue, “Recess Appointments: Frequently Asked Questions,” *Congressional Research Service*, June 7, 2013, <http://tinyurl.com/lh2gnu9>; Elizabeth Rybicki, “Veto Override Procedure in the House and Senate,” *Congressional Research Service*, Feb. 25, 2015, <http://tinyurl.com/kjck573>

Several administrations have closely monitored agency actions, says The Constitution Project’s Fisher. “I think presidents make a mistake getting involved in a whole lot of detail,” he says. “They just can’t do that.”

In 1789, Congress authorized presidents to remove the head of a department who cannot or will not carry out the law, Fisher explains. “But that doesn’t mean a president is going to run the agency,” he says, noting that

attorneys general since the 1820s repeatedly have advised presidents that they cannot direct policy or change an agency decision. “Anything that’s adjudicatory [in agencies] is of no business to the presidency.”

Obama has often said he would act if Congress remained gridlocked on legislation or blocked his initiatives. But Cato’s Pilon says just because Congress doesn’t do what the president wants does not mean it isn’t doing its

job. “Gridlock was built into the system,” he says. The framers of the Constitution “didn’t want government to act unless it had clear authority to do so.”

Pilon says that since Democratic President Franklin D. Roosevelt’s New Deal in the 1930s, domestic programs have vastly enlarged the federal government, and presidents have been tempted to play a greater role in domestic policymaking. And congressional Democrats, he says, are often incon-

sistent on executive authority: “They want to hamstring the president strongly in foreign affairs but leave him wide open in domestic affairs.”

Fisher questions the accountability of presidentially appointed “czars,” such as the short-term “Ebola czar” whom Obama named last year to coordinate a strategy for fighting the deadly disease in the United States. “We don’t know anything about that [position] or how they are paid,” he says.

Fisher criticized other presidential actions that also require federal expenditures, such as Obama’s order to hike the minimum wage of federal contractors. “How can a president raise salaries? That takes money. And that’s an appropriation,” he says.

Attorney General Eric Holder defended Obama’s order: “There’s a constitutional basis for it and, given what the president’s responsibility is in running the executive branch, I think that there is an inherent power there for him to act in the way that he has.”³⁴

Lichtman of American University says that throughout history presidents have had “broad authority over agencies,” citing President Abraham Lincoln’s decision to suspend habeas corpus during the Civil War and President Herbert Hoover’s executive order in 1930 to slash immigration. Likewise, presidents’ prosecutorial discretion — the power to decide not to enforce laws, as in the case of Obama deciding not to enforce certain immigration or federal marijuana laws — is “broad,” he says.

Many scholars say Congress tends to produce laws with gaps or vaguely written provisions, allowing the executive branch to write specifics into policy. When Congress leads, it tends to do so with a “broad brush,” says William Funke, a law professor at Lewis and Clark Law School in Portland, Ore. For example, he notes, the Clean Air Act mandated only that the government “protect the public health,” and in recent years it has led to rules aimed at limiting climate change. The president “is just

trying to make complicated systems work in the real world,” he says.

Portland State University’s Cooper defends many of Obama’s actions to direct policy through administrative agencies, including through the rulemaking process. “Every administration is asked to undertake rulemaking,” and it does not entail an abuse of power when an administration works through independent regulatory agencies, he says.

However, Cooper says, Obama overstepped his authority when he delayed the statutory deadline for the employer mandate in the Affordable Care Act (known as Obamacare), as Republicans allege in a lawsuit pending before the Supreme Court — a point on which many scholars and legal experts agree.

But the solution to such disagreements, Cooper says, is for Congress and the White House to work together, which has not occurred much in recent years. “We used to have ways of people having ideological fights and disagreements but also ways of working together to get things done,” says Cooper. ■

BACKGROUND

Early Power Struggles

The framers of the Constitution sought to balance desires for a stronger executive with fears of an imperialist power, providing broad authority in Article II for the president to be “Commander in Chief of the Army and Navy of the United States, and of the Militia of the Several States, when called into the actual Services of the United States.” The president also “shall take Care that the Laws be faithfully executed.”

But power struggles quickly ensued between Congress and the executive, and the judiciary occasionally stepped in to resolve them.

Early presidents developed a range of tools to assert their authority. President George Washington (1789-1797) fired Cabinet officers (Congress in 1789 specifically permitted such action for the departments of State, War and Navy); vetoed legislation; issued executive orders and memoranda and controlled foreign policy.³⁵

President Thomas Jefferson (1801-1809) unilaterally completed the Louisiana Purchase in 1803. He also fought an undeclared war, the First Barbary War (1801-1805), which pitted the United States against North African entities, known as the Barbary States, that were practicing state-supported piracy against American ships in the Mediterranean.³⁶

During this period, federal courts issued a series of decisions asserting Congress’ power over the president:

- In *Talbot v. Seeman* (1801), the Supreme Court ruled that Congress has a say in whether the country goes to war and in defining the scope of operations;
- In *Little v. Barreme* (1804), the high court ruled that congressional statute prevails over presidential proclamation;
- In *U.S. v. Smith* (1806), the federal Circuit Court for the District of New York ruled the president and military aides may not unilaterally authorize military actions against another country.

President Andrew Jackson (1829-1837) tried to reassert the executive’s authority in 1833, when he vetoed renewal of the Second Bank of the United States, the country’s national bank, after removing the secretary of the Treasury for refusing to carry out his policy toward the bank. Congress balked at Jackson’s move to block the bank’s renewal while depositing federal funds in state banks. And the Senate censured Jackson, whom some called “King Andrew,” for assuming “authority and power not conferred by the Constitution.”³⁷ But three years later, after Jacksonians gained the majority, the Senate expunged the censure resolution from its record.³⁸

PRESIDENTIAL POWER

President Lincoln (1861-1865), whose administration spanned the Civil War, also took unilateral actions. In 1861, with Congress out of session, he initiated military action after the South seceded and the Confederates fired on Fort Sumter in South Carolina. Lincoln blockaded Southern ports and sus-

Senate. Johnson tried to suspend Secretary of War Edwin Stanton, and, when the Senate refused to concur, tried to fire Stanton. But Johnson didn't succeed, and the issue led to his impeachment and near removal from office.⁴⁰

Congress repealed the tenure law in 1887 after facing similar disputes

into the Spanish-American War in 1898. The trend grew with each administration through that of President Franklin D. Roosevelt.

President Theodore Roosevelt (1901-1909) rallied public support and pushed through Congress his ambitious Square Deal agenda, aimed at fighting industrial trusts and corporate monopolies and helping the average worker. And through a combination of laws and executive orders, he set aside millions of acres of federal land for conservation.

President Woodrow Wilson (1913-1921) was less successful at working his will. The Senate refused to ratify the Versailles Treaty ending World War I, largely because of long-running personal animosity between the president and Senate Foreign Relations Committee Chairman Henry Cabot Lodge.⁴¹ Wilson also failed to persuade Congress to enact his vision for the League of Nations, an international body to resolve international disputes.

The Supreme Court, on the other hand, supported Wilson in 1926 regarding the power to remove subordinates. In *Myers v. U.S.*, Chief Justice William Howard Taft, himself a former president, concluded there wasn't the "slightest doubt" the power to remove officers is "vested in the President alone."⁴²

Yet in 1935 the Supreme Court ruled against Franklin D. Roosevelt (FDR) when he removed William E. Humphrey as head of the Federal Trade Commission. The president had asked Humphrey to resign, citing policy disagreements. When Humphrey refused, Roosevelt removed him anyway. The court said the FTC was responsible for enforcing "no policy except the policy of the law."⁴³

Meanwhile, Congress swiftly approved Roosevelt's New Deal agenda designed to help the nation recover from the Great Depression. But it rejected his controversial 1937 "court-packing" proposal to add up to six justices to the Supreme Court to rebalance the existing conservative court.

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Getty Images/David Hume Kennerly

President Richard M. Nixon waves goodbye as he leaves the White House for the last time on Aug. 9, 1974, in the wake of the Watergate scandal, which Nixon tried to cover up. The House Judiciary Committee approved three articles of impeachment, and Nixon soon resigned. Congress and the Supreme Court took a number of steps during Nixon's administration to end what historian Arthur Schlesinger Jr. labeled "the imperial presidency" — that is, too much power in the executive branch.

pending habeas corpus, which Congress later authorized. Later, he unilaterally issued the Emancipation Proclamation, but subsequently sought legislative support to free the slaves.³⁹

Congress clamped down on Lincoln's successor, President Andrew Johnson (1865-1869). In 1867, it overrode his veto of The Tenure of Office Act, which limited the president's ability to remove officeholders without consent of the

with Presidents Ulysses S. Grant (1869-1877) and Grover Cleveland (1885-1889, 1893-1897).

Growing Power

The early 20th century witnessed a rise of presidential power, beginning with President William McKinley (1897-1901), who led the United States

Chronology

1789-1900

Under a new Constitution, precedents for unilateral presidential action are set.

1789

Congress allows President George Washington to fire Cabinet officers.

1803

President Thomas Jefferson unilaterally orders the Louisiana Purchase.

1862

President Abraham Lincoln suspends habeas corpus during the Civil War.

1863

Lincoln issues the Emancipation Proclamation, freeing slaves in the states of the Confederacy.

1920s-1940s

Presidential powers continue to grow.

1926

Supreme Court endorses presidential power to remove subordinates.

1940

President Franklin D. Roosevelt unilaterally agrees to transfer 50 Navy destroyers to Great Britain in exchange for land rights.

1942

After 1941 Japanese attack on Pearl Harbor, FDR orders 110,000 Japanese-Americans interned in camps.

1950s-1970s

Courts, Congress seek to limit president's powers.

1952

Supreme Court rules President Harry S. Truman exceeded his authority in nationalizing steel mills to subvert a labor walkout during Korean War.

1972

Investigation finds President Richard M. Nixon mandated a cover-up of the Watergate break-in. . . . Supreme Court says Nixon cannot order warrantless wiretapping in domestic security cases.

1973

War Powers Resolution requires congressional authorization for war.

1974

Congressional Budget and Impoundment Control Act limits president's authority to withhold congressionally approved spending. . . . Supreme Court orders Nixon to turn over Watergate tapes.

1978

Foreign Intelligence Surveillance Act requires judicial warrant for foreign-intelligence gathering inside the United States.

1980s-1990s

Presidents regain influence, with limitations.

1986-87

Iran-Contra scandal weakens President Ronald Reagan.

1991

Congress approves President George H. W. Bush's request to lead U.N. coalition against Iraq.

1998

House impeaches President Bill Clinton for perjury and obstruction

in the Monica Lewinsky scandal; Senate acquits him in 1999.

2000s-Present

Terrorist attacks trigger debates over presidential power.

2001

After Islamic terrorists attack the United States, Congress passes USA PATRIOT Act and a resolution permitting use of military force against al Qaeda terrorist group. . . . President George W. Bush authorizes military tribunals to try enemy combatants.

2002

Congress authorizes U.S. invasion of Iraq.

2004

Supreme Court says president can hold "enemy combatants," but U.S. citizens must be given hearings.

2005

Bush defends electronic surveillance of U.S. citizens.

2011

President Obama authorizes bombing of Libya.

2014

Supreme Court rejects three Obama recess appointments. . . . Obama approves bombing of terrorist group, orders halt in deportation of some undocumented immigrants, announces plan to end Cuba embargo.

2015

Obama asks Congress for authorization to use force against the Islamic State, also known as ISIS or ISIL. . . . House GOP passes funding for Department of Homeland Security after failing to halt Obama's actions on immigration.

Immigration Battle Heats Up in Congress

Republicans charge the Obama administration acted illegally.

Republicans who for years have accused President Obama of abusing his executive authority believe his unilateral actions on immigration present a choice opportunity to fight back and reset constitutional boundaries between Congress and the White House.

"It's about the Constitution," House Speaker John Boehner said in January when announcing his intent to sue Obama over his immigration policy, even as Republicans considered other options to limit the president's authority — such as defunding his actions, repealing the order or impeaching him.¹

"It's about the rule of law. We're a coequal branch of our government, and the president doesn't have the ability to just change law all by himself," Boehner said.²

Legal scholars are divided over the constitutionality of Obama's actions to defer deportation of up to about 5 million immigrants living in the United States illegally. But White House officials are confident the administration will prevail in the courtroom. "We believe that we acted within the full bounds of authority enshrined to the executive branch, and we'll be defending that," White House spokesman Eric Shultz said.³

Obama's November 2014 immigration plan, reviewed and approved by the Justice Department's Office of Legal Counsel, granted three years of deportation relief to undocumented parents of U.S. citizens and to legal permanent residents who have lived in the United States at least five years; provided three years of relief for children brought here by their parents by 2010; and allowed additional visas for working immigrants and workers in certain high-tech fields.⁴

"The actions I'm taking are not only lawful, they're the kinds of actions taken by every single Republican president and every single Democratic president for the past half-century," Obama said.⁵

At the start of the 114th Congress, House Republicans tried to block funding for Obama's immigration actions via a funding bill for the Department of Homeland Security, but the Senate refused to follow suit. Hours before funding was set to run out for the department on Feb. 28, lawmakers agreed to a one-week funding extension. Days later, House GOP leaders capitulated and cleared a one-year spending bill that did not restrict funding for immigration control activities.⁶

Meanwhile, a federal district judge issued a temporary injunction against Obama's immigration actions in ruling on a lawsuit by two dozen states that alleged Obama had violated constitutional limits on presidential power. The White House filed a motion to reverse the ruling, saying the states do not have legal standing to interfere with the president's enforcement of immigration law. "We're going to be as aggressive as we can," Obama stated.⁷

Elizabeth Price Foley, a constitutional law professor at Florida International University College of Law in Miami, called Obama's actions unconstitutional. "There's no logical stopping point to the prosecutorial justification underlying President Obama's immigration policies," she said. Under such a scenario, presidents "could simply decide not to enforce entire sections of the Clean Air Act, tax code or labor laws, or exempt entire categories of people."⁸

Roger Pilon, director of the Center for Constitutional Studies at the Cato Institute, a libertarian think tank in Washington,

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Roosevelt was more successful with other actions. With war erupting in Europe, but hemmed in by neutrality acts and isolationist sentiment in Congress, he acted unilaterally to adopt the 1940 Destroyers for Bases Agreement. It transferred 50 Navy destroyers to the British Royal Navy in exchange for rights to establish U.S. bases in three British possessions: Bermuda, Newfoundland and the British West Indies.

After the Japanese bombed Pearl Harbor on Dec. 7, 1941, Roosevelt issued an executive order in 1942 that more than 110,000 Americans of Japanese descent be transferred to "relocation centers" widely known as internment camps. Congress a month later ratified the order, and the Supreme Court supported it.

But in December 1983, a congressional commission concluded the action was "not justified by military necessity."⁴⁴

'Imperial Presidency'

Postwar presidents increasingly sought more authority over the nation's affairs, but the Supreme Court and Congress often curtailed their efforts, particularly in the domestic arena.

With the creation of the U.N. Security Council in 1945, presidents looked to that new body when taking military action. President Harry S. Truman (1945-1953) went to war against North Korea without seeking congressional approval, basing his authority instead on a Security Council resolution.⁴⁵

Truman often issued executive orders, including one aimed at desegregating the armed services by ordering the equal treatment of service members without regard to race, color, religion or national origin.⁴⁶ But he suffered a historic setback in 1952 during the Korean War, when the Supreme Court blocked his executive order authorizing the secretary of Commerce to nationalize the nation's steel mills to bar a labor strike.⁴⁷ The court's decision, particularly Justice Robert H. Jackson's concurring opinion, crafted a framework that future courts would use to analyze whether a presidential executive order was valid.⁴⁸

After the assassination of President John F. Kennedy (1961-1963), President Lyndon B. Johnson (1963-1969) pushed

says Obama has discretion only to delay deportation in individual cases, not en masse for 5 million people.

However, 136 law professors wrote to Obama in September saying the administration has authority to use “prosecutorial discretion” — that is, decide how immigration laws should be applied — “as a tool for managing resources and protecting individuals residing in and contributing to the United States in meaningful ways.” The professors said such discretion is “grounded in the Constitution, and has been part of the immigration system for many years.”⁹

House Democratic Leader Nancy Pelosi of California and fellow House Democrats Luis Gutierrez of Illinois and Zoe Lofgren of California said, “We all know that no president can rewrite the laws. But it is important to remember that Congress and the Constitution give presidents broad authority to take executive action on immigration policy.” They noted that Republican Presidents Ronald Reagan and George H. W. Bush, after enactment of the 1986 Immigration Reform and Control Act that granted deportation relief to 3 million undocumented immigrants and established a path for legalization, allowed children and spouses not originally covered by the law to legally immigrate.¹⁰

Eric Posner, a University of Chicago law professor, posed an unresolved question: “If, under the Constitution, the president must enforce much of the law but need not enforce all of it, where should the line be drawn? It might be surprising that after two centuries of constitutional experience, we don’t know the answer.”¹¹

— Christina L. Lyons

¹ Erika Eichelberger, “These 7 Conservatives Would Impeach Obama Over Immigration,” *Mother Jones*, Nov. 14, 2014, <http://tinyurl.com/mg9b29h>.

² Sam Levine, “John Boehner Explains Why He’s Suing Obama Over The Immigration Executive Action,” *The Huffington Post*, Jan. 28, 2015, <http://tinyurl.com/q92o6yz>.

³ Alexandra Jaffe, “Boehner defends House GOP immigration lawsuit,” CNN, Jan. 29, 2015, <http://tinyurl.com/pcb9dzu>.

⁴ Zoe Tillman, “Justice Dept. Affirms Obama Immigration Plan,” *Legal Times*, Nov. 20, 2014, <http://tinyurl.com/nggi66w>; Karl R. Thompson, “The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others,” Office of Legal Counsel, Nov. 19, 2014, <http://tinyurl.com/mm4mmcz>.

⁵ “Remarks by the President in Address to the Nation on Immigration,” White House Office of the Press Secretary, Nov. 20, 2014, <http://tinyurl.com/qx22jds>.

⁶ Ashley Parker, “House Approves Homeland Security Budget, Without Strings,” *The New York Times*, March 3, 2015, <http://tinyurl.com/pxq7nar>.

⁷ Katie Zezima, “Obama: ‘We will be as aggressive as we can on immigration appeal,’” *The Washington Post*, Feb. 25, 2014, <http://tinyurl.com/kcbf7ot>.

⁸ Elizabeth Price Foley, “Allowing Some Illegal Immigrants to Stay Abuses Prosecutorial Discretion,” *The New York Times*, Nov. 18, 2014, <http://tinyurl.com/p3ljcrb>.

⁹ “Letter to the President, Re: ‘Executive authority to protect individuals or groups from deportation,’” Sept. 3, 2014, <http://tinyurl.com/pzjw2ou>.

¹⁰ “Executive Grants of Temporary Immigration Relief, 1956-Present,” American Immigration Council, October 2014, <http://tinyurl.com/lx94tl6>. Nancy Pelosi, Luis V. Gutierrez and Zoe Lofgren, “As Presidents before Him, Obamas Has Authority to Act,” press release, Office of Zoe Lofgren, U.S. House of Representatives, Oct. 30, 2014, <http://tinyurl.com/q33pojz>.

¹¹ Eric Posner, “The Constitutional Authority for Executive Orders on Immigration Is Clear,” *The New York Times*, Dec. 16, 2014, <http://tinyurl.com/lumptj4>.

through Congress his “Great Society” program, aimed at alleviating domestic poverty and racial discrimination. Yet many in Congress and the public said he failed to obtain congressional authorization for an escalation of the Vietnam War. Congress had approved the Gulf of Tonkin Resolution of 1964 to allow military action in Southeast Asia in response to two alleged attacks on U.S. destroyers in the Gulf. The resolution allowed the president to use “all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.”⁴⁹

In 1969, the Senate Foreign Relations Committee — chaired by Arizona Democrat William J. Fulbright — issued a report on U.S. commitments overseas and attributed “a fair share” of the expansion

of presidential power to congressional acquiescence.⁵⁰ Members of Congress already were seeing that the Gulf of Tonkin resolution granted the president broad authority, and they repealed it in 1970 after Richard M. Nixon (1969-1974) took office.

Congress and the Supreme Court took further steps to end what historian Arthur Schlesinger Jr. labeled “the imperial presidency” — that is, too much power in the executive branch beginning in Wilson’s term. The high court and Congress acted particularly in response to what they viewed as a growing abuse of power by Nixon.

Amid the Watergate scandal — the 1972 break-in at Democratic National Committee headquarters in the Watergate office complex in Washington —

congressional investigations revealed that Nixon had collected “hush money” for the burglars, who were members of his re-election team. The investigations said Nixon also tried to bar the FBI from investigating the crime, destroyed evidence and fired uncooperative staff members. The House Judiciary Committee approved three articles of impeachment, and Nixon soon resigned.

Earlier in the Pentagon Papers case in 1971, the Supreme Court said two newspapers were constitutionally entitled to publish a secret Defense Department study of the Vietnam War, overruling Nixon’s claim of “inherent power” to halt publication to make the country “secure.” And in 1972, the Court said Nixon could not order warrantless wire-tapping in domestic security cases.⁵¹

Rep. Elizabeth Holtzman, D-N.Y., sued the administration after Nixon vetoed a measure barring the Defense Department from using federal funds to support military operations in Cambodia or Laos. A federal district court ruled in 1973 that Congress' failure to override the veto did not equal authorization for bombing Cambodia. That same year, Congress passed the War Powers Resolution requiring presidents to request a congressional declaration of war and clarifying that appropriations alone do not constitute an authorization of war.⁵²

When Nixon angered many in Congress by blocking congressionally approved spending on an environmental project he opposed, Congress passed the Budget and Impoundment Control Act of 1974, which barred a president from withholding funds appropriated by Congress.

Congress took further steps to curtail the presidency during the administrations of Gerald R. Ford (1974-1977) and Jimmy Carter (1977-1981).

During Ford's administration, Congress sought to rein in executive branch offices — the CIA and the FBI — which Senate investigators found had abused their power by, among other things, spying on Americans and attempting to assassinate foreign leaders. The Senate Select Committee on Intelligence, led by Sen. Frank Church, D-Idaho, reported that "intelligence excesses" had occurred during the Cold War and recommended reforms and strengthened congressional oversight.⁵³

In 1977, Congress adopted the International Emergency Economic Powers Act, which authorized the president to regulate commerce in a national emergency resulting from an extraordinary foreign threat. Congress passed the law to clarify and restrict presidential power under the Trading With the Enemy Act of 1917, which had allowed presidents to declare national emergencies in response to domestic events.

In 1978, Carter handed further control to Congress when he signed into law a bill — promulgated in response

to the Watergate scandal — to provide for appointment of independent counsels to investigate the president or other high-ranking federal executives.

Continued Conflict

Subsequent administrations pushed for more executive authority, while Congress and the courts claimed some successes in keeping the president in check.

In 1981, President Reagan (1981-1989) fired 11,000 striking air traffic controllers who were violating prohibitions against strikes by federal employees, and in 1983 he unilaterally ordered military forces into Grenada to defeat communist forces.⁵⁴

But his administration appeared to step far beyond its constitutional boundaries when it conducted a secret deal with Iran in 1981, in violation of an arms embargo against the country, to trade arms for 52 Americans held hostage by Iran since 1979. As Reagan disclosed in 1986, he had used profits from the illegal arms sales to circumvent congressional restrictions and funnel aid to U.S.-backed paramilitary forces in Nicaragua seeking to topple a leftist regime. A special House-Senate investigative committee issued a critical report on the so-called Iran-Contra affair, and an independent counsel followed up with a separate investigation.

Like his predecessors, President George H. W. Bush (1989-1993) sent military troops abroad without congressional consent. After Iraq invaded Kuwait in August 1990, Bush committed U.S. troops to the Persian Gulf War in compliance with a U.N. Security Council resolution to force Iraqi troops to withdraw. Defense Secretary Cheney told the Senate Armed Services Committee that Bush didn't need "any additional authorization from Congress" to take military action.

Subsequently, 54 members of Congress challenged the president's authority

in district court. While the court said the case "was not ripe for judicial determination," it rejected several claims of independent presidential authority.⁵⁵ Bush ultimately asked Congress for authorization for military action, and Congress passed a bill on Jan. 12, 1991. The war began five days later.

President Clinton (1993-2001) claimed authority from the U.N. Security Council and NATO to launch air strikes against Serbian forces in Bosnia in 1993 — Clinton later sent 20,000 ground troops — and to join NATO airstrikes against Serbian forces supporting the activities of Slobodan Milosevic's government in Kosovo in 1999. Clinton also used military force in Haiti in 1994 to remove the military regime.

Clinton faced restrictions in domestic issues. In 1996, the U.S. Court of Appeals for the District of Columbia Circuit overturned his executive order directing the secretary of Labor to adopt rules ensuring that federal agencies wouldn't contract with employers who had permanently replaced striking employees. The court said the order conflicted with the National Labor Relations Act.⁵⁶

And in 1997, the Supreme Court ruled that a president could be sued while in office for actions unrelated to his official duties. That made way for ex-Arkansas state employee Paula Jones to file a lawsuit making sexual harassment charges against President Clinton.

Post-9/11 Presidency

The terrorist attacks in the United States that killed nearly 3,000 people on Sept. 11, 2001, led the White House and Congress to take steps to ensure the administration could quickly detain terrorism suspects and respond to additional attacks. But those actions also heightened concerns in Congress and among the public about the president's unilateral control over American military and security forces and intelligence activities.

Obama Faces Fire on Marijuana Enforcement

Critics say he should use his power to act on legalization.

Derided by critics for his use of presidential power, President Obama faces an opposite problem as well: Legal scholars and congressional Republicans accuse him of shirking his constitutional responsibilities over marijuana legalization by choosing not to enforce federal drug law.

Many legalization supporters say Obama should exercise his authority to reclassify the drug, which now falls under Schedule 1 of the Controlled Substances Act — the strictest designation — which lumps pot with heroin as a highly addictive substance with no accepted medicinal value. Obama has directed federal prosecutors to selectively enforce the law, particularly in states that have legalized the drug, but has said fully changing federal law is a “job for Congress.” Outgoing Attorney General Eric Holder agreed.¹

Normally eager to exert authority over statutory issues, Congress has tossed the problem back to the administration. A group of House members — 17 Democrats and one Republican — wrote to the White House last year asking it to reclassify marijuana, citing the waste of “lives and resources . . . on enforcing harsh, unrealistic, and unfair marijuana laws.”

Rep. Earl Blumenauer, D-Ore., who drafted the letter, said, “I don’t dispute that Congress could and should make the change, but it’s also something the administration could do in a matter of days.”²

The lack of federal action has left states butting heads, with some having legalized recreational marijuana (Alaska, Colorado, Oregon and Washington), decriminalized it (at least 18 states) or permitted its medical use (23 states and the District of Columbia) while others rely on federal law.

In December, Oklahoma and Nebraska sued Colorado, alleging its 2011 legalization of marijuana makes it harder and costlier to enforce their bans because residents can get the drug from neighboring Colorado.³ James Ching, a former supervising deputy attorney general for California, said the lawsuit is important because it raises the issue of whether the Obama administration’s selective enforcement policy is constitutional.⁴

The Department of Justice has told federal prosecutors to “not focus federal resources on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.” Instead, it has instructed U.S. attorneys to concentrate on such federal priorities as “distribution to minors, the participation of criminal enterprises and cartels, or the use of marijuana on federal property.”⁵

The \$1.1 trillion spending bill that Congress passed in December includes language barring federal agents from raiding medical marijuana facilities in states where the drug is legal.⁶

Ching said the federal government’s stance “doesn’t deal with the [marijuana legalization] problem on a national basis and yet this is the very purpose of Federal government.”⁷

The White House has said research thus far is insufficient to change marijuana’s classification under Schedule 1. In January 2014, the White House Office of National Drug Control Policy said the attorney general has authority to change the drug’s designation but is unlikely to do so, “given the current science.”⁸

The administration’s “enforcement discretion,” according to the Congressional Research Service (CRS), a nonpartisan group that advises lawmakers, is “a legal doctrine that generally shields executive branch enforcement decisions, including the determination of whether to initiate a criminal, civil or administrative enforcement action, from judicial review.”

Other administrations have used nonenforcement to achieve policy goals, according to CRS. The administration of Republican President George W. Bush selectively enforced certain environmental, product safety and civil rights laws, the administration of Republican President Ronald Reagan was accused of deliberately failing to enforce antitrust statutes and the Clinton administration was accused of not enforcing certain gun safety laws.⁹

Now Republicans say Democrat Obama is doing the same thing when he chooses not to enforce marijuana laws.

— *Christina L. Lyons*

¹ Nicole Flatow, “Federal Law Treats Marijuana as Worse Than Cocaine, And Obama Says He’s Not going to Change That,” ThinkProgress.org, Jan. 31, 2014, <http://tinyurl.com/mhftfv/>.

² Steven Nelson, “18 Congressmen Ask Obama to Reschedule Marijuana,” *U.S. News & World Report*, Feb. 12, 2014, <http://tinyurl.com/l6yznep>.

³ “States That Have Decriminalized,” NORML: Working to reform marijuana laws, undated, <http://tinyurl.com/o5tsjxi>; “23 Legal Medical Marijuana States and DC,” ProCon.org, updated Jan. 8, 2015, <http://tinyurl.com/y2tyn7g>; and James Ching, “Supreme Court Pot Fight Threatens Administration’s Exercise of Executive Discretion,” Law.com, Dec. 21, 2014, <http://tinyurl.com/kvslgzg>.

⁴ Ching, *ibid.*

⁵ Todd Garvey, “The Take Care Clause and Executive Discretion in the Enforcement of Law,” Congressional Research Service, Sept. 4, 2014, <http://tinyurl.com/q3v7fx4>, p. 1.

⁶ Jonathan Topaz, “The new clash over cannabis,” *Politico*, Jan. 11, 2015, <http://tinyurl.com/p7mkazv>.

⁷ Ching, *op. cit.*

⁸ Flatow, *op. cit.*

⁹ Garvey, *op. cit.*

Immediately after the 9/11 attacks, President George W. Bush (2001-2009) issued an executive order under the International Emergency Economic Powers Act to block the U.S. assets of terrorist organizations.

He also defended his power to take military action on his own, even while working to push through Congress a resolution authorizing the use of force against al Qaeda terrorist training camps and Tal-

iban military posts in Afghanistan. Congress passed a resolution on Sept. 14 — three days after the attacks.

Within weeks, Congress had passed the USA PATRIOT Act, which permitted

the blocking of foreign financial assets in the U.S. during a pending investigation, increased penalties for terrorism and expanded federal law enforcement powers in terrorism-related investigations. Bush also issued an executive order authorizing military tribunals — not used since World War II — to try noncitizens suspected of terrorism. Five years later, the Supreme Court ruled that Bush's order violated both the Uniform Code of Military Justice and the Geneva Conventions.

Supreme Court ruled that detainees could challenge their confinements in federal court.

In December 2005, however, Congress negated that decision by passing the Detainee Treatment Act, which declared that “no court, justice or judge shall have jurisdiction” to consider a habeas corpus petition filed by any Guantánamo detainee.

As a senator and presidential candidate, Obama had criticized Bush for

filed suit, arguing he had violated the Constitution and the 1973 War Powers Resolution. But in October 2011, a district court ruled that the lawmakers lacked standing to bring the case — meaning they could not prove personal injury from the president's actions. And courts have long ruled a member of Congress doesn't have “legislative standing” to sue the executive.⁵⁸

The Obama administration also issued a number of rules, including those to reduce climate change, improve school lunches, name the sage grouse an endangered species, reduce the number of hours truckers can work and change a section of the Dodd-Frank financial regulatory law. Congress responded with a series of policy riders attached to the fiscal 2015 funding bill that reversed several of his initiatives.⁵⁹

Congressional Republicans repeatedly vowed to block the administration's proposals, and the Senate — following a practice that began in 2007 — held brief so-called pro forma sessions that prevented the White House from making recess appointments. But in January 2012, just after such a session ended, Obama made four recess appointments, including three to the National Labor Relations Board, which had been unable to function because of vacancies on the five-member board. The Office of Legal Counsel declared that such pro forma sessions didn't interrupt a valid Senate recess, but the D.C. Circuit ruled in January 2013 that the appointments were unconstitutional because they were not technically made during a recess.⁶⁰

Last December, a month after announcing executive actions on immigration, Obama secretly authorized a prisoner swap with the Cuban government for two Americans and pledged to ease a 54-year-old trade and travel embargo against the country. Several leading Republicans contended the move in part would change longstanding policy set by Congress and would reward the Cuban government for its

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Getty Images/Bloomberg/Pete Marovich

Opponents of the Keystone XL pipeline demonstrate in front of the White House on Jan. 10, 2015. Under the broad, much debated guidelines of Article 2 of the Constitution, presidents have used executive orders, vetoes and other tools to deal quickly with emergencies or attain their policy goals. On Feb. 24 Obama vetoed legislation authorizing construction of the controversial oil pipeline, which would transport crude from Canada to Texas.

In June 2002, Bush warned of a possible pre-emptive nuclear strike from Iraq, claiming Iraqi dictator Saddam Hussein had amassed weapons of mass destruction that posed a threat to the United States and others. Lawmakers warned Bush not to act without their consent, and the House and Senate ultimately granted authorization for “necessary and appropriate” force.

Later, the Bush administration came under fierce criticism after allegations surfaced that it was abusing and torturing suspected terrorists captured in Afghanistan and Iraq and held at Guantánamo Bay, Cuba. In June 2004, the

taking actions without congressional approval and pledged to work with Congress on a variety of issues. But partisan gridlock led him, in the fall of 2011, to tell advisers that “the administration needed to more aggressively use executive power to govern in the face of congressional obstructionism,” using the slogan, “We Can't Wait.”⁵⁷

Obama issued executive orders or memoranda to regulatory agencies affecting a variety of domestic and foreign policies, but Republicans fought back. When Obama claimed authorization from the Security Council and NATO allies to bomb Libya, 10 members of Congress

Do Obama's immigration orders overstep his authority?



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Rather than abide by the will of Congress and faithfully enforce existing immigration laws, the president has twisted the concept of “prosecutorial discretion” to implement his own policy preferences. He did this by unilaterally deferring deportations and granting work permits for undocumented parents of U.S. citizens, legal permanent residents and children brought into the country illegally.

As commander in chief, the president has broad authority in national security and foreign affairs, but his powers on domestic issues are much more constrained. Article II, Section 3 of the Constitution makes clear that the president is to enforce laws passed by Congress, and to see that those laws are “faithfully executed.” President Obama himself has, in the past, reminded supporters of this fundamental limitation on his power when it comes to enforcing the nation’s immigration laws as written.

Now the president has reversed course, arguing that congressional refusal to adopt his immigration reforms leaves him no choice but to act alone. He is not the first president to try to substitute his own will for that of Congress: Richard Nixon’s attempt to impound federal funds for programs he did not wish to implement was unanimously struck down by the Supreme Court in *Train v. City of New York*. The president, the Court held, must carry out Congress’ objectives and execute the full scope of budgeted programs.

President Obama justifies his actions as merely an exercise in “prosecutorial discretion,” but he has turned that notion on its head. Under normal circumstances, the law applies to everyone, but prosecutorial discretion allows a prosecutor, on a case-by-case basis, to say that the law will not apply to some individual, based on exceptional circumstances. In this case, however, the president has decreed that the law will not apply to an extremely large group of people, but that it might apply to someone in that group based on exceptional circumstances.

Article I, Section 8 of the Constitution plainly grants Congress exclusive authority to establish federal immigration laws. President Obama can try to persuade Congress to amend those laws, but he cannot simply implement his policy preferences by executive fiat.

Obama’s unprecedented action undermines the rule of law and fundamental principles of separation of powers designed to protect our liberties and assure “a government of laws, not of men.” By failing to faithfully execute the law, the president has set a very dangerous precedent.



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The president’s executive actions on immigration are limited, contingent on statutory authority and prosecutorial discretion, and temporary. They can be neutered or replaced by legitimate congressional lawmaking or a successor in the White House. This is less a power grab than an acknowledgement that the country is far from the post-partisan politics that he promised in his initial run for the presidency. That acknowledgement, however tardy, is welcome. Until we as a country face up to the destructiveness of our asymmetric partisan polarization, there is little chance of improving our dysfunctional government.

The crocodile tears in reaction to President Obama acting well beyond his constitutional authority and destroying prospects in Congress for bipartisan agreement on a range of pressing public problems, including immigration, are laughable. The president has faced unified and unrelenting opposition from Republicans in Congress since the first day of his presidency, following his sweeping victory and that of his fellow Democrats in Congress in the 2008 election.

Republicans have never accepted the legitimacy of his presidency or demonstrated any willingness to enter into negotiations with him to deal with the Great Recession, stagnant wages, serious flaws in the regulation of financial services, unsustainable health care costs, a deteriorating infrastructure, climate change and a widely acknowledged broken immigration system. Instead, since the 2010 elections returned the GOP to the majority in the House, they have engaged in unprecedented and irresponsible brinkmanship and hostage-taking that have threatened the full faith and credit of the country, weakened the economy and precipitated a sharp decline in the public’s trust in government.

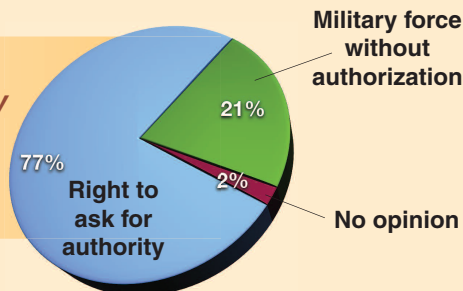
Now that the president has decided to use his well-documented constitutional and statutory authority to ease temporarily one of the most difficult and painful problems facing the country, Republicans are shocked, yes shocked, that he would “poison the well” and destroy . . . bipartisan comity in the new Congress.

Let’s get serious. Republicans used their majority foothold in the House to guarantee that Congress would be the graveyard of serious policymaking, a far cry from the deliberative first branch of government designed by the framers. They have reduced the legislative process to nothing more than a tool in a partisan war to control the levers of public power. The cost of such unrelenting opposition and gridlock is that policymaking initiative and power inevitably will flow elsewhere — to the executive and the courts.

Most Want Obama to Ask Before Attacking ISIS

More than three-fourths of Americans said President Obama was correct in asking Congress in February to authorize the use of U.S. military force against the Islamic State (also known as ISIS or ISIL), according to a CNN/ORC International poll.

Was President Obama right to ask Congress for authority to use military force against ISIS, or should he have proceeded without it?



Source: "CNN, ORC International Poll," CNN/ORC International, Feb. 12-15, 2015, p. 7, <http://tinyurl.com/mf593xw>

Continued from p. 232

poor human-rights record. They vowed to closely manage the loosening of diplomatic relations. ■

CURRENT SITUATION

Unforeseen Circumstances

Facing a GOP-controlled Congress, Obama says he will exert executive authority when lawmakers fail to act in areas of domestic and foreign policy, even while assuring voters he will attempt to reach across the aisle to Republicans. Meanwhile, Republicans vow to keep a check on Obama's unilateral actions.

Obama in his 2015 State of the Union address indicated he would pursue specific policy goals in the face of Republican opposition in Congress, such as blocking approval of the controversial Keystone XL oil pipeline. The House and Senate subsequently cleared a bill approving the pipeline, which Obama vetoed on Feb. 24.⁶¹

The administration continued to develop rules to implement Obama's plan to bar the deportation of millions of undocumented immigrants until a federal district judge in Texas issued an injunction temporarily barring the plan. (See sidebar, p. 228.) The White House continues to chip away at the 54-year-old embargo against Cuba, while political disagreements in Congress make it unlikely lawmakers will fully lift travel and trade restrictions.⁶²

On Feb. 11, the president followed up on his State of the Union request for congressional authorization for the use of military force against the Islamic State (also known as ISIS or ISIL), proposing a resolution authorizing force months after he had ordered airstrikes. He said he already had authority to act on his own, but that he believed a "bipartisan authorization of the use of military force (AUMF) against ISIL would provide a clear and powerful signal to the American people, to our allies, and to our enemies that the U.S. is united behind the effort to degrade and ultimately defeat ISIL."⁶³

Obama's draft resolution would repeal a 2002 authorization for President Bush to take action in Iraq — which was broad and open-ended. But it would leave in place the 2001 AUMF under which Obama and Bush claimed

authority to enter a range of other skirmishes and institute various national security measures.

Many have questioned such authority for continued military actions under that resolution, and two Democratic members of the Senate Foreign Relations Committee in February introduced legislation to repeal the law. "By leaving in place the 2001 AUMF, Congress could be authorizing a state of perpetual war and giving this president and future presidents a blank check to keep America at war," said Sen. Ben Cardin of Maryland.⁶⁴

Obama said his proposed war resolution was an effort to head off the open-ended warfare the public in recent years has decried. "As I've said before, I do not think the U.S. should get involved in another prolonged ground war in the Middle East," he said in February. "That is not in our national security interests and it's not necessary" to beat ISIS. But, he said, the resolution would give the administration flexibility to deal with unforeseen circumstances.⁶⁵

Several polls indicate that Americans support Obama's proposal. An NBC News/Marist poll shows that 54 percent of respondents want their member of Congress to vote for the proposed resolution. But it also indicates that views on Obama's plan to combat ISIS are mixed: 45 percent have a "great deal" or a "good amount" of confidence, while 48 percent have little to no confidence.⁶⁶ A CNN/ORC International survey released Feb. 16 found that 57 percent said they disapproved of Obama's handling of ISIS, up from 49 percent in September.⁶⁷

Republican leaders in Congress are seeking various avenues to block Obama's initiatives, and their power struggle with the president is on prominent display as they consider his request for authorization of military action against ISIS.

Republicans complain that by setting a three-year time limit and not seeking authorization for ground forces, Obama is not requesting enough flexibility.

House Speaker Boehner pledged a thorough review of the proposal: "We're

going to have discussions, we're going to have a thorough hearing, we're going to have a big debate and how that turns out, I think it's too early to predict," he said. "To do this correctly, I think we're going to have to have bipartisan support on both sides of the Capitol, so there'll be a lot of discussions."

Many observers worry about further gridlock. Former Defense Secretary Leon Panetta said on CNN: "If they wind up not being able to deal with this war authorization . . . that sends a terrible message to the world."⁶⁸

Republicans are also trying to block Obama's actions on immigration by trying to defund the executive order, remove the president's discretion to grant immigrants work permits and other benefits or prohibit the executive branch from exempting whole categories of newcomers from immigration law. (See sidebar, p. 228.)

In the Courts

Lawmakers, legal analysts and scholars are awaiting Supreme Court arguments in *King v. Burwell*, challenging an IRS rule governing implementation of the 2010 Affordable Care Act's federal subsidies for low- and middle-income individuals buying health insurance on health insurance exchanges. The rule grants subsidies to those purchasing policies on state or federally run exchanges, but the suit claims the law — known as Obamacare — only allowed subsidies for policies bought through state exchanges. The executive branch, the lawsuit contends, abused its authority by issuing rules to extend the subsidies to cover the federally run exchanges — a provision not granted in the congressionally approved statute.⁶⁹

In another case before the Supreme Court, House GOP leaders say Obama usurped Congress' constitutional power by delaying enforcement of an Affordable Care Act mandate that employers offer workers health insurance.⁷⁰

Meanwhile, 26 states have sued the federal government, arguing that Obama's executive actions on immigration are unconstitutional and violate "the will of the American people." A federal judge in Texas on Feb. 16 issued an injunction temporarily blocking Obama's action halting the deportation of undocumented immigrants.⁷¹ House Republicans also pledge to sue the administration over its executive actions on immigration.

Republicans remain encouraged their efforts to block the president through the courts will succeed, citing the Supreme Court's rebuking of Obama after he attempted to make recess appointments to the National Labor Relations Board in 2014.⁷² ■

OUTLOOK

Continuing Contention

Many experts say the debate over presidential power will grow more heated because of partisan tensions and global conflicts over terrorism.

Portland State's Cooper says "history shows us we always will have partisan debate" and that Congress should make sure presidents don't wander too far from their appropriate role as defined in the Constitution. But, he says, "when [the issue] becomes heavily ideological and partisan as it has become now, that's not helpful. That's destructive. That only stirs conflict to mobilize one's political base . . . and it weakens institutions."

Funke of Lewis and Clark Law School says Congress needs to function as the nation's founders intended rather than allow partisan battles to continue to stymie the legislative process. "I would hope the gridlock is a temporary problem, rather than institutional," he adds.

C. Boyden Gray, former White House counsel under President George H. W. Bush, said he believes the courts likely

will check the president's attempts to maximize his executive authority until the balance of power among the three branches of government shifts again.⁷³

But The Constitution Project's Fisher, who attributes much of the president's expansion of powers in foreign affairs to the courts, says, "I can't imagine the courts bringing it in check."

Some see little change in the balance of powers — particularly in foreign policy — because the public and Congress often support presidential initiatives in that realm. Matthew Dickinson, a political science professor at Middlebury College in Vermont, said Congress likely will continue to allow Obama's expanded use of drones to attack foreign terrorists, for example, because lawmakers may want "the president to take the onus of responsibility" on such "politically costly" matters.⁷⁴

American University's Lichtman believes today's debate is purely partisan. If political parties in the next administration are reversed — with a Republican in the White House and Democrats leading Congress — then Democrats will complain of an unconstitutional grab of presidential power, he and others say.

The Cato Institute's Pilon doesn't see a trend in the growth of presidential power. Each president has different leadership styles, and Obama's influence over domestic policy is unique to his administration, he says. Pilon criticizes Obama for failing to communicate with Congress and to keep it apprised of his activities, foreign and domestic, and in doing so securing lawmakers' support. "Not doing so is asking for political trouble," he says.

"The exercise of presidential power "is going to vary from executive to executive," says Georgetown University's Cole, who contends that Obama has shown a willingness in many areas to curtail his actions. "Some argue that once the executive takes power, he never gives it up," he says. "I think the history of the Bush administration and the Obama administration contradicts that."

Adds Cole, “This will always be an issue of contention in American politics, and it should be.” ■

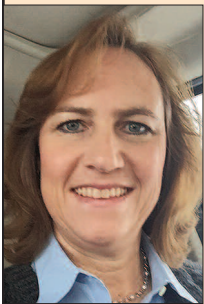
Notes

- ¹ “Remarks by the President in Address to the Nation on Immigration,” White House, Nov. 20, 2014, <http://tinyurl.com/kj8fevb>.
- ² Eric Bradner and Jedd Rosche, “Republicans Hammer Legal Case Against Obama on Immigration,” CNN, Nov. 20, 2011, updated Nov. 21, 2014, <http://tinyurl.com/p8vp7ca>.
- ³ Juliet Eilperin and Katie Zezima, “Obama vetoes Keystone XL bill,” *The Washington Post*, Feb. 24, 2015, <http://tinyurl.com/mlbf584>.
- ⁴ Chris Edelson, “Emergency presidential power: From the drafting of the Constitution to the War on Terror,” (excerpt from book), *Constitution Daily*, Jan. 22, 2014, <http://tinyurl.com/lbt19j8>.
- ⁵ Reid J. Epstein, “Americans Don’t Want Obama Leading on Policy,” *The Wall Street Journal*, Nov. 19, 2014, <http://tinyurl.com/q4cgcjif>.
- ⁶ Carrie Johnson, “Obama Tries Going It Alone — And Moves Onto Murky Legal Ground,” NPR, Feb. 7, 2014, <http://tinyurl.com/lmhcxht>.
- ⁷ Stephanie Simon, “Obama’s Power Play,” *Politico*, Jan. 31, 2014, <http://tinyurl.com/m3ltdb9>. Helena Bottemiller Evich, “Changing the Way We Eat,” *Politico Pro*, Jan. 31, 2014.
- ⁸ For background, see David Masci and Kenneth Jost, “War on Terrorism,” *CQ Researcher*, Oct. 12, 2001, pp. 817-848; and Kenneth Jost, “Presidential Power,” *CQ Researcher*, Feb. 24, 2006, pp. 169-192.
- ⁹ Anita Kumar, “Obama turning to executive power to get what he wants,” McClatchy

Newspapers, March 19, 2013, <http://tinyurl.com/cwmf7kr>.

- ¹⁰ For explanation, see: “War Powers,” Legal Information Institute, Cornell University Law School, undated, <http://tinyurl.com/mb3dbvr>.
- ¹¹ Barton Gellman, “Students Receive Albright Politely,” *The Washington Post*, Feb. 20, 1998, <http://tinyurl.com/lydsjkg>.
- ¹² Louis Fisher, *The Law of the Executive Branch: Presidential Power* (2014), p. 418.
- ¹³ Jack Goldsmith, *Power and Constraint: The Accountable Presidency after 9/11* (2012), p. xi.
- ¹⁴ Tanya Somanader, “The Authorization of Military Force Against ISIL Terrorists: What You Need to Know,” Whitehouse.gov, Feb. 11, 2015, <http://tinyurl.com/llhpluf>.
- ¹⁵ Mark Mazzetti, Charlie Savage and Scott Shane, “How a U.S. Citizen Came to Be in America’s Cross Hairs,” *The New York Times*, March 9, 2013, <http://tinyurl.com/awactkm>.
- ¹⁶ See Thomas J. Billitteri, “Drone Warfare,” *CQ Researcher*, Aug. 6, 2010, pp. 653-676.
- ¹⁷ Spencer Ackerman, “U.S. cited controversial law in decision to kill American citizen by drone,” *The Guardian*, June 23, 2014, <http://tinyurl.com/n5q9ovs>.
- ¹⁸ Gene Healy, “False Idol: Barack Obama and the Continuing Cult of the Presidency,” Cato Institute, 2012, p. 333. The case is *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).
- ¹⁹ Josh Gerstein, “Return to military tribunals?” *Politico*, March 5, 2010, <http://tinyurl.com/ovqm9rb>.
- ²⁰ Chuck McCutcheon, “Government Surveillance,” *CQ Researcher*, Aug. 30, 2013, pp. 717-740.
- ²¹ Michael A. Fletcher, “Bush Defends CIA’s Clandestine Prisons; ‘We Do Not Torture,’ President Says,” *The Washington Post*, Nov. 8, 2005, <http://tinyurl.com/a7n9o>.
- ²² Charlie Savage, “Barack Obama’s Q&A,” *The Boston Globe*, Dec. 20, 2007, <http://tinyurl.com/35jo46>; “Security Council Approves ‘No-Fly Zone’ over Libya, Authorizing ‘All Necessary Measures’ to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions,” United Nations, March 17, 2011, <http://tinyurl.com/pg5df57>.
- ²³ Marvin Kalb, *The Road to War: Presidential Commitments Honored and Betrayed* (2013), p. 3.
- ²⁴ Testimony of Peter J. Spiro before the United States Senate Committee on Foreign Relations, regarding Libya and War Powers, June 28, 2011, <http://tinyurl.com/jvre7kx>.
- ²⁵ “Statement by Louis Fisher, The Constitution Project, Before the Senate Committee on Foreign Relations, ‘Libya and War Powers,’” Senate Committee on Foreign Relations, June 28, 2011, <http://tinyurl.com/ksbdj8j>.
- ²⁶ Kyle Adams, “Libya Vote Highlights House GOP Shift on Use of Military,” *Real Clear Politics*, June 6, 2011, <http://tinyurl.com/mtluoh7>; Felicia Sonmez, “Kucinich, other House members file lawsuit against Obama on Libya military mission,” *The Washington Post*, June 15, 2011, <http://tinyurl.com/6dawolk>; and Sebastian Payne, “Republicans v. Obama — and other times the president has been sued,” *The Washington Post*, July 11, 2014, <http://tinyurl.com/letslen>.
- ²⁷ Fisher, *op. cit.*, *The Law of the Executive Branch*, pp. 414-416.
- ²⁸ “Joint Resolution to Authorize the limited use of the United States Armed Forces against the Islamic State of Iraq and the Levant,” Whitehouse.gov, Feb. 11, 2015, <http://tinyurl.com/kfqcvrj>.
- ²⁹ “President Obama Delivers a Statement on ISIL,” the White House, Feb. 11, 2015, <http://tinyurl.com/pwbxg2x>.
- ³⁰ Julie Hirschfeld Davis and Michael R. Gordon, “Obama Intends to Lift Several Restrictions Against Cuba on His Own,” *The New York Times*, Dec. 18, 2014, <http://tinyurl.com/maxg6kc>; Karen DeYoung, “U.S. eases Cuban trade and travel rules as it moves toward restoring full ties,” *The Washington Post*, Jan. 15, 2015, <http://tinyurl.com/lbd4vzk>; and Lauren French, “How Republicans could stop Obama’s Cuba play,” *Politico*, Dec. 18, 2014, <http://tinyurl.com/ll2ut2d>.
- ³¹ Charlie Savage, “Shift on Executive Power Lets Obama Bypass Rivals,” *The New York Times*, April 22, 2012, <http://tinyurl.com/b6xftly>.
- ³² Simon, *op. cit.*
- ³³ Jeffrey Scott Shapiro, “Obama admin thwarting release of public data under FOIA, lawsuit charges,” *The Washington Times*, Aug. 18, 2014, <http://tinyurl.com/lafct8b>.

About the Author



Christina L. Lyons, a freelance journalist based in the Washington, D.C., area, writes primarily about U.S. government and politics. She is a contributing author for CQ Press reference books, including *CQ’s Guide to Congress* and *Congress and the Nation*, and is a contributing editor for Bloomberg BNA’s *International Trade Daily*. A former editor for Congressional Quarterly, she also was co-author of CQ’s *Politics in America 2010*. Lyons began her career as a newspaper reporter in Maryland and then covered environment and health care policy on Capitol Hill. She has a master’s degree in political science from American University.

³⁴ Johnson, *op. cit.*

³⁵ Fisher, *op. cit.*, *The Law of the Executive Branch*, p. 85.

³⁶ “First Barbary War (1801-1805),” American History Central, 2015, <http://tinyurl.com/8wb2jmn>.

³⁷ Fisher, *op. cit.*, p. 46.

³⁸ *Ibid.*, p. 85.

³⁹ Jost, “Presidential Power,” *op. cit.*

⁴⁰ Fisher, *op. cit.*, p. 86.

⁴¹ Jost, “Presidential Power,” *op. cit.*

⁴² Fisher, *op. cit.*, p. 88.

⁴³ *Ibid.*, pp. 89-90.

⁴⁴ *Ibid.*, pp. 389-390.

⁴⁵ *Ibid.*, pp. 308-309, 325

⁴⁶ “Executive Order No. 9981,” Truman Library, July 26, 1948, <http://tinyurl.com/ljt4exv>. In it, the order says: “It is hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin.”

⁴⁷ Fisher, *op. cit.*, pp. 334-335.

⁴⁸ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 638, U.S. Supreme Court, 1952, <http://tinyurl.com/ms47qq5>; Vivian S. Chu and Todd Garvey, “Executive Orders: Issuance, Modification, and Revocation,” Congressional Research Service, April 16, 2014, p. 3, <http://tinyurl.com/ox3uauk>.

⁴⁹ “Gulf of Tonkin Resolution,” History Channel, <http://tinyurl.com/kq6wk95>.

⁵⁰ Fisher, *op. cit.*, p. 343.

⁵¹ *Ibid.*, p. 72; Jost, “Presidential Power,” *op. cit.*

⁵² *Ibid.*, Fisher, p. 346; *Holtzman v. Schlesinger*, 414 U.S. 1304, 1310 U.S. Supreme Court, 1973, <http://tinyurl.com/lh9e6mt>.

⁵³ “Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities,” U.S. Senate, undated, <http://tinyurl.com/p52k7ut>.

⁵⁴ Mark Murrmann, “33 Years Ago: Reagan Goes Union-Busting, Fires 11,000 Striking Air Traffic Controllers,” *Mother Jones*, Aug. 5, 2014, <http://tinyurl.com/mvrrt86>.

⁵⁵ Fisher, *op. cit.*, p. 352.

⁵⁶ *Chamber of Commerce of the U.S. v. Reich*, U.S. Court of Appeals, District of Columbia Circuit, 1996, <http://tinyurl.com/mbj6ybg>; “Executive Order No. 12954,” the American Presidency Project, March 10, 1995, <http://tinyurl.com/lu45rq5>.

⁵⁷ “Politics and National Issues,” in *Congress and the Nation, 2009-2012*, vol. 13 (2014), pp. 3-12; Savage, *op. cit.*

⁵⁸ Fisher, *op. cit.*, pp. 355-357; *Kucinich v. Obama*,

FOR MORE INFORMATION

American Enterprise Institute, 1150 17th St., N.W., Washington, DC 20036; 202-862-5800; www.aei.org. Conservative think tank that sponsors research on the global economy, U.S. foreign policy and international security.

American Presidency Project, University of California, Santa Barbara; www.presidency.ucsb.edu/. Archives contain more than 100,000 documents related to the study of the presidency, including presidents’ use of vetoes and executive orders.

Brookings Institution, 1775 Massachusetts Ave., N.W., Washington, DC 20036; 202-797-6000; www.brookings.edu/about/contact. Centrist think tank that analyzes the workings of U.S. and foreign governments.

Cato Institute, 1000 Massachusetts Ave., N.W., Washington, DC 20001-5403; 202-842-0200; www.cato.org. Libertarian think tank that conducts research and holds conferences on a range of public policy issues.

Cause of Action, 1919 Pennsylvania Ave., N.W., Suite 650, Washington, DC 20006; 202-499-4232; causeofaction.org. Watchdog group that focuses on executive branch.

Center for Progressive Reform, 455 Massachusetts Ave., N.W., #150-513, Washington, DC 20001; 202-747-0698; www.progressivereform.org. Liberal watchdog group that provides research and commentary on public policies and regulations.

The Constitution Project, 1200 18th St., N.W., Suite 1000, Washington, DC 20036; 202-580-6920; www.constitutionproject.org. A nonpartisan think tank that seeks to reach a bipartisan consensus on legal and constitutional issues.

Heritage Foundation, 214 Massachusetts Ave., N.E., Washington, DC 20002-4999; 202-546-4400; www.heritage.org. Conservative think tank that advocates “free enterprise, limited government, individual freedom, traditional American values and a strong national defense.”

U.S. District Court, District of Columbia, Oct. 20, 2011, <http://tinyurl.com/obtqlsl>; and Krass, *op. cit.*

⁵⁹ Ed O’Keefe, “What’s in the spending bill? We skim it so you don’t have to,” *The Washington Post*, Dec. 10, 2014, <http://tinyurl.com/nzutuqct>.

⁶⁰ *Noel Canning v. NLRB*, U.S. Court of Appeals, District of Columbia Circuit, 2013, <http://tinyurl.com/b5mwmhu>.

⁶¹ “State of the Union Primer: What President Obama Proposed,” NPR, Jan. 21, 2015, <http://tinyurl.com/megpk2j>; Michael D. Shear and Coral Davenport, “Obama Vetoes Bill Pushing Pipeline Approval,” *The New York Times*, Feb. 24, 2015, <http://tinyurl.com/qhyd7e8>.

⁶² NPR, *ibid.*

⁶³ Somanader, *op. cit.*

⁶⁴ Jennifer Bendery, “Democrats Introduce Bill to Repeal Sweeping 2001 War Authorization,” *The Huffington Post*, Feb. 13, 2015, <http://tinyurl.com/0s2n9u2>.

⁶⁵ “President Obama Delivers a Statement on ISIL,” *op. cit.*

⁶⁶ Chuck Todd, Mark Murray and Carrie Dann, “‘A Fragile Majority’: How American’s Feel About Obama’s Fight Against ISIS,” NBC News,

<http://tinyurl.com/okpyg4s>.

⁶⁷ Alexandra Jaffe, “Poll: Most disapprove of Obama handling of ISIS,” CNN, Feb. 17, 2015, <http://tinyurl.com/kovt7dq>.

⁶⁸ Brianna Ehley, “Washington on Gridlock Alert Yet Again,” *The Fiscal Times*, Feb. 15, 2015, <http://tinyurl.com/n4lursh>.

⁶⁹ *King v. Burwell*, SCOTUSblog, 2015, <http://tinyurl.com/otd7o6j>.

⁷⁰ *U.S. House of Representatives v. Burwell, et al.*, U.S. District Court for the District of Columbia, Nov. 21, 2014, <http://tinyurl.com/ozxbesn>.

⁷¹ Molly Hennessy-Fiske, Joseph Tanfani and Christine Mai-Duc, “Judge blocks Obama policy that would shield millions from deportation,” *Los Angeles Times*, Feb. 17, 2015, <http://tinyurl.com/pogtkhj>.

⁷² *National Labor Relations Board v. Noel Canning, et al.*, U.S. Supreme Court, June 26, 2014, p. 5, <http://tinyurl.com/qe4wuko>.

⁷³ Stephanie Condon, “Is Obama overstepping his bounds with executive actions?” CBS News, Jan. 28, 2014, <http://tinyurl.com/mxvx5tl>.

⁷⁴ Shawn Zeller, “Tug-of-War Gets Started,” *CQ Weekly*, Jan. 12, 2015, pp. 14-21.

Bibliography

Selected Sources

Books

Cooper, Phillip J., *By Order of the President: The Use and Abuse of Executive Direct Action*, 2nd ed., University Press of Kansas, 2014.

A Portland State University public administration professor shows how presidents have used their powers to influence domestic and foreign policy.

Fisher, Louis, *The Law of the Executive Branch: Presidential Power*, Oxford University Press, 2014.

A constitutional scholar looks at the framing of the Constitution and analyzes the development and use of presidential power through history, compares types of presidential power and analyzes presidential influence in domestic and foreign policy.

Goldsmith, Jack, *Power and Constraint: The Accountable Presidency After 9/11*, W.W. Norton & Co., 2012.

A Harvard Law School professor explores the use and limits of presidential power.

Healy, Gene, *False Idol: Barack Obama and the Continuing Cult of the Presidency*, Cato Institute, 2012.

The vice president of the libertarian Cato Institute think tank contends that the public's idealization of the presidency has enabled President Obama to assume expanded executive power.

Howell, William G., *Thinking About the Presidency: The Primacy of Power*, Princeton University Press, 2013.

A University of Chicago politics professor studies the origins and philosophical underpinnings of presidential power and analyzes the public's expectations of the presidency.

Kalb, Marvin, *The Road to War: Presidential Commitments Honored and Betrayed*, Brookings Institution Press, 2013.

A Brookings scholar examines how modern presidential commitments, rather than formal declarations, lead to the use of American military force — and to war.

Articles

Dickinson, Matthew, "No, Obama's Executive Action Did Not Violate Governing Norms," *Presidential Power* blog, Middlebury.edu, Nov. 22, 2014, <http://tinyurl.com/o3x46gy>.

A Middlebury College professor blogs about Obama's executive order to defer deportation proceedings of immigrants in the country illegally and predicts the move will garner a backlash from Congress and ultimately weaken his authority.

Griffin, Stephen M., "Executive Power in the Constitution: An Overview," draft chapter for *Oxford Handbook of the U.S. Constitution*, 2014, <http://tinyurl.com/mssxg9f>.

A Tulane University law professor analyzes the historical context of presidential power, presidential war powers and

applications of the War Powers Resolution, as well as tools that presidents use to enforce — or ignore — policies.

Johnson, Carrie, "Obama Tries Going It Alone — And Moves Onto Murky Legal Ground," *National Public Radio*, Feb. 7, 2014, <http://tinyurl.com/lmhcxht>.

In both text and audio, a reporter reviews Republicans' questioning of Attorney General Eric Holder and the Office of Legal Counsel's advice on executive branch actions.

Korte, Gregory, "Obama issues 'executive orders by another name,'" *USA Today*, Dec. 17, 2014, <http://tinyurl.com/oludlxp>

A reporter examines the battle between President Obama and congressional Republicans as the 114th Congress begins.

Simon, Stephanie, "Obama's power play," *Politico*, Jan. 31, 2014, <http://tinyurl.com/m3ltdb9>.

This installment is part of a series analyzing the Obama administration's influence over agency rulemaking.

Reports and Studies

Chu, Vivian S., and Todd Garvey, "Executive Orders: Issuance, Modification, and Revocation," *Congressional Research Service*, April 16, 2014, <http://tinyurl.com/ox3uavk>.

Two legislative attorneys analyze the scope of presidential authority to execute executive orders based on historical precedent and court rulings, along with Congress' ability to repeal or limit such orders.

Mayer, Kenneth R., "Executive Power in the Obama Administration and the Decision to Seek Congressional Authorization for a Military Attack Against Syria: Implications for Theories of Unilateral Action," *Utah Law Review*, 2014, Issue 4, pp. 821-841, <http://tinyurl.com/km6es9j>.

A University of Madison-Wisconsin political science professor analyzes President Obama's executive actions to shape policy and thus expand presidential power.

Reeves, Andrew, and Jon C. Rogowski, "Public Opinion Toward Presidential Power," forthcoming, Dec. 27, 2014, <http://tinyurl.com/nnopu4l>.

Two Washington University professors provide the results of a study analyzing whether a president's high approval ratings lead to support for a more powerful presidency.

Weatherford, Katie, "President Obama's Use of His Executive Power: Facts vs. Hyperbole," *Center for Effective Government*, Feb. 11, 2014, <http://tinyurl.com/kf2gm38>.

A regulatory policy analyst for the Center for Effective Government, a Washington, D.C.-based government watchdog group, reviews the president's authority to use a variety of executive tools and the checks that courts and Congress provide to restrain presidential power.

The Next Step:

Additional Articles from Current Periodicals

Immigration Policy

Brown, Carrie, et al., “Obama to shield 5 million from deportation,” *Politico*, Nov. 20, 2014, <http://tinyurl.com/qbkronn>.

Republicans called President Obama’s executive action on immigration and abuse of authority.

Rampton, Roberta, “On Bush turf, Obama blames immigration woes on Republicans,” *Reuters*, Feb. 25, 2015, <http://tinyurl.com/naa6caf>.

President Obama said Republican governors were responsible for delaying immigration reforms.

Schneider, Joe, “U.S. Asks Texas Judge to Put Immigration Ruling on Hold,” *Bloomberg*, Feb. 23, 2015, <http://tinyurl.com/lfse6ke>.

The Obama administration plans to appeal a U.S. district judge’s ruling that blocked the President’s deferred-deportation plan for 5 million undocumented immigrants from taking effect.

National Security

Acosta, Jim, “Russians, hackers cited as threats in new Obama National Security Strategy Document,” *CNN*, Feb. 6, 2015, <http://tinyurl.com/lfaolxr>.

The Obama administration cited terrorists, Russian aggression and hackers as threats in the latest national security strategy document released Feb. 6, but the administration did not announce policy changes.

Egelko, Bob, “Supreme Court to hear ‘national security’ case of visa denial,” *The San Francisco Chronicle*, Feb. 21, 2015, <http://tinyurl.com/psljyz6>.

In a case under review by the U.S. Supreme Court, the Obama administration will not disclose why a naturalized U.S. citizen’s Afghan husband was denied a visa in 2009.

Jaffe, Greg, “Obama budget’s boost for military spending points to brewing national security debate,” *The Washington Post*, Feb. 1, 2015, <http://tinyurl.com/myd9gcd>.

President Obama proposed a \$38 billion increase in Defense Department funding for fiscal 2016, but some Pentagon officials do not believe lawmakers from both parties can compromise on a source for more funding.

Unilateral Actions

Nather, David, “Barack Obama nears limit of executive powers,” *Politico*, Jan. 16, 2015, <http://tinyurl.com/qgena6n>.

President Obama has relied on executive actions to implement policies in the face of a Republican-controlled House and Senate, but some items on his agenda, such as education, infrastructure and minimum-wage policies, cannot move forward without congressional approval.

Sakuma, Amanda, “Obama administration asks court to lift executive action freeze,” *MSNBC*, Feb. 23, 2015, <http://tinyurl.com/ma4hj59>.

A U.S. district judge in Texas blocked President Obama’s executive order shielding undocumented immigrants from deportation.

Weise, Elizabeth, and Gregory Korte, “Homeland Security to be put in charge of info sharing,” *USA Today*, Feb. 13, 2015, <http://tinyurl.com/q2m9ad4>.

President Obama issued an executive order Feb. 13 putting the Department of Homeland Security, rather than the National Security Agency, in charge of information-sharing and cybersecurity.

War Powers

“A law for war,” *The Economist*, Feb. 14, 2015, <http://tinyurl.com/oc2re34>.

President Obama asked Congress to expand his executive war powers by allowing him to dispatch American military forces across the Middle East to better combat ISIS.

Baker, Peter, and Ashley Parker, “Congress Shows a Lack of Enthusiasm for Giving Obama War Powers to Fight ISIS,” *The New York Times*, Feb. 12, 2015, <http://tinyurl.com/oxrfjkd>.

President Obama is expected to continue to send warplanes and other forces to Iraq and Syria while Congress deliberates his recent request for formal authority to do so.

Holland, Steve, and Alistair Bell, “Potential Republican candidates tread carefully on Islamic State,” *Reuters*, Feb. 12, 2015, <http://tinyurl.com/p9wz64o>.

Potential 2016 Republican presidential candidates are critical of Obama’s proposal to expand executive war powers.

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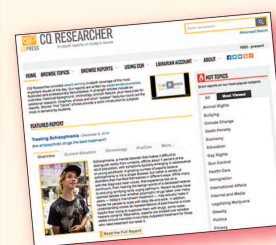
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