# XO CP

## 1NC Shells

### A-Spec Shell

#### Interpretation: The affirmative must specify which branch of government it uses in the plan. They didn’t and that is a voter because:

#### 1.Education: The affirmative robs the debate of topic specific implementation by focusing on the pros and cons of policy action by specific branches of government.

#### 2.Fairness: By not specifying the branch the affirmative can spike out of links to specific solvency argument and disadvantages predicated off of actions by specific governmental actors.

#### 3.Real World: The USFG does not implement policies. Congress passes bills, the president makes executive orders, and the Supreme Court overturns cases. No policy has gone through the entire government simultaneously.

### 1NC CP Shell

#### Text: The President of the United States should issue an executive order to [insert plan].

#### Obama has broad executive discretion over transportation – he can do anything

Joey LeMay, 3/21/12, Mint Press, "Obama 'new' executive order causes stir, but is now unprecedented," <http://www.mintpress.net/obamas-new-executive-order-causes-stir-but-is-not-unprecedented/>

President Barack Obama signed an executive order last Friday that reauthorizes, but also amends, the Defense Production Act of 1950 – a law that implements broad regulations in regards to civil defense. The order has been dubbed the Nation Defense Resources Preparedness and its language has resulted in varying interpretations of what the law allows for. The law was signed during a time when Obama has supported various legislation that includes indefinite detention and quells protests and demonstrations. The order’s principle policy is to “have an industrial and technological base capable of meeting national defense requirements and capable of contributing to the technological superiority of its national defense equipment.” The functionality of the law grants executive departments and agencies the power to plan and allocate resources and services. Under the policy, the Secretary of Agriculture would be given the power to allocate “food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer.” The law also states the Secretary of Transportation would have rule over all respects to “civil transportation,” something it defines as “movement of persons and property by all modes of transportation in interstate, intrastate, or foreign commerce within the United States, its territories and possessions, and the District of Columbia, and related public storage and warehousing, ports, services, equipment and facilities, such as transportation carrier shop and repair facilities.” It continues by saying that the Secretary of Transportation should have control and complete direction of “civil transportation,” “regardless of ownership.”

#### XO’s on transportation don’t have to go through Congress – means the CP avoids politics

Scott Thomasson, (President of NewBuild Strategies LLC), 4/9/12, The Hill, "Finding infrastructure solutions, big and small," http://thehill.com/blogs/congress-blog/politics/220605-finding-infrastructure-solutions-big-and-small,

The stalled highway bill is further proof that “go big” approaches to solving big problems are destined to fail in the current political environment. But our infrastructure needs only get more expensive when we put off paying for them. In cases where modest reforms can make more creative financing solutions possible, good ideas should not be held hostage to “grand bargains” on big legislation like the highway bill. Congress and President Obama should think beyond the highway bill alone and look to politically viable proposals that stand a chance of passing both houses this year—incremental steps that can unlock billions of dollars in additional investments without large federal costs. For example, Congress should give states more flexibility to supplement federal funding by pursuing alternative financing sources—public-private partnerships, tolling and user fees, and low-cost borrowing through innovative credit and bond programs. Billions of dollars to finance new infrastructure could be raised every year from private-sector capital and untapped revenue sources like tolls and user fees. Neither is a free lunch, but they are potential alternatives to unpopular gas tax increases and deficit spending.At the federal level, Congress and the president should improve federal financing programs and streamline regulatory approvals to accelerate planned projects that are waiting to move forward. As a modest but viable alternative to the president’s infrastructure bank proposal, he should make the most of existing financing resources by coordinating the many loan programs for infrastructure that are already spread across various federal agencies and departments. The president already issued a new executive order last month to cut red tape for infrastructure projects, but the order is short on substance and long on studies and steering committees. A bolder step would be directly eliminating duplicative reviews by ordering agencies to work together in single-track proceedings wherever possible, without needing to wait for congressional approval or new steering committee plans.

#### Executive orders increase presidential power

Risen 4 [Clay, Managing editor of *Democracy: A Journal of Ideas,* M.A. from the University of Chicago “The Power of the Pen: The Not-So-Secret Weapon of Congress-wary Presidents” The American Prospect, July 16, <http://www.prospect.org/cs/articles?article=the_power_of_the_pen>]

In the modern era, executive orders have gone from being a tool largely reserved for internal White House operations -deciding how to format agency budgets or creating outlines for diplomatic protocol -- to a powerful weapon in defining, and expanding, executive power. In turn, presidents have increasingly used that power to construct and promote social policies on some of the country's most controversial issues, from civil rights to labor relations to reproductive health.

#### Prez power solves India Pakistan, North Korea, Middle East nuclear wars

South China Morning Post 00 [“Position of Weakness” 12-11-00, p. L/N]

A weak president with an unclear mandate is bad news for the rest of the world. For better or worse, the person who rules the United States influences events far beyond the shores of his own country. Both the global economy and international politics will feel the effect of political instability in the US. The first impact will be on American financial markets, which will have a ripple effect on markets and growth across the world. A weakened US presidency will also be felt in global hotspots across the world. The Middle East, the conflict between India and Pakistan, peace on the Korean peninsula, and even the way relations between China and Taiwan play out, will be influenced by the authority the next US president brings to his job. There are those who would welcome a weakening of US global influence. Many Palestinians, for example, feel they would benefit from a less interventionist American policy in the Middle East. Even within the Western alliance, there are those who would probably see opportunities in a weakened US presidency. France, for example, might feel that a less assertive US might force the European Union to be more outward looking. But the dangers of having a weak, insecure US presidency outweigh any benefits that it might bring. US global economic and military power cannot be wished away. A president with a shaky mandate will still command great power and influence, only he will be constrained by his domestic weakness and less certain about how to use his authority. This brings with it the risks of miscalculation and the use of US power in a way that heightens conflict. There are very few conflicts in the world today which can be solved without US influence. The rest of the world needs the United States to use its power deftly and decisively.

## 2NC Blocks

### 2NC: Normal Means = Congress

**“Normal Means” means congress does the plan**

Bill **Shuster**, **2012** (Congressman, central in highway politics), “Rebuilding Transportation is Key”, Politico, http://www.politico.com/news/stories/0212/72295.html, February 1, 2012. A.G.

The great social philosopher Adam Smith argued that **one of government’s three essential duties is to build and maintain public works** to facilitate commerce. **Our founding fathers understood the importance of connecting our country** **through** effective trade and communication with **transportation and infrastructure.** **Our Constitution** clearly charged Congress to fulfill this obligation.Republicans traditionally take this obligation seriously – from President Abraham Lincoln’s support for the transcontinental railroad, to President Theodore Roosevelt’s construction of the Panama Canal, to President Dwight D. Eisenhower’s building the Interstate Highway System.

### 2NC: AT Perm – Do Both

#### Links to politics – perm still includes congressional action which sparks opposition, triggering the link

#### Doesn’t solve presidential power – simultaneous legislative and executive action creates a mixed precedent, undermining presidential authority

Bellia 2 [Patricia, Professor of Law @ Notre Dame, “Executive Power in Youngstown’s Shadows” Constitutional Commentary, , 19 Const. Commentary 87, Spring, Lexis]

Second, courts' failure to resolve the contours of the President's constitutional powers creates uncertainty about whether some forms of constitutionally based executive action have the same legal force as a federal statute. Returning to Dames & Moore, the fact that the Court rested the President's authority on grounds of congressional approval rather than implied constitutional authority avoided the difficult question of how the President could by his sole authority displace the application of the federal statutes that had provided the basis for Dames & Moore's original cause of action against the Iranian enterprises. [291](https://www.lexis.com/research/retrieve?_m=f19618c70694bf3d339be1d061d942b7&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtz-zSkAW&_md5=1b7b7f45414d178a7293c7eabf182ff3" \l "n291#n291" \t "_self) Similar questions arise with respect to the displacement of state law by operation of sole executive agreements. The result is confusion about whether sole executive agreements are the "supreme Law of the Land," [292](https://www.lexis.com/research/retrieve?_m=f19618c70694bf3d339be1d061d942b7&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtz-zSkAW&_md5=1b7b7f45414d178a7293c7eabf182ff3" \l "n292#n292" \t "_self) with the available precedents suggesting that they are [293](https://www.lexis.com/research/retrieve?_m=f19618c70694bf3d339be1d061d942b7&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtz-zSkAW&_md5=1b7b7f45414d178a7293c7eabf182ff3" \l "n293#n293" \t "_self) and the weight of recent commentary suggesting that they are not.

#### Congressional silence key to presidential power

**Bellia 2** [Patricia, Professor of Law @ Notre Dame, “Executive Power in Youngstown’s Shadows” Constitutional Commentary, , 19 Const. Commentary 87, Spring, Lexis]

To see the problems in giving dispositive weight to inferences from congressional action (or inaction), we need only examine the similarities between courts' approach to executive power questions and courts' approach to federal-state preemption questions. If a state law conflicts with a specific federal enactment, n287 or if Congress displaces the state law by occupying the field, n288 a court cannot give the state law effect. Similarly, if executive action conflicts with a specific congressional policy (reflected in a statute or, as Youngstown suggests, legislative history), or if Congress passes related measures not authorizing the presidential conduct, courts cannot give the executive action effect. n289 When Congress is silent, however, the state law will stand; when Congress is silent, the executive action will stand. This analysis makes much sense with respect to state governments with reserved powers, but it makes little sense with respect to an Executive Branch lacking such powers. The combination of congressional silence and judicial inaction has the practical effect of creating power. Courts' reluctance to face questions about the scope of the President's constitutional powers - express and implied - creates three other problems. First, the implied presidential power given effect by virtue of congressional silence and judicial inaction can solidify into a broader claim. When the Executive exercises an "initiating" or "concurrent" power, it will tie that power to a textual provision or to a claim about the structure of the Constitution. Congress's silence as a practical matter tends to validate the executive rationale, and the Executive Branch may then claim a power not only to exercise the disputed authority in the face of congressional silence, but also to exercise the disputed authority **in the face of congressional opposition**. In other words, a power that the Executive Branch claims is "implied" in the Constitution may soon become an "implied" and "plenary" one. Questions about presidential power to terminate treaties provide a  [\*151]  ready example. The Executive's claim that the President has the power to terminate a treaty - the power in controversy in Goldwater v. Carter, where Congress was silent - now takes a stronger form: that congressional efforts to curb the power are themselves unconstitutional. n290

### 2NC: Agent CPs Good

#### 1. Process Education – It forces the aff to defend the implementation of the plan, which is key because learning about how congress/executive/courts work central to understanding why the USFG is the actor in the topic.

#### 2. Topic Education – The fact that we are reading specific solvency evidence for the CP proves that clashing literature exists about who the actor of the plan should be.

#### 3. Best policy option – the judge should vote for whichever policy option is more desirable. We have a disad to the plan and evidence that the CP can solve the aff.

#### 4. Key to neg ground – There are numerous kinds of investments affs can provide to a nearly unlimited network of transportation infrastructure. The only unifying mechanism on this topic is the agent, so the neg must have the ability to read disads and counterplans to test the actor of the plan.

#### 5. At worst, reject the argument and not the team.

## CP Solvency

### Solvency – Transportation Infrastructure (General)

#### Obama could use an XO for transportation infrastructure if he wanted

Josh Robin, YNN. “Economy adds fewest jobs in a year” YNN 06/01/2012.

<http://centralny.ynn.com/content/top_stories/586529/economy-adds-fewest-jobs-in-a-year/>

YA

With his re-election possibly hanging on jobs, President Obama tried a positive spin. "We will come back strong, we do have better days ahead, and that is all because of you," said Obama. Obama's advisers are continuing to remind everyone that the president inherited a deep crisis and it is especially tough to dig out when Washington seems hopelessly divided. "In many cases, they are not supporting some of these initiatives and we've been talking transportation, infrastructure development for some time now," said Hilda Slis, U.S. Department of Labor. "We all agree that it is something that can put people back to work right away, but we're finding that politics are somehow filtering in here." Friday, the president said there are some things he could do without Republican help, such as an executive order to put veterans to work. However, Obama's rival said his plans have failed in the past. "Of course, the developments around the world always influence our jobs, but we should be well into a very robust recovery by now if the president's policies had worked," said Mitt Romney. There may be some good news for Obama. National unemployment is north of eight percent, but numbers are better in swing states. In Minnesota, it is 5.6 percent.

#### Governors prove XOs can be used to fund transportation infrastructure

Sentinel 2006

Sentinel 2006 "Californias Small and Disadvantaged Businesses to Benefit from New Executive Order.": A8. ABI/INFORM Global; ProQuest Central. 27 June 2012. LSV

"There will be no roadblocks to success," for California's Small and Disadvantaged Businesses, announced Governor Arnold Schwarzenegger before signing Executive Order S-11-06 that will help California's disadvantaged businesses play a key role in rebuilding the state's transportation infrastructure. The executive order calls for the creation of a Small Enterprise Officer, increasing outreach and assistance by state agencies to small and disadvantaged firms, and the creation of a $40 million State Transportation Bond Guarantee fund to help small businesses secure insurance protection for state projects. The Governor signed the executive order at the State Capitol with representatives of business groups whose members will potentially contract with the California Department of Transportation to build roads and transit-related systems to meet the state's growing population demands. During the ceremony major business and employer groups signed a separate partnership agreement with Caltrans to work as a cohesive team to maximize the participation of Disadvantaged Business Enterprises in the state's transportation program. During the ceremony, Sunne Wright McPeak, Secretary of Business, Housing and Transportation, called the executive order "bold and visionary." The Black Business Association's Ezekiel Patten sees the executive order, which is the administration's response to the 9th circuit court decision that changed the way Caltrans awards contracts, as a "proactive partnership" that will rebuild the state's roads and infrastructure. The Governor also announced that Samuel Wallace of Sacramento has been appointed Small Enterprise Officer. Since 1993, Wallace has served as owner and principal of Williams-Wallace Management Consultants, previously served as the Region IX representative for the Secretary of the U.S. Department of Labor from 1989 to 1993, and was president and chief operating officer for the consulting firm Xodex Enterprises from 1980-1989. The Small Enterprise Officer will inform and assist Small Business Enterprise firms in growing their business expertise and increasing their capacity to acquire and perform on state transportation contracts. Starting immediately, the agency will utilize the Small Business Expansion Fund through agreements with Financial Development Corporations to provide approximately $4 million in federal funds to guarantee $17 million in loans to small and disadvantaged businesses participating in state and federal transportation projects.

### Solvency – Gas Tax

#### Obama can used an XO to raise the gas tax – “tricky accounting”

W.N.P. 2012, ( West Knollwood Precinct), "Update on NC gas tax," (This article includes an articles from The Times News titled "Just why is the state adding to gasoline tax?" which is included in full text below), http://www.westknollwoodprecinct.com/nc-gas-tax.html

“North Carolina Revenue Secretary David Hoyle announced in a brief statement this week that the state’s tax on gasoline will rise by 3.9 cents a gallon on Jan. 1. That hike, on top of a 2.5-cent per gallon increase last summer, will bring North Carolina’s motor fuels tax to 38.9 cents per gallon. That will be one of the highest, if not the highest, gasoline taxes in the country. Bah, humbug! That certainly doesn’t qualify as spreading Christmas cheer. It’s definitely not the kind of news we’d like to hear. What we would like to hear is more detail about why the tax is going up nearly 4 cents to the highest gas tax rate in the state’s history and how this particular rate hike is being computed. North Carolina’s gas tax is adjusted twice a year (July 1 and Jan. 1) using a formula based on the wholesale price of gasoline. It’s pretty much a given that if the retail price of gasoline is spiking — as it did near $4 a gallon last spring — then you’re going to see a jump in the gasoline tax come July 1. But what’s the explanation this time? The retail price of regular gasoline now is just above $3 a gallon around here. So why aren’t we talking instead about a coming decline in the state’s gasoline tax? The numbers just don’t add up. And neither does the rational for having a gasoline tax that’s based on the wholesale price. The explanation is that many highway construction and maintenance products are made with petroleum, so the tax should rise to cover higher materials costs when the wholesale gasoline price rises. We’d call that a tenuous connection at best. Gasoline and the vast types of materials used for road work are different products manufactured and refined in different ways under different sets of production circumstances. Their costs should be accounted for differently. Additionally, the reasoning for transfers of huge amounts of money from highway trust funds for such purposes as to operate the N.C. Highway Patrol falls short. Hundreds of millions in funds dedicated to transportation issues have been spent on non-highway purposes in recent years. Obviously, such transfers must be stopped totally and the Legislature, while studying the idea of capping the gas tax, should examine changing how the gasoline tax rate is determined. And the N.C. Department of Revenue and Secretary Hoyle should better explain why Tarheel motorists are facing a 3.9-cent gasoline tax hike come Jan. 1. Lots of things aren’t adding up.” The NC Gas Tax is going up again in January (see the Times News article to the right [above and in quotes, this line added to clarify the inclusion of that article into this debate card to provide context. The entirety of the Times News article is included above start with “North Carolina” and ending with “aren’t adding up]). The Times is correct. Something is not right. Revenue Secretary David Hoyle is a Democrat in a stolidly Democrat administration. The current Gas Tax structure was created by Democrat legislatures who love higher taxes. Whet else should we expect? It is unfortunate indeed that the new NC [North Carolina] Legislature did not "get around" to fixing this in their 2011 session. But it is true that they couldn't do everything we wanted in one session. Nevertheless, the Times News editorial is correct. Something isn't right here. Things aren't adding up. Seems to me that Governor Perdue's administration is following the Obama Administration's lead: Go around the Legislature and use gimmicky "calculations" to raise taxes by "executive order". It is imperative that the NC Legislature fix this problem in 2012. North Carolina cannot remain competitive with the highest gasoline taxes in the nation. The economy is going to plunge further into depression, perhaps even crashing catastrophically worldwide. Exorbitantly high fuel taxes are not going to help North Carolina's economy or citizenry to survive.

### Solvency – Ice Breakers

#### Obama can use XOs to direct the Coast Guard to implement more ice breakers – FDR proves

Alicia Cerretani, December 2004, Larouce PAC, "Argentina joins the pacific orientation," <http://larouchepac.com/3powers>

The second panelist was Lt. Governor of Alaska, Mead Treadwell. His testimony was excellent. Treadwell recently attended a meeting hosted by Russian VP Putin in Arkhangelsk, Russia called a meeting of the “Arctic Hands,” in September. He opened by making a list of demands, beginning with the immediate deployment of US icebreakers in the Arctic and cited Franklin Roosevelt’s 1936 Executive Order 7521 which, “directs the Coast Guard, under the direction of the Secretary of the Treasury and with the cooperation of the Secretaries of War (Army), the Navy, and Commerce, to keep channels and harbors open to navigation by means of icebreaking operations.” That order, Treadwell reminded the subcommittee, has never been implemented in the Arctic.

#### The president can use an XO to increase the number of ice breakers

Mead Treadwell, 6/24/08, (Chair of the US Arctic Research Commission), Senate Commerce Cimmitte Hearing, "Is America prepared for an accessible arctic?" p. 5

Fifth and finally, an accessible Arctic means a need for investment. Your Committee, Mr. Chairman, has recognized that, and reported legislation calling for construction of two new Polar class icebreakers for the Coast Guard and the nation, while maintaining the existing fleet in working condition.14 The U.S. Arctic Research Commission has urged the President and Congress to move expeditiously in building and maintaining those ships. Certainly, they will be used as they are now –as research platforms and as the visible U.S. maritime presence in both polar regions. But the advent of Arctic transportation means the other, more traditional missions of the Coast Guard will take center stage. These ships are needed to provide the same protections the U.S. Coast Guard affords the rest of the nation: search and rescue, law enforcement, border protection, environmental protection and oil spill response15. Aid to commerce is an important mission of our Great Lakes icebreakers. Under a regime worked out with Canada, the St. Lawrence Seaway/Great Lakes system has become an important part of the global transportation network. The Executive Order signed by President Franklin Roosevelt, committing icebreakers to support U.S. maritime commerce could apply to the U.S. Arctic as well16.

### Solvency – Inland Water Ways

#### Obama has executive authority over waterways

C.B. 4/19/12, (Conservativebyte.com), "Obama's plan to zone the seas," <http://conservativebyte.com/2012/04/obamas-plan-to-zone-the-seas/>

President Barack Obama has an ambitious plan for Washington bureaucrats to take command of the oceans—and with it control over much of the nation’s energy, fisheries, even recreation in a move described by lawmakers as the ultimate power grab to zone the seas. The massive undertaking also includes control over key inland waterways and rivers that reach hundreds of miles upstream, and began with little fanfare when Obama signed an executive order in 2010 to protect the aquatic environment.

### Solvency – H2 Refueling Stations

#### Obama can use an XO to promote environmentally-friendly tech

W.H.P.O., 2012, (White House Press Office), "Leading by example," <http://www.whitehouse.gov/energy/securing-american-energy>

President Obama believes that as the largest energy consumer in the U.S. economy, the Federal government has an obligation to lead by example when it comes to its environmental, energy and economic performance. To underscore this commitment, President Obama signed an Executive Order on Federal sustainability that directs Federal agencies to reduce greenhouse gas pollution, meet a number of energy, water, and waste reduction targets, improve the efficiency of vehicle fleets, and leverage Federal purchasing power to promote environmentally-responsible products and technologies. Agencies have begun releasing annual sustainability plans describing the steps they are taking to meet these goals.

### Solvency – High Speed Rail

#### Obama can use XOs to support HSR

Lisa Lambert and John Crawley, 1/24/12, Town Hall, "Obama aims to use war savings on infrastructure," <http://townhall.com/news/politics-elections/2012/01/24/obama_aims_to_use_war_savings_on_infrastructure>

Aiming to sell his idea as potentially creating jobs, the president said his proposal would help construction workers left unemployed by the 2007-09 recession. "There's never been a better time to build," Obama said, adding that he will sign an executive order within weeks to clear away red tape for public construction projects. The White House said Obama's infrastructure plans include more investments in high-speed rail, which began with $8 billion from the 2009 economic stimulus plan enacted to fight the nation's deep recession.

### Solvency – North Slope Ports

#### A president can use an XO to order development of the North Slope – Harding proves

USGS, 2002, (US Geological Survey), "US geological survery 2002 petroleum resource assessment of the national petroleum reserve in Alaska," <http://pubs.usgs.gov/fs/2002/fs045-02/>

“Whereas there are large seepages of petroleum along the Arctic Coast of Alaska and conditions favorable to the occurrence of valuable petroleum fields on the Arctic Coast . . .” President Warren G. Harding used those words in 1923 to describe the apparent petroleum potential of a tract of land on the western North Slope of Alaska, when he issued a one-page executive order establishing the 23-million acre (36,000 square miles) Naval Petroleum Reserve No. 4. During the following six decades, the U.S. Government conducted two petroleum exploration programs in the reserve, one in the wake of World War II and the second in the wake of the 1970’s oil embargo. These programs found only a handful of oil and gas fields, none of them commercial. The name of the reserve was changed to the National Petroleum Reserve in Alaska (NPRA) in 1976 (fig. 1). Four lease sales were held in the 1980’s, but only two exploration wells were drilled by industry within the NPRA boundary—one on a Federal lease and another on Native land—and neither resulted in development of petroleum resources. Following a 10-year hiatus in exploration activity, NPRA again became a focus of interest with the 1996 announcement of the discovery of the Alpine oil field, located just outside NPRA (fig. 1). A Federal lease sale was held in northeastern NPRA in 1999, and a number of exploration wells in that lease sale area were completed by industry during the 2000 and 2001 winter drilling seasons. Five of those wells were announced in 2001 to have encountered oil and gas, and additional wells were drilled during 2002 to delineate those discoveries and to test additional prospects (fig. 2). The U.S. Geological Survey (USGS) has reexamined the petroleum geology of NPRA and has prepared a new petroleum resource assessment. This new assessment was prompted by (1) the rapidly evolving exploration activity focused on the “Alpine trend,” (2) the growing interest in natural gas resources of the Arctic, and (3) the dated perspective of previous resource estimates (the last USGS assessment of NPRA was completed in 1980). Although none of the data from 3-D seismic surveys or new wells drilled in NPRA since the 1999 lease sale was available for this study, the results nevertheless reflect a comprehensive examination of all public domain data and a consideration of new exploration and development strategies currently being applied on the Alaska North Slope. This new study complements the 1998 assessment of the Arctic National Wildlife Refuge (ANWR), 1002 Area (see USGS Fact Sheet 028-01).

### Solvency - Avoids Congress

#### Obama can act w/out Congress on infrastructure policy

Scott Thomasson, 5/9/12, president of NewBuild Strategies LLC, an energy and infrastructure consulting firm in Washington, DC, CFR.org, "Encouraging US Infrastructure Investment”

http://www.cfr.org/infrastructure/encouraging-us-infrastructure-investment/p27771

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“Despite the pressing infrastructure investment needs of the United States, federal infrastructure policy is paralyzed by partisan wrangling over massive infrastructure bills that fail to move through Congress. Federal policymakers should think beyond these bills alone and focus on two politically viable approaches. First, Congress should give states flexibility to pursue alternative financing sources—public-private partnerships (PPPs), tolling and user fees, and low-cost borrowing through innovative credit and bond programs. Second, Congress and President Barack Obama should improve federal financing programs and streamline regulatory approvals to move billions of dollars for planned investments into construction. Both recommendations can be accomplished, either with modest legislation that can bypass the partisan gridlock slowing bigger bills or through presidential action, without the need for congressional approval.”

#### Obama can use XOs to avoid Congress

Brian Koenig, 4/23/12, Yahoo News, "Obama uses executive order to bypass congress," <http://news.yahoo.com/obama-uses-executive-orders-bypass-congress-192700126.html>

President Barack Obama's agenda, particularly involving legislative proposals like his ambitious "Buffett Rule" tax plan, has been stunted by a polarized Congress now toiling in gridlock. Consequently, the White House is resorting to its purported "executive authority" -- specifically, by issuing a flurry of new executive orders. To put it lightly, the president's view of Congress has been unpalatable, at least, since the Republicans captured the House of Representatives in the 2010 election. And Obama's solution? Bypass Congress altogether. "We had been attempting to highlight the inability of Congress to do anything," asserted former White House chief of staff William M. Daley, referring to a strategy meeting carried out last fall. "The president expressed frustration, saying we have got to scour everything and push the envelope in finding things we can do on our own." Indeed, the Obama administration is now launching its "We Can't Wait" campaign, a seemingly despotic ploy to work around Obama's congressional foes and enact a catalog of new executive-ordained policies.

### Solvency – Force of Law

#### XOs have the force of law and can effectively implement policy

Mayer 1 [Kenneth, Professor of Political Science @ University of Wisconsin – Madison, With the Stroke of a Pen*]*

These chronicles of presidential decisiveness and unilateral action are at odds with the prevailing scholarly view of presidential power. Among political scientists the conventional wisdom is that the president is weak, hobbled by the separation of powers and the short reach of his formal legal authority. Presidential power, far from being a matter of prerogative or legal rule, “is the power to persuade,” wrote Richard Neustadt in the single most influential statement about the office in the past fifty years.6 Yet throughout U.S. history presidents have relied on their executive authority to make unilateral policy without interference from either Congress or the courts. In this book, I investigate how presidents have used a tool of executive power—the executive order—to wield their inherent legal authority. Executive orders are, loosely speaking, presidential directives that require or authorize some action within the executive branch (though they often extend far beyond the government).They are presidential edicts, legal instruments that create or modify laws, procedures, and policy by fiat. Working from their position as chief executive and commander in chief, presidents have used executive orders to make momentous policy choices, creating and abolishing executive branch agencies, reorganizing administrative and regulatory processes, determining how legislation is implemented, and taking whatever action is permitted within the boundaries of their constitutional or statutory authority. Even within the confines of their executive powers, presidents have been able to “legislate” in the sense of making policy that goes well beyond simple administrative activity. Y ale Law School professor E. Donald Elliot has argued that many of the thousands of executive orders “plainly ‘make law’ in every sense,”7 and Louis Fisher finds that despite the fact that the Constitution unambiguously vests the legislative function in Congress, “the President’s lawmaking role is substantial, persistent, and in many cases disturbing.”8

### AT Delay

#### XOs are quick and avoid bureaucratic rulemaking – only the plan would get delayed by procedural requirements

Cooper 2 [Phillip, Professor of Public Administration @ Portland State University, *By Order of the President: The Use and Abuse of Executive Direct Action”*]

Executive orders are often used because they are quick, convenient, and relatively easy mechanisms for moving significant policy initiatives. Though it is certainly true that executive orders are employed for symbolic purposes, enough has been said by now to demonstrate that they are also used for serious policymaking or to lay the basis for important actions to be taken by executive branch agencies under the authority of the orders. Unfortunately, as is true of legislation, it is not always possible to know from the title of orders which are significant and which are not, particularly since presidents will often use an existing order as a base for action and then change it in ways that make it far more significant than its predecessors. The relative ease of the use of an order does not merely arise from the fact that presidents may employ one to avoid the cumbersome and time consuming legislative process. They may also use this device to avoid sometimes equally time consuming administrative procedures, particularly the rulemaking processes require by the Administrative Procedure Act. Because those procedural requirements do not apply to the president, it is tempting for the executive branch agencies to seek assistance from the White House to enact by executive order that which might be difficult for the agency itself to more through the process. Moreover, there is the added plus from the agency’s perspective that it can be considerably more difficult for potential adversaries to obtain standing to launch a legal challenge to the president’s order than it is to move an agency to judicial review. There is nothing new about the practice of generating executive orders outside the White House. President Kennedy’s executive order on that process specifically provides orders generated elsewhere.

### AT No Authority

#### Previous XOs for broadband prove Obama can direct infrastructure investments

Goodwin, Jacob. 20 June 2012 "Obama Executive Order to Accelerate Broadband Deployment on Federal Lands and Buildings." *Government Security News*. GSN, 20 June 2012. Web. 27 June 2012. <http://www.gsnmagazine.com/node/26599?c=communications>.JC

President Obama issued an Executive Order on June 14 that aims to speed up the process by which broadband access -- both wireline and wireless -- are deployed on federal lands, buildings and rights of way across the U.S. “The Federal Government controls nearly 30 percent of all land in the United States, owns thousands of buildings, and provides substantial funding for State and local transportation infrastructure, creating significant opportunities for executive departments and agencies to help expand broadband infrastructure,” says Executive Order 13616, which was published in the Federal Register on June 20. President Obama’s order establishes a Broadband Deployment on Federal Property Working Group, which will be co-chaired by representatives chosen by the head of the General Services Administration and the Secretary of the Department of Homeland Security. That group will also include members from the Departments of Defense, Interior, Agriculture, Commerce, Transportation and Veterans Affairs, as well as the U.S. Postal Service. This working group will be asked to report its progress within one year to a separate panel set up by the Obama administration last March to review infrastructure projects. The working group will be asked to create one or more “templates,” which can be used for uniform contract, application and permit terms. “To ensure a consistent approach across the Federal Government and different broadband technologies,” said the Executive Order, “the templates shall, to the extent practicable and efficient, provide equal access to Federal property for the deployment of wireline and wireless facilities.”

### AT No Funding – “Power of the Purse”

#### Presidents can easily circumvent Congress’ purse strings – discretionary spending

Pika et al 02

(Joseph A Pika, John Anthony Maltese, and Norman Thomas, all professors of political science, The Politics of the Presidency, 5th edition, p.

233)

In addition to budgeting, presidents have certain discretionary spending powers that increase their leverage over the bureaucracy. They have substantial nonstatutory authority, based on understandings with congressional appropriations committees, to transfer funds within an appropriation and from one program to another. The committees expect to be kept informed of such "reprogramming" actions.81 Fund transfer authority is essential to sound financial management, but it can be abused to circumvent congressional decisions. In 1970, for example, Nixon transferred funds to support an extensive unauthorized covert military operation in Cambodia. Nevertheless, Congress has given presidents and certain agencies the authority to spend substantial amounts of money on a confidential basis, the largest and most controversial of which are for intelligence activities.

#### The President has been delegated the ability to determine who receives funding – means an XO would get funded.

Ken Mayer, 2001, Princeton University Press, "With the stroke of a pen," p. 45-6

Congress, through its power of the purse, establishes and funds programs to purchase goods and services from the private sector. Although legislation stipulates many of the goals and processes of these programs, the actual process of awarding and administering contracts is a classic executive function. 65 Congress has long recognized as much, and even though there is a complex statutory framework that governs procurement broadly, "the development of detailed procurement policies and procedures has generally been left to the procurement agencies" and, by extension, to the president.66 Within the boundaries and requirements established by law, the president retains the authority to set the conditions under which procurement will take place.

### AT Rollback – Fiat Solves

#### Fiat solves rollback – it’s justified because:

#### 1. Reciprocal – aff gets durable fiat means the neg should too.

#### 2. Ground – ensures aff doesn’t lose on backlash arguments and its key to neg ground.

#### 3. Education – avoids should/would debates and focuses on the merits of the plan.

### AT Rollback – (Future Presidents)

#### Most executive orders aren’t overturned.

Murray 99[Frank, “Clinton’s Executive Orders are Still Packing a Punch: Other Presidents Issued More, but His are Still Sweeping” Washington Times http://www.englishfirst.org/13166/13166wtgeneral.html]

Clearly, Mr. Clinton knew what some detractors do not: Presidential successors of the opposite party do not lightly wipe the slate clean of every order, or even most of them. Still on the books 54 years after his death are 80 executive orders issued by Franklin D. Roosevelt. No less than 187 of Mr. Truman's orders remain, including one to end military racial segregation, which former Joint Chiefs of Staff Chairman Colin Powell praised for starting the "Second Reconstruction." "President Truman gave us the order to march with Executive Order 9981," Mr. Powell said at a July 26, 1998 ceremony marking its 50th anniversary. Mr. Truman's final order, issued one day before he left office in 1953, created a national security medal of honor for the nation's top spies, which is still highly coveted and often revealed only in the obituary of its recipient.

#### Political barriers check – new, stronger constituencies

Branum 2 [Tara L, Associate, Fulbright & Jaworski L.L.P, “President or King? The Use and Abuse of Executive Orders in Modern Day America” Journal of Legislation]

Congressmen and private citizens besiege the President with demands  [\*58]  that action be taken on various issues. [n273](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n273) To make matters worse, once a president has signed an executive order, he often makes it impossible for a subsequent administration to undo his action without enduring the political fallout of such a reversal. For instance, President Clinton issued a slew of executive orders on environmental issues in the weeks before he left office. [n274](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n274) Many were controversial and the need for the policies he instituted was debatable. [n275](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n275) Nevertheless, President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. [n276](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n276) A policy became law by the action of one man without the healthy debate and discussion in Congress intended by the Framers. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

### AT Rollback – (Congress)

#### Its extremely difficult to challenge executive orders

Cooper 97 [Phillip, Prof of Public Administration @ Portland State, Nov 97, “Power tools for an effective and responsible presidency” Administration and Society, Vol. 29, p. Proquest]

If Congress does challenge an executive order, then the president must either demonstrate that he properly interpreted the statute in question or that the action can be independently justified from executive powers delegated by the Constitution. However, it can, for a variety of reasons, be very difficult to get a legal challenge into court, and even if such a case does reach a judicial assessment, the broad kinds of grounds that can be asserted by the president can make it extremely difficult to challenge a presidential action. It has been done but it is not a simple matter (Note, 1987a).

#### There is a 0.2% risk of an overturn

Krause and Cohen 2000 [George and David, Professors of Political Science @ South Carolina, “Opportunity, Constraints, and the Development of the Institutional Presidency: The Issuance of Executive Orders”The Journal Of Politics, Vol. 62, No. 1, February 2000, JSTOR]

We use the annual number of executive orders issued by presidents from 1939 to 1996 to test our hypotheses. Executive orders possess a number of properties that make them appropriate for our purposes. First, the series of executive orders is long, and we can cover the entirety of the institutionalizing and institutional-ized eras to date.6 Second, unlike research on presidential vetoes (Shields and Huang 1997) and public activities (Hager and Sullivan 1994), which have found support for presidency-centered variables but not president-centered factors, ex-ecutive orders offer a stronger possibility that the latter set of factors will be more prominent in explaining their use. One, they are more highly discretionary than vetoes.7 More critically, presidents take action first and unilaterally. In ad-dition, Congress has tended to allow executive orders to stand due to its own collective action problems and the cumbersomeness of using the legislative pro-cess to reverse or stop such presidential actions**.** Moe and Howell (1998) report that between 1973 and 1997, Congress challenged only 36 of more than 1,000 executive orders issued. And only two of these 36 challenges led to overturning the president's executive order. Therefore, presidents are likely to be very successful in implementing their own agendas through such actions. In fact, the nature of executive orders leads one to surmise that idiopathic factors will be relatively more important than presidency-centered variables in explaining this form of presidential action. Finally, executive orders have rarely been studied quantitatively (see Gleiber and Shull 1992; Gomez and Shull 1995; Krause and Cohen 1997)8, so a description of the factors motivating their use is worth-while.9 Such a description will allow us to determine the relative efficacy of these competing perspectives on presidential behavior.10

#### Congress won’t rollback even the most controversial presidential decisions.

Howell 3 [William G, Assistant Professor of Gov’t @ Harvard, Powers Without Persuasion: The Politics of Direct Presidential Action pg. 112]

The real world, obviously, is much more complicated than the unilateral politics model supposes. Uncertainties abound, and presidents frequently set policies without any assurance of congressional acquiescence. It is worth considering then, how presidents fare on those occasions when Congress does respond to a presidential directive. Do presidents tend to win most of the time? Or does Congress consistently crack the legislative whip, effectively enervating imperialistic presidents? Our theoretical expectation are relatively clear. Because the president has access to more (and better) information about goings-on in the executive branch, members of Congress will try to change only a small fraction of all status quo policies in any legislative session, and we should anticipate that members will leave alone the majority of unilateral directives that the president issues. While the president may occasionally overreach on a particularly salient issue, provoking a congressional response, in most instances Congress either will do nothing at all or will endorse the president’s actions.

### AT Violates Separation of Powers

#### XO’s don’t require approval of congress but checks and balances system still applies

Fox 08 Jeffrey C. Fox (professor at Catawba College) 2008 <http://www.thisnation.com/question/040.html> zp

Executive Orders (EOs) are legally binding orders given by the President, acting as the head of the Executive Branch, to Federal Administrative Agencies. Executive Orders are generally used to direct federal agencies and officials in their execution of congressionally established laws or policies. However, in many instances they have been used to guide agencies in directions contrary to congressional intent. Not all EOs are created equal. Proclamations, for example, are a special type of Executive Order that are generally ceremonial or symbolic, such as when the President declares National Take Your Child To Work Day. Another subset of Executive Orders are those concerned with national security or defense issues. These have generally been known as National Security Directives. Under the Clinton Administration, they have been termed "Presidential Decision Directives." Executive Orders do not require Congressional approval to take effect but they have the same legal weight as laws passed by Congress. The President's source of authority to issue Executive Orders can be found in the Article II, Section 1 of the Constitution which grants to the President the "executive Power." Section 3 of Article II further directs the President to "take Care that the Laws be faithfully executed." To implement or execute the laws of the land, Presidents give direction and guidance to Executive Branch agencies and departments, often in the form of Executive Orders.

## Net Benefit: Politics

### Avoids Politics

#### Executive orders reduce expenditure of political capital – Clinton proves

Kassop 2 [Nancy, Chair of the Political Science Department @ State University of New York, The Presidency and the Law: The Clinton Legacy, ed. Alder, p. 6]

As a president facing an opposition party in Congress, it is not surprising that President Clinton made bold use of executive orders as a means of circumventing the uncertainties of a legislature that was unlikely to be friendly to his initiatives. Here, too, as in war powers, Clinton followed in the paths of his Republican predecessors, who also operated under conditions of divided government. Thus, Clinton may not have blazed new trails for his successors by his use of executive orders to accomplish indirectly what he was unwilling to spend political capital on to accomplish directly.

#### Executive orders are fast and build political capital

Krause and Cohen 97 **[**George + David, Professors of Political Science @ South Carolina, “Presidential Use of Executive Orders” American Politics Quarterly, Vol 25 No 4, October 1997, Sage Journals Online]

The aim of this study is to answer the question: What causes presidents to issue executive orders with greater (or less) frequency in a given year? This is an important topic of inquiry, not only because of the dearth of research that has been conducted to date but also because it is a valuable way to assess both the managerial and policymaking characteristics associated with the office of the presidency. Executive orders are another weapon in the arsenal that presidents have at their disposal. They both afford the chief executive the ability to make quick and efficient policy decisions without consultation from Congress or from the public, and they are also a tool that allows presidents to exert bargaining pressure on Congress to enact legislation more favorable to the White House(Wigton 1996). Thus, explaining how and why executive orders are used by presidents allows scholars a better understanding of the presidency and the powers that are inherent in that office.

#### Executive orders save capital by avoiding involvement with Congress

Fleishman 76 [Joel, Prof Law and Policy Sciences, Duke, Law & Contemporary Problems, Summer, p. 38]

Several related factors, in particular, make executive orders especially attractive policymaking tools for a President. First is speed. Even if a President is reasonably confident of securing desired legislation from congress, he must wait for congressional deliberations to run their course. Invariably, he can achieve far faster, if not immediate, results by issuing an executive order. Moreover, when a President acts through an order, he avoids having to subject his policy to public scrutiny and debate. Second is flexibility. Executive orders have the force of law. Yet they differ from congressional legislation in that a President can alter any executive order simply with the stroke of his pen—merely by issuing another executive order. As noted earlier, Presidents have developed the system of classifying national security documents in precisely this manner. Finally, executive orders allow the President, not only to evade hardened congressional opposition, but also to preempt potential or growing opposition—to throw Congress off balance, to reduce its ability to formulate a powerful opposing position.

#### Executive orders bypass Congressional opposition to the plan – avoids politics

**Ostrow 87** [Steven, partner in the Business Department and chairs the Financial Restructuring and Bankruptcy Practice Group, B.A., cum laude, from the University of Vermont, .D. from The George Washington University National Law Center, “Enforcing Executive Orders: Judicial Review of Agency Action Under the Administrative Procedure Act” George Washington Law Review, 55 Geo. Wash. L. Rev. 659]

In this era of the "Imperial Presidency," [n1](http://www.lexisnexis.com.proxy1.cl.msu.edu/us/lnacademic/frame.do?tokenKey=rsh-20.965135.1719684297&target=results_DocumentContent&reloadEntirePage=true&rand=1247534378685&returnToKey=20_T6954433500&parent=docview" \l "n1) executive orders have become an important weapon in the arsenal of presidential policymaking. [n2](http://www.lexisnexis.com.proxy1.cl.msu.edu/us/lnacademic/frame.do?tokenKey=rsh-20.965135.1719684297&target=results_DocumentContent&reloadEntirePage=true&rand=1247534378685&returnToKey=20_T6954433500&parent=docview" \l "n2) Because executive orders do not need congressional approval, they enable the President to bypass parliamentary debate and opposition. [n3](http://www.lexisnexis.com.proxy1.cl.msu.edu/us/lnacademic/frame.do?tokenKey=rsh-20.965135.1719684297&target=results_DocumentContent&reloadEntirePage=true&rand=1247534378685&returnToKey=20_T6954433500&parent=docview" \l "n3) Historically, most executive orders have related to routine administrative matters and to the internal affairs and organization of the federal bureaucracy. Since the 1930s, however, executive orders have assumed an ever increasing legislative character, directly affecting the rights and duties of private parties as well as those of governmental officials. [n4](http://www.lexisnexis.com.proxy1.cl.msu.edu/us/lnacademic/frame.do?tokenKey=rsh-20.965135.1719684297&target=results_DocumentContent&reloadEntirePage=true&rand=1247534378685&returnToKey=20_T6954433500&parent=docview" \l "n4) Scholars have referred  [\*660]  to this recent use of the executive order as "presidential legislation" or "government by executive order."

### AT “XO Sparks Backlash”

#### Wrong – XOs spark momentum that overcomes any backlash

Cooper 2 [Phillip, Professor of Public Administration @ Portland State University, By Order of the President: The Use and Abuse of Executive Direct Action”

Executive orders can also be used to hit quickly with policies aimed at important problems, providing a strong and immediate sense of momentum for a new administration. These messages are sent to reassure an administration’s supporters that the issue positions for which they campaigned are going to be acted upon. In the case of symbolic orders, which are often used for this purpose, the reward can be given to allies without a serious commitment of political resources in Congress, legal resources in administrative rulemaking, or financial resources associated with building really substantive programs. They also serve to send a message to potential adversaries that the administration is truly in charge and moving. Those seeking to mobilize opposition in such conditions find themselves reactive and defensive.

### Not Perceived

#### XOs aren’t perceived

Phillip Cooper, University of Vermont political science professor, FEDERAL DOCUMENT CLEARING HOUSE CONGRESSIONAL TESTIMONY, October 28, 1999, p. online.

Few Americans, even those normally considered part of the informed public, know anything about executive orders. That is true even for many experienced public service professionals at all levels of government. When informed that there are now some 13,140 numbered executive orders in which the chief executive has sought to issue directives having binding legal force to agencies in the executive branch, a very common response is that no one ever told them the president could make law with the stroke of a pen.

## Net Benefit: Presidential Power

### UQ: Low Now

#### Presidential power is low now

Bill O'Reilly, 6/21/12, Fox News, "President Obama's power eroding at a fast rate," <http://www.foxnews.com/on-air/oreilly/2012/06/22/bill-oreilly-president-obamas-power-eroding-fast-rate>

Here is how this country works at the federal level. If a President is strong like Ronald Reagan and Franklin Roosevelt he can get a lot of things done behind the scenes. Presidential power is awesome. And if the chief executive has the folks behind him, few politicians want to go up against public opinion. But when a president is weak like Jimmy Carter and Richard Nixon in his last days, very little gets done in Washington. The opposing party sensing blood in the water does not cooperate because they want the weak president out of there. That's what's happening to Barack Obama right now. His power is in steep decline. The Russian tyrant Putin knows that and totally disrespected Mr. Obama at the G-20 summit. If Putin have done that to Reagan he would have been punished most likely behind the scenes. But right now Barack Obama has no such power. Also at the summit the President seemed discombobulated. In his press conference his answers were rambling tedious and at times incoherent. It was a troubling performance. And then there is more bad news ahead. Next week the full house will most likely hold Attorney General Holder in contempt for not handing over relevant "Fast and Furious" documents. If that happens, a grand jury will be convened to possibly prosecute Holder meantime the President is defending the Attorney General by invoking executive privilege, stonewalling the documents. That means that Mr. Obama is now tied into Mr. Holder's fate. And then there is ObamaCare. "The Factor" has learned that administration has already crafted a narrative anticipating the Supreme Court will rule the healthcare mandate unconstitutional next week. If that happens the President will become even weaker because Obama care is his signature achievement. "The Factor" has also learned that the Obama re-election campaign believes the economy will not improve by Election Day and therefore, is targeting liberal Americans to the President's cause by using personal, not policy arguments. All in all, about five months before the election, President Obama is at his weakest point and things seem to be getting worse.

### XO key to Prez Power

#### Obama’s presidential power will only increase with executive orders

Zelizer 9[Julian, professor of history and public affairs at Princeton University's Woodrow Wilson School “Commentary: Can Obama and Congress Share Power?” CNN Online, January 5, http://www.cnn.com/2009/POLITICS/01/05/zelizer.power/index.html]

Obama must be held responsible as well. While presidents don't like to give up power, maybe this president will be different. At a minimum, Obama should avoid the techniques used so often in recent years to circumvent legislative will. It is not enough to reverse Bush's executive orders -- the **crucial** **question** is whether Obama uses such orders as frequently himself. If the nation can create a better balance between the executive and legislative branches, the country will benefit. The New Deal proved when both branches work together, the nation can produce some of its finest and most effective programs.

#### Executive orders control policy and set agendas – key to presidential power

Mayer 1 [Kenneth, Professor in the Department of Poli Sci @ University of Wisconsin-Madison, *Executive Orders and Presidential Power*, pg. 28-29]

This theoretical perspective offered by the new institutional economics literature provides a way of making sense of the wide range of executive orders issued over the years, and is the centerpiece of my approach. The common theme I find in significant executive orders is control; executive orders are an instrument of executive power that presidents have used to control policy, establish and maintain institutions, shape agendas, manage constituent relationships, and keep control of their political fate generally. Within the boundaries set by statute of the Constitution, presidents have consistently used their executive power – often manifested in executive orders – to shape the institutional and political context in which they sit. There are, to be sure, limits on what presidents can do relying solely on executive orders and executive power, and presidents who push too far will find that Congress and the courts will push back. Yet the president retains significant legal, institutional, and political advantages that make executive authority a more powerful tool than scholars have thus far recognized. This emphasis on control allows for a longer-term view than that generally taken by informal approaches to presidential leadership. I conclude that presidents have used executive orders to alter the institutional and political context in which they operate. The effects of any one effort in this regard may not be immediately apparent, and in many cases presidents succeed only after following up on what their predecessors have done. In this respect I view presidential leadership as both strategic and dynamic, a perspective that brings into sharper relief the utility of executive power to the presidency. I also differ with Neustadt on this score, as he looks at how presidents can be tactically effective within a particular structure context over which they have no control.

### Link: PP Zero Sum

#### Executive/legislative power is zero-sum—increased executive power diminishes the power of Congress

**Howell 03** (William, Asst Prof of Gov’t @ Harvard, Powers without Persuasion: The Politics of Direct Presidential Action, p. 101)

We repeatedly return to a basic theme about systems of governance defined by their separated powers: executive power is inversely proportional to legislative strength. Presidential power expands at exactly the same times when, and precisely the same places that, congressional power weakens. The occurrence is hardly coincidental. Indeed, the forces operate in tandem, for it is the check each places on the other that defines the overall division of power.

#### Presidential/Congressional power is zero-sum

Columbus Dispatch 2/15/06 (lexis)

The Constitution empowers Congress to serve as a check on executive power. Over the years, as presidents strengthened their powers in matters of national security and foreign policy, legislative authority has waned.

### Impact: Hegemony

#### Presidential power is critical to sustain the vital functions of American leadership

Mallaby 2K(Sebastian, Member, Washington Post’s Editorial Board, Foreign Affairs, Jan/Feb)

Finally, some will object that the weakness of the presidency as an institution is not the main explanation for the inadequacies of American diplomacy, even if it is a secondary one. The ad hominem school of thought argues instead that Bill Clinton and his advisers have simply been incompetent. Others make various sociological claims that isolationism or multiculturalism lies at the root of America's diplomatic troubles. All of these arguments may have merit. But the evidence cited by both camps can be better explained by the structural weakness of the presidency. Take, for example, one celebrated error: President Clinton's declaration at the start of the Kosovo war that the Serbs need not fear NATO ground troops. This announcement almost certainly cost lives by encouraging the Serbs to believe that America was not serious about stopping ethnic cleansing. The ad hominem school sees in this example proof of Clinton's incompetence; the sociological school sees in it proof of isolationist pressure, which made the option of ground troops untenable. But a third explanation, offered privately by a top architect of the Kosovo policy, is more plausible. According to this official, the president knew that pundits and Congress would criticize whichever policy he chose. Clinton therefore preemptively took ground troops off the table, aware that his critics would then urge him on to a ground war -- and also aware that these urgings would convince Belgrade that Washington's resolve would stiffen with time, rather than weaken. The president's stand against ground troops was therefore the logical, tactical move of a leader feeling vulnerable to his critics. Other failings of American diplomacy can likewise be accounted for by the advent of the nonexecutive presidency. Several commentators, notably Samuel Huntington and Garry Wills in these pages, have attacked the arrogance of America's presumption to offer moral leadership to the world. But American leaders resort to moral rhetoric largely out of weakness. They fear that their policy will be blocked unless they generate moral momentum powerful enough to overcome domestic opponents. Likewise, critics point to the hypocrisy of the United States on the world stage. America seeks U.N. endorsement when convenient but is slow to pay its U.N. dues; America practices legal abortion at home but denies funds to organizations that do the same abroad. Again, this hypocrisy has everything to do with the weak executive. The president has a favored policy but is powerless to make Congress follow it. Still other critics decry American diplomacy as a rag-bag of narrow agendas: Boeing lobbies for China trade while Cuban-Americans demand sanctions on Cuba. Here, too, presidential power is the issue. A strong presidency might see to it that America pursues its broader national interest, but a weak one cannot. This is why Clinton signed the Helms-Burton sanctions on Cuba even though he knew that these would do disproportionate harm to U.S. relations with Canada and Europe. What if America's nonexecutive presidency is indeed at the root of its diplomatic inadequacy? First, it follows that it is too optimistic to blame America's foreign policy drift on the weak character of the current president. The institution of the presidency itself is weak, and we would be unwise to assume that a President Gore or Bradley or Bush will perform much better. But it also follows that it is too pessimistic to blame America's foreign policy drift on cultural forces that nobody can change, such as isolationism or multiculturalism.

#### US primacy prevents nuclear great power wars

Walt 2 (Stephen, Professor of International Affairs at Harvard's Kennedy School of Government. "American Primacy: Its Prospects and Pitfalls." Naval War College Review, Vol. 55, Iss. 2. pg. 9 (20 pages) Spring 2002. Proquest)

A second consequence of U.S. primacy is a decreased danger of great-power rivalry and a higher level of overall international tranquility. Ironically, those who argue that primacy is no longer important, because the danger of war is slight, overlook the fact that the extent of American primacy is one of the main reasons why the risk of great-power war is as low as it is. For most of the past four centuries, relations among the major powers have been intensely competitive, often punctuated by major wars and occasionally by all-out struggles for hegemony. In the first half of the twentieth century, for example, great-power wars killed over eighty million people. Today, however, the dominant position of the United States places significant limits on the possibility of great-power competition, for at least two reasons. One reason is that because the United States is currently so far ahead, other major powers are not inclined to challenge its dominant position. Not only is there no possibility of a "hegemonic war" (because there is no potential hegemon to mount a challenge), but the risk of war via miscalculation is reduced by the overwhelming gap between the United States and the other major powers. Miscalculation is more likely to lead to war when the balance of power is fairly even, because in this situation both sides can convince themselves that they might be able to win. When the balance of power is heavily skewed, however, the leading state does not need to go to war and weaker states dare not try.8 The second reason is that the continued deployment of roughly two hundred thousand troops in Europe and in Asia provides a further barrier to conflict in each region. So long as U.S. troops are committed abroad, regional powers know that launching a war is likely to lead to a confrontation with the United States. Thus, states within these regions do not worry as much about each other, because the U.S. presence effectively prevents regional conflicts from breaking out. What Joseph Joffe has termed the "American pacifier" is not the only barrier to conflict in Europe and Asia, but it is an important one. This tranquilizing effect is not lost on America's allies in Europe and Asia. They resent U.S. dominance and dislike playing host to American troops, but they also do not want "Uncle Sam" to leave.9 Thus, U.S. primacy is of benefit to the United States, and to other countries as well, because it dampens the overall level of international insecurity. World politics might be more interesting if the United States were weaker and if other states were forced to compete with each other more actively, but a more exciting world is not necessarily a better one. A comparatively boring era may provide few opportunities for genuine heroism, but it is probably a good deal more pleasant to live in than "interesting" decades like the 1930s or 1940s.

### AT “XO Won’t Be Perceived”

#### Presidential action is perceived globally

Sunstein 95 [Cass, Karl N. Llewellyn Professor of Jurisprudence, University of Chicago Law School and Department of Political Science, “An Eighteenth Century Presidency in a Twenty-First Century World” Arkansas Law Review, 48 Ark. L. Rev. 1, Lexis]

With the emergence of the United States as a world power, the President's foreign affairs authority has become far more capacious than was originally anticipated. For the most part this is because the powers originally conferred on the President have turned out - in light of the unanticipated position of the United States in the world - to mean much more than anyone would have thought. The constitutionally granted authorities have led to a great deal of unilateral authority, simply because the United States is so central an actor on the world scene. The posture of the President means a great deal even if the President acts clearly within the scope of his constitutionally-granted power. Indeed, mere words from the President, at a press conference or during an interview, can have enormous consequences for the international community**.**

### AT Separation of Powers Turn

#### Unitary Executive theory key to Separation of Power

Calabresi**,** 95 [Calabresi - Associate Professor at Northwestern University School of Law. “Some Normative Arguments for the Unitary Executive” 48 Ark. L. Rev. 23]

The goal, of course, is to ensure that “ambition [will] be made to counteract ambition.” N61 This is accomplished in two ways. First, it is necessary to ensure that each department will have a will of its own. This can be done in part by creating separate electoral channels for each of the three departments back to the ultimate “fountain of authority, the people…”n62 Second, it is necessary to guarantee that “those who administer each department,” will have “the necessary constitutional powers of those offices and the “provision for defence must in this, as in all other [\*46] cases, be made commensurate to the danger of attack.” N64 This in turn, leads necessarily to the idea of a unitary executive. The reason for this is because “it is not possible to give to each department an equal power of self defense” as “in republican government the legislative, necessarily, predominate.” N65 Madison explained that “the remedy for this inconveniency is, to divide the legislature into different branches: and to render them by different modes of election, and different principles of action, as little connected with each other as the nature of their common function; and their common dependence on the society, will admit.” N66 But just as key to Madison as the weakening of the legislature was the concomitant strengthening of the executive. Thus, he stated that “ as the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand that it should be fortified.”

#### Inter branch conflict is a non-unique impact and the last century shows it always balances out and constantly swings like a pendulum

Rottinghaus, Assistant Professor (Political Science) and Director of Bureau of Public Affairs Research, University of Idaho. 2006 [Brandon, “Putting the 2006 Bellwood Lecture in Context: Reflections on Executive-Legislative Power Sharing in Modern Foreign Policy Making,” 43 Idaho L. Rev. 1 lexis]

In particular, three historical peaks in the 20th Century characterize the ebb and flow of the dynamic relationship, including the "isolationists" in the aftermath of World War I, n15 the "revisionists" during the height of the Cold War and the "new internationalists" during the Vietnam War. The "isolationists" in Congress were powerful (and savvy) enough to block Woodrow Wilson's proposed League of Nations and force the administration to withdraw troops from revolutionary Russia. n16 During the beginnings of the Cold War, congressional power was again enlarged, with congressional "revisionists" as "players on virtually every key issue of the day, in a bipartisan foreign policy where formal and informal powers seamlessly intersected." n17 Because of strong sentiments from the Republican leadership (and a relatively ineffectual Democratic leadership), several factions of the Republican [\*4] Party were permitted to continue their ideological goals to limit the spread of Communism, both at home and abroad. Riding in the wake of the "imperial presidency," Congress again reasserted its power in the mid-1970s. n19 The "new internationalists," who had coalesced years earlier as critics of foreign aid policies that supported anti-Communist regimes in the 1960s, challenged presidential supremacy during the Vietnam War. n20 Stalwart Senators, including Stuart Symington, Edward Kennedy, John Tunney, Dick Clark, Frank Church and members of the "Watergate class of 1974," led the charge with legislation limiting covert assistance, convening hearings on human rights abuses and cutting off aid to governments deemed reckless with power. n21 These idealistic changes prompted many to argue for more transparency in national security affairs and the justification of American international actions to the public, culminating in the War Powers Act of 1974 n22 that ostensibly limited formal presidential war-making power. n23 The most dramatic of these post-Watergate moments, and central for purposes of reflection in the 2006 Bellwood Lecture, was Senator Frank Church's investigation of the United States' intelligence community (including the FBI, CIA and other intelligence agencies) from 1975 to 1976 through the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activity. The "Church Committee" (as it came to be known) investigated some of the many abuses of the United States during this time, including assassination plots against foreign leaders and the overthrow of democratically elected governments in Latin America. n24 Out of these proceedings emerged significant legislation restricting presidential power in covert operations by requiring court-granted warrants for international surveillance (called the Foreign Intelligence Surveillance Act). n25 The Ford White House largely viewed the Committee as resultant from the [\*5] power shift during Watergate, suggesting emerging political energy (even if temporary) in the legislative branch on foreign policy. n26 As is clear from these examples, this power-sharing relationship is not static. And, as we have seen in the past, this dynamic relationship bends and reforms as function of the political will expended by the political actors involved and as international events unfold. Even as this preface goes to press, the pendulum of power-sharing continues to sway back and forth on contemporary issues, primarily the "war on terror." In advance of the 2006 elections, the White House and Congress, after key congressional Republicans questioned the White House's blanket authority to detain prisoners, negotiated a compromise on rules for trials for "enemy combatants." Under new rules, detainees have some expanded rights to fair trials where the President is able to establish military tribunals without potential review from federal courts. n27 In addition, while these legislative determinations give the executive more power to classify military detainees, the Congress, even members of the President's party, have been periodically willing to challenge this executive authority. Senator Specter went so far as to initiate Judiciary Committee hearings to investigate President Bush's use of signing statements to interpret laws or statutes as he signs them into law, particularly on the President's ability to interpret Article 3 (regarding "cruel treatment and torture") of the Geneva Convention.

#### Inter branch conflict is inevitable and cyclical

Rottinghaus, Assistant Professor (Political Science) and Director of Bureau of Public Affairs Research, University of Idaho. 2006 [Brandon, “Putting the 2006 Bellwood Lecture in Context: Reflections on Executive-Legislative Power Sharing in Modern Foreign Policy Making,” 43 Idaho L. Rev. 1 lexis]

The events of September 11, 2001 ushered in a complex reorganization of the nation (and perhaps the world) but were an understandable part of a long and incessant struggle in the balance of power in American government between the legislative and executive branches. Indeed, dramatic national events that seek out a national leader tend to allow for a tuning of the thorny relationship between the two lawmaking branches of government. Interestingly, we have witnessed this pattern of inter-branch tension in similar past dramatic events: the Civil War, the Great Depression, and Pearl Harbor (and now 9/11). All have pushed the pressure points of political power. However, because of Constitutional design, political energy among these American political institutions cannot be destroyed-only displaced. In truth, one branch can only absorb so much of this energy before the other branches demand redistribution of these important shared powers. Concerns over these inter-branch tensions are not new and distinct patterns emerge governing how the relationship evolves over time; scholars for generations have labored to describe the complicated and tenuous relationship between the executive and legislative branches. Woodrow Wilson, the most famous scholar and practitioner of the science, suggested in Congressional Government that Congress was ill-equipped to legislate and the president must have a more significant and formal role. n1 Corwin's prescient description of the separated powers as an invitation to struggle, framed scholars' thinking about the Constitutional interaction between the presidency and Congress. n2 Neustadt's concept of the president and the legislature as "separated institutions sharing powers" intellectually echoed Corwin's [\*2] finding. n3 He argued separated but shared powers sets the stage for "that great game" where both sides must lobby and bargain with each other "much like collective bargaining, in which each seeks to profit from the other's needs and fears."

### AT Tyranny Turn

#### Congressional and Judicial oversight prevent tyrannical power

Wetzel ‘7 [Alissa C., Juris Doctor and Master of Science in international commerce and policy degrees May 17 from Valparaiso University, The School of Law, 2007 Valparaiso University Law Review. 42 Val. U.L. Rev. 385. Beyond the Zone of Twilight: How Congress and the Court Can Minimize the Dangers and Maximize the Benefits of Executive Orders. Lexis. Accessed 6/13/09]

As this Part has shown, though executive orders may seem to leave open the possibility of Presidential abuse, in practice, the system, though not perfect, creates appropriate blocks to executive tyranny. n165 First, executive orders allow the President to issue bold prerogatives on [\*425] politically sensitive issues. n166 Second, Congress is able to appropriately check any potential for Presidential abuse, though it does not often do so. n167 Finally, the Court's test for the validity of executive orders is proper, though it is improperly applied to intelligence and classification. n168 In short, the Constitutional dialogue on executive orders has been a productive one, producing a test that, if applied correctly, can guard against executive tyranny and abuse. However, Congressional oversight has not been sufficiently effective and the Court's application of the Jackson test is flawed in the area of intelligence and classification. n169 Now, it is up to Congress to take a bolder stance on such issues in order for the Court to apply the test correctly. n170 V. CONCLUSION For two centuries, executive orders have allowed Presidents to exercise enormous power. At times, that power has been used to implement important measures to advance the country. At other times, executive orders have bred scandal and national shame. Upon closer examination of 200 years of Constitutional dialogue among the three branches of government concerning how much unilateral power a President ought to have, however, it becomes clear that although executive orders may appear tyrannical based on the broad power they afford Presidents, in practice executive orders are useful tools of the Presidency, able to be checked by Congressional oversight and controlled by the Court. If correctly wielded, such Congressional and judicial oversight can guarantee that executive orders will not allow Presidents to become the despots so feared by the founding generation. Instead, by moving out of the zone of twilight and exercising proper oversight Congress and the Court can ensure that the President is able to [\*430] administer the executive branch effectively, pass measures quickly, and occasionally rise above political divisions and do the right thing.

#### History proves Executive Orders are Constitutional and that they can be controlled

Wetzel ‘7 [Alissa C., Juris Doctor and Master of Science in international commerce and policy degrees May 17 from Valparaiso University, The School of Law, 2007 Valparaiso University Law Review. 42 Val. U.L. Rev. 385. Beyond the Zone of Twilight: How Congress and the Court Can Minimize the Dangers and Maximize the Benefits of Executive Orders. Lexis. Accessed 6/13/09]

II. BACKGROUND Like all executive power, the ability of Presidents to issue executive orders has developed through past practice and judicial decisions. n13 Indeed, Supreme Court jurisprudence in the area of executive orders has been called a "constitutional dialogue" between the executive and judicial branches. n14 Moreover**,** an examination of the long history of executive orders reveals the measures that Congress and the courts can take today to minimize the danger of absolute Presidential power, while preserving the positive attributes of executive orders. n15 [\*388] Thus, this Part will cover over 200 years of constitutional dialogue, tracing the rise of the modern presidency and encompassing some of the great political debates and judicial decisions of the past. n16 First, this Part examines the early history of this dialogue, from its Constitutional roots to early executive orders and judicial challenges. n17 Second, this Part considers the manner in which executive orders and court challenges were affected by the Civil War and Gilded Age that followed. n18 Next, this Part focuses on how the dialogue changed with the advent of the modern presidency at the turn of the twentieth century through the duel crises of the Great Depression and World War II. n19 Finally, this Part discusses how contemporary Presidents have used executive orders and how the Supreme Court has developed the modern judicial hurdle of challenging an executive order. n20 A. Executive Orders from Constitutional Roots Through the Dawn of the Civil War: Congress Ignores Early Orders While the Court Firmly Establishes Statutory Supremacy In 1789, the framers drafted the United States Constitution and created an innovative institution: the American Presidency. n21 Though wary of creating too strong an executive figure, the framers drafted the Constitution such that the President possesses both express and implied [\*389] powers. n22 The authority to issue executive orders is an implied power that has been used by Presidents dating back to George Washington. n23 Executive orders have allowed Presidents to do that which even the King of England could not: bypass the legislative process by issuing orders that carry the force of law. n24 [\*390] Though executive orders did not receive their name until well into the nineteenth century, most authorities agree that the first such order was an administrative order issued by George Washington in June of 1789. n25 However, President Washington's most divisive order did not come until 1793 in the form of a Neutrality Proclamation, declaring that the United States would not get involved in the war between France and Britain. n26 Significantly, though highly controversial, Congress never [\*391] overturned the Neutrality Proclamation. n27 However, as history would soon illustrate, Congress was not the only check on Presidential power. n28 In 1804, the Supreme Court first weighed in on Presidential proclamations in Little v. Barreme. n29 The executive order at issue in Little, a naval order that was issued pursuant to a Congressional grant of Presidential authority, conflicted with a statute. n30 Firmly establishing the [\*392] supremacy of statutes over executive orders, the Court held that the statute controlled and that the executive order was thus invalid. n31 The years that followed Little saw numerous executive orders unchallenged by Congress, most dealing with civil service issues and the disposition of public lands. n32 Still, two important executive orders were issued prior to the Civil War. n33 First, though seldom classified as such**,** President Thomas Jefferson's Louisiana Purchase had all the markings of an executive order, since it was done unilaterally by Presidential order without direct statutory or Constitutional authority. n34 Significantly, neither Congress nor the public challenged the Louisiana Purchase on [\*393] the grounds that it was issued without Congressional authority. n35 Second, President John Tyler began the tradition of establishing controversial independent Presidential commissions with executive orders when he issued an 1842 order calling for a commission to investigate corruption in the New York City Customshouse. n36 Thus, by the beginning of the Civil War, the practice of issuing executive orders was firmly established in American politics, and, although the Court had established the supremacy of statutes over executive orders, Congress was seldom willing to override an order. n37 In the mid-1800s, as with modern executive orders, the Courthaddeveloped a framework for assessing the legality of executive orders**;** however, in order for the Court to effectively check Presidential power, Congress had to be proactive as well. n38

#### Youngstown decision prevents unchecked executive power

Wetzel ‘7 [Alissa C., Juris Doctor and Master of Science in international commerce and policy degrees May 17 from Valparaiso University, The School of Law, 2007 Valparaiso University Law Review. 42 Val. U.L. Rev. 385. Beyond the Zone of Twilight: How Congress and the Court Can Minimize the Dangers and Maximize the Benefits of Executive Orders. Lexis. Accessed 6/13/09]

Paradoxically, Youngstown, the most dramatic instance of the Court declining to cooperate with the executive branch, also presented the seminal test that the Court has used to uphold subsequent executive orders. n155 Justice Jackson's test, outlined in Youngstown, which grants the President less deference depending upon Congressional action or inaction, properly assures that executive orders will not become instruments of abuse. n156 By allowing Congressional behavior to determine whether an executive order is valid, the Courts have allowed the two political branches of government to draw the territorial line themselves. n157 Congress is able to allow the President to issue an executive order without endorsing it or overturning it. n158 This process [\*424] results in a delicate political balance between Congress and the President, and allows the Court to stay out of subjective determinations of whether or not a President has issued a tyrannical executive order. n159 Though Youngstown properly ensures that executive orders do not become mechanisms of executive tyranny, there is one area in which the Court has inexplicably declined to apply the Youngstown analysis--intelligence and government classification. n160 Even following clear Congressional attempts to curb the President's power to classify information under the Freedom of Information Act and allow Courts to review intelligence information in camera, the Court has declined to apply the proper prong of the Jackson Test. n161 Instead, the Court has treated intelligence and classification orders as if they are backed by Constitutional or statutory authority, when they are in fact within the purview of both the executive and legislative branches of government. n162 Thus, the Court offered deference to the President for policy reasons. n163 Yet, avoidance of these types of subjective judicial determinations was the reason behind the Jackson test. Accordingly, under the Jackson test, Congress, and not the Court, should be making the determination of how much deference to give to the President in issuing intelligence orders.

# Aff Answers

## Theory

### AT A-Spec

#### Our interpretation is that the plan must specify as far as the resolution. That preserves disad and counterplan ground based off of the USFG.

#### Their interpretation arbitrarily explodes the limits of the debate because we could specify one of an infinite amount of agents, which is worse.

#### Our interp forces good topic education by avoiding unrelated discussions about the process or the actors.

#### Vote on reasonability because competing interpretations creates a race to the bottom where the negative always wins.

### Agent CP’s Bad

#### Our interpretation of fiat is the affirmative only has to defend the world of the plan and not the antecedent to the plan. Arguments of this kind should be rejected because:

#### 1.Predictability – there are an infinite number of process’s that could be used to do the plan, the aff can never win because the neg just has to find the most obscure way to pass law and we won’t have cards on it.

#### 2. Topic education – the CP skirts the discussion of the topic by only focusing on the process, that encourages a shallow form of education since it ignores the part of the topic that changes from year to year.

#### 3. Ground – We lose all 2AC offense against the cp’s because it literally does the aff, forcing the aff to make undesirable and unstrategic offense args that always benefit the neg.

## Solvency Answers

### No Solvency – Rollback (General)

#### No precedence, congress and courts can overturn or eliminate executive orders.

William G. Howell, Associate Prof Gov Dep @ Harvard 2005(Unilateral Powers: A Brief

Overview; Presidential Studies Quarterly, Vol. 35, Issue: 3, Pg 417)

Plainly, presidents cannot institute every aspect of their policy agenda by decree. The checks and balances that define our system of governance are alive, though not always well, when presidents contemplate unilateral action. Should the president proceed without statutory or constitutional authority, the courts stand to overturn his actions, just as Congress can amend them, cut funding for their operations, or eliminate them outright. (4) Even in those moments when presidential power reaches its zenith--namely, during times of national crisis--judicial and congressional prerogatives may be asserted (Howell and Pevehouse 2005, forthcoming; Kriner, forthcoming; Lindsay 1995, 2003; and see Fisher's contribution to this volume). In 2004, as the nation braced itself for another domestic terrorist attack and images of car bombings and suicide missions filled the evening news, the courts extended new protections to citizens deemed enemy combatants by the president, (5) as well as noncitizens held in protective custody abroad. (6) And while Congress, as of this writing, continues to authorize as much funding for the Iraq occupation as Bush requests, members have imposed increasing numbers of restrictions on how the money is to be spent.

### No Solvency – Rollback (Future Presidents)

#### Future Presidents will rollback the XO

**Cooper 97** [Phillip, Professor of Poli Sci @ University of Vermont, Administration and Society, Lexis]

Even if they serve temporary goals, executive orders can produce a significant amount of complexity and conflict and not yield a long-term benefit because the next president may dispose of predecessors’ orders at a whim. It may be easier than moving a statute through Congress and faster than waiting for agencies to use their rule-making processes to accomplish policy ends, but executive orders may ultimately be a much weaker foundation on which to build a policy than the alternatives.

### No Solvency – Funding

#### Obama can’t fund large infrastructure projects

Dan Primack February 17, 2011 Dan Primack is a senior editor at cnn.com reporting from Wall Street to Sand Hill Valley “Why Obama can't save infrastructure” <http://finance.fortune.cnn.com/2011/02/17/why-obama-cant-save-infrastructure/>

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Here are two things we all can agree on about America's transportation infrastructure: (1) It is in desperate need of costly repairs, and (2) Our political leaders cannot agree on how to pay for them. President Obama dove into the conversation this week, proposing $556 billion in new infrastructure spending over the next six years. Not only would it include money for road and bridge repair, but also high-speed rail development and the formation of a National Infrastructure Bank that would (hopefully) prevent the next Bridge to Nowhere from being federally funded. It is an important step, considering that the American Society of Civil Engineers estimates that the nation's 5-year infrastructure investment need is approximately $2.2 trillion. Unfortunately, Obama didn't explain how the new spending would be paid for. Increases in transportation infrastructure spending traditionally have been paid for via gas tax increases, but today's GOP orthodoxy is to oppose all new revenue generators (even if this particular one originated with Ronald Reagan). This isn't to say that Republicans don't believe the civil engineers – it's just that they consider their version of fiscal discipline to be more vital. In other words, America's infrastructure needs are stuck in a holding pattern. That may be sustainable for a while longer, but at some point we need to land this plane or it's going to crash.

#### Either the CP can’t solve or it causes Congress to act which magnifies the link to politics

Terry M. Moe (Professor of Political Science at Stanford University) and William G. Howell (Graduate Student of Political Science at Stanford University) December 1999 “Unilateral Action and Presidential Power: A Theory,” Presidential Studies Quarterly

There is one crucial consideration, however, that we have yet to discuss and that gives Congress a trump card of far-reaching consequence. This is the fact that Congress has the constitutional power to appropriate money--which means that, to the extent that unilateral actions by presidents require congressional funding, presidents are dependent on getting Congress to pass new legislation that at least implicitly (via appropriations) supports what they are doing. When appropriations are involved, in other words, presidents cannot succeed by simply preventing Congress from acting. They can only succeed if they can get Congress to act--which, of course, is much more difficult and gives legislators far greater opportunities to shape or block what presidents want to do.

## Perm Solvency

### Perm Solvency

#### Permutation is the only thing that can give an executive order the power of law and prevent roll back

Leanna Anderson (clerk for H.R. Lloyd, U.S. Magistrate) Hastings Constitutional Law Quarterly 2002

To be challengeable, an executive order must have the force and effect of law. Under the United States Code, federal court jurisdiction is limited to "federal questions." "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." For federal courts to have jurisdiction over a civil action challenging an executive order, the order must have the "force and effect of law." There are two different branches of analysis under this requirement. First, if the order is issued in accordance with Congressional statutory mandate or delegation, the order has the force and effect of law. However, if the order is not based on an express Congressional grant of authority, federal courts may either look for an implied Congressional basis for the order or find that no statutory basis exists so that the order does not have the force and effect of law.

## Separation of Powers Turn

### Turn – Separation of Powers

#### Presidential funding approval without Congressional agreement causes inter-branch conflict

Rosen 98[Colonel Richard**,** Judge Advocate General's Corps, United States Army, “Funding "Non-Traditional" Military Operations: The Alluring Myth Of A Presidential Power Of The Purse” Military Law Review 155 Mil. L. Rev. 1, Lexis]

Finally, if a situation is sufficiently grave and an operation is essential to national security, the President has the raw, physical power--but not the legal authority--to spend public funds without congressional approval, after which he or she can either seek congressional approbation or attempt to weather the resulting political storm. To the President's immediate advantage is the fact that the only sure means of directly stopping such unconstitutional conduct is impeachment. ~~703~~ **Congress could**, however, [\*149] **certainly make a President's life** miserable **through other means, such as denying requested legislation or appropriations, delaying confirmation of presidential appointments, and conducting public investigations into the President's actions**.

#### IBC destroys leadership

**Winik ‘91 [**Jay, Senior Research Fellow, Nat’l Defense U, Washington Quarterly, Autumn, Lexis]

Thus, it is demonstrably clear that, in the absence of bipartisanship, dealing with the new international system will be difficult at best and at times next to impossible. Friends and foes alike, watching U.S. indecision at home, will not see the United States as a credible negotiating partner, ally, or deterrent against wanton aggression. This is a recipe for increased chaos, anarchy, and strife on the world scene. The appeal, then, to recreate anew as the hallmark of U.S. efforts abroad the predictability and resolve that can only come from bipartisanship at home is as critical as during the perilous days following World War II. Bipartisanship in Context The ease of constructing bipartisanship, however, should not be overstated. Its halcyon years are often idealized. People forget that the golden years from Pearl Harbor to the Tet offensive were the exception rather than the rule. Consensus was not a prevailing characteristic in the first 170 years of the Republic. Critics have noted with justification that it was the clear lack of purpose regarding vigorous U.S. involvement in world affairs that led to the U.S. rejection of membership in the League of Nations. In no small measure, this rejection led to the 20-year crisis that resulted in the rise of Hitler. Proponents of bipartisanship point out its crowning achievements. Unprecedented unity between the two political parties made it possible for President Harry S. Truman and a Republican senator, Arthur H. Vandenberg (R-Mich.), to join forces and create such monumental achievements as the Marshall Plan, the Truman Doctrine, the North Atlantic Alliance, and the United Nations Charter. Despite strains between the two parties over the Korean War and China, to name but two issues, that unity held firm and enabled United States to act with continuity and consistency. Allies saw that the United States was strong and reliable, and the unmistakable message to adversaries was that the United States would abide by its commitments. Some argue that it was the foreign policy consensus prevalent during the Cold War that made possible the tragic U.S. involvement in the Vietnam War. But this argument in no way invalidates the benefits of bipartisanship and, in the case of Vietnam, represents an oversimplification of the facts. The failure of U.S. involvement in Southeast Asia had as much to do with the unique circumstances of the war itself, which were exacerbated by the then current theories of limited war fighting. These factors, in conjunction with the profound domestic turmoil on both domestic and foreign policy that was tearing at the U.S. political fabric, made a complicated and protracted war abroad virtually impossible to prosecute. More generally, the fact remains that the perception of strength resting on bipartisan unity has been crucial to the United States in times of crisis. This principle was most vividly displayed by the bipartisan support for President John F. Kennedy during the Cuban missile crisis. Had the Soviets felt the United States was divided, the situation might have ended in tragic defeat or quite possibly in a devastating war. Although history will be the final judge, it could be argued that in the recent Gulf crisis it was precisely the vast chasm that separated the Republicans from the Democrats over whether to use force or to employ sanctions in order to reverse Saddam Hussein's aggression that led him to calculate that the United States would never actually employ significant military power. This encouraged him to ignore the resolutions passed by the United Nations (UN) and wait for the United States to seek a watered-down diplomatic compromise. Certainly Hussein's statements that the American people would have to "face rows of coffins' if there were a war, echoing statements emanating from lengthy Senate hearings and floor debate, were designed to play into the antiwar sentiment that wanted to "give sanctions a chance." Tragically, the perception of division and weakness at home made the necessity for a military solution almost inevitable. Executive-Legislative Relations: The Search for Balance The foundation of sustainable bipartisanship is effective executive-legislative relations. After the Vietnam War, however, the cold war foreign policy consensus, supported by harmonious executive-legislative relations and by both parties in Congress in a manner that minimized conflict over foreign affairs, was rudely shattered. Although it was not completely undone, as is often claimed by the pundits, and central elements of the postwar consensus enjoyed a fair deree of support, it was severely frayed. As a result, a slide began down a slippery slope leading to the balkanization of the U.S. approach to national security, and today this threatens to inject chaos into the foreign policy process. Congress lies at the heart of the issue.

#### US primacy prevents nuclear great power wars

Walt 2 (Stephen, Professor of International Affairs at Harvard's Kennedy School of Government. "American Primacy: Its Prospects and Pitfalls." Naval War College Review, Vol. 55, Iss. 2. pg. 9 (20 pages) Spring 2002. Proquest)

A second consequence of U.S. primacy is a decreased danger of great-power rivalry and a higher level of overall international tranquility. Ironically, those who argue that primacy is no longer important, because the danger of war is slight, overlook the fact that the extent of American primacy is one of the main reasons why the risk of great-power war is as low as it is. For most of the past four centuries, relations among the major powers have been intensely competitive, often punctuated by major wars and occasionally by all-out struggles for hegemony. In the first half of the twentieth century, for example, great-power wars killed over eighty million people. Today, however, the dominant position of the United States places significant limits on the possibility of great-power competition, for at least two reasons. One reason is that because the United States is currently so far ahead, other major powers are not inclined to challenge its dominant position. Not only is there no possibility of a "hegemonic war" (because there is no potential hegemon to mount a challenge), but the risk of war via miscalculation is reduced by the overwhelming gap between the United States and the other major powers. Miscalculation is more likely to lead to war when the balance of power is fairly even, because in this situation both sides can convince themselves that they might be able to win. When the balance of power is heavily skewed, however, the leading state does not need to go to war and weaker states dare not try.8 The second reason is that the continued deployment of roughly two hundred thousand troops in Europe and in Asia provides a further barrier to conflict in each region. So long as U.S. troops are committed abroad, regional powers know that launching a war is likely to lead to a confrontation with the United States. Thus, states within these regions do not worry as much about each other, because the U.S. presence effectively prevents regional conflicts from breaking out. What Joseph Joffe has termed the "American pacifier" is not the only barrier to conflict in Europe and Asia, but it is an important one. This tranquilizing effect is not lost on America's allies in Europe and Asia. They resent U.S. dominance and dislike playing host to American troops, but they also do not want "Uncle Sam" to leave.9 Thus, U.S. primacy is of benefit to the United States, and to other countries as well, because it dampens the overall level of international insecurity. World politics might be more interesting if the United States were weaker and if other states were forced to compete with each other more actively, but a more exciting world is not necessarily a better one. A comparatively boring era may provide few opportunities for genuine heroism, but it is probably a good deal more pleasant to live in than "interesting" decades like the 1930s or 1940s.

### SoP Impact: Hegemony

#### Strong separation of powers are essential for US global leadership

G. John Ikenberry, Professor @ Georgetown University, Spring 2001 (The National Interest)

First, America's mature political institutions organized around the rule of law have made it a relatively predictable and cooperative hegemon. The pluralistic and regularized way in which U.S. foreign and security policy is made reduces surprises and allows other states to build long-term, mutually beneficial relations. The governmental separation of powers creates a shared decision-making system that opens up the process and reduces the ability of any one leader to make abrupt or aggressive moves toward other states. An active press and competitive party system also provide a service to outside states by generating information about U.S. policy and determining its seriousness of purpose. The messiness of a democracy can, indeed, frustrate American diplomats and confuse foreign observers. But over the long term, democratic institutions produce more consistent and credible policies--policies that do not reflect the capricious and idiosyncratic whims of an autocrat. Think of the United States as a giant corporation that seeks foreign investors. It is more likely to attract investors if it can demonstrate that it operates according to accepted accounting and fiduciary principles. The rule of law and the institutions of policymaking in a democracy are the political equivalent of corporate transparency and accountability. Sharp shifts in policy must ultimately be vetted within the policy process and pass muster by an array of investigatory and decision-making bodies. Because it is a constitutional, rule-based democracy, outside states are more willing to work with the United States-or, to return to the corporate metaphor, to invest in ongoing partnerships.

### SoP Impact: Prez Power

#### Inter-branch conflict weakens Presidential power

Weida ‘04 [Jason Collins, JD Candidate @ University of Connecticut School of Law, “*A Republic of Emergencies: Martial Law in American Jurisprudence” Connecticut Law Review, 36 Conn. L. Rev. 1397, Lexis]*

The opinion that has had greatest influence, however, is not Black's majority opinion, but Justice Jackson's concurrence. 302 Jackson set forth the framework by which courts would examine the use of emergency powers in the years to come. 303 At the heart of Jackson's theory of separation of powers was relativity--that presidential powers fluctuate depending upon their juxtaposition with those of Congress. 304 Jackson deduced three categories which determined the degree of the President's authority under the Constitution to implement emergency measures. 305 The first involved an executive action pursuant to an express or implied authorization from Congress. 306 Under these circumstances, presidential power was at its height, "for it includes all that he possesses in his own right plus all that Congress can delegate." 307 The Court would bestow congressional-executive cooperation with "the strongest of presumptions and the widest [\*1431] latitude of judicial interpretation." 308 The second situation entailed an action in which the President and Congress had concurrent authority, yet Congress was silent on the matter. 309 Here, the President could bring only the executive's independent powers to bear, on which the emergency measure would stand or fall. 310 The third category addressed those presidential actions which were in direct contravention with the express or implied will of Congress. 311 Such acts represented the lowest constitutional authority of the President, subject to scrutiny by the courts. 312 Jackson placed Truman's seizure in the third category because Congress had considered, and rejected, an amendment in the Taft-Hartley Act that would have provided for exactly that which Executive Order No. 10340 sought to accomplish. 313 Thus, Jackson concurred

### SoP Impact: Turns Solvency

#### Interbranch battles hold up agency action – major delays on implementation

.Cooper 2 [Phillip, Professor of Public Administration @ Portland State University, *By Order of the President: The Use and Abuse of Executive Direct Action”* 232-233]

A president who is focused on the short-term, internal view of a possible decision may elect a power management approach. The emphasis is on efficient, effective, prompt, and controlled action within the executive branch. This is an increasingly common approach employed by new administrations; certainly it has been by Reagan and his successors. Whether spoken or unspoken, the tendency to adopt a power management perspective as the base for the use of presidential direct action tools may grow from an assumption that alternative approaches will simply not work or not work rapidly enough because of recalcitrant administrative agencies or opposition by other institutional players inside or outside the Beltway. The executive orders on rulemaking issued by presidents Carter, Reagan, Bush, and Clinton and the Bush memoranda on the rulemaking moratorium are clear examples of this approach. The tendency to use this approach may also stem from the idea that the situation confronting the White House is a real or a perceived emergency in which the executive branch must be mobilized for action. Another tendency is to use this type of approach in national security matters where the White House holds the view that time is of the essence and a particular window of opportunity exists that must be seized. This kind of action is common in the use of national security directives. Control of sensitive materials, personnel practices, or communications is often the focus of this kind of activity. Another feature of the power management approach is the attempt to use the policies of the executive branch to make a wider political point. Certainly the Reagan administration's Drug Free Workplace order is an example, as are many of the Clinton-era orders and memoranda associated with the reinventing government initiative. Still, the power management approach presents many of the dangers and challenges of the various types of instruments. The costs can be high, and the damage both within government and to people outside it can be significant. The rulemaking orders have tied administrative agencies up in knots for years and have trapped them in a cross fire between the Congress that adopted statutes requiring regulations to be issued and presidents who tried to measure their success by the number of rulemaking processes they could block. Reagan's NSD 84 and other related directives seeking to impose dramatically intensified controls on access to information and control over communication during and after government employment incited a mini rebellion even among a number of cabinet level officials and conveyed a sense of the tenor of leadership being exercised in the executive branch that drew fire from many sources. The Clinton ethics order was meant to make a very public and political point, but it was one of the factors contributing to the administration's inability to staff many of its key positions for months.

## Tyranny Turn

### Turn – XOs -> Presidential Tyranny

#### XOs bad—Tyranny and Democracy

Kissinger 92, Henry, Nobel Peace Prize Laureate, 3/21/08,[“Executive Tyranny,” [http://www.cassiopaea.org/cass/exec\_tyranny.htm /](http://www.cassiopaea.org/cass/exec_tyranny.htm%20/)

With the unearthing of old and newly improved executive orders recently we come to realise that this has been an ideological strategy that was designed long before the present U.S. administration. We are seeing the death throes of the US constitution and any semblance of democracy that may have initially existed with the founding fathers. It seems inevitable that the U.S. will become the epitome of a totalitarian rule with a further mandate to build on its already established cultural "McDonaldization" and geopolitical destruction of the planet. The above words from Kissinger giving a speech at the 1992 Bilderberg meeting in Evian, France, was recorded by a Swiss delegate, no doubt much to the chagrin of this "elder statesman", who was unaware of the taping. The barely disguised contempt for humanity is only too familiar within the ranks of the "Elite", and this man is particularly active at the moment. No doubt he is seeing the beginnings of a Faustian pay-off for services rendered. I dread to think what misanthropic propaganda he is peddling behind the closed doors of conferences and special "interest groups" in 2003.

#### The impact is value to life – moral side constraint

Petro, Wake Forest Professor in Toledo Law Review, 1974

(Sylvester, Spring, page 480)

However, one may still insist, echoing Ernest Hemingway - "I believe in only one thing: liberty." And it is always well to bear in mind David Hume's observation: "It is seldom that liberty of any kind is lost all at once." Thus, it is unacceptable to say that the invasion of one aspect of freedom is of no import because there have been invasions of so many other aspects. That road leads to chaos, tyranny, despotism, and the end of all human aspiration. Ask Solzhenitsyn. Ask Milovan Dijas. In sum, if one believed in freedom as a supreme value and the proper ordering principle for any society aiming to maximize spiritual and material welfare, then every invasion of freedom must be emphatically identified and resisted with undying spirit.

### XOs = Tyranny

#### Executive Orders bad—personal liberty

Olsen 99, William J, Attorney at Law, 10/27/99,

[“The Impact of Executive Orders on the Legislative Process: Executive Lawmaking?,” [http://www.cato.org/testimony/ct-wo102799.html /](http://www.cato.org/testimony/ct-wo102799.html%20/) dan v]

On January 30, 1788, in Federalist 47, James Madison observed that Montesquieu’s warning — "There can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates" — did not apply to our constitution because "[t]he magistrate in whom the whole executive power resides cannot of himself make a law, though he can put a negative on every law...." Despite Madison’s predictions, our government quickly strayed from its principles and our chief magistrate has, in fact, again and again, legislated by fiat. In fact, in our research on presidential directives (such as executive orders and proclamations), I learned that from its beginning, American political history has been marked by efforts of many presidents to define the extent of their power and authority in ways violative of the U.S. Constitution. As early as 1792, according to Thomas Jefferson: "I said to [President Washington] that if the equilibrium of the three great bodies, Legislative, Executive and Judiciary, could be preserved, if the Legislature could be kept independent, I should never fear the result of such a government; but that I could not but be uneasy when I saw that the Executive had swallowed up the Legislative branch."

## AT Politics Net Benefit

### Links to Politics

#### Unpopular XOs have political consequences and spark massive congressional backlash

Risen 4 [Clay, Managing editor of *Democracy: A Journal of Ideas,* M.A. from the University of Chicago “The Power of the Pen: The Not-So-Secret Weapon of Congress-wary Presidents” The American Prospect, July 16, http://www.prospect.org/cs/articles?article=the\_power\_of\_the\_pen]

The most effective check on executive orders has proven to be political. When it comes to executive orders, “The president is much more clearly responsible,” says Dellinger, who was heavily involved in crafting orders under Clinton. “Not only is there no involvement from Congress, but the president has to personally sign the order.” Clinton's Grand Staircase-Escalante National Monument executive order may have helped him win votes, but it also set off a massive congressional and public backlash. Right-wing Internet sites bristled with comments about “dictatorial powers,” and Republicans warned of an end to civil liberties as we know them. “President Clinton is running roughshod over our Constitution,” said then–House Majority Leader Dick Armey. Indeed, **an unpopular executive order can have immediate--and lasting--political consequences**. In 2001, for example, Bush proposed raising the acceptable number of parts per billion of arsenic in drinking water. It was a bone he was trying to toss to the mining industry, and it would have overturned Clinton's order lowering the levels. But the overwhelmingly negative public reaction forced Bush to quickly withdraw his proposal--and it painted him indelibly as an anti-environmental president.

#### Executive orders turn the President into a lightning rod

Cooper 97 [Phillip, Professor of Poli Sci @ University of Vermont, Administration and Society, Lexis]

Interestingly enough, the effort to avoid opposition from Congress or agencies can have the effect of turning the White House itself into a lightning rod. When an administrative agency takes action under its statutory authority and responsibility, its opponents generally focus their conflicts as limited disputes aimed at the agency involved. Where the White House employs an executive order, for example, to shift critical elements of decision making from the agencies to the executive office of the president, the nature of conflict changes and the focus shifts to 1600 Pennsylvania Avenue or at least to the executive office buildings The saga of the OTRA battle with Congress under regulatory review orders and the murky status of the Quayle Commission working in concert with OIRA provides a dramatic case in point. The nature and focus of conflict is in some measure affected by the fact that executive orders take administrative action outside the normal rules of administrative law. And although there are tensions in that field of law, the fact is that it has been carefully developed over time with the intention of accommodating the needs of administration and the demands for accountability by agencies filled with unelected administrators who make important decisions having the force of law in the form of rules and administrative adjudications. On one hand, administrative law requires open, orderly, and participative decision processes, but it also creates significant presumptions in favor of administrative agencies. The courts provide legal support in the form of favorable decisions as well as assisting agencies in enforcement through orders enforcing subpoena and other investigative authority while also ordering compliance with agency decisions once the investigations and decision processes are complete. Administrative law also provides a vehicle for integrating administrative decisions having the force of law with the larger body of law and policy. The use of executive orders to confound or circumvent normal administrative law is counterproductive and ultimately dysfunctional.

#### Executive action inevitably draws legislators into the process

Michael J. Foley (professor of International Politics at the University of Wales) and John E. Owens (Senior Lecturer in US Politics at the University of Westminister) Congress and the Presidency, 1996, p. 387

Second, the new ways in which delegated authority was exercised by execu­tive departments and agencies from the 1960s onwards encouraged greater con­gressional involvement in administration. Traditionally, the predominant means by which agencies fulfilled their congressional mandates was through case-by-case adjudication, where factual evidence and legal deductions were the sole bases for decisions and in consequence the impact on decision-making was typically small and incremental. From the late 1960s onwards, under pressure from the newly empowered public interest group movement, executive administrators resorted increasingly to issuing quasi-legislative rules which affected entire classes of in­dividuals and types of actions instead of specific named parties. As a result, the rule-making process was effectively transformed into a ‘surrogate political process’ which frequently attracted powerful political interests on opposing sides and drew in legislators.

#### Issuance of orders impose political costs upon the president

Kenneth R. Mayer (Associate Professor of Political Science at University of Wisconsin-Madison) May 1999 “Executive Orders and Presidential Power,” Journal Of Politics

At the same time, however, presidential exercise of authority through executive orders depends on political and institutional context (King and Ragsdale 1988, 121-24). Presidents cannot (and do not) issue one order after another and expect immediate and unquestioned obedience. In deciding whether to issue substantive orders, even when their authority is clear, presidents consider how opponents might respond, the likely degree of compliance, and the costs and benefits of issuing an order as opposed to relying on some other strategy (such as legislation or litigation).

### AT XOs not perceived

#### Executive orders are published, ensures that the president is held publicly accountable

Robert Bedell (Deputy and Acting General Counsel) October 27 1999 Testimony before House Subcommittee on Legislative and Budget Process, Federal Document Clearing House Congressional Testimony

From a public policy perspective, Executive Orders have one salient advantage over these other, less formal and invisible means of communication; they are published in the Federal Register, so that both the Congress and the public can understand what the President has done and can hold him accountable for his actions. The Committee also should understand the severe limitation that Executive Orders have from the point of view of the President and his senior staff.

#### Public increasingly aware of executive orders

Porter Goss Testimony before House Subcommittee on Legislative and Budget Process, Federal News Service, October 27, 1999

Additionally, a by-product of modern technology appears to have been greater public awareness of and interest in the unilateral actions taken by the executive. Today we have cable television, talk radio, and the internet as means to provide unprecedented access to a wealth of information for the average citizen with an interest. I have found in recent years that and of the people I represent in southwest Florida are contacting me to discuss concerns with executive orders.

## AT Prez Power Net Benefit

### AT “XO key to PP” – Other XOs

#### Obama has issued 126 XOs – that means the plan is not key

V2A, 6/11/12, (Vision to America), "Obama has signed 126 executive orders in 40 months!" <http://visiontoamerica.org/10286/obama-has-signed-923-executive-orders-in-40-months/>

Obama has signed 126 Executive Orders in 40 months! What did Congress do in those 40 months? The following are a few from 2011 and 2012. -Executive Order 13600 Establishing the President’s Global Development Council -Executive Order 13601 Establishment of the Interagency Trade Enforcement Center -Executive Order 13602 Establishing a White House Council on Strong Cities, Strong Communities -Executive Order 13603 National Defense Resources Preparedness -Executive Order 13604 Improving Performance of Federal Permitting and Review of Infrastructure Projects -Executive Order 13605 Supporting Safe and Responsible Development of Unconventional Domestic Natural Gas Resources -Executive Order 13607 Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members -Executive Order 13609 Promoting International Regulatory Cooperation -Executive Order 13612 Providing an Order of Succession Within the Department of Agriculture -Executive Order 13564 Establishment of the President’s Council on Jobs and Competitiveness -Executive Order 13565 Establishment of the Intellectual Property Enforcement Advisory Committees -Executive Order 13569 Amendments to Executive Orders 12824, 12835, 12859, and 13532, Reestablishment Pursuant to Executive Order 13498, and Revocation of Executive Order 13507 -Executive Order 13575 Establishment of the White House Rural Council -Executive Order 13579 Regulation and Independent Regulatory Agencies.

### UQ: PP High Now

#### Obama’s presidential power is high now

Steven Thomma and William Douglas, 6/24/12, Boston Herald, "Obama asserts presidential powers he once spoke out against," http://www.bostonherald.com/news/us\_politics/view/20120624obama\_asserts\_presidential\_powers\_he\_once\_spoke\_out\_against/

President Barack Obama is starting to channel his inner Cheney. For years, Obama talked about the limits on presidential power. Now, driven either by principle or political expediency, he’s working to build and maintain a powerful presidency that pushes the edge of what it can do, while often telling Congress and the courts to mind their own business. In the last week alone, he refused a subpoena to share Justice Department emails with Congress, told courts he doesn’t have to justify his claimed power to assassinate suspected terrorists, and decided to stop deporting certain illegal immigrants even though Congress has refused to enact a law to do that. Those moves cap a slow buildup of executive branch power since Obama took office in January 2009. Some actions build on war powers seized by the administration of President George W. Bush and Vice President Dick Cheney. Some assert new domestic authority. Taken together, they reinforce the strengthening presidential power that Cheney pursued ever since he served as White House chief of staff to Gerald Ford and watched Congress take power away from a presidency weakened by Vietnam and Watergate. "Particularly with regard to national security powers, Obama is as vigorous in exercising those powers, and expanding some of them, as his predecessor," said Gene Healy, the author of the book "The Cult of the Presidency: America’s Dangerous Devotion to Executive Power."

### AT Prez Power – XO’s -> Backlash/Turns PP

#### Congressional backlash to executive orders weakens the president

**Posner 2K** [Michael, Professor Emeritus at the University of Oregon and Adjunct Professor at the Weill Medical College in New York “Blocking the Presidential Power Play” National Journal, Jan 1, <http://www.nationaljournal.com/njmagazine/nj_20000101_15.php>]

Some legal experts counsel Congress to be careful not to usurp legitimate presidential power. One expert urging caution is Douglas Cox, a lawyer who was deputy assistant attorney general in the Office of Legal Counsel at the Justice Department during the Bush Administration. "When a President overreaches and uses executive orders to invade or supersede the legislative powers of Congress, Congress may be sufficiently provoked to consider an across-the-board approach to rein in those abuses," he told the House Rules subcommittee. "Although that reaction is understandable, Congress must be careful to understand the extent to which executive orders are a necessary adjunct of the President's constitutional duties," Cox added. "At all times, Congress has ample legislative and political means to respond to abusive or lawless executive orders, and thus Congress should resist the temptation to pursue more sweeping, more draconian, and more questionable responses."

### Prez Power Bad: Kills SoP

#### Presidential power destroys separation of powers, democracy, and rule of law.

Slonim, July 24, 2006: [Nancy Cowger Slonim – American Bar Association spokewwoman. July 24, 2006, American Bar Association, “Blue-ribbon task force finds president Bush’s signing statements undermine separation of powers.” Embargoed for AM Editions. <http://www.abanet.org/media/releases/news072406.html> ]

Presidential signing statements that assert President Bush’s authority to disregard or decline to enforce laws adopted by Congress undermine the rule of law and our constitutional system of separation of powers, according to a report released today by a blue-ribbon American Bar Association task force. To address these concerns, the task force urges Congress to adopt legislation enabling its members to seek court review of signing statements that assert the President’s right to ignore or not enforce laws passed by Congress, and urges the President to veto bills he feels are not constitutional. The Task Force on Presidential Signing Statements and the Separation of Powers Doctrine was created by ABA President Michael S. Greco with the approval of the ABA Board of Governors in June, to examine the changing role of presidential signing statements after the Boston Globe on April 30 revealed an exclusive reliance on presidential signing statements, in lieu of vetoes, by the Bush Administration. In appointing the special task force Greco said, “The use of presidential signing statements raises serious issues relating to the constitutional doctrine of separation of powers. I have appointed the Task Force to take a balanced, scholarly look at the use and implications of signing statements, and to propose appropriate ABA policy consistent with our Association’s commitment to safeguarding the rule of law and the separation of powers in our system of government.” The task force report and recommendations will be presented to the ABA’s policy-making House of Delegates for adoption at its upcoming Annual Meeting Aug. 7-8. Until the ABA House has taken formal action, the report and recommendations represent only the views of the task force. The bipartisan task force, composed of constitutional scholars, former presidential advisers, and legal and judicial experts, noted that President George W. Bush is not the first president to use signing statements, but said, “It was the number and nature of the current President’s signing statements which … compelled our recommendations.” The task force said its report and recommendations “are intended to underscore the importance of the doctrine of separation of powers. They therefore represent a call to this President and to all his successors to fully respect the rule of law and our constitutional system of separation of powers and checks and balances.” The task force determined that signing statements that signal the president’s intent to disregard laws adopted by Congress undermine the separation of powers by depriving Congress of the opportunity to override a veto, and by shutting off policy debate between the two branches of government. According to the task force, they operate as a “line item veto,” which the U.S. Supreme Court has ruled unconstitutional. Noting that the Constitution is silent about presidential signing statements, the task force found that, while several recent presidents have used them, the frequency of signing statements that challenge laws has escalated substantially, and their purpose has changed dramatically, during the Bush Administration. The task force report states, “From the inception of the Republic until 2000, Presidents produced fewer than 600 signing statements taking issue with the bills they signed. According to the most recent update, in his one-and-a-half terms so far, President George Walker Bush ... has produced more than 800.” The report found that President Bush’s signing statements are “ritualistic, mechanical and generally carry no citation of authority or detailed explanation.” Even when “[a] frustrated Congress finally enacted a law requiring the Attorney General to submit to Congress a report of any instance in which that official or any officer of the Department of Justice established or pursued a policy of refraining from enforcing any provision of any federal statute, … this too was subjected to a ritual signing statement insisting on the President’s authority to withhold information whenever he deemed it necessary.” “This report raises serious concerns crucial to the survival of our democracy,” said Greco. “If left unchecked, the president’s practice does grave harm to the separation of powers doctrine, and the system of checks and balances, that have sustained our democracy for more than two centuries. Immediate action is required to address this threat to the Constitution and to the rule of law in our country.” Greco said that the task force’s report “constructively offers procedures that consider the prerogatives both of the president and of the Congress, while protecting the public’s right to know what legislation is adopted by Congress and if and how the president intends to enforce it. This transparency is essential if the American people are to have confidence that the rule of law is being respected by both citizens and government leaders.” The bipartisan and independent task force is chaired by Miami lawyer Neal Sonnett, a former Assistant U.S. Attorney and Chief of the Criminal Division for the Southern District of Florida. He is past chair of the ABA Criminal Justice Section, chair of the ABA Task Force on Domestic Surveillance and the ABA Task Force on Treatment of Enemy Combatants; and president-elect of the American Judicature Society. "Abuse of presidential signing statements poses a threat to the rule of law," said Sonnett. "Whenever actions threaten to weaken our system of checks and balances and the separation of powers, the American Bar Association has a profound responsibility to speak out forcefully to protect those lynchpins of democracy."

### Prez Power Bad: Nuclear War

#### Sole presidential authority makes nuclear war inevitable

Forrester 89[Ray, Professor, @ Hastings College of the Law, University of California, Former dean of the law schools at Vanderbilt, Tulane, and Cornell, “Presidential Wars in the Nuclear Age: An Unresolved Problem” George Washington Law Review, August, 57 Geo. Wash. L. Rev. 1636, Lexis]

A basic theory--if not the basic theory of our Constitution--is that concentration of power in any one person, or one group, is dangerous to mankind. The Constitution, therefore, contains a strong system of checks and balances, starting with the separation of powers between the President, Congress, and the Supreme Court. The message is that no one of them is safe with unchecked power. Yet, in what is probably the most dangerous governmental power ever possessed, we find the potential for world destruction lodged in the discretion of one person. As a result of public indignation aroused by the Vietnam disaster, in which tens of thousands lost their lives in military actions initiated by a succession of Presidents, Congress in 1973 adopted, despite presidential veto, the War Powers Resolution. Congress finally asserted its checking and balancing duties in relation to the making of presidential wars. Congress declared in section 2(a) that its purpose was to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations. The law also stated in section 3 that [t]he President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated. . . .   Other limitations not essential to this discussion are also provided. The intent of the law is clear. Congress undertook to check the President, at least by prior consultation, in any executive action that might lead to hostilities and war.  [\*1638]  President Nixon, who initially vetoed the resolution, claimed that it was an unconstitutional restriction on his powers as Executive and Commander in Chief of the military. His successors have taken a similar view. Even so, some of them have at times complied with the law by prior consultation with representatives of Congress, but obedience to the law has been uncertain and a subject of continuing controversy between Congress and the President. Ordinarily, the issue of the constitutionality of a law would be decided by the Supreme Court. But, despite a series of cases in which such a decision has been sought, the Supreme Court has refused to settle the controversy. The usual ground for such a refusal is that a "political question" is involved. The rule is well established that the federal judiciary will decide only "justiciable" controversies. "Political questions" are not "justiciable." However, the standards established by the Supreme Court in 1962 in [Baker v. Carr, 369 U.S. 186,](http://www.lexisnexis.com.proxy-remote.galib.uga.edu/us/lnacademic/mungo/lexseestat.do?bct=A&risb=21_T6985987787&homeCsi=7338&A=0.6266105664536012&urlEnc=ISO-8859-1&&citeString=369%20U.S.%20186&countryCode=USA) to determine the distinction between "justiciable controversies" and "political questions" are far from clear. One writer observed that the term "political question" [a]pplies to all those matters of which the court, at a given time, will be of the opinion that it is impolitic or inexpedient to take jurisdiction. Sometimes this idea of inexpediency will result from the fear of the vastness of the consequences that a decision on the merits might entail.   Finkelstein, Judicial Self-Limitation, 37 HARV. L. REV. 338, 344 (1924)(footnote omitted). It is difficult to defend the Court's refusal to assume the responsibility of decisionmaking on this most critical issue. The Court has been fearless in deciding other issues of "vast consequences" in many historic disputes, some involving executive war power. It is to be hoped that the Justices will finally do their duty here. But in the meantime the spectre of single-minded power persists, fraught with all of the frailties of human nature that each human possesses, including the President. World history is filled with tragic examples. Even if the Court assumed its responsibility to tell us whether the Constitution gives Congress the necessary power to check the President, the War Powers Resolution itself is unclear. Does the Resolution require the President to consult with Congress before launching a nuclear attack? It has been asserted that "introducing United States Armed Forces into hostilities" refers only to military personnel and does not include the launching of nuclear missiles alone. In support of this interpretation, it has been argued that Congress was concerned about the human losses in Vietnam and in other presidential wars, rather than about the weaponry. Congress, of course, can amend the Resolution to state explicitly that "the introduction of Armed Forces" includes missiles as well as personnel. However, the President could continue to act without prior consultation by renewing the claim first made by President  [\*1639]  Nixon that the Resolution is an unconstitutional invasion of the executive power. Therefore, the real solution, in the absence of a Supreme Court decision, would appear to be a constitutional amendment. All must obey a clear rule in the Constitution. The adoption of an amendment is very difficult. Wisely, Article V requires that an amendment may be proposed only by the vote of two-thirds of both houses of Congress or by the application of the legislatures of two-thirds of the states, and the proposal must be ratified by the legislatures or conventions of three-fourths of the states. Despite the difficulty, the Constitution has been amended twenty-six times. Amendment can be done when a problem is so important that it arouses the attention and concern of a preponderant majority of the American people. But the people must be made aware of the problem. It is hardly necessary to belabor the relative importance of the control of nuclear warfare. A constitutional amendment may be, indeed, the appropriate method. But the most difficult issue remains. What should the amendment provide? How can the problem be solved specifically? The Constitution in section 8 of Article I stipulates that "[t]he Congress shall have power . . . To declare War. . . ." The idea seems to be that only these many representatives of the people, reflecting the public will, should possess the power to commit the lives and the fortunes of the nation to warfare. This approach makes much more sense in a democratic republic than entrusting the decision to one person, even though he may be designated the "Commander in Chief" of the military forces. His power is to command the war after the people, through their representatives, have made the basic choice to submit themselves and their children to war. There is a recurring relevation of a paranoia of power throughout human history that has impelled one leader after another to draw their people into wars which, in hindsight, were foolish, unnecessary, and, in some instances, downright insane. Whatever may be the psychological influences that drive the single decisionmaker to these irrational commitments of the lives and fortunes of others, the fact remains that the behavior is a predictable one in any government that does not provide an effective check and balance against uncontrolled power in the hands of one human. We, naturally, like to think that our leaders are above such irrational behavior. Eventually, however, human nature, with all its weakness, asserts itself whatever the setting. At least that is the evidence that experience and history give us, even in our own relatively benign society, where the Executive is subject to the rule of law.  [\*1640]  Vietnam and other more recent engagements show that it can happen and has happened here. But the "nuclear football"--the ominous "black bag" --remains in the sole possession of the President.