### 1NC XO CP

#### TEXT: The President of the United States should issue an executive order to [INSERT PLAN MANDATES].

#### **The counterplan solves and avoids politics**

#### **Thomasson, 12** [Scott, president of NewBuild Strategies LLC, an energy and infrastructure consulting firm, former policy director at a nonprofit think tank, has testified before Congress about proposals for financing infrastructure, “Encouraging U.S. Infrastructure Investment,” Council on Foreign Relations Policy Innovation Memorandum No. 17, April, http://www.cfr.org/infrastructure/encouraging-us-infrastructure-investment/p27771]

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.¶ The Problem¶ The United States has huge unpaid bills coming due for its infrastructure. A generation of investments in world-class infrastructure in the mid-twentieth century is now reaching the end of its useful life. Cost estimates for modernizing run as high as $2.3 trillion or more over the next decade for transportation, energy, and water infrastructure. Yet public infrastructure investment, at 2.4 percent of GDP, is half what it was fifty years ago.¶ Congress has done little to address this growing crisis. Ideally, it would pass comprehensive bills to guide strategic, long-term investments. The surface transportation bill, known as the highway bill, is a notable example of such comprehensive legislation. It is the largest source of federal infrastructure spending, allocating hundreds of billions of dollars over several years for highways, rapid transit, and rail. But the most recent six-year highway bill expired in 2009, and Congress has been unable to agree on a new multiyear bill since then. The Senate passed a new bill in March 2012 that provides only two years of funding and efforts in the House to pass a longer-term bill have nearly collapsed. The continuing impasse forced Congress to pass its ninth temporary extension of the old law at the end of March 2012, this time for ninety days. Transportation Secretary Ray LaHood announced in February that he does not expect a bill to pass before the 2012 election, a view many experts share.¶ Even if Congress passes a new highway bill, the country's infrastructure debacle is hardly resolved. Transportation is only one part of the problem, and the pending bills do not even raise investment in this sector from previous, insufficient levels. Nor do they address the biggest long-term problem for transportation—inadequate funding from the Highway Trust Fund. Since the mid-1950s, federal gas tax revenues have been deposited into the Highway Trust Fund and then allocated to states for transportation improvements. But the gas tax is not tied to inflation and has not been raised since 1993. At current spending and revenue levels, the trust fund will be insolvent within two years. Raising the gas tax would alleviate the funding problem, but both parties consider that and other new taxes to be political nonstarters.¶ There is no shortage of good proposals to encourage infrastructure investment. For example, President Obama has endorsed the idea of creating a national infrastructure bank to leverage federal funds and encourage PPPs. Bipartisan negotiations in the Senate produced a bill for a scaled-down version of the bank, focused on low-cost federal loans to supplement state financing and private capital. The bill is not supported by House Republican leaders, however, and is unlikely to pass this year. There are also important transportation reforms in both pending highway bills where Republicans and Democrats are on common ground: expanding the popular Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program, streamlining the Department of Transportation bureaucracy to speed approval of new projects, and eliminating congressional earmarks—a huge step toward smarter project selection based on merit rather than political interests. But if the highway bill does not pass, none of these reforms will happen.¶ States are already looking at new ways to finance infrastructure as federal funding becomes uncertain and their own budgets are strained. More states rely on PPPs to share the costs and risks of new projects, and they are finding new sources of nontax revenues to fund investments, like tolling and higher utility rates. But at the same time, federal regulations and tax laws often prevent states from taking advantage of creative methods to finance projects. Federal programs designed to facilitate innovative state financing are underfunded, backlogged, or saddled with dysfunctional application processes. Many of these obstacles can be removed by adjusting regulations and tax rules to empower states to use the tools already available to them, and by better managing federal credit programs that have become so popular with states and private investors.¶ In cases where modest reforms can make more financing solutions possible, good ideas should not be held hostage to "grand bargains" on big legislation like the highway bill or the failed 2010 energy bill. Congress should take up smaller 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. Any proposals hoping to win Republican support in the House need to have a limited impact on the federal deficit and focus on reducing, rather than expanding, federal regulations and bureaucracy. Some progress can also be achieved by circumventing Congress entirely with executive branch action.

#### <\*\*\*PREZ POWERS NET BENEFIT IS OPTIONAL\*\*\*>

#### 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.

## \*\*\*Solvency\*\*\*

### Generic-Transportation

#### Obama has recently signed Executive Orders in regards to transportation infrastructure – leaders agree that they’re vital to the U.S. economy. **Nelson 2012** [Greg, B.A. in Political Science and History from Yale Universtity, director of the private sector engagement initiatives for the White House. http://www.whitehouse.gov/blog/2012/03/27/business-leaders-respond-president-obamas-executive-order-infrastructure-permitting]

Last week, President Obama signed an Executive Order directing Federal agencies to expedite permitting and review decisions for key infrastructure projects – a critical step in improving our nation’s infrastructure and maintaining our competitive edge. U.S. business leaders and members of the President’s Council on Jobs and Competitiveness put out statements in support of the new Executive Order: "President Obama's Executive Order will help reduce regulatory burdens on private and public infrastructure investment in a thoughtful and transparent manner. By encouraging concurrent reviews, avoiding duplicative requirements, and by expediting early engagement with all potential stakeholders, the President's new Steering Committee has the potential to greatly reduce regulatory uncertainty across the nation.

Obama can solve infrastructure through executive order-We Can’t Wait initiative proves

Port Technology International, 12 [“US fast-tracks East Coast port projects,” 7/20, http://www.porttechnology.org/news/us\_fast\_tracks\_reviews\_of\_east\_coast\_infrastructure\_projects/]

Obama Adminstration lists seven seaport-related projects for expedited review¶ The Obama Administration has announced that it is to fast-track seven seaport-related projects as part of its ‘We Can’t Wait initiative’ aimed at expediting the most critical infrastructure projects in the country.¶ Today’s decision means that all the projects, aimed at readying the country for the soon to be expanded Panama Canal, will have all the necessary studies and reviews completed by September 2015.¶ “One way to help American businesses grow and hire is to modernize our infrastructure,” said President Obama.¶ “That’s why in March I asked my administration to identify important projects across the country where federal review could be expedited. Today’s commitment to move these port projects forward faster will help drive job growth and strengthen the economy.”¶ We Can’t Wait, a direct result of a Presidential Executive Order issued in March, called for a government-wide effort to streamline the permitting and review process for vital infrastructure projects in communities across the nation.¶ Included in the initiative will be the fast-tracking federal review of five East Coast harbor-deepening projects in Charleston, Miami, Savannah, Jacksonville, and in the Port of New York and New Jersey, which will enable the respective ports to handle the larger vessels stemming from the newly expanded Panama Canal.¶ Commenting on today’s announcement, and just a week after the US Army Corps of Engineers’ Charleston District confirmed a reduced timeline and cost estimate for Charleston’s feasibility study, Jim Newsome, president and CEO of the South Carolina Ports Authority (SCPA), was quick to applaud the news.¶ “This announcement represents more good news for our deepening project, and demonstrates that the highest levels of our government understand the critical need to advance this project,” said Jim Newsome, president and CEO of the South Carolina Ports Authority (SCPA).¶ “In just two years, we have gone from not being included in the President’s Budget to now being a top priority. We are grateful for the Administration’s commitment.”¶ As PTI reported earlier today, the raising of the Bayonne Bridge from 151 feet to 215 feet to allow larger vessels to call New York and New Jersey will also be brought forward by six months to coincide with the opening of the new locks.¶ In addition, the White House will also fast-track the Jacksonville’s proposed Intermodal Container Transfer facility, with the completion of federal reviews now scheduled for July next year.¶ The Obama Administration also announced that the seven projects expedited today are the first of 43 planned projects to be fast-tracked that will be named in the coming weeks.

Obama can use executive orders to solve infrastructure-That expedites the process

Dredging Today, 12 [“USA: President Recognizes Importance of Seaport-Related Infrastructure,” 7/20, http://www.dredgingtoday.com/2012/07/20/usa-president-recognizes-importance-of-seaport-related-infrastructure/]

U.S. President Barack Obama recognized the importance of seaport-related infrastructure by announcing seven projects of national and regional significance which will benefit from aggressive federal permit decision-making and review schedules.¶ Each of these projects directly support America’s seaports and their ability to move freight efficiently to reduce costs to consumers, create jobs, and help America’s manufacturing and agricultural industries sell their goods overseas.¶ “The American Association of Port Authorities (AAPA) has long stressed the importance of expediting permitting and project delivery processes for water- and land-side access infrastructure projects at America’s seaports,” said Kurt Nagle, AAPA’s president and CEO. “These types of projects not only aid in the efficient movement of freight, they pay long-term dividends by supporting job creation and economic growth, and help to ensure America’s international competitiveness overseas. We hope that additional water- and land-side access projects at seaports will be added to the list.”¶ The need to expedite infrastructure projects through permitting and environmental review processes was a recommendation of the President’s Council on Jobs and Competitiveness. Fourteen projects, including highway, bridge, transit, water supply and other projects were initially identified by the administration last October. In a March, 2012 Executive Order, the president formally directed federal agencies to identify nationally or regionally significant infrastructure projects and set aggressive schedules for completing the necessary federal permit and review decisions associated with each project.¶ The projects announced yesterday are the first seven of 43 additional projects that will be expedited under the Executive Order. The names of the other projects will be announced in the coming weeks.¶ The seven projects include five harbor improvements to deepen federal navigation channels for larger ships (in Jacksonville, Miami, Charleston, Savannah and New York/New Jersey), a project to increase the height of the New York harbor’s Bayonne Bridge to enhance navigation, and an intermodal container facility in Jacksonville to increase rail capacity.

#### The CP solves-and avoids politics

<THIS CARD ALSO IN POLITICS NET BENEFIT SECTION-DON’T READ TWICE!>

#### **Thomasson, 12** [Scott, president of NewBuild Strategies LLC, an energy and infrastructure consulting firm, former policy director at a nonprofit think tank, has testified before Congress about proposals for financing infrastructure, “Encouraging U.S. Infrastructure Investment,” Council on Foreign Relations Policy Innovation Memorandum No. 17, April, http://www.cfr.org/infrastructure/encouraging-us-infrastructure-investment/p27771]

Cut red tape for new projects. On March 22, 2012, President Obama issued a new executive order to "improve performance of federal permitting and review of infrastructure projects." But the order is short on substance and long on studies and steering committees. A bolder step would be eliminating duplicative reviews by merging them into single-track proceedings wherever possible. The approval process for natural gas pipelines is a model; an interagency agreement established a "one-stop" review conducted by the Federal Energy Regulatory Commission (FERC) with input from other government agencies. President Obama could order similar streamlining without congressional approval and without waiting months for a steering committee plan.¶ Conclusion¶ None of these steps is a silver bullet for fulfilling the United States' infrastructure needs. But big successes may be hard to come by before the 2012 election. In the meantime, small victories are better than none. The modest steps offered here could unlock hundreds of billions of dollars in new investment over the next decade. With pragmatic solutions that do not carry big federal price tags, Congress and President Obama can offer some relief to the states and local governments who know firsthand that the country cannot afford to wait any longer to make these investments.

### Generic-XOs

#### Executive orders are faster and more efficient than normal means

Mayer 1(Kenneth, Professor at the University of Wisconsin-Madison, Princeton University Press, "With the Stroke of a Pen", 2001, http://press.princeton.edu/chapters/s7095.pdf, Accessed 7/23/2012)

The second presidential advantage in the institutional setting is the ability to act first, leaving it up to other institutions to reverse what presidents have done. Whether presidents have effective plenary executive authority or not (an open question), there is no doubt that they can take action faster and more efficiently than either Congress or the courts.Congress as a collective organization takes definitive action through the legislative process, which is cumbersome, difficult to navigate, and characterized by multiple veto points. Even when Congress can create and sustain majorities at the subcommittee, committee, floor, and conference stages, the president can use the veto power to raise the bar from a simple majority to a two-thirds majority necessary to enact legislation over the president’s objection. The president, at the same time, “has a trump card of great consequence in his struggle against Congress for control of government. He can act unilaterally in many matters of structure.”118 The president, in effect, can often make the first move in these disputes, forcing Congress to take positive action to undo what the president has created. Similarly, the judiciary can overturn executive actions (as it did in rejecting Clinton’s 1995 replacement worker executive order), but must wait for controversies to come to it, and definitive resolution can take years. Moreover, even after the judicial decision, enforcement is a matter for the president. 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. 128 Within the boundaries set by statute or 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.

### Warming

Executive action is best for addressing warming through infrastructure

Bipartisan Policy Center, 9 [“Transportation Adaptation to Global Climate Change,” white paper prepared by Cambridge Systematics, Inc. for The Bipartisan Policy Center, http://bipartisanpolicy.org/sites/default/files/Transportation%20Adaptation%20(3).pdf]

Executive Policy Action Some transportation resilience actions can be implemented simply by Executive Order of the President. Some actions particularly suited for executive policy are: Address project development/National Environmental Policy Act (NEPA) considerations. Adaptation and resiliency considerations can permeate all aspects of the NEPA process, from shaping a project’s purpose to its mitigation. Transportation and other planning and resource agencies will require guidance and support in developing feasible and appropriate techniques to incorporate climate information at the project level. This could include developing nationally standardized practice and data sources related to emerging climate impact information (including mapping data needs), developing guidance on the incorporation of climate considerations into project development, and developing guidance on educating stakeholders on climate adaptation considerations. Incorporate climate risk analysis into Federal Infrastructure Investment policies. Revise Federal Infrastructure Investment Executive Order(s) to explicitly incorporate climate-related risk analysis into infrastructure investment plans and decision-making. This could include developing inventories of transportation facilities vulnerable to climate change, and developing updated ¶ construction standards to address transportation ¶ and other infrastructure in vulnerable locations. Conduct a federal interagency assessment to develop and prioritize a climate adaptation research, data, and policy agenda. This could be an important precursor to funding of a recommended interagency, interdisciplinary, long-term, ¶ national climate-adaptation research program in ¶ transportation and climate legislation this year.

Obama has the authority to change transportation climate policy

Bipartisan Policy Center, 9 [“Transportation Adaptation to Global Climate Change,” white paper prepared by Cambridge Systematics, Inc. for The Bipartisan Policy Center, http://bipartisanpolicy.org/sites/default/files/Transportation%20Adaptation%20(3).pdf]

5.2 Executive Policy Actions By Executive Order (EO) the President can require all federal action to take adaptation considerations into account, such as was done in regard to Environmental Justice in a previous EO.He also can direct federal agencies to develop guidance or amend existing regulations to further develop policy implementation. Some actions particularly suited for executive policy are:¶ Address project development/NEPA considerations. Climate impacts and adaptation certainly fall within the NEPA scope of considerations. The basic goal of adaptation planning as part of NEPA should be to prepare for the projected impacts of climate change in order that infrastructure investment decisions can meet the desired outcome to “create and maintain conditions under which man (SIC) and nature can exist in productive harmony, and fulﬁll the social, economic, and other requirements of present and future generations of Americans.” Adaptation considerations can permeate all aspects of the NEPA process, from shaping a project’s purpose and need to its mitigation. Transportation and other planning and resource agencies will require guidance and support in developing feasible and appropriate techniques to incorporate climate information at the project level. Guidance would likely include:¶ Quality climate data. Developing and maintaining nationally-standardized practice and data sources related to emerging climate impact information. This should include consistent GIS mapping of the transportation network as related to climate variables (particularly elevation) and updated FEMA ﬂood plain mapping. Project-level guidance. Developing federal guidance for transportation and other planning and resource agencies on the incorporation of quantitative and qualitative climate considerations into project development. This guidance should explicitly address the uncertainty inherent in climate models and projections Public involvement. Developing guidance on educating stakeholders on climate adaptation considerations. Incorporating adaptation into project development will have a variety of consequences, and public involvement will be vitally important in reviewing the impacts for context and severity. Incorporate climate risk analysis into federal infrastructure investment policies. Revise Federal Infrastructure Investment Executive Order(s) to explicitly incorporate climate-related risk analysis into infrastructure investment plans and decision making. To proactively minimize future risks, it should include a framework and process for inventorying and identifying transportation assets and locations that are vulnerable to climate change. Finally, it should implement processes to develop updated construction standards to address transportation and other infrastructure in vulnerable locations. Conduct a federal interagency assessment to develop and prioritize a climate adaptation research, data, and policy agenda. This could be an important precursor to funding of a recommended interagency, interdisciplinary, longterm, national, climate adaptation research program in transportation and climate legislation this year. It would help set the research ¶ agenda and, in particular, the priorities for ¶ early action to support infrastructure and other ¶ adaptation planning.

#### Executive orders solve for global warming – mindset shift

Cote 11 [Michael, Environmental Consultant, “Obama's "Secret" Climate Adaptation Plan”, March 28, 2011, http://www.good.is/post/obama-/s-secret-climate-adaptation-plan/ Accessed 7/24/12)]

On March 4th, in a move surely designed to side-step Congress, Obama's Council on Environmental Quality issued instructions to all federal agencies on how to adapt to climate change. All agencies, from the Food and Drug Administration to the Department of Defense, will be required to analyze their vulnerabilities to the impacts from climate change and come up with a plan to adapt.Thousands of governmental employees will be trained on climate science, like it or not.The changes aren't limited to just federal agencies. Countless numbers of private businesses that sell, build, provide logistics or maintenance, or anything else to the government will be forced to comply with new Federal climate adaptation guidelines—all because of Presidential Executive Order 13514.How far reaching is this adaptation action? The National Defense Industrial Association (NDIA) is holding a training and workshop conference on Obama's Executive Order in May. NDIA is the primary private industry group that supports the Department of Defense. To be clear, NDIA connects the DoD to bomb makers Raytheon, bullet manufacturers Sierra Bullets, and the designer of the stealth bomber, Northrup-Grumman. Now [NDIA](http://e2s2.ndia.org/schedule/Pages/ExecutiveOrder13514.aspx) is training defense contractors on climate science and analysis based on a little known Executive Order.At first glance, President Obama's little-reported Executive Order 13514 ([PDF](http://edocket.access.gpo.gov/2009/pdf/E9-24518.pdf)) is a straightforward, environmentally-friendly one-two punch that boosts the sustainability of our government. The Order aims to lower the amount of greenhouse gases that the Federal Government emits, reduce environmental pollution and waste, and establish a permanent Sustainability Officer in each agency. It also "r[equires Federal Agencies](http://www.whitehouse.gov/the_press_office/President-Obama-signs-an-Executive-Order-Focused-on-Federal-Leadership-in-Environmental-Energy-and-Economic-Performance) to set a 2020 greenhouse gas emissions reduction target within 90 days; increase energy efficiency; reduce fleet petroleum consumption; conserve water; reduce waste; support sustainable communities; and leverage Federal purchasing power to promote environmentally-responsible products and technologies."But tucked into EO 13514 is a provision that requires all Federal Agencies to also adapt to climate change. The Order's brief Section 16 (PDF) will have profound and long lasting effects on how our Federal Government responds to climate change. For here, each agency is required, among other things, to:Appoint a Climate Adaptation specialistEstablish an Agency wide Climate Change Adaptation Policy and Mandate by June 2011Participate in Climate Adaptation workshops and then educate all employees throughout 2011Identify and analyze climate vulnerabilities that would interfere with accomplishing the Agency's mission by March 2012Implement the adaptation plan by September 2012The U.S. Navy's Task Force Climate Change created a 5-year climate action plan, called the [Navy Arctic Roadmap](http://www.navy.mil/search/display.asp?story_id=49725). The Roadmap is concerned with protecting U.S. interests in the Arctic Circle from impacts that melting ice—to the point of conducting Joint war games with allies. Other agencies are scrambling, as well. The USDA, [for example](http://www.usda.gov/oce/climate_change/index.htm), is evaluating how climate change impacts crops and commodities markets, and then make a plan to avoid food shortages and price collapses. Even the Army Corps of Engineers is required to reassess all water resources and coastlines in the United States for vulnerabilities to climate change. It is unclear what this will mean for those new dikes protecting New Orleans.The mainstream media hasn't given this executive order much attention over the last year and a half but its implications are far-reaching. An Executive Order is a powerful and enforceable law, and it takes a (rare) Congressional [super-majority](http://en.wikipedia.org/wiki/Executive_order_%28United_States%29#Legal_conflicts) to override the President's pen. What might surprise you is that this was not Obama's idea. It was President George W. Bush's. You see, back in 2007, it was Bush who forced the Federal Government to lower emissions and become more sustainable. Executive Order 13423 ([PDF](http://edocket.access.gpo.gov/2007/pdf/07-374.pdf)) "Strengthening Federal Environmental, Energy, and Transportation Management" was a short, sweet 5-pager that required all Federal Agencies to adopt sustainability plans. Two years later, in 2009, Obama merely expanded on Bush's idea. Obama tweaked the former requirements by upping the percentages of emissions cuts, boosting sustainability requirements, and adding in adapting to climate change. Executive Orders are somewhat controversial because they seem to subvert the legislative process. Through the use of Executive Orders, presidents have substantial formal powers to make their own policies without interference from Congress or the courts. Abraham Lincoln used the EO to sign the Emancipation Proclamation, for example. And Presidents Kennedy and Johnson, keen on avoiding losing several political battles, bypassed the Congress to establish many civil rights laws and racial discrimination law. Most controversial, however, was George H.W. Bush's EO 13292, which created the concept of the "unitary executive," substantially expanding the powers vested in the Office of the Vice President. Collectively, EOs do in fact expand the powers vested in the Executive Office. It pushes the boundaries of what is possible to get around the Congress. Obama's EO 13514 not only forces agencies to green their operations without signing on to Kyoto or passing domestic legislation, it also trains all employees to believe, analyze, and make decisions on the controversial topic of climate change. Obama has stated many times that he represents all people—right, left, and center. This top down decision forces tens of thousands of federal employees—right, left, and center—to be trained openly on the science of climate change. It may be his best kept secret.

### Port Security/General Solvency

Obama can improve ports through executive order-solves competitiveness

Progressive Railroading, 12 [“Obama Administration expedites seven infrastructure projects at five U.S. ports,” 7/23, http://www.progressiverailroading.com/intermodal/news/Obama-Administration-expedites-seven-infrastructure-projects-at-five-US-ports--31772#]

Last week, the Obama Administration announced that seven key infrastructure projects designed to modernize and expand five U.S. ports will be expedited through the Administration’s We Can’t Wait initiative. The projects are under development at the Port of Miami and Port of Jacksonville, Fla.; Port of Savannah, Ga.; Port of New York and New Jersey; and Port of Charleston, S.C.¶ The Office of Management and Budget is charged with overseeing a government-wide effort to make the projects’ permitting and review process more efficient and effective, Administration officials said in a prepared statement. In addition, a White House-led task force comprising senior officials from the U.S. Army Corps of Engineers, U.S. Department of Transportation, U.S. Department of Commerce, U.S. Department of Homeland Security and U.S. Treasury will develop a federal strategy and coordinate decision-making principles to focus on ensuring an economic return from major port projects, they said.¶ The chosen projects include the deepening of the Port of Miami’s navigation channel from 42 feet to 50 feet; constructing an intermodal container transfer facility at the Port of Jacksonville and deepening the port’s harbor from 40 feet to 50 feet; deepening of the Port of Savannah’s channel from 42 feet to 47 feet; deepening the Port of New York and New Jersey’s channel to 50 feet and raising the height of the nearby Bayonne Bridge; and deepening the Port of Charleston’s navigation channel from 45 feet to 50 feet.¶ After the project is completed at the Port of Miami, it will become the only U.S. East Coast port south of Norfolk, Va., to feature a depth of 50 feet when the expanded Panama Canal opens in early 2015, said Miami-Dade County Mayor Carlos Gimenez in a prepared statement.¶ “Miami-Dade County has been ahead of the curve in making major infrastructure improvements to its seaport, most notably the deepening of Port of Miami’s channel to 50 feet, which will allow for the largest cargo ships in the world to dock at our port,” he said.¶ The American Association of Port Authorities (APPA) long has stressed the importance of expediting permitting and project delivery processes for water- and land-access infrastructure projects at America’s seaports, said APPA President and Chief Executive Officer Kurt Nagle in a statement.¶ “These types of projects not only aid in the efficient movement of freight, they pay long-term dividends by supporting job creation and economic growth, and help to ensure America’s international competitiveness overseas,” he said.¶ The port projects are the first batch of an initial 43 infrastructure projects that will be expedited by executive order in the coming weeks, Obama Administration officials said.

### Port Security

Executive orders can be used for ports-empirics prove

Leach, 12 [Walter T., Senior Editor, The Journal of Commerce Online, “Charleston Harbor Projects on Obama’s Priority List,”7/19, http://www.joc.com/infrastructure/charleston-harbor-project-obama%E2%80%99s-priority-list?page=2]

Plan to deepen channel to 50 feet will come under expedited review¶ The planned project to deepen the Port of Charleston’s harbor to 50 feet has been added to the initial list of projects for expedited review under President Obama’s Executive Order on Permitting and Federal Review, which commits the project's study and necessary U.S. government reviews will be completed by September 2015.¶ The initial list of projects, part of the administration's We Can't Wait initiative, is targeted to expedite the most critical infrastructure projects in the country. Charleston's harbor deepening is one of seven projects in five ports included in the initiative announced by the White House Wednesday evening.¶ The South Carolina Ports Authority said the news builds on last week's update from the Army Corps of Engineers' Charleston District announcing a reduced timeline and cost estimate for Charleston's feasibility study.¶ Plan to deepen channel to 50 feet will come under expedited review¶ A report to Congress released last month by the Corps of Engineers' Institute for Water Resources indicated that modernizing Southeast and Gulf ports is most critical to serving the nation's export needs over the coming years.¶ In February, the Obama administration included $3.5 million toward the project's feasibility study in the president's budget for fiscal year 2013. The deepening of Charleston harbor to 50 feet is predicted to provide significant economic benefit to the Southeast region and the entire nation, with $106 million in net benefit to the nation estimated on an annual basis.¶ Last month, the South Carolina Legislature committed $300 million in the state budget to fund the construction of a post-45-foot harbor project for the Port of Charleston. This allocation could cover the entire estimated cost to deepen the harbor to 50 feet or greater, once the project receives authorization from Congress.¶ With 45 feet of water at mean low tide, Charleston harbor is currently the deepest port in the region, serving ships drawing up to 48 feet of water on the tides. Deepening Charleston harbor would open the port to the biggest vessels 24 hours a day, under any tidal condition. The corps stated in its Reconnaissance Study in 2010 that Charleston is likely "the cheapest South Atlantic harbor to deepen to 50 feet."Under the new Obama administration program, the study and federal reviews will be further expedited and completed up to another year earlier.¶ "This announcement represents more good news for our deepening project, and demonstrates that the highest levels of our government understand the critical need to advance this project," SCPA President and CEO Jim Newsome said. "In just two years, we have gone from not being included in the president's budget to now being a top priority. We are grateful for the administration's commitment."¶ The We Can't Wait list of projects is the result of a Presidential Executive Order issued in March, which called for a government-wide effort to streamline the permitting and review process for vital infrastructure projects in communities across the nation.¶ "This priority infrastructure program is a natural extension of the Obama administration's export initiative," Newsome said. "There is clearly a recognition that in order to double the nation's exports — which are primarily sourced from the Southeast region — a port in this region must be deepened to at least 50 feet to accommodate the largest ships expected to call our coast without tidal restriction. We anticipate a favorable cost-to-benefit ratio in the Chief's Report allowing for a true post-Panamax harbor allowing for two-way vessel traffic."

### Disability

#### Obama can address disability through executive order-Empirically proven and XOs expedite the process

Newell, 10 [Elizabeth, writes for Government Executive, “Obama orders agencies to increase employment of disabled workers,” Government Executive, 6/27, http://www.govexec.com/pay-benefits/2010/07/obama-orders-agencies-to-increase-employment-of-disabled-workers/31999/]

President Obama issued an executive order Monday instructing federal agencies to take steps to increase employment of people with disabilities.¶ The directive orders agencies to take steps to meet a goal of hiring an additional 100,000 disabled employees over five years that was originally laid out by President Clinton in a July 2000 executive order. "Few steps were taken to implement that executive order in subsequent years," Obama said.¶ "As the nation's largest employer, the federal government must become a model for the employment of individuals with disabilities," the president wrote in the order. "Executive departments and agencies must improve their efforts to employ workers with disabilities through increased recruitment, hiring and retention of these individuals."¶ According to the executive order, approximately 54 million Americans are living with disabilities. Obama said the federal government has an important interest in reducing discrimination against such Americans, in eliminating the stigma associated with disability and in encouraging Americans with disabilities to seek employment in the federal workforce.¶ An Equal Employment Opportunity Commission report also released Monday showed that individuals with targeted disabilities -- deafness, blindness, missing extremities, partial or complete paralysis, convulsive disorders, mental retardation, mental illness and distortion of the limbs and/or spine -- represent less than 1 percent of the federal workforce.¶ The order directs the head of the Office of Personnel Management, in consultation with the Labor secretary, the chair of the EEOC, and the director of the Office of Management and Budget, to design strategies for recruiting and hiring people with disabilities within 60 days. The OPM director also must develop mandatory training programs for agency human resources personnel and hiring managers on the employment of people with disabilities.¶ Agencies will then be required to develop their own plans for promoting employment opportunities for disabled individuals. The plans, to be spearheaded by senior-level officials, must include performance targets and numerical goals.¶ In implementing their plans, agencies are expected to increase their use of Schedule A excepted service hiring authority and to increase participation of people with disabilities in internships, fellowships and training and mentoring programs.¶ Agencies must report frequently on their progress in implementing their plans. Their reports will be published on OPM's website.¶ In addition to the hiring initiatives, the order requires agencies to take steps to improve retention of disabled workers. Among strategies available to them, according to the order, are improved training, the use of centralized funds to provide reasonable accommodations, increased access to accessible technologies, and ensuring the accessibility of physical and virtual workspaces.¶ Also, Obama ordered that "agencies shall make special efforts, to the extent permitted by law, to ensure the retention of those who are injured on the job. Agencies shall work to improve, expand, and increase successful return-to-work outcomes for those of their employees who sustain work-related injuries and illnesses, as defined under the Federal Employees' Compensation Act, by increasing the availability of job accommodations and light or limited duty jobs, removing disincentives for FECA claimants to return to work, and taking other appropriate measures."¶ Under the executive order, the Labor secretary must pursue "innovative re-employment strategies" that increase the likelihood of an injured employee returning to work, including by pursuing reform of the FECA system.

XOs can address disability discrimination

Robitaille, 10 [Suzanne, founded and writes for abled body, a news and media platform, 7/26, “Obama Signs Executive Order to Hire More Federal Workers with Disabilities,” http://abledbody.com/2010/07/26/obama-signs-executive-order-to-hire-more-federal-workers-with-disabilities/]

The President also signed an Executive Order to increase federal employment of individuals with disabilities.The Executive Order fulfills a pledge by the President to have the federal government be a model employer of people with disabilities.¶ It establishes mechanisms such as mandatory training for hiring managers, requires preparing of strategic plans by agencies, requires the White House to develop model guidelines and assistance for hiring people with disabilities, reporting to the President about progress, and publicizing results on a website as a way to promote transparency.

### Social Justice (Transit Apartheid)

XOs key to social justice-helps minority communities

SustainableBusiness.com 11 [Website run by Rona Fried, Ph.D., CEO of SustainableBusiness.com. Known for her wide-ranging, deep knowledge of sustainable business, she writes topics related to green business, green jobs and green investing “Obama Issues Executive Order on Environmental Justice”, sustainablebusiness.com, 8/15, http://www.sustainablebusiness.com/index.cfm/go/news.display/id/22786]

The Obama Administration last week announced it would develop environmental justice strategies to protect the health of people living in communities overburdened by pollution. The heads of numerous federal agencies signed the "Memorandum of Understanding on Environmental Justice and Executive Order 12898" (EJ MOU). The document states that all communities overburdened by pollution - particularly minority, low income and tribal communities - deserve the same degree of protection from environmental and health hazards, equal access to the Federal decision-making process, and a healthy environment in which to live, learn, and work. The signing of the MOU is the latest in a series of steps the Obama Administration has taken to elevate the environmental justice conversation. Last September, EPA Secretary Lisa Jackson and White House Council on Environmental Quality Chair Nancy Sutley reconvened the [Interagency Working Group on Environmental Justice (EJ IWG)](http://www.epa.gov/compliance/ej/interagency/index.html) for the first time in more than a decade. The MOU advances agency responsibilities outlined in the 1994 Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." The Executive Order directs each of the named Federal agencies to make environmental justice part of its mission and to work with the other agencies on environmental justice issues as members of the EJ IWG. The EJ MOU increases the number of agencies involved and adopts the charter developed under the 1994 executive order, provides the workgroup with more structure and direction. It also formalizes the environmental justice commitments that agencies have made over the past year, providing a roadmap for agencies to better coordinate their efforts.  Agencies are specifically focusing on the environmental justice impacts of climate adaptation and commercial transportation, and strengthening environmental justice efforts under the National Environmental Policy Act and Title VI of the Civil Rights Act of 1964. The MOU also outlines processes and procedures to help overburdened communities more efficiently and effectively engage agencies as they make decisions. "All too often, low-income, minority and Native Americans live in the shadows of our society's worst pollution, facing disproportionate health impacts and greater obstacles to economic growth in communities that can't attract businesses and new jobs. Expanding the conversation on environmentalism and working for environmental justice are some of my top priorities for the work of the EPA," says EPA Administrator  Jackson. "Every agency has a unique and important role to play in ensuring that all communities receive the health and environmental protections they deserve." The following agencies signed the EJ MOU: Environmental Protection Agency; White House Council on Environmental Quality; Department of Health and Human Services; Department of Justice; Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Homeland Security; Department of Housing and Urban Development; Department of Interior; Department of Labor; Department of Transportation; Department of Veterans Affairs; General Services Administration; and Small Business Administration.

Executive orders can be used to pursue social justice-civil rights history proves

Mayer 1(Kenneth, Professor at the University of Wisconsin-Madison, Princeton University Press, "With the Stroke of a Pen", 2001, http://press.princeton.edu/chapters/s7095.pdf, Accessed 7/23/2012)

Presidents have resorted to executive orders to implement many of the nation’s most dramatic civil rights policies.These include Harry S Truman’s integration of the armed forces12and Dwight D.Eisenhower’s calling the Arkansas National Guard into active military service in Little Rock, Arkansas, in order to enforce a court order to integrate CentralHigh School.13The AmericanCouncil onRace Relations reported in 1948that Truman’s military desegregation orders “demonstrate that in government the area of administration and executive authority is equal in importance to legislation and judicial decision” in fostering equal opportunity and civil rights.14Within the civil rights community the executive order became a powerful symbol of presidential commitment to racial equality.Shortly afterJohn F.Kennedy’s inauguration, Martin Luther King, Jr., urged the newpresident to use his executive authority to combat racial discrimination,citing the historical practice of presidents’ issuing civil rights executiveorders “of extraordinary range and significance.”15It was through an executive order that “affirmative action” became part of the nationalconsciousness, after President Kennedy used the term in an executiveorder establishing a Presidential Committee on Equal Employment Op-portunity, and thereafter President Lyndon Baines Johnson referred toit in a follow-on order that made eligibility for government contractsconditional upon the implementation of adequate affirmative actionprograms.16

### Speed

#### XO Solves Speed

Scheuerman,1 [William, Professor of Political Theory at the University of Minnesota, "Liberal Democracy and the Empire of Speed," Polity 34.1, 41-67]

Time and space compression presents an immediate challenge to the traditional model of legislative-executive relations. The legislature was conceived as the central site for lawmaking in part because freewheeling debate and deliberate provided its activities with a normative legitimacy missing in the executive, whose chief function was to undertake rapid-fire action in applying general legislative norms to individual scenarios. Yet time-space compression means that legislatures increasingly operate in the context of a social and economic environment characterized by incessant change and innovation. The ever faster pace of social and economic life potentially conflicts with the conventional emphasis on the legislature's reliance on careful, wide-ranging, and time-consuming deliberative exchange. A misfit between the time and space horizons of legislative activity and of social and economic life may result. As long as laissez-faire ideology limited government's role within economic and social affairs, this tension remained submerged. When polities become committed to developing both the regulatory and welfare states, however, the opposition at hand manifests plainly: legislatures are expected to do nothing less than react effectively to a multiplicity of rapid-fire changes in social and economic life while simultaneously maintaining fidelity to the traditional notion of its legitimacy as resting on wide-ranging forms of unhurried debate.

Not surprisingly, legislatures tend to throw their hands up in the air in frustration when faced with these contradictory demands. Too often, contemporary parliaments abandon their lawmaking duties--to an executive envisioned as better equipped to grapple with the imperatives of speed. Confronted with the awesome challenge of regulating an ever-changing variety of fast-paced social and economic arenas, legislatures typically have delegated far-reaching authority to the executive; a substantial scholarly literature documents this now-familiar trend. We are now in a position to understand why this tendency to delegate authoirty--much of it poorly defined and highly discretionary--follows in part form the traditional liberal notion of the time and space horizons of political decision-making. Given the association of the executive with dispatch and expeditiousness, it makes sense to hand over especially fast-paced regulatory challenges to the institution long considered most adept at dealing with the problem of speed. Moreover, it would seem to make no less sense to provide the executive with far-reaching discretionary legal authority to do so, since the fast-changing character of the material at hand means that any clearly formulated legislative norm or standard may very well soon appear anachronistic. As Locke's Second Treatise points out, the scope of executive prerogative is intimately connected to the legislature's ability to foresee social and economic trends. To the extent that the legislature's ability to coordinate future activities is drastically curtailed by the process of time and space compression, the scope of discretionary executive authority grows accordingly. Indeed, literature on the modern executive suggests that precisely this development has taken place, as the range of exceptional and even emergency executive authority has become sizable even in relatively stable liberal democracies. In our high-speed social world, the legislature's inability "to foresee, and so by laws to provide for, all accidents and necessities that may concern the public" is probably a main source of the ubiquity of executive discretion in modern-day liberal democracy.

### High Speed Rail Solvency

Executive action is critical to high speed rail-Only way to streamline and solve efficiently

Government Accountability Office, 10 [“Transit Rail: Potential Rail Car Cost-Saving Strategies Exist,” http://books.google.com/books?id=7H8pycIEEhoC&pg=PA29&lpg=PA29&dq=transportation+infrastructure+%22executive+action%22&source=bl&ots=EBFn-yY2gj&sig=vMKcYHPPKqkJTwP-ciOCOjHircs&hl=en&sa=X&ei=nOwNUOzdNLCH0QHwlIHgBQ&ved=0CD0Q6AEwAQ#v=onepage&q&f=false]

Joint procurements and piggybacking also have the potential to increase the financial advantages of purchasing large numbers of cars. These advantages typically have been limited to a handful of larger transit agencies, since smaller transit agencies have not purchased a sufficient amount of cars to benefit from economies of scale. While FTA’s procurement guidance encourages joint procurement, it has not established a mechanism to assist transit agencies to successfully pool their orders, and transit agencies have reported difficulties in this area. Often, transit agencies are not aware of the activities of other agencies in the procurement arena. Without a process for coordinating performance and design standards and a mean of encouraging joint procurements, current practices may not substantially change. A more systematic approach to linking agencies with similar infrastructure and rail car needs could identify even more of these opportunities. Since FTA helps fund many procurements, it may be in the best position to help transit agencies identify joint procurement opportunities. To ensure that federal funds are used efficiently when procuring transit rail cars, we recommend that the Secretary of Transportation direct the Administrator of the Federal Transit Administration to, in conjunction with the American Public Transportation Association, take the following two actions: 1. Develop a process to systematically identify and communicate opportunities for transit agencies with similar needs to participate in joint procurements of transit rail cars. 2. Identify additional opportunities for standardization, especially for new systems, such as light rail and streetcar systems.

Executive action and streamlining on HSR is key to efficiency

Fleming, 9 [Susan, United States Government Accountability Office, Report to Congressional Requesters, “High Speed Passenger Rail: Future Development Will Depend on Addressing Financial and Other Challenges,” pg. google books]

It is not likely high speed rail projects will come to fruition without federal assistance. The PRIIA establishes a good framework for helping craft a federal role in high speed rail (which, to date, has been limited) to address these challenges. Given the complexity, high cost, and long development time for high speed rail projects, it will be critical to first determine how high speed rail fits into the national transportation system and establish a strategic vision and goals for such systems. This will establish the baseline for federal involvement. To maximize returns on federal investments, it will also be critical when reviewing grant applications under the PRIIA high speed rail provisions to clearly identify expected outcomes and to incorporate accountability measures to ensure these outcomes are achieved. The failure to incorporate such measures is a common drawback of federal transportation programs. Finally, it will be incumbent upon the federal government to develop the guidelines, methods, and analytical tools to develop the guidelines, methods, and analytical tools to develop credible and reliable ridership, cost, and public benefit forecasts. Without such guidelines, methods and tools, reliable determinations of economic viability will continue to be the exception rather than the norm, and the efficiency and effectiveness of any federal assistance to high speed rail could be jeopardized. To ensure effective implementation of the PRIIA related to high speed rail and equitable consideration of high speed rail as a potential option to address demands on the nation’s transportation system, we recommend that the Secretary of Transportation, in consultation with Congress and other stakeholders, take the following three actions: \*Develop a written strategic vision for high speed rail, particularly in relation to the role high speed rail systems can play in the national transportation system, clearly identifying potential objectives and goals for high speed rail systems and the roles federal and other stakeholders should play in achieving each objective and goal. \*Develop specific policies and procedures for reviewing and evaluating grant applications under the high speed rail provisions of the PRIIA that clearly identify the outcomes expected to be achieved through the award of grant funds and includes performance and accountability measures. \*Develop guidance and methods for ensuring reliability of ridership and other forecasts used to determine the viability of high speed rail projects and support the need for federal grant assistance. The methods could include such things as independent, third-party reviews of applicable ridership and other forecasts, identifying and implementing ways to structure incentives to improve the precision of ridership and cost estimates received from grant applications, or other methods that can ensure a high degree of reliability of such forecasts.

### Infrastructure Bank

#### **Streamlining solves the need for an infrastructure bank-and avoids politics**

#### **Thomasson, 12** [Scott, president of NewBuild Strategies LLC, an energy and infrastructure consulting firm, former policy director at a nonprofit think tank, has testified before Congress about proposals for financing infrastructure, “Encouraging U.S. Infrastructure Investment,” Council on Foreign Relations Policy Innovation Memorandum No. 17, April, http://www.cfr.org/infrastructure/encouraging-us-infrastructure-investment/p27771]

Streamlining regulatory reviews and financing approval processes and improving program management can speed project delivery and reduce regulatory uncertainty for project sponsors. Specifically, federal policymakers should:¶ Coordinate and enhance existing finance programs. A modest but viable alternative to an infrastructure bank is coordinating the many loan programs for infrastructure that are already spread across various federal agencies and departments. There is bipartisan agreement that these programs need improvement—for example, TIFIA needs more credit experts to keep up with its growing workload, and the Department of Energy's loan program needs better oversight and transparency. Congress should modernize the outdated Federal Financing Bank (FFB), a nearly dormant government corporation now controlled by the Treasury Department, and convert it into an independent credit review and oversight office. The new, more active FFB could perform technical, "back office" functions like risk assessments and loan tracking for agency credit programs. Using a central team of experts would avoid duplicative staff across programs, speed approvals, and minimize taxpayer exposure to unforeseen loan risks.

### A2: Funding (Legislation) Key

#### Empirically DOT can circumvent need for Congressional funding

Dovell, 12 [Elizabeth, contributor, Council on Foreign Relations, “U.S. Rail Infrastructure,” Council on Foreign Relations’ Renew America Project, 3/7, http://www.cfr.org/united-states/us-rail-infrastructure/p27585#p4]

When President Obama took office in 2009, as part of the American Recovery and Reinvestment Act, he allocated $8 billion for high-speed rail projects. The administration also announced the creation of the High-Speed Intercity Passenger Rail program. The proposal included a $1 billion per year allocation for the next five years for high-speed rail investment in strategic areas around the country, such as Chicago, New York, and Los Angeles. The HSIPR program was also designed to address other outstanding rail transport problems around the country, and sought to upgrade existing passenger rail lines to increase speed and efficiency of services. In February 2011, Vice President Biden announced a six-year plan to build a HSR network that would fulfill President Obama's promise to grant HSR access to 80 percent of the country within twenty-five years.¶ But in November 2011 the U.S. Senate and the House of Representatives killed HSR stimulus funding (USA Today), a measure that was controversial from the start. It faced opposition at the state level, where some lawmakers and policy analysts claimed high-speed rail was impractical and a waste of taxpayer dollars. Republican governors from Florida, Ohio, and Wisconsin rejected their HSR stimulus grants (TransportationNation), calling for the redistribution of funds to other infrastructure and transportation projects. In spite of the funding setback, the Department of Transportation announced in its 2011 DoT Year in Review the accumulation of $9.4 billion in Federal Railroad Administration grants for HSR innovation.

#### 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.

**President has discretionary spending power within agencies**

**Pike et. Al. 5** [Joseph, Professor of Political Science and International Relations @ University of Delaware and John Maltese, Associate Professor of Political Science @ University of Georgia, and Norman Thomas, Department of Political Science @ University of Cincinnati, *The Politics of the Presidency* 5th Edition, pg. 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 finds within an appropriation and from one program to another. The committees expect to be kept informed of such “reprogramming” actions. 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.

## \*\*\*A2\*\*\*

### A2 Perm do the CP

#### Perm severs out of the term “federal government” -

A) **“Normal Means” includes Congress**

**Shuster, 12** [Bill, Congressman, central in highway politics, “Rebuilding Transportation is Key,” Politico, <http://www.politico.com/news/stories/0212/72285.html>, 2/1, 2012]

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.

**B) The means all parts**

**Merriam-Websters, 8 [Online Collegiate Dictionary, http://www.m-w.com/cgi-bin/dictionary]**

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

**C) Federal government is central government**

**Webster’s 76** NEW INTERNATIONAL DICTIONARY UNABRIDGED, p. 833.

Federal government. Of or relating to the central government of a nation, having the character of a federation as distinguished from the governments of the constituent unites (as states or provinces).

**That’s a voting issue-Makes the aff a moving target and destroys predictable negative ground**

### 2NC A2 Perm Do Both

#### Links to politics – perm still includes congressional action, causing opposition

#### Doesn’t solve presidential power

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

### A2: Rollback

#### No risk of rollback-Fiat is durable and means that the plan is implemented and can’t be rolled back –That’s Reciprocal – aff gets durable fiat means the neg should too. Also critical to education – avoids should/would debates and focuses on the merits of the plan.

#### Executive orders won’t be rolled back – presidential powers

Moe & Howell 99(Terry and WG, William Bennett Munro professor of political science at Stanford University,Sydney Stein Professor in American Politics in the Harris School School of Public Policy Studies, Oxford University Press, “The presidential power of unilateral action” abstract, 1999, <http://jleo.oxfordjournals.org/content/15/1/132.short>, Accessed 7/23/12)

In this article we highlight a formal basis for presidential power that has gone largely unappreciated to this point, but has become so pivotal to presidential leadership and so central to an understanding of presidential power that it virtually defines what is distinctively modern about the modern presidency. This is the president's formal capacity to act unilaterally and thus to make law on his own. Our central purpose is to set out a theory of this aspect of presidential power.We argue that the president's powers of unilateral action are a force in American politics precisely because they are not specified in the Constitution. They derive their strength and resilience from the ambiguity of the contract. We also argue that presidents have incentives to push this ambiguity relentlessly to expand their own powers - and that, for reasons rooted in the nature of their institutions, neither Congress nor the courts are likely to stop them. We are currently in the midst of a research project to collect comprehensive data for testing this theory - data on what presidents have done, as well as on how Congress and the courts have responded. Here we provide a brief history of unilateral action, with special attention to the themes of our theoretical argument. We also make use of some early data to emerge from our project. For now it appears that the theory is well supported by the available evidence. This is a work in progress, however, and more is clearly needed before definitive conclusions can be justified.

#### 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.

### A2 Agent CPs Bad

#### 1.Education-Debates over the agent are critical to learning about the actual inner workings of transportation policy-How the aff gets implemented is just as important as whether or not a particular outcome is a good idea

#### 2. Key to neg ground-The best counterplans on the topic are all agent CPs-The neg has to be able to test the actor

#### 3. Predictability and limits are checked by the literature-The transportation infrastructure literature base contains debates about only a few actors, limiting the aff’s research burden

#### 4. Reject the arg and not the team

### A2 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.

#### 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.

## \*\*\*Net Benefits\*\*\*

### 2NC Avoids Politics

#### 1.Executive orders on infrastructure avoid politics-That’s Thomasson –It circumvents the need for Congressional debate-Prefer this evidence-It’s comparative

**2. XOs don’t cost political capital --- even if it causes controversy it doesn’t affect the agenda**

Sovacool and Sovacool, 9 [Dr. Benjamin K., Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization, Kelly E., Senior Research Associate at the Lee Kuan Yew School of Public Policy at the National University of Singapore, “Preventing National-Electricity-Water Crisis Areas in the United States, *Columbia Journal of Environmental Law*, pg. lexis]  
**Executive Orders also save time** in a second sense. **The President** does not have to expend scarce political capital **trying to persuade Congress to adopt his** or her **proposal.** Executive Orders **thus save presidential attention for other topics.** **Executive Orders bypass congressional debate and opposition, along with all of the horse-trading and compromise such legislative activity entails.**292 **Speediness of implementation can be especially important when challenges require rapid and decisive action**. **After** the **September 11**, 2001 attacks on the Pentagon and World Trade Center, for instance, the **Bush** Administration almost **immediately passed Executive Orders** forcing airlines to reinforce cockpit doors and freezing the U.S. based assets of individuals and organizations involved with terrorist groups.293 **These actions took Congress nearly four months to** debate and subsequently **endorse with legislation. Executive Orders therefore enable presidents to rapidly change law without having to wait for congressional action** or agency regulatory rulemaking.

#### 3.Executive orders generate political capital – makes Obama look decisive in the face of inaction

Cohen 11 [Tom, CNN Wire news editor, Former Bureau Chief at The Associated Press, “Obama uses executive orders as a political tool” November 01, 2011 http://articles.cnn.com/2011-11-01/politics/politics\_obama-executive-orders\_1\_executive-orders-press-secretary-jay-carney-inaction?\_s=PM:POLITICS]

For Obama, the strategy of executive orders serves a dual purpose by moving forward on parts of his agenda despite Republican opposition while projecting an image of decisive action in the face of political inaction. "Congress has been trying since February to do something about this," Obama said Monday in announcing an executive order that directs the Food and Drug Administration to increase efforts to reduce shortages of some prescription drugs. "It has not yet been able to get it done. And it is the belief of this administration ... that we can't wait for action on the Hill; we've got to go ahead and move forward."

**4.Obama’s base and moderates love XOs**

Daniels, 10 **[Dr. Ron, President of the Institute of the Black World 21st Century and Distinguished Lecturer at York College City University of New York, “Lessons from the 2010 Elections,” http://freespeech.org/blog/lessons-2010-elections]**  
President Obama has also been terribly inattentive to the liberal-progressive wing and major constituencies within the Democratic Party. As a general proposition, progressives would have felt much better if he had fought first and compromised later on key issues like the Stimulus package, health care, the foreclosure crisis and financial regulatory reform. I start from the premise that one of the responsibilities of the President as head of a political party is to articulate a vision/philosophy and advance a policy agenda that enhances the influence, capacity and power of the base constituencies and allies of your party. This is precisely what Bush and Cheney did over an eight-year period. Obama not only refused to advance a more liberal/progressive position on the issues enumerated above, the Freedom of Choice Act (labor), immigration policy reform (Latinos/Caribbeans), "Don' Ask Don't Tell" (Lesbian and Gay) and targeted jobs/economic programs (Blacks) were de-prioritized or given only lukewarm support. The Dream Act which would have inched the immigration reform agenda forward was only brought up as an amendment in the final hours before Congress adjourned in order to help the beleaguered campaign of Harry Reid. The amendment was defeated. Like other initiatives of importance to liberals and progressives, Obama signaled willingness to weaken the Freedom of Choice Act before it even began to be seriously considered. When Congress refused to take up Don't Ask Don't Tell, progressives wondered why the President simply didn't end it by Executive Order. And, there has been an ongoing frustration among Black leaders that Obama simply refuses to embrace the idea that the "state of emergency" in urban Black communities across the country can be ameliorated by targeting jobs and economic programs to address the crisis. If you want your base to be "enthusiastic," you can't take it for granted or admonish your supporters to "stop whining" when they complain about the lack of attention to its agenda. You have to feed the base to keep it "fired up."

### Warming XO Avoids Politics

Executive action on warming is the best way to avoid politics

**Podesta,10** [John, President and CEO of the Center for American Progress, “Progressive Growth: Building a Prosperous World in the 21st Century,” Center for American Progress, http://www.americanprogress.org/issues/2010/10/podesta\_berlin.html]

Given the congressional gridlock I described earlier, the executive branch will have to lead in meeting these sustainability goals in the short term. Both the administration’s words and deeds thus far prove they’re serious about doing all they can on the executive side, especially when it comes to energy. Aside from the $90 billion in energy provisions in the Recovery Act, the Obama administration has used its executive authority to set strong efficiency rules for a broad range of appliances. This will save the equivalent of two years’ worth of U.S. coal emissions over the next three decades. It also set strict new auto fuel efficiency and tailpipe emission standards. And for the first time ever, it initiated efficiency standards for heavy-duty trucks.

### Exts-Avoids Politics

#### 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 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 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."

#### The CP solves-and avoids politics

<THIS CARD ALSO IN GENERIC SOLVENCY SECTION-DON’T READ TWICE!>

#### **Thomasson, 12** [Scott, president of NewBuild Strategies LLC, an energy and infrastructure consulting firm, former policy director at a nonprofit think tank, has testified before Congress about proposals for financing infrastructure, “Encouraging U.S. Infrastructure Investment,” Council on Foreign Relations Policy Innovation Memorandum No. 17, April, http://www.cfr.org/infrastructure/encouraging-us-infrastructure-investment/p27771]

Cut red tape for new projects. On March 22, 2012, President Obama issued a new executive order to "improve performance of federal permitting and review of infrastructure projects." But the order is short on substance and long on studies and steering committees. A bolder step would be eliminating duplicative reviews by merging them into single-track proceedings wherever possible. The approval process for natural gas pipelines is a model; an interagency agreement established a "one-stop" review conducted by the Federal Energy Regulatory Commission (FERC) with input from other government agencies. President Obama could order similar streamlining without congressional approval and without waiting months for a steering committee plan.¶ Conclusion¶ None of these steps is a silver bullet for fulfilling the United States' infrastructure needs. But big successes may be hard to come by before the 2012 election. In the meantime, small victories are better than none. The modest steps offered here could unlock hundreds of billions of dollars in new investment over the next decade. With pragmatic solutions that do not carry big federal price tags, Congress and President Obama can offer some relief to the states and local governments who know firsthand that the country cannot afford to wait any longer to make these investments.

### XOs 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.

**XOs increase presidential power**  
**Kreider, 6** [Kyle, Political Science Department of Wilkes University, “Review of Executive Orders and the Modern Presidency: Legislating from the Oval Office” http://www.bsos.umd.edu/gvpt/lpbr/subpages/reviews/warber0606.htm, 6-06]

Warber concludes with a cursory examination of President George W. Bush’s use of executive orders and some thoughts on where future research should go.  While his political opponents and some members of the media criticize President Bush for his penchant for acting unilaterally (in both domestic and foreign affairs), expanding the powers of the presidency, and sometimes bypassing the expertise found in Congress, “the results demonstrate that Bush has not significantly departed from previous presidents regarding the types and quantity of executive orders that he issued during his first term”  (p.124).  However, what has been different under President Bush is his willingness to change existing public policy by revoking, superseding, or amending executive orders made by previous presidents.  Yearly averages show President Bush to be second only to President Carter in revising inherited executive orders.

**Executive Orders increase presidential power, and are faster than congressional legislation.**

**Gale Group, 06**

Gale Group, “President assumes arbitrary power” http://www.thefreelibrary.com/President+assumes+arbitrary+power-a0147389580 2006

Obviously, the office of president is becoming more powerful almost daily. There seems to be little or no restraint holding back the nation's chief executive. Presidents have for years taken the nation to war even though the Constitution clearly grants such life-and-death power solely to Congress. If a president feels the need to assert his will, he simply issues an executive order, has it published in the Federal Register and, bingo, he gets his way.

**Even if they win executive orders are controversial, they are critical to increasing positive prez power**   
**Alissa C. Wetzel J.D. Candidate, Valparaiso University School of Law, 8**

(Alissa C. Wetzel, NOTE: BEYOND THE ZONE OF TWILIGHT: HOW CONGRESS AND THE COURT CAN MINIMIZE THE DANGERS AND MAXIMIZE THE BENEFITS OF EXECUTIVE ORDERS. Valparaiso University Law Review Fall, 2007 42 Val. U.L. Rev. 385)

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.

**XO key to prez powers**  
**Gilman, Prof of law, ‘7**

Michele Estrin Gilman. Associate Professor and Director, Civil Advocacy Clinic, University of Baltimore School of Law. J.D,. University of Michigan Law School, IF AT FIRST YOU DON'T SUCCEED, SIGN AN EXECUTIVE ORDER: PRESIDENT BUSH AND THE EXPANSION OF CHARITABLE CHOICE, William & Mary Bill of Rights Journal  April, 2007)

The case study of the CCEOs suggests that one way to think about the President's powers within the zone of twilight is to focus on efficiency and accountability, which are, after all, the underlying reasons for and benefits of having a unitary executive. Purely theoretical contentions about the virtues or vices of a unitary executive make untested assumptions about these constitutional values. n584 By contrast, the CCEOs demonstrate that we cannot presume that the President serves these values when he engages in policymaking. n585 Yet where these values are furthered, we have less to fear from presidential policymaking and more confidence that the President is taking care that the laws are faithfully executed pursuant to some norm other than his personal preferences. Moreover, putting some boundaries on the zone of twilight would make exercises of presidential power more transparent because the President would have to articulate a basis for his actions. In turn, the President's rationale could be judged on its merits, rather than forcing courts to engage in an often fruitless search for legislative intent that usually results in the aggrandizement of executive power. In searching for a line between presidential lawmaking and gap- filling we should not forget that the Framers of the Constitution have given us valuable benchmarks by which to judge presidential action. We best serve both original understandings and modern realities by returning to the touchstones of accountability and efficiency.

### 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.

**2NC Nuclear Terror Module**

**Prez power key to stop nuclear terrorism**  
**Taylor and Thomas, writers for Newsweek Magazine, 2009**  
Stuart Taylor Jr and Evan Thomas, Writers for Newsweek Magazine, “Obama’s Cheney Dilemma” 1-10-09, http://www.newsweek.com/id/178855

In times of war and crisis, as presidents such as Lincoln and Franklin Roosevelt discovered, the nation needs a strong chief executive. The flaw of the Bush-Cheney administration may have been less in what it did than in the way it did it—flaunting executive power, ignoring Congress, showing scorn for anyone who waved the banner of civil liberties. Arguably, there has been an overreaction to the alleged arrogance and heedlessness of Bush and Cheney—especially Cheney, who almost seemed to take a grim satisfaction in his Darth Vader-esque image. The courts, at first slow to respond to arrogations of executive power after September 11, ¶ have pushed back. Many federal officials have grown risk-averse, fearing that they will be prosecuted or dragged before a congressional committee for fighting too hard against terrorism. (A growing number of CIA officials buy insurance policies to cover legal fees.) Obama, who has been receiving intelligence briefings for weeks, already knows what a scary world it is out there. It is unlikely he will wildly overcorrect for the Bush administration's abuses. A very senior incoming official, who refused to be quoted discussing internal policy debates, indicated that the new administration will try to find a middle road that will protect civil liberties without leaving the nation defenseless. But Obama's team has some strong critics of the old order, including his choice for director of the CIA, Leon Panetta, who has spoken out strongly against coercive interrogation methods. In Obama's spirit of nonpartisanship, the new crowd would do well to listen to Jack Goldsmith, formerly a Bush Justice Department official, now a Harvard Law School professor. At Justice, Goldsmith was the head of an obscure but critically important unit called the Office of Legal Counsel. OLC acts as a kind of lawyer for the executive branch, offering opinions—close to binding—on what the executive branch can and cannot do. It was an OLC lawyer, John Yoo, who in 2001 and 2002 drafted many of the memos that first gave the Cheneyites permission to do pretty much whatever they wanted in the way of interrogating and detaining suspected terrorists (and eavesdropping on Americans to catch terrorists). Goldsmith, who became head of OLC in 2003, quietly began to revoke some of these permissions as illegal or unconstitutional. The revolt of Goldsmith and some other principled Justice lawyers was a heroic story, kept secret at the time. Now Goldsmith worries about the pendulum swinging too far, as it often does in American democracy. "The presidency has already been diminished in ways that would be hard to reverse" and may be losing its capability to fight terrorism, he says. He argues that Americans should now be "less worried about an out-of-control presidency than an enfeebled one."

**Nuclear terrorism causes extinction**  
**Sid-Ahmed,4**

(Al-Ahram Weekly political analyst, "Extinction!" 8/26,  http://weekly.ahram.org.eg/2004/705/op5.htm)

What would be the consequences of a nuclear attack by terrorists? Even if it fails, it would further exacerbate the negative features of the new and frightening world in which we are now living. Societies would close in on themselves, police measures would be stepped up at the expense of human rights, tensions between civilisations and religions would rise and ethnic conflicts would proliferate. It would also speed up the arms race and develop the awareness that a different type of world order is imperative if humankind is to survive. But the still more critical scenario is if the attack succeeds. This could lead to a third world war, from which no one will emerge victorious. Unlike a conventional war which ends when one side triumphs over another, this war will be without winners and losers. When nuclear pollution infects the whole planet, we will all be losers.

**2NC Heg Module**

**Presidential powers key to solving numerous global problems and preserving hegemony**  
**Deans 2k**  
(Bob Deans, “The American Presidency: White House Power Growing”, The Atlanta Journal Constitution, 1/23/00)

Yet the U.S. presidency, long regarded as the most powerful institution in the world, arguably has assumed more authority and reach than at any time in its history. While no one can doubt the growing impact of the Internet, Silicon Valley and Wall Street on the daily lives of all Americans, only the president can rally truly global resources around American ideals to further the quest for equality and to combat the timeless ills of poverty and war. It is that unique ability to build and harness a worldwide consensus that is widening the circle of presidential power**.** ''The presidency will remain as important as it is or will become more important,'' predicted presidential scholar Michael Nelson, professor of political science at Rhodes College in Memphis, Tenn. The voice of all Americans The taproot of presidential power is the Constitution, which designates the chief executive, the only official elected in a national vote, as the sole representative of all the American people.That conferred authority reflects the state of the nation, and it would be hard to argue that any country in history has possessed the military, economic and political pre-eminence that this country now holds. And yet, the nation's greatest strength as a global power lies in its ability to build an international consensus around values and interests important to most Americans.On Clinton's watch, that ability has been almost constantly on display as he has patched together multinational responses to war in the Balkans, despotism in Haiti, economic crises in Mexico, Russia, Indonesia and South Korea, and natural disasters in Turkey and Venezuela. The institutions for putting together coalition-type action --- the United Nations, the North Atlantic Treaty Organization, the International Monetary Fund, the World Bank and the World Trade Organization among them --- are hardly tools of American policy. But the United States commands a dominant, in some cases decisive, position in each of those institutions. And it is the president, far more than Congress, who determines how the United States wants those institutions to be structured and to perform. ''Congress is a clunky institution of 535 people that can't negotiate as a unit with global corporations or entities,'' said Alan Ehrenhalt, editor of It is the president, indeed, who appoints envoys to those institutions, negotiates the treaties that bind them and delivers the public and private counsel that helps guide them, leaving the indelible imprint of American priorities on every major initiative they undertake. ''That means, for example, that we can advance our interests in resolving ethnic conflicts, in helping address the problems of AIDS in Africa, of contributing to the world's economic development, of promoting human rights, '' Governing magazine. ''It's the president who is capable of making deals with global institutions.''said Emory University's Robert Pastor, editor of a new book, ''A Century's Journey,'' that elaborates on the theme.

**Collapse of U.S. leadership leads to an apolar world of plagues and nuclear wars**  
Niall **Ferguson**, Herzog professor of history at New York University's Stern School of Business and senior fellow at the Hoover Institution at Stanford University, July-August **2004**, Foreign Policy, Issue 143, p. 32.

**The worst effects of the new Dark Age would be felt on the edges of the waning great powers**. The wealthiest ports of the global economy--from New York to Rotterdam to Shanghai--would become the targets of plunderers and pirates. With ease, **terrorists could disrupt the freedom of the seas, targeting oil tankers, aircraft carriers, and cruise liners**, while Western nations frantically concentrated on making their airports secure. Meanwhile, **limited nuclear wars could devastate numerous regions, beginning in the Korean peninsula and Kashmir**, perhaps **ending catastrophically in the Middle East**. In Latin America, wretchedly poor citizens would seek solace in Evangelical Christianity imported by U.S. religious orders. In Africa, **the great plagues of AIDS and malaria would continue their deadly work**. The few remaining solvent airlines would simply suspend services to many cities in these continents; who would wish to leave their privately guarded safe havens to go there? **For all these reasons, the prospect of an apolar world should frighten us today** a great deal more than it frightened the heirs of Charlemagne. **If the U**nited **S**tates **retreats from global hegemony--its fragile self-image dented by minor setbacks on the imperial frontier--its critics at home and abroad must not pretend that they are ushering in a new era of multipolar harmony, or even a return to the good old balance of power**. Be careful what you wish for. **The alternative to unipolarity would not be multipolarity at all. It would be apolarity--a global vacuum of power. And far more dangerous forces than rival great powers would benefit from such a not-so-new world disorder**.

**A2: Prez Powers=Tyranny**

**You Should be Skeptical of Their Claims – Claims of Totalitarianism Are Just Political Sabre Rattling**  
Ed **Kilgore** July **2010** “Obama the All Powerful?” http://www.thedemocraticstrategist.org/strategist/2010/07/obama\_the\_all-powerful.php  
One of the more notable examples of the gulf in perceived reality between Left and Right these days is the very different perceptions of the power of Barack Obama. Most Democrats think the president has been hemmed in by the economic and fiscal conditions he inherited and by an opposition party with the will and the means to obstruct his every effort. Some Democrats also think he's been hemmed in by his own timidity, and/or by the views and interests of his advisors, but nobody much thinks he's kicking ass and taking names.  Meanwhile, on the Right, while the dominant attitude towards the president remains one of exultant mockery, in anticipation of a big 2010 Republican victory, it seems important to some polls and gabbers to maintain the impression that the president represents an ever-growing threat to American liberties.  This "Fear Factor" is especially present in the bizarre op-ed penned in the Washington Times by former congressman, and perhaps future candidate for Colorado governor, Tom Tancredo, calling for the president's impeachment.  Now there's nothing particularly newsworthy about Tancredo seizing the limelight with crazy talk, or even his contention that Obama's violated his constitutional oath by refusing to immediately launch a nationwide manhunt to identify and deport illegal immigrants by the millions as the openly xenophobic Coloradan would do.  Butit's the paranoid fear of Obama's totalitarian designs on the nation that stands out **i**n the piece:  Barack Obama is one of the most powerful presidents this nation has seen in generations. He is powerful because he is supported by large majorities in Congress, but, more importantly, because he does not feel constrained by the rule of law.... Mr. Obama's paramount goal, as he so memorably put it during his campaign in 2008, is to "fundamentally transform America." He has not proposed improving America - he is intent on changing its most essential character. The words he has chosen to describe his goals are neither the words nor the motivation of just any liberal Democratic politician. This is the utopian, or rather dystopian, reverie of a dedicated Marxist - a dedicated Marxist who lives in the White House.  Aside from illustrating that Tom Tancredo knows absolutely nothing about Marxism, this passage makes you wonder why Tancredo thinks a future Republican Congress could get away with impeachment. Wouldn't Obama simply suspend the Constitution, round up Republican Members, and then maybe ship them to one of those secret camps that FEMA--or is it AmeriCorps?--is supposedly building?  This is a perpetual problem for hard-core conservatives today, isn't it? It's hard to simultaneously maintain that Barack Obama is well on his way to becoming Benito Mussolini, and also that an aroused American people are on the brink of chasing him from office. A similar contradiction seems to afflict the thinking of another conservative Republican who spoke out this week, Tennessee congressman and gubernatorial candidate Zach Wamp, as explained by Hotline's Dan Roem:  Rep. Zach Wamp (R-03) suggested TN and other states may have to consider seceding from the union if the federal government does not change its ways regarding mandates. "I hope that the American people will go to the ballot box in 2010 and 2012 so that states are not forced to consider separation from this government," said Wamp during an interview with Hotline OnCall.  He lauded Gov. Rick Perry (R-TX), who first floated the idea of secession in April '09, for leading the push-back against health care reform, adding that he hopes the American people "will send people to Washington that will, in 2010 and 2012, strictly adhere" to the constitution's defined role for the federal government.  "Patriots like Rick Perry have talked about these issues because the federal government is putting us in an untenable position at the state level," said Wamp, who is competing with Knoxville Mayor Bill Haslam (R) and LG Ron Ramsey (R) for the GOP nod in the race to replace TN Gov. Phil Bredesen (D).  In his case, Wamp is floating an extra-constitutional remedy for what he claims to be an extra-constitutional action by the Congress and the Executive Branch. This did not work out too well when Tennessee and other states tried it in 1861, you may recall. But more immediately, what, specifically, is Obama doing that has led Wamp to propose so radical a step? Is he threatening to bombard military facilities in Chattanooga? Is an alleged "unfunded mandate" on the states really equivalent to Kristallnacht or the March on Rome?  Rhetorical excess is one thing; extreme partisanship is still another; but projecting totalitarian powers onto Barack Obama while one is in the very process of seeking to drive him and his party from office is, well, just delusional.   
  
  
**Your Evidence is an Exaggeration**  
Michael Stokes **Paulsen**, Associate Professor of Law, University of Minnesota Law School, December, **1994** (Georgetown Law Journal “The Most Dangerous Branch: Executive Power to Say What the Law Is”)  
**The likelihood of such scenarios seems grossly exaggerated**. In reality -- the reality the framers envisioned -- **the existence of strong, blunt checks serves to keep each branch within a proper constitutional orbit as determined by the other constitutional actors**. No less with the case of separated and divided interpretive power than for any other separated and divided power, **checked independence does not invariably lead to meltdown; rather, it typically leads to compromise and moderation.** Like the doctrine of Mutual Assured Destruction in national security, **the very prospect of such politically cataclysmic constitutional confrontations serves to prevent their occurrence. The President is not likely to "go nuclear" on any issue of legal interpretation given the carefully calibrated, equilibrated power of the other branches to do the same.**  
  
**And Balance is Inevitable**  
Michael Stokes **Paulsen**, Associate Professor of Law, University of Minnesota Law School, December, **1994** (Georgetown Law Journal “The Most Dangerous Branch: Executive Power to Say What the Law Is” )  
The second lesson from repeat play of the separation-of-powers game is that the **initial allocation of interpretive power will, over time, have a tendency to equalize.** That is, the relative powers will move toward something closer to 33%-33%-33% than the hypothesized initial 45-35-20. **The reason is not difficult to understand. It is never rational, over the long run, for any branch to enter a predatory alliance that leaves its coconspirator with a controlling majority of the interpretive power**. Such a scale-tipping  [\*327]  outcome could then be turned against the junior partner. But **there is an incentive to conspire against the most powerful branch and reduce its power. A predictable long-run outcome of this game is for the two less-powerful branches to combine against the third and nibble away at its power until a rough 33-33-33 allocation is reached.**

### A2 “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**.**

### Elections

**Executive orders improve public perception of Obama**

**Fifeld, 11** [Anna, The Financial Times, “Obama uses orders to bypass Congress,” http://www.ft.com/cms/s/0/6a5a3f66-03d2-11e1-bbc5-00144feabdc0.html#axzz21TsDc0BS]

Another part of the act, including new spending on infrastructure and the creation of a national infrastructure bank – was expected to be blocked again by the Senate this week.¶ But with the executive orders, Mr Obama has signalled a new strategy to advance his agenda without Congress. It also marks the beginning of a public campaign, a year out from the presidential election, to show voters that he is taking concrete action to create jobs while Republicans are not.¶ “He needs people in Congress who are not going to obstruct job creation,” said Thomas Mann, a Congressional expert at the Brookings Institution think tank, adding that the president had little choice.¶ “So he has no alternative but to use executive orders. He should turn it into a virtue,” he said.

## \*\*\*Aff\*\*\*

### HSR Solvency Deficit

#### XO doesn’t solve HSR-Only Congress guarantees investor confidence and long term solvency

Ashiabor and Wei, 12 [Senanu, Ph.D. and MTI researcher, active member of the Transportation Research Board, and Wenbin, professor in the Department of Aviation and Technology at San Jose State University College of Engineering, Ph.D in transportation engineering from University of California Berkeley, “Advancing High-Speed Rail Policy in the United States,” Mineta Transportation Institute, June, <http://transweb.sjsu.edu/PDFs/research/2905-US-hsr-high-speed-rail-policy.pdf>]

For projects spanning multiple states, member states may have to negotiate what level of financial responsibility they will bear, and this will require detailed negotiations and financial setups that are not addressed in this report. States that do not benefit directly from HSR will still contribute to the HSR systems through taxpayer-funded loans and grants, and this is equitable, since some of these citizens will, at one point or another, use the HSR systems. Moreover, as with urban mass transit, citizens of one state may well benefit from improved economic efficiency in any other state through increased business interchange. Also given that intercity travelers are not currently experiencing severe congestion, the greatest beneficiaries of the HSR systems are those who will use them ten to twenty-five years down the line. So having a setup where those beneficiaries pay off the bonds (cost ¶ of the system) in the future is more equitable than having current taxpayers fully fund the ¶ system. The federal funding going forward should be initiated and set by Congress rather ¶ than the Executive branch. The funds should come from a dedicated, long-term source, ¶ such as an extended fuel tax. This is needed so to instill confidence in private investors and other stakeholders, such as train set manufacturers, that the resources they allocate to HSR development are a wise investment. Without a dedicated funding source and support from the government, these third parties will consider HSR too risky and their incentive to allocate capital to such projects will be minimal.

Agencies can’t handle HSR development

Ashiabor and Wei, 12 [Senanu, Ph.D. and MTI researcher, active member of the Transportation Research Board, and Wenbin, professor in the Department of Aviation and Technology at San Jose State University College of Engineering, Ph.D in transportation engineering from University of California Berkeley, “Advancing High-Speed Rail Policy in the United States,” Mineta Transportation Institute, June, http://transweb.sjsu.edu/PDFs/research/2905-US-hsr-high-speed-rail-policy.pdf]

The lead agency (FRA) Is not positioned to handle HSR development. Amtrak was created to take over operation and development of intercity passenger rail in the US from freight operators , while FRA has been responsible for regulating safety of both passenger and freight rail operations as well as overseeing rail transport policy within the national framework. Though FRA developed the first US HSR project (NECIP), this was eventually transferred to Amtrak for completion. Since FRA was later tasked with distributing ARRA funds, it seems likely that it will be lead agency in charge of HSR development. Also PRIIA tasked FRA, not Amtrak, to develop the National Rail Plan and assist states in developing state rail plans because the state plans involve freight as well as passenger issues and because Amtrak is an operating entity, not a policy agency. The federal government needs to come out clearly on this issue and staff the FRA-HSR office accordingly. The agency had to request support staff from other DOT agencies to handle the ARRA fund applications and is ramping up its passenger rail staff from 23 to 46. Though laudable, these staffing adjustments cannot transform it from a rail safety regulatory agency to one managing multiple multibillion-dollar construction projects.

#### Legislation key to HSR-Executive action alone fails

Ashiabor and Wei, 12 [Senanu, Ph.D. and MTI researcher, active member of the Transportation Research Board, and Wenbin, professor in the Department of Aviation and Technology at San Jose State University College of Engineering, Ph.D in transportation engineering from University of California Berkeley, “Advancing High-Speed Rail Policy in the United States,” Mineta Transportation Institute, June, http://transweb.sjsu.edu/PDFs/research/2905-US-hsr-high-speed-rail-policy.pdf]

There is no functional legislation guiding the development of HSR. Though ISTEA provided for designation of HSR corridors and PRIIA mandates the development of a National Rail Plan, both legislations are very broad and do not provide much specificity. For example PRIIA required funding be provided to only states that had state rail plans but there are no defined criteria for what should be in a ¶ state rail plan. Neither PRIIA nor ARRA provides a comprehensive framework withinwhich HSR could operate. Until Congress buys fully into the current administration’s push for HSR, it is unlikely the legislative gap will be bridged in the near future. This will create challenges for HSR development in the US.

### Inland Waterways Solvency Deficit

**XOs that deal with Inland Waterways link to politics-empirically proven**

**Hudson, 12** [Audrey, award-winning investigative journalist and Congressional Correspondent for *Human Events*, “Zoning the Ocean,” <http://www.humanevents.com/2012/04/17/zoning-the-ocean-2/>]

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.¶ “This one to me could be the sleeping power grab that Americans will wake up to one day and wonder what the heck hit them,” said Rep. Bill Flores (R -Texas).¶ “This is pure administrative fiat,” said Sen. David Vitter (R -La.). “It’s very troubling.”¶ “This is purely a unilateral administrative action with no real congressional input or oversight,” Vitter said. “I think it clearly threatens to have a big impact on a lot of industry, starting with energy, oil and gas, and fishing.”¶ But in his zeal to curb sea sprawl, lawmakers say the president’s executive order also gives Washington officialdom unprecedented reach to control land use as well.

### Economy Solvency Deficit

**XOs can’t solve the economy**

**Fifeld, 11** [Anna, The Financial Times, “Obama uses orders to bypass Congress,” http://www.ft.com/cms/s/0/6a5a3f66-03d2-11e1-bbc5-00144feabdc0.html#axzz21TsDc0BS]

The problem, some analysts said, is that executive orders have a much more limited scope than legislation. And with the economy stuck in first gear, bolder action is needed.

“Nobody should be fooled into thinking that you can construct through executive orders the kind of stimulus you could create through Congress,” said Bill Galston, a former Clinton administration official. “This is really just tinkering at the margins.”

### Critical Solvency Deficit

No solvency-The shift to executive action creates authoritative understandings

Glezos 2011 [Simon, PhD in Poli Sci from Johns Hopkins, Professor at the University of Regina, Contemporary Political Theory, 10.2, 147]

In this context, the move to increasing executive power takes on a new¶ coloring. I read this shift to governance via executive prerogative not solely as a political maneuver, done for the sake of expediency, but rather as an existential maneuver, to secure an identity and a narrative. In times of crisis says Connolly, there is always a tendency to ‘reinstate forcefully authoritative understandings’ (p. 146). A unitary executive is ideally suited to provide a unitary account of events, one that will challenge the collective identity as little as possible, or at the very least, re-establish the conditions of possibility for a stable narrative and identity. The executive’s right of ‘authority’ is linked to a duty of ‘authorship’, to write a new narrative; or rather, to write new events into the old narrative, to make the new gibe with the old, to extend the present into the future. At this point, one might ask why can this job not be carried out by the legislative branch, which is to say by a democratic, pluralistic decision-making body? After all, under normal conditions this is not viewed as a threat to the collective narrative and identity. Well, the key term there is ‘normal conditions’. Under the everyday functioning of government the historical narrative and identity of the polity are relatively intact and awareness of the rift in time is suppressed. As such debate and negotiation can be trusted not to upset the existential apple cart. But in times of crisis, narrative and identity are called into question, and as such there is no telling what sorts of renegotiations might emerge from democratic debate and what changes might be made to the narratives and identities with which we have become comfortable. And when a generalized social acceleration expands this time of crisis, producing a general existential anxiety, and this anxiety becomes crystallized into a general ressentiment against the future, a move towards government via executive fiat becomes increasingly attractive.

#### Executive orders are instruments of totalitarianism

Mayer 1(Kenneth, Professor at the University of Wisconsin-Madison, Princeton University Press, "With the Stroke of a Pen", 2001, http://press.princeton.edu/chapters/s7095.pdf, Accessed 7/23/2012)

Observers who are even less sympathetic cast executive orders in analtogether sinister light, seeing in them evidence of a broad conspiracyto create a presidential dictatorship. The common theme of these com-plaints is that the executive order is an example of unaccountable power and a way of evading both public opinion and constitutional constraints. In the more extreme manifestations, executive orders are portrayed as an instrument of secret government and totalitarianism.Thepresident says “Do this! Do that!” and not only is it done, but the government, the economy, and individual freedom are crushed under the yokeof executive decree.Truman is said to have issued a top-secret executive order in 1947 to create a special government commission to investigate the alleged flyingsaucer crash in Roswell, New Mexico (the air force says no such orderexists, but not surprisingly the proponents of the UFO-order theory don’tbelieve it). 36 When John F.Kennedy issued a series of executive orders authorizing federal agencies to prepare studies of how they would respond to national emergencies, some saw this as evidence that the government was getting ready to take over the economy and establish atotalitarian regime. 37 The Justice Department in 1963 complained of an “organized campaign to mislead the public” about these orders. The department had presumably grown tired of responding to members of Congress, who referred letters from constituents expressing outrage and alarm over the dictatorship that was right around the corner. 38

### Transit Apartheid Solvency Deficit

The CP causes neoliberalism

Harvey, 5 [David, Distinguished Professor of Anthropology at the Graduate Center for the City University of New York, leading social theorist, PhD in Geography from the University of Cambridge, *A Brief History of Neoliberalism*, pg. google books]

Neoliberal theorists are, however, profoundly suspicious of democracy. Governance by majority rule is seen as a potential threat to individual rights and constitutional liberties. Democracy is viewed as a luxury, only possible under conditions of relative affluence coupled with a strong middle-class presence to guarantee political stability. Neoliberals therefore tend to favour governance by experts and elites. A strong preference exists for government by executive order and by judicial decision rather than democratic and parliamentary decision-making. Neoliberals prefer to insulate key institutions, such as the central bank, from democratic pressures. Given that neoliberal theory centre on the rule of law and a strict interpretation of constitutionality, it follows that conflict and opposition must be mediated through the courts. Solutions and remedies to any problems have to be sought by individuals through the legal system.

### 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/>

ek

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.

### Links to Politics

#### The executive order counterplan links back into politics – republicans

Cohen 11 [Tom, CNN Wire news editor, Former Bureau Chief at The Associated Press, “Obama uses executive orders as a political tool” November 01, 2011 http://articles.cnn.com/2011-11-01/politics/politics\_obama-executive-orders\_1\_executive-orders-press-secretary-jay-carney-inaction?\_s=PM:POLITICS]

Republicans reject the premise of the White House position, arguing that Obama chooses to blame Congress for inaction instead of working with legislators from both parties on bills that can pass. House Speaker John Boehner, speaking on the Laura Ingraham show last week,described as laughable the prospect that Obama would use executive orders to bypass Congress on substantive issues.At the same time, though, the Ohio Republican said he would keep close watch to make sure nothing unconstitutional happens.

**Links to politics-The GOP freaks out when Obama issues executive orders**

**Fifeld, 11** [Anna, The Financial Times, “Obama uses orders to bypass Congress,” http://www.ft.com/cms/s/0/6a5a3f66-03d2-11e1-bbc5-00144feabdc0.html#axzz21TsDc0BS]

Bill Daley, Mr Obama’s chief of staff, bluntly described the new strategy in an interview with the Politico website published on Friday. “Let’s re-emphasise what powers we have! What we can do on our own! Push the envelope!” he is quoted as saying.¶ The Republican leadership of the House is not happy. “This idea that you’re just going to go around the Congress is just, it’s almost laughable,” John Boehner, the speaker, told conservative radio talk show host Laura Ingraham last week.¶ Mr Boehner said he was “keeping a very close eye” to make sure he was not doing anything unconstitutional.

#### 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).

### Aff-Rollback/Link to Politics

#### Executive orders can be rolled back and links to politics – Clinton proves

Gaziano 1 [Todd, Director, Center for Legal & Judicial Studies, Heritage Foundation “The Use and Abuse of Executive Orders and Other Presidential Directives,February 21, 2001, <http://www.heritage.org/research/reports/2001/02/the-use-and-abuse-of-executive-orders-and-other-presidential-directives>, Accessed 7/23/12]

Nevertheless, the President’s power to issue executive decrees is limited—by the scope of his powers and by other authority granted to Congress. If the President’s authority is derived from a statutory grant of power, Congress remains free to negate or modify the underlying authority. Congress also has some latitude in defining the procedures the President must undertake in the exercise of that authority, although there are some constitutional limits to Congress’s power to micromanage the President’s enforcement or decision-making procedures. Because the constitutional separation of powers both supports and limits a President’s power to issue executive directives, it is natural that some friction exists in the exercise of that power. Over the past 60 years, presidential authority to issue certain decrees has been tested in court (although many executive directives remain difficult to challenge in court), and a legal framework of analysis for the legitimacy of this power has evolved. The interplay between Congress and the White House varies depending on the aggressiveness of the President and Congress’s reaction to it. During the previous Administration, PresidentClinton proudly publicized his use of executive decrees in situations where he failed to achieve a legislative objective. Moreover, he repeatedly flaunted his executive order power to curry favor with narrow or partisan special interests. A review of Clinton’s executive orders shows that the number issued by him is not significantly different from the number issued by Presidents Ronald Reagan or George H. W. Bush. Yet the true measure of abuse is not the overall number of directives, but whether any of them were illegal or improper, and if so, how significant they may have been. A review of President Clinton’s directives also reveals some important departures from the practices of his two predecessors. This is particularly true of his use (and abuse) of powers under the Antiquities Act of 1906 and numerous directives issued in the areas of foreign and defense policy, environmental policy, regulatory review, labor policy, and civil rights. A disproportionate number of these executive directives were either illegal or issued in the furtherance of an improper policy or political objective. One of President George W. Bush’s priorities should be to review, revise, or rescind the most troublesome of these.Predictably, the 106th **Congress considered several measures** designed to rein in the past President’s abuses. H.R. 2655 attempted, in part, to define presidential directives more precisely and to require that all executive decrees specify the constitutional and statutory basis for any action incorporated in such directives. Both of these provisions are worthy of further consideration. Yet provisions of other bills were problematic and might be unconstitutional in application. Internalreforms initiated by the President may have a more lasting effect and are often more workable. Because few reforms can be imposed on a President over his veto, it makes sense for Congress to work with the new President on such reforms rather than overreact to the abuses of the last President.

### A2: Prez Powers/Heg

**XO/Pres Powers destroy leadership—INTERPOL proves**  
**Owens ‘9** [Bob, “Obama Surrenders U.S. Sovereignty: His INTERPOL Executive Order,” December 28, <http://pajamasmedia.com/blog/obama-surrenders-u-s-sovereignty-his-interpol-executive-order/>]  
Schippert and Middleton note [2] that Obama’s order removes protections placed upon INTERPOL by President Reagan in 1983. Obama’s order gives the group the authority to avoid Freedom of Information Act (FOIA) requests — which means this foreign law enforcement organization can operate free of an important safeguard against governmental abuse. “Property and assets,” including the organization’s records, cannot be searched or seized. Their physical locations and records are now immune from U.S. legal or investigative authorities.  If the presidentof the United Stateshas an aboveboard reason for making a foreign law enforcement agency exempt from American laws on American soil, it wasn’t shared by the White House.  Andy McCarthy, former assistant United States attorney for the Southern District of New York and senior fellow at the Foundation for Defense of Democracies, notes at National Review [3] that the limitations that Obama removed are “what prevents law-enforcement and its controlling government authority from becoming tyrannical.”  A paragraph later, McCarthy describes Obama’s actions in the starkest of terms:  This international police force (whose U.S. headquarters is in the Justice Department in Washington) will be unrestrained by the U.S. Constitution and American law while it operates in the United States and affects both Americans and American interests outside the United States.  Some bloggers covering this story are noting that the law enforcement agency to which Obama has extended such extraordinary powers to has had a dismal past.  INTERPOL’s senior leadership was flush with Nazis [4] from the late 1930s all the way into the 1970s. That fact allowed, going Godwin [5] isn’t necessarily relevant to today’s organization. Khoo Boon Hui of Singapore is the current president of the organization, and the current secretary general is American Ronald Noble. Noble is perhaps best known in America for overseeing the Treasury Department’s review of the disastrous 1993 raid and siege of a Branch Davidian compound in Waco, Texas, that left nearly 80 people dead. Noble had cautioned against the initial raid plan as being too dangerous, but the lack of any significant ramifications for federal officials that approved of the raid and allegations of a cover-up have inspired conspiracy theorists [6] to derisively dub Noble “the Enforcer.” But INTERPOL’s past isn’t what concerns us at this moment. Its current actions and the actions of our president are those that we question.  With the flourish of a pen and no warning at all, Barack Obama surrendered American sovereignty to an international force with a checkered past. To what end?  The consensus opinion among those commenting on this development is that the most radical president in American history seems to be intent on submitting American citizens to the whims of the International Criminal Court (ICC). Previous administrations have been very leery of signing onto agreements that would make citizens susceptible to the ICC, due to the possibility that U.S. servicemen could be dragged into show war crimes trials. Such events are obviously heavily politicized, and demands for war crimes arrests can come from any government, even those that sponsor terrorism or genocide themselves.  No finer point can be made about the endemic problems of the INTERPOL/ICC than that made by a recent diplomatic incident [7] that erupted in Great Britain, where an Israeli government official had to cancel travel plans to England because of an arrest warrant issued by an English judge — because of Iranian charges of Israeli war crimes in Gaza. The brief but intense conflict was one Iran helped instigate, as the Persians supplied the terrorists in Gaza with the rockets they used against Israeli civilians, triggering an inevitable Israeli response.  If President Obama and his radical allies in the Democratic leadership have their way, American soldiers could presumably be brought up on charges as war criminals by enemy nations and marked for arrest and deportation by an international police force on American soil. They would face charges in a foreign land without the constitutional protections they fought and bled to protect. The White House seems to be on the bewildering path of giving al-Qaeda terrorists who murder innocent women and children more legal protection than the very soldiers that risk their lives trying to bring terrorists to justice. The asinine court-martial charges being brought against three Navy SEALs based upon the word of a terrorist they captured suddenly make a sickening kind of sense [8].  It also stands to reason that Obama’s seeming willingness to put American soldiers’ lives in the hands of a corrupt international community could also be brought to bear against his political enemies. Foreign investigators of dubious intent, and our own left-wing extremists, have long branded officials of the previous administration “war criminals” for actions they’d taken in the war on terror. It is entirely conceivable — perhaps even likely — that these same organizations and enemy governments that went after 25 Israeli government officials [9] through INTERPOL and the ICC would quickly move to indict a wish list of current and former U.S. government officials for alleged “war crimes.” Former President George W. Bush and Vice President Dick Cheney would obviously be at the top of such a list of politically motivated suspects, but such a list could just as easily include General David Petraeus, Defense Secretary Robert Gates, congressmen, and senators.  As the Iranian gambit has shown, Obama’s bizarre assault on U.S. sovereignty could have disastrous repercussions. We can only hope that his fetish for weakening this nation can be stopped before American politicians and servicemen are made pawns by our enemies.

### 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.

### 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.