



“HOV Lane Ahead”: A Brief Overview of the Executive Order

by Dylan Erwin

I want you to imagine something with me. It’s, let’s say, about 6:15 p.m. on a Tuesday. You’ve just gotten back home after a long day of work. You walk into the living room and plop down on the couch – after 6:00 there’s no other way to move from a standing to sitting position other than the “plop.” You fire up your laptop, ignore the ever present “Your Startup Disk Is Almost Full” message, and log into Facebook. And there it is. Just as you expected, it’s another political post from your Great Aunt Twice Removed. And oh, look, another political post from that guy you went to high school with who used to weld his hands into his shop class projects. And, yup, another political post from your friend who, after watching the first season of the West Wing, lists “political activism” as an “interest.” Another political post, another political post, another political post. It’s amazing. In this day and age, with our access to unlimited information, everyone has the ability to attain the status of Constitutional Scholar overnight. The topic of the day: executive orders.

Wait... what is an executive order?

An executive order, generally, is a legally binding order from the President of the United States as the head of the executive branch. There is no *specific* portion of the U.S. Constitution that directly provides the power for executive order. Rather, it is ascertained through the penumbra of rights given to the executive branch and its head. Article II, Section 1 of the Constitution states: “the executive Power shall be vested in a President of the United States of America”¹. Further, Article II, Section 3 states: “[the President] shall take Care that the Laws be faithfully executed”². There are various flavors of executive orders, including, but not limited to, Proclamations and National Security Directives (a.k.a. Presidential Decision Directives).

Executive orders have been a part of the American democracy since the beginning. In fact, President George Washington issued a total of 8 executive orders while in office. Although President William Henry Harrison issued 0 executive orders (since he died of pneumonia after a

¹ U.S. Const. art. II, § 1, cl. 1.

² U.S. Const., art. II, § 3.

month in office for allegedly giving a two-hour inaugural address in the freezing rain), Presidents John Adams, Madison and Monroe – with 1 executive order each – win the award for fewest executive orders while in office. As to be expected, President Franklin Roosevelt issued the most executive orders while in office with 3,721 – granted, he spent a little over 12 years as President. Prior to leaving office, Presidents George W. Bush and Barack Obama issued 291 and 276 executive orders, respectively.³

If you recall from way back in elementary school, we have three branches of government. The legislative branch makes our laws, the judicial branch interprets our laws, and the executive branch enforces our laws. As the great constitutional scholars of Schoolhouse Rock taught us, most laws start out as bills. Bills sitting on Capitol Hill, praying they don't get stuck in committee on their journey to fame and fortune as a law. Executive orders don't suffer the same pitfalls as the poor bills sitting on Capitol Hill. If the legislative process is a highway, packed bumper to bumper with bills, an executive order is the driver flying past everyone in the HOV lane.

However, just like laws that begin as bills in Congress, executive orders can be challenged in the courts. We've seen that happen recently with challenges to President Trump's January 27, 2017 Executive Order subtitled "PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES"⁴. Spurred by the filing of cases by groups like the ACLU, judges in Virginia, Massachusetts, New York, and Washington have all issued rulings halting the enforcement of the executive order.

Having the ability to form your own opinion outside of what you hear screamed at you by your favorite talking heads is *essential* to the success of this great American Experiment. Regardless of what Meryl Streep or Scott Baio think is best for you, only *you* can make that determination. So, in the spirit of healthy political discussion, I challenge you to research executive orders. What do you like about executive orders? What do you dislike? What have other presidents done in the past using the vehicle of executive orders? When are executive orders appropriate? When are they inappropriate? Are they a good way to speed past the gridlock of the legislative process, or do they taste too much like Dictatorship Light?

³ Gerhard Peters and John T. Woolley, "Executive Orders." [The American Presidency Project](http://www.presidency.ucsb.edu/data/orders.php). Ed. John T. Woolley and Gerhard Peters. Santa Barbara, CA. 1999-2017. Available from the World Wide Web: <http://www.presidency.ucsb.edu/data/orders.php>.

⁴ <https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>