

Congress of the United States
House of Representatives
Washington, DC 20515-0301

January 28, 2014

The Honorable Barack Obama
President of the United States of America
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Obama:

We write you so that we may bring to your attention our concerns over a series of statements you have recently made. Your comments—culminating, of course, in your State of the Union Address—indicate that you plan to use a “pen and phone” to act unilaterally via executive order so that you may ostensibly create new laws without congressional authorization.

This sentiment, while understandable (we also have legislative and policy goals that have not been enacted by Congress), is constitutionally suspect and it ultimately serves to undermine the rule of law. Executive orders are not expressly recognized in the Constitution, nor are they prohibited.

But, as an acknowledged “inherent” constitutional power, such orders when not confined to the express constitutional powers as Commander-in-Chief should be used sparingly and never to legislate. Our system is intended to work carefully, sometimes ploddingly, through a series of checks and balances. As President, however, you are not free to enact your own legislative agendas and policy goals by executive fiat.

To the contrary, the oath you swore, and the Constitution itself, authorizes you as President to faithfully execute the laws *Congress enacts*. The presidency, unless vested by Congress or the Constitution expressly, has no lawmaking ability. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952), in which the Court invalidated President Truman’s executive order directing the seizure of steel mills, holding that “the President’s power to see that laws are faithfully executed refutes the idea that he is to be a lawmaker”.

Accordingly, while subjectively you may feel constrained from enacting all of your legislative goals by virtue of insufficient votes or public support in Congress, stating you will implement them by executive fiat threatens and undermines the constitutional balance established by the Framers. Emotional references to “kids” or “businesses” in speeches do not make such orders more constitutionally palatable.

Under Article II, Section 1, the “executive power” is vested with your office. In this sense, presidential power is to carry out and enforce the laws of the land. The laws, however, are the sole province of Congress. Policy and appropriations are the exclusive domain of Congress, with due regard for presidential input and information. Article II, Section 3 allows the President to “give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient...” We welcome such information and recommendations.

We ask that you show more deference to the constitutional role of the presidency vis-à-vis Congress. We are certain that if an administration that succeeds yours does not share your particular policy aims you would want that administration to honor the separation of powers and act within the confines of the Constitution. Our Constitution transcends partisanship.

The Rule of Law binds all of us as Americans and eliminates the vagaries associated with cronyism and *ad hoc* governmental decision making. It is a legacy for your office to uphold, protect, and improve upon. We note that the Attorney General should be advising your office of these parameters and ensuring compliance therewith.

We find derelict the Department of Justice’s failure to properly advise your office with regard to these matters. Your Administration has shown an unconstitutional tendency to usurp Congress’ lawmaking authority, with examples including, but not limited to: using the recess appointment powers to install appointees while the Senate was actually in session, legislating categories of people for non-deportation, creating waivers at-will under the Patient Protection and Affordable Care Act, and legislating cap-and-trade standards expressly rejected by Congress into rules that are being enforced by EPA agents.

We trust your office will evaluate these concerns and we are willing to meet with your office for further discussion. Thank you for your attention to this matter.

Sincerely,



Paul A. Gosar
Member of Congress
Arizona’s Fourth District



Trent Franks
Member of Congress
Arizona’s Eighth District



Matt Salmon
Member of Congress
Arizona’s Fifth District