

# AMERICAN GOVERNMENT

THE EXECUTIVE BRANCH

Name: \_\_\_\_\_

## The War Powers Resolution of 1973

*The New York Times*

### HOW WAR POWERS ACT WORKS

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**WASHINGTON, March 28**— The War Powers Act of 1973, passed in the aftermath of the Vietnam War, puts limits on the ability of the President to send American troops into combat areas without Congressional approval.

Under the act, the President can only send combat troops into battle or into areas where "imminent" hostilities are likely, for 60 days without either a declaration of war by Congress or a specific Congressional mandate.

The President can extend the time the troops are in the combat area for 30 extra days, without Congressional approval, for a total of 90 days.

The act, however, does not specify what Congress can do if the President refuses to comply with the act. Congress could presumably suspend all funds for such troops and override a Presidential veto.

## The Controversy

### Article I, Section 8:

The Congress shall have Power ...

- **To declare War, ...**
- To raise and support Armies, ...
- To provide and maintain a Navy;
- To make Rules for the Government and Regulation of the land and naval Forces;

### Article II, Section 2:

The President shall be **Commander in Chief of the Army and Navy** of the United States, and of the Militia of the several States, when called into the actual Service of the United States

**Question(s): Is the War Powers Resolution of 1973 even constitutional? Is it practical?  
How do you resolve the conflict?**

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### What is an Executive Order?

*From time to time I hear that President Obama has issued an Executive Order establishing this policy or that. What is an Executive Order? Where does the President get the authority to issue them? Is there any way to reverse an Executive Order?*

"Stroke of the pen. Law of the Land. Kinda cool."  
*Paul Begala, former Clinton advisor, The New York Times, July 5, 1998*

"We've switched the rules of the game. We're not trying to do anything legislatively."  
*Interior Secretary Bruce Babbitt, The Washington Times, June 14, 1999*

**Executive Orders** (EOs) are legally binding orders given by the President, acting as the head of the Executive Branch, to Federal Administrative Agencies. Executive Orders are generally used to direct federal agencies and officials in their execution of congressionally established laws or policies. However, in many instances they have been used to guide agencies in directions contrary to congressional intent.

Not all EOs are created equal. Proclamations, for example, are a special type of Executive Order that are generally ceremonial or symbolic, such as when the President declares National Take Your Child To Work Day. Another subset of Executive Orders are those concerned with national security or defense issues. These have generally been known as National Security Directives. Under the Clinton Administration, they have been termed "Presidential Decision Directives."

Executive Orders do not require Congressional approval to take effect but they have the same legal weight as laws passed by Congress. The President's source of authority to issue Executive Orders can be found in the Article II, Section 1 of the Constitution which grants to the President the "executive Power." Section 3 of Article II further

directs the President to "take Care that the Laws be faithfully executed." To implement or execute the laws of the land, Presidents give direction and guidance to Executive Branch agencies and departments, often in the form of Executive Orders.

### A Brief History and Examples

Executive Orders have been used by every chief executive since the time of George Washington. Most of these directives were unpublished and were only seen by the agencies involved. In the early 1900s, the State Department began numbering them; there are now over 13,000 numbered orders. Orders were retroactively numbered going back to 1862 when President Lincoln suspended the writ of habeas corpus and issued the Emancipation Proclamation by Executive Order. There are also many other Executive Orders that have not been numbered because they have been lost due to bad record-keeping. Such is not the problem today. All new Executive Orders are easily accessible (see below).

Many important policy changes have occurred through Executive Orders. Harry Truman integrated the armed forces under Executive Order. President Eisenhower used an EO to desegregate schools. Presidents Kennedy and Johnson used them to bar racial discrimination in federal housing, hiring, and contracting. President Reagan used an EO to bar the use of federal funds for advocating abortion. President Clinton reversed this order when he came into office.

President Clinton has come under fire for using the EO as a way to make policy without consulting the Republican Congress (see the quotes at the beginning of this article). Clinton has signed over 300 EOs since 1992. In one case, he designated 1.7 million acres of Southern Utah as the Grant Staircase - Escalante National Monument. He also designated a system of American Heritage Rivers

and even fought a war with Yugoslavia under Executive Order.

### **Controversy**

Executive Orders are controversial because they allow the President to make major decisions, even law, without the consent of Congress. This, of course, runs against the general logic of the Constitution -- that no one should have power to act unilaterally. Nevertheless, Congress often gives the President considerable leeway in implementing and administering federal law and programs. Sometimes, Congress cannot agree exactly how to implement a law or program. In effect, this leaves the decision to the federal agencies involved and the President that stands at their head. When Congress fails to spell out in detail how a law is to be executed, it leaves the door open for the President to provide those details in the form of Executive Orders.

### **Congressional Recourse**

If Congress does not like what the executive branch is doing, it has two main options. First, it may rewrite or amend a previous law, or spell it out in greater detail how the Executive Branch must act. Of course, the President has the right to veto the bill if he disagrees with it, so, in practice, a 2/3 majority is often required to override an Executive Order.

Congress is less likely to challenge EOs that deal with foreign policy, national defense, or the implementation and negotiation of treaties, as these are powers granted largely to the President by the Constitution. As the Commander-in-Chief of the armed forces, the President is also considered the nation's "Chief Diplomat." In fact, given national security concerns, some defense or security related EOs (often called National Security Directives or Presidential Decision Directives) are not made public.

In addition to congressional recourse, Executive Orders can be challenged in court, usually on the grounds that the Order deviates from "congressional intent" or exceeds the President's constitutional powers. In one such notable instance, President Harry Truman, was rebuked by

the Supreme Court for overstepping the bounds of presidential authority. After World War II, Truman seized control of steel mills across the nation in an effort to settle labor disputes. In response to a challenge of this action, the Supreme Court ruled that the seizure was unconstitutional and exceeded presidential powers because neither the Constitution or any statute authorized the President to seize private businesses to settle labor disputes. For the most part, however, the Court has been fairly tolerant of wide range of executive actions.

*Contributing Author: Jeffrey C. Fox, Catawba College*

### **What Do You Think?**

Do you think that President Obama's executive action on immigration falls within his constitutional role and powers, or does it go too far? Explain.