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“We Can’t Wait”: Barack Obama, Partisan Polarization and the Administrative Presidency

Abstract: Scholars and pundits have usually depicted Barack Obama as a prisoner of partisan rancor in Congress, which has been especially fierce on the Republican side of the aisle. We argue, to the contrary, that he has actively – if sometimes reluctantly – embraced the role of party leader, even in the management of the bureaucracy, the arena in which the modern presidency’s claim to transcend partisanship was nurtured. The Administration’s public celebration of unilateralism – typified by the “We Can’t Wait” initiative – is emblematic of a far-reaching development within the presidency and American politics: the rise of an *executive centered party-system*, which relies on presidential candidates and presidents to pronounce party doctrine, raise campaign funds, campaign on behalf of their partisan brethren, mobilize grass roots support and advance party programs. Although this development poses hard challenges to collective responsibility and the rule of law that undergirds it, Obama’s innovative administrative tactics may be the harbinger of a new paradigm that extols unilateral presidential policymaking as a habitual solution to partisan polarization.

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The Administrative Presidency

In October 2011, President Obama gave vent to his frustration with the partisan obstruction he suffered during the first 2 years of his presidency. Responding to the Republicans blocking the enactment of a jobs bill and other measures he hoped would buttress his political support and add steam to a sluggish recovery from the Great Recession, the president shared a new message with a crowd in Nevada: “... I’m here to say... to the people of Nevada and the people of Las Vegas – we can’t wait for an increasingly dysfunctional Congress to do its job. Where they won’t act, I will” (<http://www.whitehouse.gov/blog/2011/10/24/we-cant-wait-president-obama-nevada>).

Obama's "We Can't Wait" campaign (WCW) seemed to mark a turning point in his presidency. During his celebrated 2008 campaign for the White House, Obama had presented himself as a transcendent leader who could rise above the partisan rancor that had sharply divided Democrats and Republicans during the George W. Bush administration; he also condemned the administrative aggrandizement of the Bush years for flouting the constitutional role of Congress and undermining the rule of law. This was not merely the stuff of campaign slogans. When Democrats controlled Congress, Obama for the most part seemed willing to work through the legislative process to achieve ambitious programmatic goals such as health care and financial reforms. But the Senate Republicans' routine use of the filibuster to stifle the Administration's initiatives and the growing inter-branch combat resulting from the "shellacking" Obama suffered in the 2010 elections persuaded the president, as then White House Chief of Staff William M. Daley recalled, that he and his political allies would "have to scour everything and push the envelope in finding things we can do on our own" (Savage 2012).

In our view, this public celebration of unilateralism is emblematic of a far-reaching development within the presidency and American politics: the rise of an *executive centered party-system* – one initiated by Ronald Reagan and continued by George W. Bush – that relies on presidential candidates and presidents to pronounce party doctrine, raise campaign funds, campaign on behalf of their partisan brethren, mobilize grass roots support and advance party programs (Milkis and Rhodes 2007). Scholars and pundits have usually depicted Obama as a prisoner of partisan rancor in Congress, which has been especially fierce on the Republican side of the aisle. We argue, to the contrary, that he has actively – if sometimes reluctantly – embraced the role of party leader, even in the management of the bureaucracy, the arena in which the modern presidency's claim to transcend partisanship was nurtured.¹ Indeed, it is our contention that President Obama has surpassed the institutional strategies of the Bush administration in combining programmatic achievement and electoral calculation that will endure beyond 2016.² In effect, Obama's circumvention of partisan

1 For a more systematic development of this argument, see Milkis, Rhodes, and Charnock (2012).

2 Farris, Nathan, and Wright (2004) note that George W. Bush's executive action in support of his "faith-based initiative" pushed administrative politics into new areas. When Congress failed to pass legislation to establish this program, President Bush made his unilateral pursuit of a comprehensive policy that would significantly affect the relationship between Church and State a major theme of his re-election campaign. "Congress wouldn't act," he told a group of faith-based leaders in Los Angeles on March 3 2004, "so I signed an executive order – that means I did it on my own" (cited in *Ibid.*, 4). Although President Obama has recast the administrative presidency in his own image, making unprecedented use of informal measures and elaborating on the imperative of acting when Congress would not, the Bush presidency pioneered important precedents that anticipated, and to a point inspired, the current administration's strategy.

“gridlock” may provide the blueprint for future presidents – Democrats and Republicans alike – in responding to party polarization over public policy.

Of course, the “administrative presidency” has been an important feature of policymaking since the consolidation of the modern executive office during the New Deal (Nathan 1983; Milkis 1993). Modern presidents have attempted to strengthen their capacity to achieve political and policy objectives by wielding administrative powers through the bureaucracy rather than navigating a complex system of separated powers. But Progressive reformers sought to replace Congress-centered partisan politics seen as favoring “special interests” with nonpartisan administrative politics that presumed to serve the “whole people.” Obama’s bow to “post-partisanship” appeared to reprise the Progressive tradition of non-partisan administration that informed the presidencies of the Roosevelts, Woodrow Wilson, and Lyndon Johnson. Conceiving of the executive as the “steward of the public welfare,” to use Theodore Roosevelt’s beguiling phrase, they presumed nonpartisan leadership of public opinion and management of the bureaucracy as an essential means for achieving economic and social reform.

Recent policy stalemates in Congress, however, instigated by escalating partisan polarization, have encouraged the White House to deploy executive power in the service of partisan objectives. Since the late 1980s, party conflict has roiled the administrative state forged during the Progressive and New Deal eras. Most accounts of our present political discontents have emphasized polarization in Congress, but the “modern” executive also has become more partisan. Republican presidents, especially, have advanced the art of mobilizing *partisan* opinion and exploiting administrative power for their party’s objectives (Galvin 2010). By the time Obama reached office, it no longer seemed possible for presidents to stand apart from partisan combat; more to the point, partisan polarization had come to so divide Congress and advocacy groups in Washington, that the Obama Administration had strong incentives to take “refuge” and pursue progressive policies in the administrative presidency (Coglianese 2010; Jacobs and King 2010; Skocpol and Jacobs 2012).

The Obama administration, in fact, occasionally resorted to unilateral action as a *first* resort in bringing about non-incremental policy change. In early March of 2009, President Obama received considerable praise from the press by signaling he intended to follow through on campaign promises to temper the use (and abuse) of signing statements. This praise proved premature, however, given that the administration went on to use such statements in ways that seemed to mimic those for which George W. Bush had taken so much heat (Savage 2006; Crouch, Rozzell, and Sollenberger 2013). More problematic was the fact that the administration’s policy was issued as a presidential memorandum – a tool that President Obama has used more frequently and with more substantive impact than any other

president (Lowande submitted). Informal measures such as policy memos and waivers have long been supplanting executive orders and regulations, which have the force of law but require complex administrative procedures and are subject to more resistance from the Congress and Judiciary; however, the Obama administration has brought informal but policy-consequential administrative tactics to a new level. Most scholars and journalists have cited Obama's relatively limited use of executive orders to discount the significance of his administrative politics. But these analyses have overlooked the growing importance of unilateralism by other, less formal means, which Obama has used to an unprecedented degree.³

Unilateralism, Environmental Protection and Women's Rights

During the first 2 years of his presidency, the Obama White House was especially keen to use unilateral power to achieve progressive objectives in environmental and social policy. Since the "Great Recession," carbon capture, energy and pollution have largely been relegated to the back burner. At the outset of his term, given the unemployment rate and other woeful economic indicators, it was unlikely the President would see any legislation pass Congress that risked agitating the short-term crisis to address a long-term one.⁴ Rather than risk vital political capital in a legislative battle, the President focused his efforts on addressing energy independence and climate change through liberal interpretation of existing law and administrative rulemaking. Presidential memoranda requesting such rules touched off many of those actions. The first initiated a regulatory process that resulted in new, more ambitious corporate average fuel economy (CAFE) standards, surpassing those established by the Energy Independence and Security Act (EISA), enacted with bipartisan support in 2007.⁵ This process was largely centralized within the Obama White House through informal brokering with relevant stakeholders. The second memorandum was issued February 5th, 2009.

³ For example, during the first 5 years of his presidency, George W. Bush issued 79 memos and 208 executive orders; during his first 5 years, Obama issued 162 memos and 171 executive orders (Tabulated using the digitized *Federal Register*: www.federalregister.gov).

⁴ To the extent Energy and Climate change were discussed in Congress, it was intentionally couched in terms of economic development. See "Growing US Trade in Green Technology," Hearing, *Subcommittee on Commerce, Trade and Consumer Protection* (October 7, 2009) and "Competitiveness and Climate Policy: Avoiding Leakage of Jobs and Emissions" (March 18, 2009).

⁵ "The Energy Independence and Security Act of 2007," *Federal Register* 74, no. 17, (28 Jan. 2009).

It requested that the Department of Energy accelerate the promulgation of final rules regarding the energy efficiency of home appliances, in accordance with the EISA.⁶ Other memos commissioned task forces on nuclear energy and carbon capture technology.⁷ The latter read, in part:

The Task Force shall develop within 180 days of the date of this memorandum a proposed plan to overcome the barriers to the widespread, cost-effective deployment of CCS [Carbon Capture and Storage] within 10 years, *with a goal of bringing 5–10 commercial demonstration projects online by 2016* (emphasis added).

These were not empty words; the proverbial stroke of the pen resulted in the administration dedicating \$1.4 billion from the American Recovery and Reinvestment Act of 2009 to carbon capture projects. Several large CCS projects have already been implemented through the Department of Energy. Additionally, the Blue Ribbon Commission on nuclear energy has since issued a final report, that among other recommendations, calls for the creation of a new independent agency to handle nuclear waste; this agency, the Commission prescribed, should be funded by user fees – as opposed to “competing” for yearly discretionary appropriations.⁸

Although the Obama administration did not make much of an effort to usher energy legislation through Congress, all of these initiatives were touted as formative presidential action, made necessary by a gridlocked Congress. As Bruce Oppenheimer has written of the CAFE standards initiative, “Having struggled with Congress over a stimulus package immediately upon taking office, anticipating great difficulty in enacting health care legislation, and concerned with the potential of unified Republican opposition to most of its domestic policy initiatives, the Obama administration chose to sidestep Congress to make significant increases in CAFE standards well beyond those [for which existing legislation] provided.” EISA, passed in 2007 as a result of difficult but ultimately fruitful negotiations between a Democratic Congress and Republican White House, called for manufacturers of cars and small trucks to meet a CAFE standard of 35 miles per gallon by 2020. The new rules, announced with much fanfare by Obama in a May 19, 2009 Rose Garden Ceremony,

⁶ “Appliance Efficiency Standards,” *Federal Register* 74, no. 25 (5 Feb. 2009).

⁷ “A Comprehensive Federal Strategy on Carbon Capture and Storage,” *Federal Register* 75, no. 24 (5 Feb. 2010). “Blue Ribbon Commission on America’s Nuclear Future,” *Federal Register* 75, no. 22 (3 Feb. 2010).

⁸ “[W]aste management needs have had to compete for limited discretionary funds with other DOE priorities in the appropriations process” (Carnesale 2012). “Report to the Secretary of Energy,” *Blue Ribbon Commission on America’s Future* (January 26, 2012).

mandated an average fuel economy of 35.5 miles per gallon be met by 2016, a substantial victory for environmental groups and an important policy achievement for a president dedicated to reducing greenhouse gases (Oppenheimer 2013).

In the area of social policy, the President used a memorandum to revoke the so-called “Mexico City” policy that prohibited funding to non-governmental organizations that provided family planning and abortion-related services in foreign nations.⁹ Since Ronald Reagan established the policy in 1984, Democratic and Republican presidents have dueled over the issue – with Clinton revoking the policy and George W. Bush reinstating it – all via presidential memoranda. The Obama administration also commissioned interagency working groups on HIV/AIDS, violence against women, and gender-disparities in healthcare provision.¹⁰ In addition, the White House initiated new guidelines governing domestic violence in federal workplaces.¹¹ In each of these instances, the Obama administration might have pursued these policies in Congress. In the case of the Mexico City policy, it is worth noting that the action occurred just a few days into Obama’s first term – when he had large and largely supportive majorities in both chambers of Congress. But Obama dared not risk, as Clinton did, deflecting Congress’s and the public’s attention from the economic and health care reforms he coveted. Moreover, both the CAFE standards initiative and Mexico City affirmation of women’s rights abroad illustrate a key dimension of executive-centered partisanship: securing electoral and partisan gains in the face of sharp partisan conflict in Washington. Unilateral presidential actions are often messages sent directly to constituents – a purpose that the Obama administration transformed into a cause in its battles with Republicans of the 112th Congress.

Into the Breach: The We Can’t Wait Campaign

The actions Obama took in the areas of energy and social policy stoked important constituents of the Democratic Party; however, these initiatives were relatively isolated and largely overshadowed by the primary public message that the

⁹ “Mexico City Policy and Assistance for Voluntary Population Planning,” *Federal Register* 74, no. 17 (28 Jan. 2009).

¹⁰ “Memorandum on Establishing a Working Group on the Intersection of HIV/AIDS, Violence Against Women and Girls, and Gender-Related Health Disparities,” Government Printing Office (30 Mar. 2012).

¹¹ “Memorandum Establishing Policies for Addressing Domestic Violence in the Federal Workforce,” Government Printing Office (18 Apr. 2012).

Administration was engaged in unrequited efforts to reach across the aisle and get things done. After the summer of 2011, however, when Obama and congressional Republicans reached an impasse on fiscal policy and the House Republicans refused to raise the debt ceiling, threatening to bring the government into default, the White House began to plot the course that led to the launching of the We Can't Wait Campaign – a shift in rhetoric and policy that more decisively joined partisanship and national administration. As Nancy DeParle, a deputy chief of staff assigned to lead the initiative, observed, the President determined that it was not longer enough to highlight Republican obstructionism – facing a tough re-election in the midst of the stubborn tumor of high employment and declining public support, Obama “wanted to continue down the path of being bold with Congress and flexing our muscles a little bit,” thus “showing contrast with the American people of a Congress that was completely stuck.”¹²

From October 2011 to October 2012, the administration announced 45 distinct executive actions that were packaged under the “We Can't Wait” brand. These actions were taken using a variety of means, including executive orders, presidential memoranda, waivers, recess appointments, and informal brokering between interested parties. What distinguished this comprehensive administrative strategy from previous uses of the presidential pen was its near seamless connection with the president's re-election campaign; the Nevada launching took place beneath a “We Can't Wait” banner highlighting Obama's celebration of the initiative as a justifiable response to congressional Republicans' obstructive tactics that went far beyond constitutional limits to thwart representative government. “When Congress refuses to act and – as a result – hurts our economy and puts people at risk,” Obama declared, “I have an obligation as president to do what I can without them.”

The president had good reason to complain about Congressional obstruction. Although the minority party in the Senate has utilized aggressive partisan tactics since the Clinton administration, these maneuvers spiked during Obama's first term. Exercising the filibuster and other dilatory measures, Republicans blocked presidential appointments to the courts and the executive branch as well as legislation from reaching the floor of the Senate at unprecedented rates. During the three legislative sessions of Congress from 2007 (when the Democrats captured the upper chamber during Bush 43's second term) to 2012, Republicans threatened to filibuster on 385 occasions – equaling, in 5 years, the total number of filibuster threats to grip the Senate during the seven decades from the start of World War I until the end of the Reagan administration (Klaidman and Romano 2012).

Nevertheless, this celebration of the Obama White House as the guardian of constitutional forms against a rancorous Republican assault on them veiled a

¹² DeParle cited in Savage (2012).

calculated partisan and electoral strategy. Indeed, never before had a president and his administration collected and packaged a set of unilateral actions so clearly designed to reap electoral gains. This political calculation becomes clear when one examines what was (and was not) included in the initiative and considers that in the course of the 2012 campaign there was a great deal of variation in what actions were chosen to be included and publicized. The early initiatives in the We Can't Wait campaign were aimed at implementing small pieces of the American Jobs Act, in order to build grassroots support to pressure Congress to pass legislation aimed at ameliorating unemployment.¹³ The Act had been effectively stalled by a Republican filibuster in the Senate at the time of the initiative (Helderman and Nakamura 2011). While insisting that his actions were no substitute for the enactment of comprehensive legislation, and renewing his demand that Congress pass the jobs bill, Obama raised the ante by announcing four actions to promote “job creation.”

Two of those actions – taken October 25th and November 7th – were directed at veterans, who have been the most popular beneficiaries of social welfare policy since the enactment of GI Bill in 1944. The American Jobs Act contained a provision to increase the work opportunity tax credit for businesses hiring unemployed veterans. The corresponding WCW initiatives gave preferential grant status to physicians assistant programs that trained veterans, created online employment resources exclusively for veterans, and gave veterans preferred case status with the Department of Labor. In 2012, the administration gave more evidence of its support for helping veterans by negotiating with major lenders to reduce refinancing fees for members of the armed services, and to crack down on predatory recruitment of veterans by vocational schools seeking to reap profits from the benefits provided by the GI Bill.¹⁴

The administration used a variety of means other than orders and memoranda as a part of the initiative. The most common of these was the president's “convening authority” to bring together the private and nonprofit sectors to move ahead on his agenda when Congress refused to do so, and then showcasing this action through traditional and social media (Eilperin 2014). This facilitation of informal bargaining among interested parties was at the core of the agreement worked out between mortgage lenders and veterans. The president's convening power was also critical to the development of the more stringent CAFE standards that were negotiated with major automakers; building on the 2009 initiative, Obama packaged a new CAFE proposal as part of the We Can't Wait initiative. Standing on the stage with thirteen leading automobile companies in July 2011,

¹³ “American Jobs Act of 2011,” S.1549, 112th Congress (introduced September 14, 2011).

¹⁴ The first was taken March 3, 2012 and was negotiated with help of the Veterans Affairs administration. The second was taken April 27, 2012 via executive order (13,607), and coordinated efforts between the VA, the Department of Defense, and the Justice Department.

the president announced standards that mandated an average fuel economy of 54.5 miles per gallon for the 2025 model year (Oppenheimer 2013).¹⁵ Similarly, when the administration released its Consumer Privacy Bill of Rights on February 23, 2012, it negotiated with major tech giants Google, Yahoo!, Microsoft, and AOL to voluntarily agree to an FTC regulation that required they allow users to opt out of the web-browsing tracking used to provide more targeted advertising.¹⁶

The We Can't Wait Initiative thus highlighted how the Obama administration not only engaged in *de facto* lawmaking; for some of the measures, it also forged consensus among interest groups, another task conventionally understood to reside with Congress. To be sure, this coalition building cannot be reduced to vulgar electioneering. Many pieces of WCW had important policy consequences, most notably the educational reform the Obama administration included in the initiative. No domestic policy of the Bush Administration was more controversial than No Child Left Behind (NCLB); it was especially abhorrent to teachers unions, an important Democratic constituency. Enacted in 2001 with bipartisan support, NCLB linked educational funding with requirements for annual testing for grades 3–8 in reading and math; the law also required proof of “adequate yearly progress,” even for student subgroups defined by race and ethnicity, socioeconomic status, disability, and English language proficiency. Although the federal government had been involved in public education since the enactment of the Elementary and Secondary Education Act in 1965, NCLB carried federal intervention much farther than any previous law; moreover, whereas hitherto aid for elementary and secondary education had emphasized carrots, NCLB joined benefits to the stick: it threatened sanctions against schools that failed to make required progress. All students had to attain proficiency in reading and math by 2013–2014, and all teachers had to be “highly qualified” by the end of the 2005–2006 school year.

Malice towards NCLB went far beyond teachers unions; broadly unpopular with most state and local officials, who faced the prospect of many schools all over the country facing “failing” grades for falling short of adequate yearly progress standards, the law was left in limbo when Congress did not re-authorize it in 2007. Disrupting schools and infuriating parents, teachers and voters,

15 The Environmental Protection Agency and the Department of Transportation formally unveiled the Administration's proposal to set stronger fuel economy and greenhouse gas pollution standards for Model Year 2017–2025 passenger cars and light trucks on November 16, 2011, <http://www.nhtsa.gov/About+NHTSA/Press+Releases/2011/We+Can'+Wait:+Obama+Administration+Proposes+Historic+Fuel+Economy+Standards+to+Reduce+Dependence+on+Oil,+Save+Consumers+Money+at+the+Pump>.

16 “We Can't Wait: Obama Administration Unveils Blueprint for a “Privacy Bill of Rights” to Protect Consumers Online,” The White House, Office of the Press Secretary (February 23, 2012).

NCLB was a perfect candidate for the WCW campaign. Making innovative use of waivers, President Obama and Education Secretary Arne Duncan essentially rewrote the law. Waivers from federal mandates have been an important part of national-state relations since the Reagan administration; what distinguished the WCW educational initiative was the Obama's administration's use of "conditional waivers:" that is, a State only was allowed to avoid the law and regulations made in pursuance of the statute if it adopted new standards prescribed by the Obama administration.¹⁷ Consequently, the waivers became a "fundamental redesign by the administration" of important features of the law written by Congress, so much so, Lauren Smith of the *Congressional Quarterly* claims, that Obama and Duncan were not only changing education policy but also "writing the book on how to get things done without waiting for Congress" (Smith 2012).

To a point, the NCLB initiative fulfilled President Obama's commitment to transcend partisan differences, which had fractured the coalition that supported the original legislation. Duncan worked with teachers, governors and state chiefs to gain their support, constructing a broad bipartisan consensus that fended off the fury of Republicans on Capitol Hill. But the waivers took on a "partisan tinge," Smith argues, "when Obama announced them as part of his 'we can't wait' campaign theme directed at the GOP in Congress." The partisan divide widened when the administration showed its determination to substitute Common Core standards, emphasizing critical thinking and analytical skills, for the standards stressed during the Bush years, which it denigrated as mind numbing memorization. Republicans in Congress, especially those allied with the Tea Party, shot back that new standards amounted to a federal takeover of local education (Hess 2013; Layton 2014).¹⁸ Thus Republicans grouched and Democrats approved, when Duncan trumpeted the Obama program as a "Race to the Top" – an approach that

¹⁷ The new conditions a State has to put in place to be relieved of the NCLB mandates are: States must adopt the common academic standards advocated by the Department of Education or work with their state higher education system to devise standards that are "college and career ready;" they must develop a new accountability system based on student progress, as well as a new teacher model that includes student performance as one measurement; they must intervene in the poorest 5% of schools and in most cases implement one of the turnaround strategies prescribed by the Education Department; in an additional 10% of schools having low graduation rates, big achievement gaps or low performance in student subgroups, districts must develop strategies for helping students with the greatest need (Smith 2012). On the Obama administration's use of conditional waivers, which examines this practice form a broad historical and constitutional perspective, see Derthick (2013).

¹⁸ The fight over Common Core did not break down strictly according to partisan lines. Some progressive groups, including teachers unions, bristled at the emphasis on testing and the role of the Gates Foundation, which has funded the development and promotion of standards (Layton 2014).

he celebrated as a superior method to the Bush administration's more punitive enforcement: "At a time when we have to get better faster than ever before, it's crazy that we have a law that is stifling creativity and innovation. It is very, very punitive. The only reward for success is not being labeled a failure."¹⁹

There were other telltale signs of an election-year strategy and partisan slant in the development of the We Can't Wait program. The final action under the auspices of the WCW mantra, for example, was taken roughly a month prior to the election.²⁰ Furthermore, breaking down the actions by how initiatives benefitted specific states reveals that a disproportionate number of those beneficiaries were widely regarded as "swing states" in 2012.²¹ The four swing states with the most electoral votes – Ohio, Virginia, North Carolina, and Florida – each benefitted from multiple actions. These actions that bestowed state-level benefits included expedited review for waivers from No Child Left Behind, infrastructure projects and multi-million dollar pilot programs.²² This is not to suggest that the Obama administration disproportionately targeted critical electoral ground as a general rule. The WCW initiative was ultimately about publicity. What matters is what the administration chose to publicize. In the case of WCW, that often meant the states that would later decide the election were placed front-and-center in the initiative.

No less than publicity, forbearance played an important role in the electoral and partisan strategy of Obama's administrative presidency. A report of the Administrative Conference of the United States (ACUS), an independent agency that advises the federal government on regulatory issues, reveals that the White House delayed enacting a series of rules on the environment, worker safety and health care to prevent these measures from rousing unwanted controversy for the president and his partisan brethren before the 2012 election (Administrative Conference of the United States 2013). Substantiating this report, a *Washington Post*

¹⁹ Duncan cited in Smith (2012).

²⁰ In early October 2012, the administration announced that two nationally and regionally significant transit projects in Minneapolis, Minnesota and Cleveland, Ohio that would be expedited via presidential action. <http://www.whitehouse.gov/the-press-office/2012/10/01/we-can-t-wait-obama-administration-announces-transit-projects-minnesota>

²¹ There were 11 actions that mentioned individual states, with 44 total individual mentions. Only two of those actions did not affect swing states. Of those 44 mentions, 12 were swing states. Of the conventional list of swing states – Colorado, Florida, Iowa, Nevada, New Hampshire, North Carolina, Ohio, Virginia, and Wisconsin—only Iowa, New Hampshire and Wisconsin were not the subject of some publicized action.

²² From June to October 2012, the administration used the expedited review processes outlined in Executive Order 13604 to approve projects in 12 states. The NCLB waivers were granted February 9, 2012. A \$45 million manufacturing pilot program in Virginia was announced March 9, 2012.

investigation found that “some agency officials were instructed to hold off submitting proposals to the White House for up to a year to ensure that they would not be issued before voters went to the polls” (Eilperin 2013).

Again, political influence on the regulatory process is not new; but the Obama effort, like the WCW campaign, was more carefully coordinated. According to the ACUS report it was spearheaded by the Office of Information and Regulatory Affairs (OIRA), which oversees the implementation of federal rules. Starting in 2012, the White House instructed department and agency officials that they had to meet with an OIRA desk officer, the regulatory traffic cop for their particular policy arena, before submitting each significant rule for formal review. Regulatory officials dubbed these sessions “Mother May I” meetings, and they resulted in important initiatives being delayed until 2013 (ACUS Report, p. 38). Postponed measures included the EPA’s rule on green house emissions and the Department of Health and Human Service’s regulations, pertaining to the Patient Protection and Affordable Care Act, that covered the explosive issues of what constituted “essential health benefits” under a health care plan and which Americans could qualify for federal subsidies if they opted to enroll in a state or federal marketplace plan. That these rules were ultimately issued makes clear that the White House’s programmatic ambitions were slowed but not fundamentally altered by electoral calculations. And yet, as the administrative debacle that ensued when implementation of health care reform began in late 2013 suggests, had the White House not developed an unprecedented formal process to monitor the potential electoral impact of regulatory measures, the president’s re-election and his party’s gains in the House and Senate might very well have been jeopardized.

The Administrative Presidency and the Democratic Coalition

From the start, the Obama Administration has been attentive, not only to sustaining support among the Democratic Party’s base but also to building a new progressive coalition of minorities, youth and educated white voters, especially women. With this objective in mind, the White House took important executive action beyond the neatly packaged initiatives of the We Can’t Wait Initiative. As mentioned, many of the president’s administrative actions in the service of environmental protection and women’s rights appealed to these constituencies. Similarly, the administration’s direction to the Justice Department in February 2011 to stop defending the Defense of Marriage Act (DOMA), which barred federal recognition of same sex marriage, against constitutional challenges sealed the White House’s partnership with the burgeoning LGBT rights movement. Previously, the administration had called for

Congress to repeal the law, but it had defended lawmakers right to enact it.²³ Perhaps the most significant action the Obama administration took to strengthen the support of the coalition it envisaged was the Deferred Action for Childhood Arrivals (DACA). Obama announced in June 2012 that the Department of Homeland Security was setting up an administrative procedure that granted relief to an entire category of young immigrants, as many as 1.4 million people, who would otherwise have been subject to deportation. The president thus elided Republican opposition to the Dream Act, the administration's bill designed to provide a conditional pathway to citizenship for immigrants who were brought to America illegally as children.

As in the DOMA case, Obama officials had previously demurred on immigration reform, claiming in the face of importunities from Illinois Senator Richard Durbin and a newly emergent Dreamers movement – *United We Dream* – that although they supported the Dream Act, it was up to Congress to pass a law. As late as April, Valerie Jarrett, the president's senior advisor, and Cecilia Munoz, the domestic policy advisor,²⁴ held a meeting with *United We Dream* leaders to express strong support for their cause, but also to insist that President Obama had no legal authority to issue an order granting deportation protection (Preston 2012). Yet getting word that Republican Marco Rubio of Florida was preparing a new bill to give visas to young immigrants and fearing that Obama could not win re-election without strong Hispanic support, the Administration decisively veered toward an administrative solution. On June 15, Secretary of Homeland Security Janet Napolitano, who hitherto had echoed the White House's demurals, issued a memorandum that instructed subordinate agencies – Customs and Border Patrol (CPB), US Citizenship and Immigration Services (USCIS), and Immigration and Custom Enforcement (ICE) – to exercise “prosecutorial discretion” on certain immigrants who came to the US prior to the age of 16.²⁵ Although

²³ The Obama Administration's constitutional position on DOMA was vindicated when the Supreme Court declared its key provision – Section 3 – unconstitutional. See *United States v. Windsor*, 570 US __ (2013) (Docket No. 12-307).

²⁴ Munoz's recalcitrance was especially notable – and frustrating – to Dreamers, as she formerly had served as the Senior Vice President for the Office of Research, Advocacy and Legislation at the National Council of La Raza, an advocacy group for Hispanic Americans.

²⁵ “Memorandum: Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” Janet Napolitano, Department of Homeland Security (June 15, 2012). Secretary Napolitano's memo was not created out of whole cloth. It was contemplated a year earlier in a memo issued by ICE Director, John Morton, an initiative which also was influenced by the intensive efforts of immigration advocates. Morton's memo set out 19 factors that ICE officers should consider in determining whether to exercise prosecutorial discretion. But it did not require ICE field officers to exercise discretion in individual cases, and therefore left open the possibility that many individuals who were low enforcement priorities still faced the threat of deportation (Gilbert 2013, p. 274).

Secretary Napolitano's memo specified that the directive "conferred no substantive right, immigration status or pathway to citizenship," it did establish a process to allow qualifying individuals to gain protection from deportation for 2 years, and instructed that those Dreamers granted deferred action could apply for work authorization (Napolitano Memo, p. 2).

This adroit administrative maneuver contributed to the president's successful reelection campaign, which saw Hispanics support him by an overwhelming margin (Lizza 2012; Lopez and Taylor 2012). Prior to DACA, Hispanic activists were highly ambivalent about the Obama Administration, which had pursued a vigorous deportation policy; but a survey of Latinos following the action revealed a significant turning of the tide: 58% of respondents indicated DACA had made them "more enthusiastic" about Obama, while just 6% indicated it had made them less enthusiastic.²⁶ President Obama would go on to win roughly 70% of the Latino vote. In a careful review of the legal and political issues the deferral action engendered, Lauren Gilbert concludes that it constituted a "bold political move that not only may have won [Obama] the election but may have reenergized his Administration, restored balance in the government, and laid the foundation for comprehensive immigration reform" (Gilbert 2013, p. 256). There have been signs, in fact, that that 2012 election and the recognition of many Republicans that the party paid dearly for its failure to court the Latino vote may eventually end the congressional stalemate over this issue.²⁷ The arc of immigration policy, therefore, might defy the conventional wisdom that the system is "broken" or "gridlocked"; just as surely, when viewed in a larger context, no less than the We Can't Wait initiative, DACA illustrates the emergence of a new form of presidential politics that weakens the role Congress has traditionally played in policy reform.

The Limits of Administrative Politics

Barack Obama's administrative presidency thus holds important lessons for contemporary developments in party politics, the rule of law, and the Constitution. The President's strategy to escape partisan gridlock by exploiting the full powers of the office to carry his program strengthened the Democratic Party by servicing

²⁶ Source: Latino Decisions/America's Voice (June 2013).

²⁷ Soon after the election, the Senate passed a comprehensive bill that had strong bipartisan support – the final vote was 68-32 in favor. The Republican-controlled House has not been so moved, but there were signs by the beginning of 2014 that it was prepared to enact legislation that would address the most pressing deportation issues. The pending 2014 Midterm elections, however, made passage of immigration reform very uncertain (Lowery 2014).

the demands of important party constituencies and advancing the party's programmatic goals. But it also advanced – indeed, bestowed bipartisan legitimacy on – an executive-centered party system that threatens the integrity of parties as collective organizations with a past and a future. Although Democrats in Congress tended to support the White House's "go it alone" strategy, it is not clear that the politics made by presidential policy-making will redound to the long term benefit of the Democratic Party. For example, even as the DACA initiative enhanced support for Obama and his party in the 2012 election, Latino partisanship has not been translated into party loyalty: surveys show that a huge majority of Latino permanent residents – over 70% – lack a partisan loyalty (Lee 2013; Sanchez 2013). Although Latinos may develop strong party ties over time, especially if the partisan divide over immigration reform persists, Obama's resort to unilateral action tends to foster direct links between the president and constituencies that might not endure beyond 2016.²⁸

The emphasis on executive rather than party responsibility was reinforced by Obama's reliance on the White House Office (WHO) to formulate and carry out policy initiatives. The concentration of political and policymaking power in the hands of presidential staff who do not have to be confirmed by the Senate has been a staple of the institutionalization of the presidency (Moe and Howell 1999). But these positions have grown dramatically during the George W. Bush and Obama presidencies (Sollenberger and Rozell 2012). Cecilia Munoz, not Janet Napolitano, was the key player in the DACA initiative. Moreover, in organizing the WHO, the president appointed a number of "policy czars" with broad authority

28 In this sense, Obama's administrative strategy parallels his innovative political organization, which was dedicated to linking him directly with potential supporters. He and his allies built an information-age grassroots organization that was critical not only to his two presidential campaigns but also to the enactment and implementation of Obama's signature legislative achievement, the Patient Protection and Affordable Care Act of 2010. Born during the 2008 campaign as "Organizing for Obama," this mass mobilization effort was inserted into the Democratic National Committee as "Organizing for America" during Obama's first term in the White House; and after 2012 it was spun off as a nonprofit social-welfare entity called "Organizing for Action." Obama promised his followers that removing his organization from the Democratic National Committee would strengthen its potential as a grass roots organization. Such a move also appeared to further embellish an executive-centered Democratic Party (Milkis, Rhodes, and Charnock 2012). Significantly, just as Obama's attentions shifted to executive action in the Fall of 2011, so OFA combined its advocacy of the president's legislative program with careful attention to administrative politics, touting the president's We Can't Wait campaign and his use of the presidential pen to advance climate change and immigration. In 2014, OFA was enlisted to help the Administration correct its troubled rollout of "Obamacare" by encouraging the uninsured to enroll in one of the government's sponsored plans.

to “cut through – or leapfrog – the traditional bureaucracy” in matters of climate change, housing, education, and healthcare (Shapiro and Wright 2011). Such a top-heavy administrative organization relegated some cabinet secretaries and agency heads, tending to have stronger ties to Congress and party constituencies, to the status of weak and, often, isolated middle management (Lewis 2011).

As most dramatically illustrated by the disastrous rollout of the Patient Protection and Affordable Care Act, centralizing decision-making in the White House has not always redounded to the benefit of the president. Such insularity not only centered political responsibility for health care reform – fittingly dubbed “Obamacare” – on the president but also has been a major factor in the administration’s turbulent implementation of the new federal health insurance marketplace that was so crucial to the success of the program. At the president’s insistence, the burden of administering the complex law fell on Nancy DeParle, the White House health care czar, who oversaw matters until she was promoted to be the president’s deputy chief of staff for policy in February of 2011, when the task fell to her successor Jeanne Lambrew. The White House was in charge, but on-the-ground-work fell largely to the Department of Health and Human Services (HHS), especially the Centers for Medicare and Medicaid (CMS). The result was a fragmented process that, in effect, failed to establish essential connective tissue between White House planning, bureaucratic management, and the construction of technical architecture. Adding to the chaos, Congress and the States, which were expected to play a critical part in the development of insurance marketplaces, were largely kept in the dark about controversial regulations and technical difficulties (Goldstein and Eilperin 2013).

The calamitous rollout of Obamacare did great damage to the reputation of the president and threatened to have serious political repercussions for Democrats in Congress and the States. The We Can’t Wait initiative, dedicated to making the president look like a strong leader in the face of fierce Republican opposition, was enthusiastically supported by congressional Democrats; the dysfunctional launching of the president’s signature program resulted in deep frustration and near rebellion. The White House blamed its furtive and uncoordinated planning on Republican hostility to Obamacare; one White House official likened the task to constructing “a complicated building in a war zone.”²⁹ So fearful were Obama and his top advisors of GOP “sabotage” that when it became apparent that HHS and CMS were overwhelmed by administrative and technical problems, the White House created a new – and ostensibly less visible agency – in the HHS to coordinate the launching: the Center for Consumer Information and Insurance

²⁹ Cited in Goldstein and Eilperin 2013.

Oversight. “Oversight would be better insulated from the efforts of House Republicans,” the White House reasoned, “who were looking for ways to undermine the law” (Goldstein and Eilperin 2013). In the end, however, the new agency only added another player to a fractious process. The White House centered administration of health care reform, according to Richard Foster, a former Medicare chief actuary who left the administration in early 2013, wrought “bad implementation” for “short term political gains.”³⁰

Beyond the question of partisan maneuver, even successful deployment of executive administration can undermine the rule of law, the foundation of representative constitutional government. As Lauren Gilbert, a strong proponent of DACA – the Dreamers initiative – acknowledges, “we must urge the Administration to focus on *legislative* solutions, and to avoid establishing a precedent for unilateralism that will be subject to abuse in future administrations” (Gilbert, p. 309, emphasis in original). In fact, a constitutional disease already was alarmingly widespread: partisan polarization has become so pronounced during the past decade, it has enflamed American government in an institutional arms race, with both Democrats and Republican all too willing to sacrifice constitutional forms to partisan objectives. During the hotly contested 2012 elections, some Conservatives envisioned how President Romney could use the loaded administrative weapon that Obama would bequeath to a Republican administration. As one former aid to George W. Bush anticipated, by invoking the sort of prosecutorial discretion that the Obama administration used to justify its DREAM Act deferral, Romney might “direct the IRS not to enforce [Obamacare’s] tax penalty against anybody who does not buy insurance [the individual mandate]. You [could] effectively overrule the central component of the health-care law through a regulation.”³¹ Precedents in administrative problem-solving are often more durable than the short-term policy goals they serve; this is especially so in a polarized political environment where Democrats and Republicans battle for the services of the administrative state.

Ironically, amid the furor over the postponed rule establishing standards for insurance coverage, which was promulgated after the 2012 election, Obama partially repealed one of the core components of his most important policy achievement. In late October of 2013 insurance companies sent hundreds of thousands of termination notices to previously insured individuals and small businesses,

³⁰ Foster cited in *Ibid.*

³¹ Quoted in Klaidman and Romano 2012. Romney, in fact, did pledge to repeal Obamacare on his first day in office, albeit by issuing waivers to all 50 States exempting them from the law’s requirements (Somashkehkar 2012).

informing them that their policies did not meet the standards of the Patient Protection and Affordable Care Act, which required that beginning January 1, 2014, insurers had to offer renewal policies that covered a core group of essential benefits, such as maternity leave and prescription drug coverage. Those whose policies were cancelled faced the Hobson's choice of accepting a new, far more expensive policy or seeking a policy on the still malfunctioning government marketplace. Most damaging to the administration was that these cancellations appeared to violate President's Obama's promise – made during the hard fought battle to enact health care legislation – that the administration's plan would allow Americans to keep their policies if they were satisfied with them. Bitter recriminations followed – with many Democrats joining Republicans in the assault on the White House. In a measure of congressional discontent, 39 Democrats joined most Republicans in the House in passing a bill – by a 261 to 157 margin – that would allow insurance companies to keep selling indefinitely individual health policies that did not meet the law's basic standards.

To preempt legislation that would gut health care reform, the President issued a “transitional policy” that would allow insurance companies to continue for another year to offer individuals and small businesses health plans that did not meet requirements under the new law. But the letter to State insurance commissioners, who were responsible for enforcing the specified market reforms, issued by Gary Cohen, the director of the Center for Consumer Information and Insurance Oversight, only indicated that the transitional policy would be “reviewed” after a year to gauge its impact and merely “encouraged” the States to accept the president's policy fix (<http://www.cms.gov/CCIIO/Resources/Letters/Downloads/commissioner-letter-11-14-2013.pdf>). Although congressional Democrats were assuaged by this shift, and fell in behind the president, state regulators, who were completely blindsided by the new “order,” were mystified as to how they would regulate around a policy that appeared to have no legal basis (Sun, Kliff, and Somaschekhar 2013).

Hitherto relying on informal administrative measures such as memoranda, waivers, and signing statements to obviate Republican opposition, Obama, entangled in a complex web of his own making, now resorted to ad hoc measures that jeopardized the integrity of national health care reform. More tinkering occurred in February of 2014 with respect to the law's “employer mandate.” At the White House's behest, the Treasury Department, responsible for enforcing this measure, announced that employers with 50–99 workers would be given until 2016, 2 years longer than the law stipulated, before they risked a federal penalty for not complying. Companies with 100 workers or more were only given a year's dispensation, but instead of being required to offer coverage to 95% of full-time workers, these larger employees could avoid a fine by offering insurance to 70%

of them in 2015 (Eilperin and Goldstein 2014). The administration should not have disregarded the law's intent "without exceptionally good reason," a *Washington Post* editorial scolded. "Fear of a midterm shellacking doesn't qualify as good reason" (http://www.washingtonpost.com/opinions/the-obama-administration-has-a-mandate-on-the-health-care-law-too/2014/02/11/f001df36-9361-11e3-84e1-27626c5ef5fb_story.html?hpid=z6).

Unrepentant, the administration announced another "transitional policy" in early March that would allow individuals to retain non-compliant insurance policies for two more years – allowing Congressional Democrats to avoid constituent anger over cancellations during the height of the mid-term elections (Pear 2014).³² Additionally, HHS reduced and delayed "reinsurance fees," designed to tax group health plans – a portion of the law that drew considerable criticism from labor unions and business interests alike (Goat 2014).

Barack Obama's Legacy for the Administrative Presidency

For all the legal and political problems associated with the recent politics of administration, Obama's actions, resting in a political environment of high expectations for presidential leadership and sharp partisan divisions, are likely to have an imprint on the executive office beyond 2016. Members of the opposition explicitly criticized many of those actions, but few ever faced serious challenge. The 112th and 113th Congresses, in particular, illustrate the inherent difficulty of challenging unilateral presidential action without unified control of Congress. In these Congresses, especially, partisan gridlock seems to have induced presidential aggrandizement, opening up opportunities for the Obama administration to act alone. Unless current political conditions change significantly, it is likely that future presidents – Democratic or Republican – will be tempted to exploit precedents that have established innovative methods to pursue personal and partisan programmatic ambitions by unilateral action.

³² In announcing the new transition policy, the Department of Health and Human Services said it had been devised "in close consultation with members of Congress," and it gave credit to a number of Democrats in competitive races, including Senators Mary L. Landrieu of Louisiana, Jeanne Shaheen of New Hampshire and Mark Udall of Colorado (<http://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2014-Fact-sheets-items/2014-03-05-2.html>).

Indeed, the final 3 years of the Obama presidency are likely to bring new experiments in administrative politics. By the end of 2013, it was clear that the administration had given up any hope of climate change legislation, and was determined to move full speed ahead on plans that were postponed until after the 2012 election. In June of 2013, the Executive Office issued the President's "Climate Action Plan" – along with a memorandum directing the EPA to issue new regulations governing carbon emissions in future power plants.³³ The EPA released its proposed rule on September 20th. Championed as the "first uniform national limits on the amount of carbon pollution that future power plants will be allowed to emit," the proposed rule explicitly draws on authority implied by the Clean Air Act, which was last amended in 1990.

Although no amendment to the Clean Air Act had been passed in more than 20 years, Congress had recognized the authority of the EPA to regulate other forms of pollution, and the Supreme Court had determined that the agency had the power to regulate carbon emissions from automobiles (*Massachusetts v. Environmental Protection Agency*, 549, 2007). The Obama Administration claimed that the EPA was merely applying such standards to carbon emissions from other sources. Even before the proposed rule was released, Republicans in Congress contested the process by which the new policies were being made. Senate Minority Leader Mitch McConnell (R-KY) introduced legislation to halt the rule-making process.³⁴ The proposed bill explicitly targets Obama's memorandum, writing that such action "circumvents Congress and the will of the people of the US." It orders the EPA to ignore the memorandum and cease producing the rule unless explicitly required to by an act of Congress. Despite this protest, efforts to promulgate final rules have moved forward as the bill is unlikely to pass the Democratic-controlled Senate.³⁵ In October 2013 House Rep. Ed Whitfield (R-KY, Chairman of the Subcommittee on Energy and Power) circulated a draft bill explicitly prohibiting the EPA "from issuing, implementing, or enforcing any proposed or final rule under the Clean Air Act." Although the bill passed the House in March 2014, given the strong partisan divide on the issue, there is very little prospect that the Democratic

³³ "Power Sector Carbon Pollution Standards," *Federal Register* 78, no. 126 (1 Jul. 2013); "The President's Climate Action Plan," *Executive Office of the President* (June, 2013).

³⁴ "Saving Coal Jobs Act of 2013," S. 1514, 113th Congress, 1st Session, introduced September 17th, 2013.

³⁵ A Op-Ed by Senator Edward Markey (D-MA) wrote that the need for such regulations was as definitive as the science behind climate change. Markey Edward, "An 'Unequivocal' Need to Limit Power Plants' Carbon Emissions," *The Hill* October 22, 2013.

majority in the Senate will act on the legislation.³⁶ In absence of a politically unified Congress, the administrative action strategy employed by the Obama White House has enabled the president to move closer toward programmatic goals involving climate change and energy efficiency – policy that saw no significant development in Congress.

The pursuit of these goals and other progressive causes were trumpeted in the president's 2014 State of the Union Address, which, as *The New York Times* reported, “declared independence from Congress” (Baker 2014). Suffering from declining approval ratings in the aftermath of the Obamacare debacle, the president revised the “We Can’t Wait” trope that helped energize his re-election campaign. He called for “a year of action,” with a special focus on the malady of economic inequality that had been exacerbated by the Great Recession and Congress’s tepid response to it. As partial remedies for this disease, the president offered “a set of concrete, practical proposals to speed up growth, strengthen the middle class, and build new ladders of opportunity into the middle class.” Some of these measures required legislation, and Obama avowed that he was eager to work with both his political friends and enemies to enact such measures. “But America would not stand still – and neither will I,” he pledged. “So wherever and whenever I can take steps without legislation to expand opportunity for more American families, that’s what I am going to do” (<http://www.whitehouse.gov/blog/2014/01/29/president-obamas-2014-state-union-address>). Lest the meaning of this message escape the press, White House communications director John Carney’s briefing prior to the prime time address anticipated the core theme: “he believes that he has two unique powers as President – the power of the pen and the power of the telephone – to try to instigate action” (<http://www.whitehouse.gov/the-press-office/2014/01/14/daily-press-briefing-press-secretary-11414>).

In pursuance, Obama engaged in a flurry of activity that he and his political allies hoped would reinvigorate his flagging popularity and the fortunes of his party in the approaching 2014 elections. Among other things, the president issued an executive order raising the minimum wage to \$10.10 an hour for future federal contract workers; directed the Treasury to create a new way for American workers, whose employers did not provide 401k plans, to start “MyRa” accounts based on government secured savings bonds; and got on

³⁶ “Discussion Draft,” H.R. _____, 113th Congress, 1st Session, circulated October 28th, 2013. H.R.3826 – Electricity Security and Affordability Act, March 6, 2014: <http://beta.congress.gov/bill/113th-congress/house-bill/3826>. The Supreme Court agreed to hear a major case challenging the power plant rule, albeit on narrow ground that did not appear to threaten the right of the EPA to regulate greenhouse gases (Liptak 2013).

the phone, deploying the convening authority to bring together university presidents who promised to enroll more low-income students and to host a session for corporations that pledged to hire the long term unemployed (Eilperin 2014).

Whether this new celebration of acting alone boosts the president's standing with the public and redounds to the benefit of the Democrats remains to be seen. Beyond the issues and partisan alignments of the moment, however, Barack Obama's innovative presidency has advanced an executive party system that poses fundamental challenges to collective responsibility and the rule of law that undergirds it. While less visible and dramatic than the administrative politics of Reagan and George W. Bush, the Obama White House has established a new paradigm that presumes to make unilateral presidential policymaking a habitual solution to partisan polarization.

More broadly, Obama's unilateral tactics illustrate the tension between presidential leadership, the administrative state, and modern political parties. The Progressive's steward of the public welfare embodied the reformers' hope to emancipate the presidency from the parochial parties – rooted in states and localities – they viewed as obstructing necessary political and economic reform. But the development of the administrative state engendered conflicts between liberals and conservatives for its services – and posed hard challenges to the view that modern executive administration and party politics were in fundamental conflict. Like Republican presidents such as Reagan and George W. Bush, Barack Obama's commitment to partisan administration has revealed that modern presidents, especially when motivated by programmatic and institutional incentives, can be strong party leaders, indeed exploit executive power for partisan purposes. Like the Reagan and Bush administrations, too, Obama's joining of presidential prerogative and partisanship raises profound questions about whether the executive of a vast bureaucratic state, even with the tools of instant communication and social media, can truly function as a democratic institution with meaningful links to the president's party and the public. In bestowing bipartisan legitimacy on the executive-centered party system, President Obama has continued the illusion of an executive-centered democracy – a vision that risks embroiling presidents in policy controversies that diminish collaboration with Congress, roil the system of checks and balances, and erode citizens' trust in the competence and fairness of the national government. As implausible as it seems, our present discontents might call, not for more visionary leadership and purposeful partisan administration, but, instead, for appeals to patience and acts of forbearance.

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