

WHO GAVE TRUMP THE POWER TO DO THAT?

GOP lawmakers shrug as president sidesteps constitutional boundaries with bold executive moves

BY ORION DONOVAN SMITH THE SPOKESMAN-REVIEW

WASHINGTON – For nearly 250 years, the American system of government has been defined by the separation of powers between three coequal branches of government.

In the first two weeks of his second term in office, President Donald Trump has pushed the limits of the executive branch's authority while even the most institutionally minded members of the Republican majorities in Congress have appeared reluctant to risk their own political careers by playing the traditional check-and-balance role prescribed by the U.S. Constitution. This leaves the judicial branch, where Trump installed a supermajority of GOP-appointed justices on the Supreme Court in his first term, to decide what the president can and can't do.

"I think the opening days certainly do presage a lot of use of executive power," said Richard Seamon, a law professor at the University of Idaho.

“From the first Trump administration, my sense is that President Trump is very willing to do things that are legally questionable and kind of let the chips fall where they may.”

In principle, Seamon said, the limits of a president’s authority are simple: Either the Constitution or an act of Congress must authorize an action. In practice, it hasn’t been that straightforward.

“The Constitution talks about the ‘vesting of executive power,’ and it’s an undefined term,” he said. “Presidents tend to be pretty creative about interpreting that term to include lots of things that aren’t spelled out elsewhere in Article II of the Constitution.”

Erica Goldberg, a law professor at Gonzaga University, said presidents have often tried to do things beyond their authority throughout U.S. history and the courts have generally enforced those limits, even if their fellow politicians at the Capitol wouldn’t.

On Day 1 of his presidency, Trump signed a flurry of executive orders, including rescinding orders signed by his predecessor, pausing foreign aid, restricting refugee and immigrations policies and granting clemency to each of the nearly 1,600 people who had been charged with crimes for their actions at the Capitol on Jan. 6, 2021, including hundreds convicted of felonies related to rioting and assaulting police. Despite most Americans, according to polls, and even many of Trump’s own supporters opposing that move, most Republicans in Congress have avoided criticizing it.

“What we have here is a record number, in modern history, of first-day executive orders, some of which do not appear to have been thought through,” Goldberg said, citing Trump’s move to end birthright citizenship.

While Trump and GOP lawmakers may pay a political price for the pardons, presidents have used their clemency power in controversial ways – such as former President Joe Biden’s recent pardons of several of his relatives – without courts blocking those moves. Some of Trump’s other actions, however, have infringed on the authority of Congress, granted by Article I of the Constitution, which lawmakers have historically fought to protect.

After Congress passed a law – spearheaded by former Rep. Cathy McMorris Rodgers, R-Spokane – to force the sale of the viral video app TikTok and the Supreme Court unanimously upheld the law, the president ignored both branches and chose not to enforce the law. Republicans who had fiercely

advocated for forcing TikTok's China-based parent company to sell the app over national security concerns have largely gone silent.

On the night of Jan. 24, Trump quietly fired the inspectors general of 18 federal agencies with no explanation, violating a law that requires a president to give Congress 30 days' notice and a "substantive rationale" for removing the watchdogs who are charged with rooting out waste, fraud and abuse of power in the federal government. Republicans in Congress, many of whom voted for the law Trump violated, have figuratively shrugged.

"Presidential power has expanded over time as Congress sort of cedes the field," Seamon said. "When Congress doesn't act, it sort of leaves it open for the president to do whatever he or she wants. That inaction tends to embolden presidents to take action, and if Congress doesn't do anything about it, then presidents feel like, you know, give them an inch and they'll take a mile."

Trump also has tested the compliance of Senate Republicans by choosing controversial nominees for key positions that are subject to Senate confirmation. This past week, Democrats-turned-Trump-allies Robert F. Kennedy Jr. and Tulsi Gabbard received warm welcomes from nearly all GOP senators during their confirmation hearings to serve as Health and Human Services secretary and director of national intelligence, respectively, despite having espoused positions that are at odds with many Republicans.

Trump's nominee to run the FBI, Kash Patel, spent the past four years selling Trump-themed merchandise, writing children's books lionizing the president, producing a song featuring convicted rioters whom Patel and Trump call "hostages," and promising retribution against a long list of Trump's perceived enemies. His nomination has been met with fewer objections from Republicans than Kennedy's or Gabbard's.

It's no mystery why congressional Republicans are wary of crossing Trump. Elon Musk, the world's richest man and a close Trump adviser, has threatened to use his virtually infinite wealth to bankroll primary challenges to any GOP lawmaker who defies the president.

The traditional conservatives who provided a check against some of Trump's impulses during his first administration, such as retired general and Eastern Washington native Jim Mattis, are nowhere to be seen in the White House. In a move that drew rare grumbling from a few Republicans in Congress, Trump revoked the security details from two of the top national security officials

from his first administration, Mike Pompeo and John Bolton, despite both men reportedly facing threats on their lives from Iran due to actions they took on behalf of the president.

When the White House issued a memo on Monday that caused chaos by potentially freezing trillions in federal spending that Congress had already approved through the bipartisan appropriations process, Democrats objected loudly, but Republicans largely deferred to the president, who is overwhelmingly popular among the party's base.

In that case, the judiciary branch stepped in when a federal judge in Washington, D.C., temporarily blocked the policy directed by the memo, which the White House later rescinded.

Goldberg said it's important to distinguish between policies that are legally dubious and those that are merely controversial.

"People in his own party appear to be afraid to stand up to him," she said. "I don't think the courts will be afraid to stand up to him."

Some of the president's moves appear plainly unconstitutional, Goldberg said, such as his executive order directing the government to end the foundational American practice of granting citizenship to children born in the United States, regardless of their parents' nationality or legal status. Others, she said, have drawn strong objections from Democrats and other critics of Trump but rest on firmer legal ground.

Goldberg said even Trump-appointed judges have shown themselves to be willing to rule against the president, citing the examples of his numerous legal challenges to the legitimacy of the 2020 election and what she described as the Supreme Court's relatively narrow ruling on presidential immunity.

"I think that President Trump feels emboldened because he has more than a majority on the Supreme Court," Goldberg said, before adding, "I think the Supreme Court is still a meaningful check on presidential power, but that does remain to be seen."

Seamon said that the 6-3 conservative majority on the Supreme Court and the ability to file lawsuits in jurisdictions with favorable judges – coupled with Trump's willingness to lose some court battles as long as he's still seen as a fighter by his supporters – mean the president will likely keep pushing

the boundaries of his authority in the weeks, months and years ahead.

“The president has an obligation to uphold the Constitution,” Seamon said. “But in the end, the president gets to do what he or she wants. And I think the president has something of a devil-may-care attitude. You know, throw out things and see what sticks.”

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