



Read ... and repeat

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Do you remember when the dynamic young U.S. senator from Illinois assured us that the era of the "cowboy" Bush was over; that his pedigree as a Harvard Law grad and constitutional law professor would ensure a more palatable (and responsible) approach to the rule of law?

The last eight years paints quite a different picture. Indeed, the Obama tenure has witnessed ultra-aggressive rulemaking and extra-territorial executive orders in unprecedented number and scope. For context, check out my summaries of news headlines from the last seven plus years. After reading, you may want to either re-read the Federalist Papers or attend a Broadway production of "Hamilton" ...

1. Supreme Court kills Obama administration's plan to defer deportation and provide work authorization for approximately four million illegal aliens;
2. Federal judge rules "cost-sharing" payments made to Obamacare insurers unconstitutional because authorization and appropriation by Congress are non-negotiable duties of the legislative branch;
3. Supreme Court orders Obama administration to compromise with "The Little Sisters of the Poor" over Obamacare's universal birth control mandate;
4. U.S. District Judge blocks Interior Department rule providing for stricter standards for hydraulic fracturing on public lands;
5. U.S. District Judge grants "limited discovery" into former Secretary of State Hillary Clinton's email matter... "even though it is exceedingly rare in FOIA cases";
6. Supreme Court suspends Obama administration's proposal to limit carbon emissions from power plants while legal challenges work their way through the courts;
7. U.S. District Judge reverses federal government's designation of insurer as a "systemically important" financial institution;

8. Supreme Court checks Obama's unprecedented attempt to expand recess appointment power by filling three vacancies in the National Labor Relations Board when Senate was still in session;
9. Eleven state attorneys general filed suit challenging the legality of the Obama Education Department's decision to require the nation's school districts to allow students to use bathrooms and locker rooms as a function of gender identity rather than biology; and
10. Federal judge rules in favor of House Republicans who had claimed the administration broke the law by paying Obamacare insurers without permission from Congress.

The breadth of Mr. Obama's overreach is historic and wholly compatible with Saul Alinsky's admonition that progressive ends must be reached by whatever means available (how else to achieve a transformative tenure?). Yet, these and many other media reports (I could fill the remainder of this column with similar bulletins) reveal that the judicial branch has stepped up to check many of Obama's most brazen power plays.

Ilya Shapiro, a senior fellow at CATO, sums up Obama's relentless, yet mostly unsuccessful regulatory power plays as follows:

"This term, the federal government argued an incredible ten cases without getting a single vote, not even that of one of President Obama's own nominees, Sonia Sotomayor and Elena Kagan. That brings his total to 44 unanimous losses. For comparison, George W. Bush suffered 30 unanimous losses, while Bill Clinton withstood 31. In other words, Barack Obama has lost unanimously 50 percent more often than his two immediate predecessors. These cases have been in such disparate areas as criminal procedure, religious liberty, property rights, immigration, securities regulation, tax law and the separation of powers. The government's argument across this wide variety of cases [would have] essentially allowed the executive branch to do whatever it wants without meaningful constitutional restraint."

In the aftermath of FBI Director Comey's extraordinary oh-so-close non-referral regarding Hillary's private server fiasco, this is an important takeaway for disaffected conservatives otherwise ready to throw in the towel in the face of relentless Obama administrative edicts. Alas, the system (still) genuinely works. An independent judiciary still reigns. The administrative state still faces boundaries. Many of Obama's worst expansionary inclinations have been defeated or curtailed in the courts.

Of course, the optimism expressed herein will be wiped out should a third progressive administration come about next January. Twelve years (maybe sixteen) of uber-left activist judges will likely complete the aforementioned transformation.

For those of you conservative types still not "feeling the Donald" and unable to fully appreciate the enormous stakes involved here, indulge me with a brief exercise: Review the Supreme Court voting records of Elena Kagan and Sonia Sotomayor. Then, research Judge Ruth Bader

Ginsburg's recent tirade against candidate Trump. Then, re-read this column. Then, come to your own conclusion.