

Congress on Easy Mode

By Glenn Harlan Reynolds

On Wednesday I did a panel, with three other colleagues, on the first ten weeks of the Trump Administration. I kind of wish it had been televised, as I think it would have been a boost for the Trump Administration's policies.

As you might imagine, the other panelists were for the most part more negative on what's going on than I am, given that I'm not really negative at all. But one of the presentations was just a long list of horrors brought on by the Trump administration in terms of defunding universities, NGOs, and big law firms, deporting illegals, and so on that made me want to exclaim, like the popular meme, *I already voted for him, you don't have to sell me!*



That's me on the left. We look a bit glum in this pic, but the panel was actually pretty cheery.

The awfulness of these steps wasn't self-evident to me, although it was kind of assumed, and I doubt it would have been self-evident to an audience of the general public either.

As one of the other presenters noted, Trump is hardly alone in starting office with a flurry of executive orders; a lovely graphic of presidencies going back to FDR had Trump in the lead for most EOs in the first hundred days so far, but in his first term he was comfortably within the pack. And Trump has a lot to do, and not a lot of time to do it in. By November, we'll be heading into midterms.

My talk was a pretty technical Administrative Law discussion of the Supreme Court and various cases pending and recent. In essence, much of what people are calling executive overreach is merely a case of Trump exercising powers already delegated to him by statutes like IEEPA (the International Emergency Economic Powers Act, which lawyers in the field pronounce "I-yeepa" to be cool), other trade laws, immigration laws, etc. People underestimate the extent of presidential power under these statutes: In the 1981 case of *U.S. v. Spawr Optical*, the Spawrs were [convicted](#) of violating the Export Administration Act. Their defense that the Act had expired when they exported their products sounded pretty good, but the expired statute had been re-enacted *by executive order* under the president's powers via the Trading With The Enemy Act.

The D.C. Circuit held that the Act

delegated to the President broad and extensive powers; "it could not have been otherwise if the President were to have, within constitutional boundaries, the flexibility required to meet problems surrounding a national emergency with the success desired by Congress." [United States v. Yoshida International, Inc., 526 F.2d 560, 573 \(Cust. &](#)

[Pat.App.1975](#)) (footnote omitted). Wary of impairing the flexibility necessary to such a broad delegation, courts have not normally reviewed “the essentially political questions surrounding the declaration or continuance of a national emergency.”

Courts – at least district courts – seem less deferential to the executive now that his last name is Trump. But if you can throw people in jail for violating an expired statute that the president has extended by fiat – and this was not the first time that extension had happened – it’s hard to argue that what Trump has been doing represents some sort of new power grab.

If you can fault Trump for anything, in fact, it’s for not doing enough on the legislative front, not for doing too much on the executive front. Admittedly, Congress is not his responsibility. But it kind of is. And it’s certainly true that if Congress doesn’t start pushing out legislation soon, the lost momentum will cost them – and him.

This week, for example, we got a House rule change to allow remote voting for new mothers in Congress, something that was trivial, but that to the extent it did anything was harmful. You can bet that the slippery slope will be extended to people with medical problems and that, just as a deceased Democratic Rep. was still tweeting after his death, some Representative – probably also a Democrat – will wind up voting after death. We already had a *Weekend at Bernie’s* presidency, we don’t need multiple Bernies in Congress. But then they went home.

What they didn’t do was pass any legislation relating to controlling rogue District Courts, or defunding and and eliminating federal agencies, or requiring photo ID to vote, or eliminating federal funds to states that interfere with immigration laws, or . . . well, lots of things, absolutely none of which got done.

Maybe they know what they're doing. After Florida's special elections, the majority is, for the moment, a bit bigger, so maybe it's worth waiting. Maybe not, though. *Faster, please* has been my view on this stuff all along, and I think I'm right.

Members of Congress are home for the weekend. Maybe you should talk to yours.

First published in [Glenn's Substack](#)