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# **HOPING FOR CHANGE:**

## THE LEGISLATIVE RECORD OF THE OBAMA PRESIDENCY

By Samuel B. Hoff

George Washington Distinguished Professor Emeritus Department of History, Political Science, and Philosophy Delaware State University.

Corresponding Email: shoff@desu.edu

## ABSTRACT

What does it take for a president to be successful in dealing with Congress? This research endeavors to address that query as it pertains to Barack Obama, the 44th President of the United States. After tracing Obama's background, the study identifies several elements that formed the legislative approach of the Obama White House. In order to evaluate effectiveness in interacting with Congress, the paper analyzes how the Obama administration fared on a dozen measures. The results point to a mediocre legislative record, one which is inconsistent with scholarly views of where Barack Obama fits in the latest presidential greatness survey released by Sienna College.



#### **INTRODUCTION**

The purpose of this research is to assess Barack Obama's legislative record as U.S. president. This is accomplished through a comprehensive review of Obama's background, an examination of his legislative approach, delineation of early successes in office, and by weighing several indicators of legislative effectiveness.

The American president is imbued with important powers pertaining to his role as chief legislator in the Constitution. First, he can recommend measures to Congress. Second, he can nominate and appoint officials who will interact with Congress to prosecute the president's agenda.

Third, he can convene Congress in special session and conversely adjourn Congress if the two chambers disagree on a date to do so. Fourth, he can issue a veto of a bill or joint resolution which he opposes, which can be overridden only by a two-thirds majority of both chambers of Congress.

In judging the overall performance of the chief executive, success in dealing with Congress is usually at or near the top. Yet, that view often ignores other relevant factors which may be just as influential in evaluating where a presidential administration fits across American history.

#### **BACKGROUND**

Barack Obama's early life gave him exposure to different cultures. He was born in Hawaii in 1961. After his parents divorced in 1964, he moved to Indonesia in 1967 and back to Hawaii four years later (DeGregorio, 2009).

Obama's education certainly followed a path consistent with politics. He graduated from ColumbiaUniversity in 1983 with a degree in international relations. He earned a J.D. from Harvard University Law School in 1991(DeGregorio, 2009).

Barack Obama's professional experience prior to the presidency prepared him for interacting with the legislative branch. Among his posts were eight years as an Illinois state senator, where he was known as a consensus-builder who backed progressive legislation. Additionally, he was elected to the U.S. Senate in 2004, becoming the fifth African American elected to that body (DeGregorio, 2009). During his four years in the Senate, Obama sponsored 147 bills, of which two became law, and cosponsored 687 bills (List of Bills, 2023).

In 2008, Barack Obama declared his candidacy for the Democratic presidential nomination. Though initially regarded as the underdog, Obama's team beat Hillary Clinton for the nomination. Obama then defeated Republican John McCain in the general election for president, winning 32 states, a majority of the popular vote, and two-thirds of available electoral votes. Meanwhile, the Democrats gained over 30 seats in the House and Senate and strengthened the hold on both chambers (Whitney and Whitney, 2012).

# LEGISLATIVE APPROACH

President Obama's legislative approach to Congress was not a static exercise. Rather, it can be seen as evolving with circumstances. But it was based on several components, including the president's own view of Congress, his staff, the partisan composition of Congress, and the tools that the White House had to work with in getting the legislature to act.

As far as President Obama's take on Congress, he offers the following keen observations (Obama, 2020, p. 424):

It's not hard to find people who hade Congress, voters who are convinced that the Capitol is filled with poseurs and cowardsthat most elected officials are in the pocket of lobbyists and big donors and motivated by a hunger for power...I admit that watching the daily scrum that takes place on the House or Senate floor can sap even the hardiest spirit.

That President Obama likewise cited the potential effectiveness of Congress is why he was confident, if naïve, about his ability to work with Republicans in the House and Senate.

For Kathryn Moore (2021), the unique economic conditions facing the United Statesduring the Great Recession of 2008 permitted the Obama White House team to create momentum, particularly in the first year in office. For Claude Clegg (2021), the experience of Vice President Joe Biden and the president's staff in interacting with Congress gave the Obama administration an initial advantage with the legislative branch.

However, the most critical factor impacting President Obama's relations with Congress was the party composition in both chambers. In the first two years, the Obama team was able to maintain cohesion and party control of both the House and Senate. After the 2010 midterm election, when Democrats lost six seats in the Senate and 63 seats and control of the House, the Obama administration struggled to establish voting coalitions to overcome regional party alliances. David Corn (2012) believes that the political opposition which President Obama faced in 2011 set the stage for the 2012 presidential campaign.

Optimism returned after Barack Obamawas reelected in 2012, but following the 2014 midterm election Republicans controlled both the Houseand Senate and the administration was forced to rely on executive orders to enact policy priorities (Yenne, 2021). Chuck Todd (2014) claims that while President Obama pledged to work with Congress during his second term, he was not afraid to bypass the legislature to accomplish goals.

#### MEASURING EFFECTIVENESS IN CONGRESSIONAL RELATIONS

There are plethoras of ways to gauge the success which the Obama White House had in its relations with Congress.

#### State of the Union Addresses

Given to a joint session of Congress, the president's State of the Union (SOU) address can convey an indication of priorities and strategy. Recent SOU speeches are found online at the American Presidency Project (2023). This author measured the page length of SOU addresses for the last four two-term presidents, including Ronald Reagan, Bill Clinton, George W. Bush, and Barack Obama. In Obama's case, his shortest SOU speeches were delivered in his first and last year in office. Three of four of the aforementioned chief executives delivered the longest SOU speech during the third year in office President Obama's longest speeches by page length occurred in his second, third, and fourth year.

### First 100 Days

Since the administration of Franklin D. Roosevelt, American presidents have been measured by level of activity during the first three-plus months of a new White House team (Moore, 2021).

Unfortunately, the Barack Obama administration began under similar circumstances as FDR: a national economic emergency. The Obama team's most important victory during this period was Congress's passage of the economic stimulus bill. Additionally, the White House took credit for extension of health benefits for children, expansion of Head Start Program, and increasing the number of AmeriCorps volunteers. The Obama White House likewise noted a number of policies of President George W. Bush which were reversed during the opening months of the administration. However, the fiasco in trying to find a Commerce Department Secretary, the poor manner by which the A10 bonus issue was handled, and the apparent flip-flop on possible prosecution of G.W. Bush personnel who approved torture procedures used against certain detainees in U.S. custody diminished the otherwise stellar record and momentum which had been generated (Hoff, 2009).

## **Presidential Support Scores**

Presidential support scores for each chamber of Congress annually record the fraction of time that members vote to support the president's position on all votes where said position can be inferred. Though Congressional Quarterly likewise publishes that score yearly, data from Vote view are tapped here starting in 1955. Of the 12 presidents encompassed in the period from 1955 through 2020, Barack Obama ranks fourth in overall annual presidential support at 60.8 percent. While President Obama enjoyed a record stand success score in his first year at 96.7 percent (Donyea, 2010), that rate declined precipitously after 2010 (CQ Roll Call, 2023). Like every other two-term chief executive who served during that span, Obama's second term support average was lower than his first-term average. There is one clear pattern inthis data: while the Obama White House enjoyed a support average in the Senate over 70 percent for the first six of his eight years in office, he did not reach 50 percent average in the House over his final six years in office (Lewis, 2022).

### Number of Public Laws

One method for weighing productivity of a Congress is to count the number of public laws passed. This figure, which can be translated to an annual average, can likewise be considered an indication of presidential influence with Congress. This analysis starts with President Harry Truman in 1945 and goes through Donald Trump's tenure. Of the 13 chief executives included in the list, Richard Nixon ranks first with an average of 655 public bills becoming law annually. Conversely, Barack Obama ranks last, withan average of 161 public laws annually. From 2011 through 2014, Congress averaged just 144 public bills passed per year. Of the top five presidents with the highest number of public laws passed per year since 1945, three experienced a Congress controlled by the other party for a majority of their tenure (List of United States Federal Legislation, 2023).

While revealing, the afore mentioned comparison under-emphasizes the 2009-10 period of President Obama's relations with Congress, when Democrats controlled both chambers. The 111th Congress approved initiatives such as the \$1.67 trillion economic stimulus bill, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Patient Protection and Affordable Care Act, and the News Start Treaty on arms control with Russia; it extended federal unemployment insurance and the number of children on school lunch programs; and it repealed the Pentagon's "don't ask, don't tell" policy on gays serving in the military (Yenne, 2021).

## **Signing Statements**

A signing statement is a written message issued by the president upon signing a bill into law. In recent times, constitutional scholars and members of Congress have objected to such statements when they modify the meaning of legislation. Having been a constitutional law professor, Barack Obama

regarded signing statements as an abuse of power and promised to eschew them if elected (Tumulty, 2014).

As president, Barack Obama issued 37 signing statements affecting 122 provisions. While fairly consistent in the number of these devices used each year, Obama issued just one signing statement in 2012 and one in 2015.

Conversely, Obama's predecessor George W. Bush issued 160 signing statements impacting over 1100 provisions (Presidential Signing Statements, 2023).

## Statements of Administration Policy (SAPs)

Presidents often attempt to impact the direction of legislation as it is being considered by issuing Statements of Administration Policy, or SAPs.

In the contemporary era of American politics, this tool is often employed as a veto threat. A 2020 Congressional Research Service study found that President Obama issued more veto threats in his SAPs with each passing Congress. Overall, the Obama White House released 472 SAPs on non-appropriations bills, of which 48 percent contained a veto threat. That statistic is compared to President George W. Bush, who issued 491 SAPs on non-appropriations bills, of which 24 percent contained a veto threat. Six of the eventual 12 vetoes issued by the Obama administration were preceded by a written veto threat.

Veto threats can be transmitted in other type of presidential communication. For instance, President Obama issued veto threats against legislation aimed at weakening health care, Wall Street legislation, amnesty, and the Iran nuclear agreement in his 2015 State of the Union address.

#### Vetoes and Overrides

President Obama vetoed 12 public bills by regular means during his two terms in office, an average of 1.5 yearly. This total can be compared to other two-term presidents since FDR. For instance, Harry Truman vetoed 180 public bills by regular means; Dwight Eisenhower vetoed 73 public bills by regular means, Ronald Reagan vetoed 39 public bills by regular means; and Bill Clinton vetoed 36 public bills by regular means. Obama's total number of public bill vetoes is closest to his predecessor George W. Bush (12) and successor Donald Trump (10). Obama, Bush, and Trump did not issue any pocket vetoes during their time in office, the first chief executives since James Garfield to forsake that tool (Presidential Vetoes, 2023).

On an annual basis, President Obama vetoed one bill in 2009, two in 2010, five in 2015, and five in 2016. Samuel Hoff's (1991) study of influences on annual veto use from 1889-1989 discovered that later year in term and second term are among the factors which increase yearly veto frequency, whereas having majority partisan support in Congress reduces veto utilization. These factors certainly help to explain the pattern of veto issuance during the Obama presidency.

Relating to President Obama's public bill vetoes by regular means, his first three vetoes were sustained by the first chamber to vote on override; the Senate tabled his forth veto message; no action was taken on Obama's next three vetoes; his eighth veto was sustained by House vote; and there was inaction on his next three vetoes. Ironically, it was President Obama's last public bill veto issued in 2016 that resulted in the only veto override he suffered during his presidency, a record which tied him with George Bush in contemporary times. (Presidential Vetoes, 2023). While it is true that Bush served a single term, he too had his lastveto overridden. (Hoff, 2016).

The bill which was vetoed by President Obama and overridden by Congress dealt with the 9-11 Victims Bill, which permitted lawsuits against those known to have taken part in the September 2001 terrorist attacks against the United States. Despite intense opposition from Saudi Arabia, the Senate passed the Justice Against Sponsors of Terrorism Act (JASTA) on May 17, 2016, followed by the House on September 9. President Obama, claiming that the legislation could lead to retaliatory attacks against Americans living overseas, vetoed JASTA on September 23. Both the Senate and House overrode the veto on September 28. In Samuel Hoff's 1992study of influences on probability of veto overrides over a century of American history, he concluded that a high percentage of first chamber veto override and existence of military conflict—both conditions present during the Obama veto controversy—augmented likelihood of final override.

## **Judicial Appointments**

Though only the Senate is directly involved in the judicial nomination process, compiling the number of successful appointments among recent two-term presidents can assist in evaluating overall legislative effectiveness by the Obama administration. A table by Sean Foreman (2021) shows a steady decline in total judicial appointments, from 402 during the Reagan presidency to 387 for Bill Clinton, 340 for George W. Bush, and 334 for Barack Obama. It should be noted that Reagan, Clinton, and Bush faced a Senate controlled by the other party for at least as long as Obama did.

President Obama appointed two persons who were confirmed as justices of the U.S. Supreme Court, including Sonia Sotomayor in 2009 and Elena Kagan in 2010. However, due to Senate obstructionism, his appointment of Merrick Garland in 2016 following the sudden death of Antonin Scalia never came to a vote (Janssen, 2022).

On the issue of recess appointments, President Obama appointed several persons to the National Labor Relations Board in 2012 when the Senate was meeting every three days. However, two years later the U.S. Supreme Court ruled unanimously against the administration, concluding that Senate breaks would have to last more ten days or more for such recess appointments to valid (Liptak, 2014).

## Presidential Approval

Though the Gallup Poll measure taps public views toward presidential performance, the periodic surveys definitely have an impact on congressional support for the chief executive. By employing the aforementioned data from the Harry Truman through the Donald Trump administrations, it is discovered that Barack Obama ranks eighth of thirteen on public approval, with an average of 47.9 percent approval. Like some two-term presidents over the latter time frame, Obama's second-term public approval average is lower than during his first term in office. However, the second-term average public approval ratings for Presidents Bill Clinton and Ronald Reagan are higher than their first-term approval (Presidential Approval Ratings, 2023).

#### Party Seats in Congress

We have already seen the significant impact which party support has on presidential effectiveness with Congress. Party seats are up for grabs in congressional elections, which occur every two years for all House members and for one-third of the Senate. In contemporary American politics, the president's party usually gains seats in Congress inpresidential election years and loses seats in midterm election years.

Since 1932, average seat gain for the incoming president's party is 15 seats. When Barack Obama won his first term as president, Democrats gained 31 seats in Congress, while his party picked up nine seats in the 2012 election (Seats in Congress, 2023).

From the beginning of the Franklin Roosevelt administration through the end of the Donald Trump presidency, there have been 23 midterm elections, in which the president's party has lost an average of 30 seats, including 27 in the House and three in the Senate. While the 2010 total seat loss for President Obama's party (-69) far exceeded the average above, the 2014 electionsaw total seat loss less than that average (-22). The House of Representativeschanged to Republican control in the 2010 election, while the Senate turned to Republican control after the 2014 election (Seats in Congress, 2023).

#### **Executive Orders**

On the one hand, executive orders are mundane directions to a department or agency about the details of enacting a law. On the other hand, they can be considered a unilateral executive device to counter what Congress has done or intended in passing a law. Kristen Bialik (2017) discovers that Barack Obama issued fewer executive orders on average than any president since Grover Cleveland. From 1953 through 2020, a ranking of presidents by annual frequency of executive orders shows that Barack Obama places last of 12 chief executives, with an average of 35per year. Overall, the total number of executive orders released has declined for the last four presidents (Executive Orders, 2023). Ironically, difficult relations with Congress in his second term forced President Obama to resort to the once-denigrated tool to advance critical policy areas, such as climate change, Federal workers' pay, land preservation, and LGBTQ employee rights in the workplace (Applebaum and Shear, 2016).

## Executive Privilege

Executive privilege is a claim that due to national security or privacy concerns, the president and close advisors have a right to with hold information or testimony from Congress. While it gained constitutional credence as a result of the Supreme Court ruling in U.S. v. Nixon, it is still regarded as an end-around weapon in the president's arsenal. Because it involves a dispute over the authority of the two branches, it certainly can impact the direction of executive-legislative relations (Rozell, 2010).

Over the fifty year span from 1961 to 2021, American presidents invoked executive privilege more than forty times. Of the ten chief executives included in the latter duration, Bill Clinton led with 14 assertions, followed by George W. Bush with six, Richard Nixon and Donald Trump tied with four, Ronald Reagan and Lyndon Johnson tied with three, John Kennedy and Barack Obama tied with two, and three presidents tied with a single claim (Executive Privilege, 2023)

The first instance of executive privilege in the Obama administration occurred less than a month after the president's inauguration. At a House Committee on Financial Services hearing probing the charge that the Security and Exchange Commission failed to investigate a fraud claim, an SEC official declined to answer certain queries (Executive Privilege, 2023).

The more-well-known controversy involving executive privilege during the Obama years began in 2012, when the White House used the device to prevent release of selected documents pertaining to Operation Fast and Furious. Began several years before, this was a sting operation designed to snag arms traffickers. However, it was reported that Federal agents lost track of guns sold to suspected

peddlers, many of which later turned up in Mexico. When he declined its mandate to testify the House Committee on Oversight and Government Reform held Attorney General Eric Holder in contempt and Republican leaders initiated legal proceedings (Currier, 2012). Four years later, U.S. District Court Judge Amy Berman Jackson decided against the Obama administration's claim of executive privilege in the aforementioned case (Gerstein, 2016).

#### LEGISLATIVE LEADERSHIP AND LEGACY

The views of Barack Obama's success as president are diverse. Michael D'Antonio (2016) and Michael Days (2016) evaluate Obama's performance across a wide array of issues, including energy, the economy, education, and civil rights. For D'Antonio, "Obama and his supporters delivered hope, won America, and changed the world" (p. 230).

Days declares that, "ultimately, historians will portray him favorably, well beyond the obvious citation that he broke the color line" (p. 210). Jonathan Alter (2010) asserts that Obama's health care law triumph placed him in the company "of Franklin Roosevelt and Lyndon Johnson now in terms of domestic achievement, a figure of history for reasons far beyond the color of his skin" (p. 434). Jonathan Chait (2017) argues that Barack Obama vindicated the faith that millions of Americans placed in him, delivering on economic recovery, health care reform, and environmental protection.

On the other hand, Matt Margolis and Mark Noonan (2018) contend that President Obama's "agenda always trumped the constitutional process for achieving his goals" (p. 318) and accuse him of refusing to negotiate or make any concessions with Congress. Similarly, Stephen Dinan (2017) concludes that President Obama oversaw the deepest legislative malaise in modern political history" (p. 1). Joe Klein (2017) observes that "a thick and noxious cloud of partisanship and pettiness cast a shadow on everything Obama did" (p. 140). George Edwards (2012) opines that President Obama failed at both bipartisanship and party leadership of his own party. David Freddoso (2011) identifies a plethora of areas where the Obama team overreached. John Pitney (2016) posits that Obama "made a promise, failed to keep it, and then claimed that he never really made the promise to begin with" (p. 70). A 2021 University Press biography of Barack Obama holds that the "hope that things would change was largely lost because, for the most part, the status quo that people wanted changed remained firmly intact, with only a few notable exceptions" (Chapter 13).

As has been shown here, any balanced assessment of Barack Obama's effectiveness with Congress must include the circumstances the Obama team inherited, early momentum, the administration personnel who interacted with Congress, and tools that the Obama White House employed to maneuver with Congress.

In its 2022 study, Sienna Research Institute found that Barack Obama ranks 11<sup>th</sup> in overall success as president in the latest survey of historians. In examining individual characteristics, Obama scores well on integrity and intelligence but places just 27<sup>th</sup> out of 45 chief executives on relationship with Congress.

Suffice it to say that Barack Obama's impressive placement in the latest presidential greatness survey is based more on personal factors than perceptions of his interaction with the legislative branch. Writing as the 2008 presidential campaign was underway, Jerome Corsi labeled Obama as "more of a Michael Dukakis, a George McGovern, a Jimmy Carter, or a John Kerry than he is a Franklin Roosevelt or even a John Kennedy" (Preface, xvi). When measured by his legislative record, Obama fits between the latter two presidents. As Eric Rauchway (2018) put it, Obama bequeathed neither a Great Depression nor a New Deal.

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