



Written by [Bob Adelman](#) on January 5, 2016

Obama's Executive Orders Threaten Separation of Powers

There were few surprises in President Obama's [announcement of new executive orders](#) on Tuesday as most of them had been deliberately leaked to the press in advance, reviewed by others sworn to anonymity, or covered in his radio address last Friday. Many of them are rehashes of previous attempts to nibble away further at Americans' right to keep and bear arms guaranteed under the Second Amendment.



They included pressuring the Social Security Administration to notify the FBI of beneficiaries who have designated third parties to receive their benefits and manage their financial affairs. Guns that are stolen or lost in transit must be reported to the FBI. Firearms can no longer be purchased by trusts or corporations without background checks. State laws protecting citizens' private health information are being abrogated so that medical professionals can submit mental health concerns to the FBI without legal challenges. He announced the hiring of more agents for the FBI to help facilitate the background check system, and more ATF agents to monitor gun dealers more closely. He wants to extend the three-day period following which, if a background check hasn't been completed, a gun purchase can be completed anyway.

He had nothing to say about large capacity magazines or the "no-fly" list.

His primary objective, however, is the one most likely to be challenged: the expansion of the requirement that gun dealers must apply for a Federal Firearms License (FFL). This is how the president proposes to close the so-called "gun show loophole," or, more accurately, the "private sale loophole" or "internet sale loophole" where private individuals are free to buy and sell firearms without government interference. Such regulation is fraught with dangerous overreach of the executive branch into the business of the legislative branch.

As Judge Andrew Napolitano expressed it on Fox News immediately after Obama's pronouncement, that demand is "a blatant attack on the separation of powers" of the Constitution that he thinks will be successfully challenged in the courts.

By unilaterally granting ungrantable powers to the ATF, Obama now allows ATF agents to scour the records of every FFL holder in the country to find out who is buying and selling guns on a regular basis. From there it is easy to picture the outcome: depending upon how the ATF defines "engaging in the business" of firearm sales, an individual acquiring or selling firearms from time to time would find himself confronted by an ATF agent at his door demanding that he apply for an FFL or face charges of violating the new law.

This egregious overreach generated this response from Jennifer Baker, a spokeswoman for the National Rifle Association:

President Obama failed to pass his anti-gun agenda through Congress because the majority of Americans oppose more gun control. Now he is doing what he always does when he doesn't get his way, which is defy the will of the people and rely on executive action.... The plain truth is that



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President Obama's gun-control agenda will only make it harder for law-abiding citizens to exercise their constitutional right to self-protection. It will not stop criminals or terrorists.

Dave Workman, senior editor of the Second Amendment Foundation's *The Gun Mag*, agreed with both the NRA and Judge Napolitano: "I don't think the president has the authority to redefine what a dealer is because that is defined in existing federal statute. He can't snap his fingers and suddenly say ... someone who sells a gun ... is now a gun dealer."

The conversation has been deliberately and misleadingly directed toward "how many guns does a gun dealer have to sell to be required to obtain an FFL?" Two years ago the White House drafted a proposal that someone selling 50 guns annually should be required to have an FFL. A month ago that number was revised downward to 25 guns a year. During a conference call on Monday with reporters, Obama's personal confidante Valerie Jarrett reduced the number still further:

ATF will make clear that whether you are "engaged in the business" depends on the facts and circumstances ... factors such as whether you represent yourself as a dealer, such as making business cards or taking credit cards [or] whether you sell firearms shortly after they're acquired or whether you buy or sell in the original packaging. Numbers are relevant. The ATF and the DOJ did not identify a magic number of weapons that makes you engaged in the business because that would limit their ability to bring prosecution. It can be as little as one or two depending upon the circumstances under which the person sells the gun.

In a review of Obama's executive orders prior to the announcement, German Lopez, writing for Vox, made it crystal clear exactly what the end point of all this is: "The problem is, fundamentally, that the US has a lot of guns, so any measure that doesn't significantly reduce the number of guns will ultimately fall short of fully addressing violence.... To have a more immediate impact, then, the US would have to find a way to quickly remove the number of guns in circulation."

So, despite presidential claims that his orders "are well within my legal authority in the executive branch" and that they would not infringe on the Second Amendment-protected rights of law-abiding gun owners, it's clear even to casual observers that the president wishes to turn the executive branch into a unitary control unit: making laws, judging who violates them, and then prosecuting those violators. This is the very essence of tyranny. Newly-minted Speaker of the House Paul Ryan was clear on that very point:

The president is at minimum subverting the legislative branch, and potentially overturning its will. No president should be able to reverse legislative failure [to enact his agenda] by executive fiat, not even incrementally.

The American people deserve a president who will respect their constitutional rights — all of them. [These executive orders represent] a dangerous level of executive overreach, and the country will not stand for it.

On that point Ryan is right: The citizens will refuse to stand for it only if they are sufficiently informed of the danger such overreach poses to their freedoms. As Robert Welch, the founder of the John Birch Society, put it so eloquently years ago: "All we must find and build and use, to win, is sufficient understanding. Let's create that understanding and build that resistance, with everything mortal men can put into the effort — while there is still time."

There are several saving graces emanating from Tuesday morning's presidential peroration. One, gun sales are likely to continue to set new records. As of this writing, stock prices of Smith & Wesson and



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Sturm, Ruger are setting new highs. Second, the NRA's legal staff is poring over Obama's orders to challenge them in court. Third, the much-needed conversation about the proper role of the executive branch in a constitutional republic is gaining purchase. Finally, Obama's orders are forcing Republican candidates running for their party's nomination for president to clarify exactly where they stand on such overreach, and what they intend to do about it if elected in November.

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