



## **No Labels Would Hurt Separation of Powers**

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By Louis Fisher

There was little in the way of genuine debate. Obama dominated the discussion and marginalized Republican lawmakers. Given that experience, there would be no invitation for a repeat performance.

No Labels favors new powers for the president, such as authority to recommend the deletion of individual items in spending bills. It explains that when a president receives an appropriations bill he must choose between vetoing the entire bill and accepting "some really unappealing" items. The solution: authorize the president to return those items to Congress for an expedited, up-or-down vote. This may sound appealing, but the procedure would shift the spending power from Congress to the president. More likely: to political appointees and agency careerists. Consider also the president's opportunity to coerce lawmakers. A typical quid pro quo: "I won't put your pet project on the rescission list if you agree to back my spending initiatives." Through this accommodation, spending would go up, not down. It would certainly not deliver what No Labels advocates: "more transparency and accountability in the legislative process."

As proposed by No Labels, presidential appointment powers would be greatly strengthened. Nominees must be confirmed or rejected within 90 days. If the Senate failed to reject nominees during that period, they would be automatically confirmed. The Senate's advice and consent function under the Constitution would disappear. Nonaction during a period of 90 days cannot be considered "consent." Why would Senators cede that authority to a president?

Finally, No Labels wants to empower the president to send legislation to Congress twice a year that could not be amended but only approved or rejected. Such a procedure would undermine the deliberative process in Congress and the system of representative government. Congress should not permit a president to drive the legislative agenda in this manner. One can imagine presidents and executive officials meeting privately with selected lawmakers to have their particular needs included in the president's bill, thus building advance Congressional support. Another step toward "more transparency and accountability in the legislative process?" Hardly.

In "Make Congress Work!," No Labels claims it does not "favor any party or particular cause." Yet its partiality for the president is evident. It recalls that on Aug. 5, 2011, Congress "had collectively lost its mind" by putting America's credit at risk. The debt ceiling crisis turned Congress into "one of the least respected institutions in the United States." There is a pressing need, it says, "to fix our broken Congress."

Nowhere does the report confront the broken presidency, including going to ruinous wars on false intelligence (Korea, Vietnam, Iraq) and a sustained failure by recent presidents to address budget deficits that threaten the nation. By assigning all political and constitutional ills to Congress, No Labels asks us to trust in presidential power without explaining why. The record does not show that we have been blessed by competent, effective, reliable and honest chief executives.

Louis Fisher is scholar in residence at the Constitution Project, after serving in the Library of Congress for four decades as senior specialist in separation of powers at the Congressional Research Service and specialist in constitutional law at the Law Library. He is the author of the forthcoming "The Law of the Executive Branch: Presidential Power" from Oxford University Press.

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