

## EXECUTIVE BRANCH OVERHAUL DUE

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In the aftermath of September 11, America is fighting the first war of the 21st century. But while the war on terrorism has changed our priorities, America is fighting that war with a 20th-century government structured for an earlier era's challenges. To be effective, new policies need to be accompanied by new institutions of government.

For that reason, Congress should grant President Bush the authority to reorganize the executive branch to meet our new mission.

Some changes have already taken place, such as the appointment of Tom Ridge as director of homeland security. Mr. Bush was deft in getting Mr. Ridge into office quickly while avoiding the temptation to immediately define all that the position entails.

But now that Mr. Bush and Mr. Ridge have had a chance to immerse themselves in the details of protecting the homeland, it is right to think about what kind of institutional authority Mr. Ridge should have. Should there be a full-fledged Department of Homeland Security? Should Mr. Ridge have budgetary authority over parts of other departments related to homeland security? Who should report to whom?

Beyond homeland security, the Bush administration should think more comprehensively about the structure of the institutions it needs in a post-September 11th world. For example, should there be an agency dedicated to fighting bioterrorism? Should the FBI focus more on anti-terrorism efforts? How should we structure our border protection and our immigration authorities to defend against foreign terrorists?

But changing the structure of government is a difficult task. The executive branch is an

enormous enterprise with many masters. The president is its head, but Congress funds it and specifies its structure and duties, and court rulings bind its actions. The president himself can make certain smaller changes through executive orders, personnel appointments and other minor policy changes, but any significant structural changes in departments or agencies requires congressional legislation.

Throughout our history, we have approached matters of restructuring government in two different ways, one with Congress taking the lead and the other with the president.

Congress can reorganize the executive branch through the regular legislative process — holding hearings, fashioning a bill, and allowing floor debate and amendments. In the 19th and early 20th centuries, major government restructuring was accomplished through this process. Even newer departments such as the Education Department were created in this way.

This approach has several benefits. A restructuring plan receives a full public hearing, and the deliberateness of the process can lead to a better outcome. But the normal legislative process can be slow, and it may not adequately reflect the interests of the executive branch or the particular president who will ultimately preside over the new arrangements.

In much of the 20th century, however, Congress has allowed the president to take a leading role in reorganization. Through a series of reorganization acts, presidents from Franklin D. Roosevelt to Ronald Reagan were given authority to propose a government reorganization plan, which would go into effect unless either house of Congress vetoed it. These reorganization acts differed slightly with respect to the scope of the reorganization or the timeframe, but the basic idea was the same: The president crafts a restructuring plan and Congress rejects it or tacitly accepts it.

In the 1983 *INS vs. Chadha* decision, the

Supreme Court ruled against legislative vetoes, so the reorganization act had to be revisited by Congress. Shortly thereafter, in 1984, the act expired and no reorganization acts have been enacted since. We have reverted to restructuring government by the legislative process.

The war against terrorism should not be hindered by a lack of institutional capacity. Given the need for quick, decisive action, the events of September 11 make the case for granting reorganization authority to the president.

The Chadha decision makes it impossible to revive the old reorganization authority verbatim, but Congress should pass a new version. They should model the legislation on fast-track authority (now renamed Trade Promotion Authority), which has on occasion been given to the president for negotiating trade agreements. Congress should empower the president to design a reorganization plan, perhaps limiting the scope to terrorism or homeland security.

Once the president submits a plan, the Congress should guarantee a vote within 90 days with no amendments and no filibuster in the Senate. If either house of Congress votes against the plan, it will die. But if both houses pass the bill as submitted, the president can sign into law and implement the restructuring plan. This fast-track reorganization authority will preserve Congress' role, guarantee quick action and properly involve the president in designing the institutions he needs to fight the war on terrorism.

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