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IS THE COLOR OF THE ECONOMIC CRISIS THE COLOR OF PRESIDENTIAL FEAR?

Justin Townley*

This essay will examine how the President of the United States and others with similar influence have used fear of the economic problems facing the nation in both beneficial and harmful ways. President Obama may have intended to use fear to garner help for those who were adversely affected by the economy. However, others outmaneuvered the President and used fear to target vulnerable populations. Thus, the color of the economic crisis is the color of fear. Although this is a troubling insight, LatCrit will address, as detailed below, such fears in several ways.

I. INTRODUCTION

Fear can have both beneficial and harmful purposes. The fear of the unknown can be used to exploit another's insecurities. Fact-based fear can motivate another to take necessary, constructive action. The use and effect of fear from the Oval Office is not new to America. The Office of the President has used both types of fear, with predictable results in some instances, and surprising results in others.

Many former Presidents created fear of the unknown in the American people to advance their political agendas based on their insecurities about those different racially or culturally. President Bush, for example, soared in popularity when he discussed the fear of others. His fear worked, in a sense, as he obtained the support of the American people. This support advanced his agenda abroad and domestically.1

President Obama has also used fear, but with different results. President

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2. See, e.g., David W. Moore, Bush Approval Drops to Post 9/11 Low, GALLUP NEWS SERVICE (June 7, 2002), http://www.gallup.com/poll/6160/bush-approval-drops-post911-low.aspx. After the September 11, 2001, attacks, President Bush’s approval rating rose to ninety percent. Id.

3. Id. President Bush’s approval rating according to an ABC/Washington Post poll soared to over ninety percent after the September 11, 2001, attacks, but steadily fell throughout his presidency to his low point of twenty-three percent at the time of the 2008 elections. See, e.g., President Bush: Job Ratings, POLLINGREPORT.COM, http://www.pollingreport.com/BushJob1.htm (Last Viewed: June 28, 2011).
Obama attempted to leverage the fact-based fear of America’s trying economic times into a proactive legislative agenda.

While President Bush's use of fear brought the support of many Americans, President Obama’s use of fear led to a loss of his personal and party base. Today we face this different type of fear—one that originates outside the Oval Office and focuses on the occupant and his strategies. Although this second form of fear is different from the types we saw before, this fear is still real and, as illustrated below, it is colored by the economic crisis.

Therefore, the purpose of this essay is three-fold. The first part will examine pre-Obama presidential use of fear. Throughout our history there have been forty-four different presidential administrations in the United States. Each President was given specific powers under the United States Constitution. However, with the checks and balances that are set up in our government, most of the powers of the President are subject to the "[a]dvice and [c]onsent of the Senate." However, at various times in our history, the President has used an unchecked power, the power to invoke fear in order to persuade others to follow the agenda of the President.

President Franklin D. Roosevelt once said "the only thing we have to fear is fear itself." In sum, this paper will take a look at how some Presidents have used the tool of fear to persuade Congress, the courts, and the American people of the necessity of controversial executive actions.

The second part of this essay will examine the Obama-induced fear, colored as the economic crisis, but stemming from an even deeper fear caused by many Americans eyeing the color of the President and his policies that would help others of color and whites of lesser economic means.

After assuming office, President Obama used well-established facts to generate appropriate fear to garner support for policies that would stimulate the economy and push forward healthcare reform legislation. These measures would be beneficial for all members of society.

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4. Id.
5. See, e.g., Richard Cowen, Republicans to Attack Healthcare Law Funding, REUTERS (Nov. 5, 2010), http://www.reuters.com/article/idUSTRE6A30YD20101105. After Democrats lost control of the United States House of Representatives and took losses in the United States Senate, Republican and Tea Party members began talking about undoing some of the legislation done by Democrats in Congress. Id.
7. U.S. CONST. art. II § 2.
8. U.S. CONST. art. II § 2 cl. 2.
12. Id.
13. Id.
14. Although many may not believe that these measures would be beneficial to all members of society, a better economy and a healthcare system that allowed everyone adequate healthcare allows for a more productive society in which everyone benefits. When people are healthy and employed, they...
Some individuals who actually need healthcare or who are already on government subsidies have re-labeled President Obama's efforts to provide healthcare as big government abusively taking over lives. Also, some have fearfully relabeled his efforts to address immigration reform and the unlawful activities of companies who hire illegal immigrants as supporting Hispanics who are seeking "amnesty" for their immigration violations. There are also those who have fearfully taken Obama's inclusive agenda to have better working relationships with other countries and mislabeled it as supporting non-religious or dangerous Arab-Americans who are "insensitive and uncaring" to the United States.

Others, who resent the inclusivity he has urged in his court nominations, have mislabeled this as his selecting those who are prejudiced because their non-white experiences influence their perspectives. Some who vow to be patriots have fearfully mislabeled Obama's abiding by the Constitution’s separation of church and state as his supporting terrorists. Finally, some, so scared of losing the America they once "owned," fearfully cry that they must "take back their country," presumably from the white women, young whites, and people of color who voted for Obama. Many of these same fearful people admit receiving and cashing their stimulus checks, which were issued as a part of Obama’s plan to reenergize the economy.

Poor economic conditions and continued political rhetoric can cause the quasi-demonization of certain members of society, and then those who have created these demons of fear then are scared themselves into voting against their own interests, and taking the country back into the plunge of economic downfall.

The 2010 midterm elections revealed this fear from outside the Oval Office that the occupant's policies are colored to help all, particularly minority groups.
This fear was colored not only by the economic crises and desperation; it was also colored by a fear that President Obama was concerned with non-mainstream Americans. Some might consider such groups as being responsible for being a drain on the American economy. Some Americans who actually stand to benefit from these reforms, however, were scared out of such progress. The second part of this essay focuses on this fear, which led some Americans to vote in favor of a retreat from progress and against self-interest.

The third part of this essay will offer, with insights gained from the LatCrit XV Conference, suggestions on the use of fear tactics by the Obama and future administrations, and further on how Americans can handle and cope with the use of such fear tactics.

II. THE EXECUTIVE’S USE OF FEAR–PRE-OBAMA

Presidents have wielded fear influentially many times throughout our nation’s history. Sometimes these actions lie within the authority granted to the President under the Constitution. More often than not, however, presidents have expanded their authority using the tactic of fear.

A. Constitutional Authority to Use Fear

The U.S. Constitution enumerates the powers of the President, including the power to serve as commander-in-chief of the military and to be the chief executive of the United States. Although it could be argued that the powers of the President are clearly defined in the Constitution, Presidents have been able to expand their powers. During times of national crisis, Presidents have exercised powers that violated recognized rights in the U.S. Constitution. Presidents have gained these expanded powers by using fear in time of national crisis.

Case law suggests that presidents have been able to gain more power during fearful times. However, if there is not an immediately perceivable fear, the public is less likely to grant the President expanded authority. The courts have generally allowed the President to exercise more power when such imminent threats exist.

27. Loven, supra note 11.
28. See, e.g., Immigrants and the Economy, AMERICAN CIVIL LIBERTIES UNION (Mar. 12, 2002), http://www.aclu.org/immigrants-rights/immigrants-and-economy. The study by the ACLU suggests that immigrants contribute more to the economy through tax revenue than they receive in benefits. Id.
31. U.S. CONST. art. II.
32. See, e.g., Dames & Moore v. Regan, 453 U.S. 654 (1981) (Court held as constitutional President’s tribunals to deal with claims arising out of dealings with the government of Iran).
33. See, e.g., Korematsu v. United States, 323 U.S. 214 (1944) (Court upheld President Roosevelt’s detention of Japanese Americans in spite of the Due Process Clause of the Fifth Amendment).
34. Id.
35. See, e.g., Youngstown Steel Co. v. Sawyer, 343 U.S. 579 (1952) (Court determined that the President was not constitutionally able to take over the steel industry under his powers as commander in chief).
36. See, e.g., Authorization for Use of Military Force Against Iraq Resolution of 2002, Pub. L. No. 107-243, 116 Stat. 1498; Children of the Camps, supra note 1. When fear is not prevalent, then the Supreme Court or Congress will be less likely to give into the fear. Youngstown Steel Co., supra note 35.
Cases that demonstrate this willingness and unwillingness to expand Presidential authority are *Youngstown Steel Co. v. Sawyer*\(^{37}\) and *Hamdi v. Rumsfeld*.\(^{38}\)

In *Youngstown Steel*, the Supreme Court ruled that the President could not take over the steel industry under his authority as commander-in-chief because there was no military or governmental necessity.\(^{39}\) The conflict in Korea did not pose an imminent danger to the United States.\(^{40}\)

However, the Court in *Hamdi* ruled that the President did have the authority to detain "enemy combatants" indefinitely.\(^{41}\) A sense of fear prevailed due to the September 11, 2001 attacks by Al Qaeda.\(^{42}\) Although the Court did impose some restrictions on the actions of the President in *Hamdi*,\(^{43}\) the Court was far more willing to give the President certain powers under his role as commander-in-chief than it was willing to give the President in *Youngstown Steel*.\(^{44}\)

Thus, fear can be used as a powerful political tool. The power of the President to use fear in achieving an agenda can degrade the checks and balances among the three branches of government. Although fear can be used to motivate the other branches to accept actions that are beneficial for the country,\(^{45}\) the usage of fear can also have disastrous consequences.\(^{46}\) The usage of fear by the President causes one to question how far the President’s authority in his role as chief executive and commander-in-chief of the armed forces should be extended during times of crisis. Although some crises may require immediate response from the Executive,\(^{47}\) there are other times when the President garners authority without an “imminent” threat to the country.\(^{48}\) How far should the President’s authority extend?

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37. 343 U.S. 579 (1952).
41. Hamdi, 542 U.S. at 507. Hamdi is an American citizen who was detained in Afghanistan fighting with Al Qaeda and the Taliban. After his arrest and detention as an enemy combatant in Guantanamo Bay, Cuba, Hamdi challenged his detention as an enemy combatant as a U.S. citizen without due process. *Id.* The Court made an exception for American citizens, stating that the government could not detain an American citizen indefinitely. *Id.* This did show a departure from the Court’s previous ruling in *Korematsu*, where the Court found that the detention of American citizens was acceptable under the principle of military necessity. *Korematsu*, supra note 33.
43. *Hamdi*, supra note 41.
44. *Youngstown Steel*, supra note 35.
46. *Korematsu*, 323 U.S. at 214. Fear propelled the discriminatory treatment of people of Japanese descent, leading to the loss of their constitutional rights. *Id.*
47. It can be argued that in the interest of national security, the President should have the authority to respond immediately to a threat or action against the country.
48. The military action against Iraq in 2003 is an example of an Executive action taken without an imminent threat.
B. Practice as Power—How Presidents Have Used Fear Pre-Obama

Presidents of the United States have used fear to achieve what they believed was the right thing for the United States and its citizens. However, the usage of fear by the President can lead to many problems for society. The lessons learned from President George W. Bush's push for continuing his policy in Iraq should show that a President should only use fear when it is absolutely necessary. President Bush used fear of terror to justify actions not in the best interests of the United States. This section will examine three different Presidents—Franklin D. Roosevelt, Lyndon B. Johnson, and George W. Bush—and how they used fear to influence the courts, the Congress, and the American people.

C. Fearing the Worst: The Actions Of President Franklin D. Roosevelt During World War II

President Franklin D. Roosevelt in his inaugural address said that "the only thing we have to fear is fear itself." In contradiction to this, however, he later allowed fear to influence his decisions. After the Japanese attack on Pearl Harbor, President Roosevelt authorized Executive Order 9066, which interned Japanese-Americans into camps across the country. These camps allowed for American citizens to be confined and deprived of their rights without due process of law in the name of national security. The sense of fear that Japanese-Americans would aid war efforts on behalf of the Japanese Empire allowed for their loss of rights. Japanese-Americans had far more to fear than fear itself during World War II; they had to fear...
the loss of their life, liberty, justice, and property in the name of national security.

After the devastating bombing of Pearl Harbor and threat of a Japanese invasion, President Roosevelt allowed his fears to influence his decisions. It is clear in the case of the World War II internments, the Executive failed to "preserve, protect, and defend" the constitutional rights of American citizens, since Roosevelt interned Japanese-Americans in violation of the Constitution which he swore to protect. By allowing for fear to influence his decision, President Roosevelt dishonored the oath that he took when he assumed the office of President of the United States. President Roosevelt allowed for fear to influence his decisions, and these decisions may have influenced others members of the government and the judiciary. Historically, however, President Roosevelt is not the only Executive to allow fear in influencing his decisions.

D. Fear as a Justification For War: Comparing the Johnson and Bush Administrations

During President Lyndon B. Johnson's administration, Congress authorized the President to take action against North Vietnam. President Johnson insisted that North Vietnam posed an immediate threat to the United States. However, evidence suggests that President Johnson was not sure at the time he advocated for the Gulf of Tonkin Resolution that North Vietnam had actually conducted a second attack against United States forces. However, even without conclusive evidence, President Johnson was able to influence Congress to pass legislation that authorized him to use military force.

59. Id.
60. The Supreme Court upheld the Presidential decision to intern Japanese Americans during World War II in Korematsu, 323 U.S. at 214 and Hirabayashi v. United States, 320 U.S. 81 (1943).
61. U.S. CONST. art. 2 § 1.
63. Id. Congress later realized the violation of these citizen's constitutional rights and issued reparations in the amount of $20,000. Id.
64. U.S. CONST. art. II § 2. "I do solemnly swear (or affirm) that I will faithfully execute the Office of the President of the United States, and will to the best of my Ability, preserve, protect, and defend the Constitution of the United States." Id. This is the oath of office that the President-elect takes before assuming the Office of President of the United States.
65. Korematsu and Hirabayashi, supra note 60. In both of these cases the Court upheld the authorization of Executive Order 9066 to detain Japanese-American citizens without due process of law guaranteed to them by the Fifth Amendment. Id.
67. Edward J. Marolda, Tonkin Gulf Crisis, August 1964, NAVAL HISTORICAL CENTER (July 13, 2005), http://www.history.navy.mil/faqs/faq120-1.htm (Last Viewed: Aug. 22, 2010). The Gulf of Tonkin Incident dealt with a possible attack on the U.S.S. Maddox and U.S.S. Turner Joy. The U.S.S. Maddox had been attacked on August 2, 1964 and after which the U.S.S. Turner Joy arrived to support the Maddox in its mission. On August 4, 1964 there were allegations that the Maddox and Turner Joy were attacked by Vietnamese forces. However, there was no conclusive evidence of the attack. Id.
68. See, e.g., Scott Shane, Vietnam Study, Casting Doubts, Remains Secret, N.Y. TIMES (Oct. 31, 2005), http://www.nytimes.com/2005/10/31/politics/31war.html (last viewed: Aug. 22, 2010). President Johnson stated to Under Secretary of State George W. Ball, "Hell, those dumb, stupid sailors were just shooting at flying fish!" Id. However, even with such reservations, President Johnson still influenced Congress with the fear of other attacks to pass the Gulf of Tonkin Resolution which lead to the escalation of the war in Vietnam. Id.
69. Gulf of Tonkin Resolution, supra note 66.
This is a clear example of how presidential usage of fear can be used to extend the President’s power in his roles as commander-in-chief and chief executive.70 It is generally thought that the President of the United States has greater foreign powers than he does domestic powers.71 In Curtiss-Wright, the Court decided that the President did have the authority to stop arms sales to combating nations under his foreign affairs powers.72 Although the President does have a large role in foreign affairs, some might believe that the President might try to expand his authority in foreign affairs and other presidential powers during a crisis.73 During times of crisis or national emergency, presidents have tried to exercise more power than they might otherwise try to exercise during their presidency.74

During these times of “crisis,” however, the President might use such fear tactics to make things seem worse or to rely on facts that are questionable at best. President Johnson did this with his usage of fear to get the Gulf of Tonkin Resolution.75 A fear of communism spreading and ultimately impacting the United States was a concern that affected Americans during this time in history.76 President Johnson was able to use this fear to influence members of Congress to vote for legislation that would authorize him to use military force, if necessary, to defend the United States against North Vietnam and communism in general.77 By posing the image that a communist power was taking aggressive actions against the United States, the President was able to influence members of Congress that he needed to authority to respond to attacks.78 Members of Congress could not afford to look weak or that they did not want to support combating communism. This fear could be a reasonable explanation for the expansion of Presidential authority to use and wage in war without formal congressional declarations of war as required by the U.S. Constitution.79

70. U.S. CONST. art. II.

71. See, e.g., United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 320 (1936). The Court in Curtiss-Wright expresses that the authority Congress gives by statute gives the President power in foreign matters that is either without restriction or that is far less restricted than in the domestic context. Id. at 324. Curtiss-Wright dealt with the President’s authority to restrict the sale of weapons by U.S. corporations to countries that were engaging in military conflict. Id.

72. Id.

73. See, e.g., David Gray Adler, George Bush and the Abuse of History: The Constitution and Presidential Power in Foreign Affairs, UCLA J. INT’L L. & FOREIGN AFF. 75, 78, 96 (Spring 2007). In this article, the author discusses how President Bush expanded his powers as commander-in-chief and chief executive in the same way that Presidential foreign powers were extended. Id.

74. See, e.g., Youngstown Sheet & Tube Co., 343 U.S. at 579. President Truman tried to seize the steel industry because he felt that a strike and shut down of the steel industry would hinder the war effort in Korea. The Court ultimately rejected President Truman’s seizure of the steel industry and said that he was not able to seize the steel industry under his powers as commander in chief. Id.

75. Gulf of Tonkin Resolution, supra note 71. President Johnson’s reservations about the accuracy of the reports of a second attack on American naval forces by North Vietnam did not deter his quest for military action against North Vietnam. Id.

76. Edward J. Marolda, Tonkin Gulf Crisis, August 1964, NAVAL HISTORICAL CENTER (July 13, 2005) http://www.history.navy.mil/faqs/faq120-1.htm (last viewed: Aug. 22, 2010). The Gulf of Tonkin incident dealt with a possible attack on the U.S.S. Maddox and U.S.S. Turner Joy. The U.S.S. Maddox had been attacked on August 2, 1964 and the U.S.S. Turner Joy arrived to support the Maddox in its mission. On August 4, 1964, the Maddox and Turner Joy were allegedly attacked by Vietnamese forces. However, there was no conclusive evidence of the attack. Id.

77. Gulf of Tonkin Resolution, supra note 66.

78. Id.

79. To restrain the President’s power to wage war without congressional approval, Congress
This usage of fear to further military action is similar to the lead up to military action against Iraq. The fears President George W. Bush stirred regarding an attack by Iraq are similar to the fears that President Johnson exploited when discussing North Vietnam. The next section examines how President George W. Bush succeeded in the greatest expansion of presidential power yet.

E. The War of Fear: Expanding Presidential Powers During The War On Terror

After the events of September 11, 2001, many feared another terrorist attack against the United States. President George W. Bush was able to use this fear on many different occasions to gain approval of legislation favorable toward his policies. This usage of fear was especially effective when it came to any policy that dealt with the “War on Terror.”

The powers of the Presidency from time to time have been extended by the Congress and the courts. However, the expansion of presidential powers under President Bush was extremely far reaching. One of the major power extensions that President Bush received was the authorization for the war in Iraq. This war received heavy bipartisan support, with Democrats fearful of looking soft on passed the War Powers Act of 1973. Congress has even taken the President to court on this issue. See, e.g., Dellums v. Bush, 752 F. Supp. 1141 (D.D.C. 1990). The federal district court for D.C. ruled that the power to declare war was obviously vested with Congress and offensive military actions could not be taken without Congressional declarations of war or another formal authorization for the use of military force. Id. at 1146.


81. Gulf of Tonkin Resolution, supra note 66.

82. Marily Elias, USA’s Muslims Under a Cloud, USA TODAY (Aug. 10, 2006), http://www.usatoday.com/news/nation/2006-08-09-muslim-american-cover_x.htm (last viewed Feb. 07, 2010). In August 2003, seventy-five percent of Americans thought that the world was a more dangerous place than it had been, and seventy-four percent of Americans thought that terrorism would become part of the daily life in the future. See, e.g., Two Years Later, the Fear Lingers: 75% Say It’s a More Dangerous World, PEW RESEARCH CENTER (Sept. 4, 2003), http://people-press.org/report/192/two-years-later-the-fear-lingers (last viewed Feb. 24, 2010).


85. See, e.g., Dames & Moore, 453 U.S. at 654. This case granted the President the right to seize assets and then order that any claims against a foreign power be sent to a special tribunal. Id.

86. See, e.g., David Gray Adler, George Bush and the Abuse Of History: The Constitution And Presidential Power In Foreign Affairs, UCLA J. INT’L L. & FOREIGN AFF. 75, 78, 96 (Spring 2007). In this article, the author discusses how President Bush used his power as commander-and-chief and chief executive to further his powers in the same way that Presidential foreign powers were extended. Id. Bush claimed that his authority included the power “to initiate preemptive war, terminate and suspend treaties, conduct warrantless electronic surveillance, establish military tribunals, and order acts of extraordinary renditions, all without congressional approval.” Id.

terrorism and national security. President Bush further continued to use the fear of terrorism in later speeches after the war commenced, stressing that terrorists were still a threat to the United States. This fear-mongering in turn led Congress to authorize actions such as domestic surveillance, military tribunals, and other acts that might be considered to be outside of the Presidential realm.

The War on Terror led many members of Congress to grant the President unusual powers. The President was able to use the fears of another terrorist attack to achieve his policy goals and to gain broader authority. The usage of fear by the President could be argued to be a form of fear-mongering that is more damaging than it is productive. Intentionally or not, President Bush harnessed the fear of another terrorist attack to breed more fear in American society.

III. FEAR IS IN THE EYE OF THE BEHOLDER: DO PRESIDENTS TRULY USE FEAR?

Presidents can use fear as a powerful political tool. Some may argue that fear can benefit the country, some may argue that former Presidents did not try to use fear at all. The argument exists that President Bush did not use fear to further his agenda or policy of removing Saddam Hussein from power. This argument can also be used to reject that fear played a role in the detention of Japanese-Americans during World War II by President Roosevelt, and the furtherance of military action.

88. See, e.g., Jeffrey A. Botelho, Congressional Responsibility In Controlling The War Machine, 21 ST. THOMAS L. REV. 305, 336 (Spring 2009). The politics of fear was at play for the war in Iraq. Not wanting to appear soft on national security or counter-terrorism, Democrats ultimately voted for an authorization for military action. Id.

89. See, e.g., Joel Bleifuss, Fear Monger In Chief, IN THESE TIMES (Feb. 2, 2004), http://www.inthesetimes.com/article/507/fear_monger_in_chief/ (last viewed: Sept. 14, 2010). President Bush in his state of the union address that “The terrorist continue to plot against America and the civilized world. . . . training and plotting in other nations and drawing up more ambitious plans.” Id.

90. The Court in Ex Parte Quirin did hold that during World War II, military tribunals were held to be lawful. Ex Parte Quirin, 317 U.S. 1 (1942). However, the Court held in Hamdi, 542 U.S. 507 (2004), held that U.S. citizens could not be held in military tribunals without due process of law. In response to Hamdi, Congress passed the Military Commissions Act which specified who could be held and tried by military tribunals. 18 U.S.C. §§ 1801-1807 (2006). After the passage of the U.S.A. PATRIOT Act, the president was given broader authority that allowed him to conduct surveillance with far fewer restrictions that before the September 11 attacks. Pub. L. 107-56, 115 Stat. 272.


92. See, e.g., Daniel R. Williams, Averting a Legitimating Crisis and The Paradox Of The War On Terror, 17 MICH. ST. J. INT’L L.J. 493, 504 (2009). “Our post-9/11 fears have allowed to become a reality a War on Terror that itself produces fear, if not outright terror.” Id.

93. Id.

94. See, e.g., Obama's Health Care Speech to Congress, supra note 45.

95. See, e.g., Julian E. Zelizer, Bush Was Right: We’re Not At War With Islam, CNN (Sept. 13, 2010), http://www.cnn.com/2010/OPINION/09/13/zelizer.bush.muslins/index.html?hpt=T2 (last viewed: Oct. 17, 2010). In his article, Zelizer points to speeches made by then President Bush condemning actions taken against Muslim and Arab Americans and trying to make the point that the United States was not at war with the Arab or Islamic culture, but at war with extremists. Id.

by President Johnson in Vietnam.  

President Bush’s statements leading up to the war against Iraq might not have been seen as fear mongering, but just acting on what he thought was a legitimate threat to the country. The Iraqi government under Saddam Hussein had supported terrorist actions in the past, and there could have been a suspicion that Iraq would support terrorist actions in the future. The argument that President Bush acted in response to a legitimate fear might be valid under the circumstances and the information that was available to President Bush at that time.

Furthermore, it could be argued that President Bush’s actions did not perpetuate a sense of fear to further his agenda and expand Presidential powers. Some have argued that President Bush’s actions were merely a response to the events of September 11, 2001, and it was his duty as commander-in-chief of the armed forces to do everything within his power to protect and defend the nation against another attack. The expansion of presidential powers was not a goal of President Bush, but a necessity due to the threats presented against the United States.

Arguably, President Bush was put in a situation that no other American president has had to face. President Bush had to respond to an attack against different parts of the mainland of the United States where there was no clear nation state to retaliate against. With the new types of threats that the country was facing, it could be argued that the President was in need of powers that might not have otherwise been necessary in other more conventional wars.

The September 11, 2001, attacks by Al Qaeda killed over 3,000 American citizens. President Bush’s response to the attacks can be argued to be appropriate

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97. See, e.g., Scott Shane, *Vietnam Study, Casting Doubts, Remains Secret*, NEW YORK TIMES (Oct. 31, 2005), http://www.nytimes.com/2005/10/31/politics/31war.html?r=1&sq=gulf_of_tonkin_reports_cooked&st=cse&adxnnl=1&scp=1&adxnnlx=1282413614-UqeuV0IsZPvL50eKLgyzA (last viewed: Aug. 22, 2010); see also, e.g., *Children of the Camps*, supra note 1. During times of national crisis or potential attacks, it could be argued that the President does not have all the facts available when decisions need to be made. Therefore, there are times when they might get something wrong, but this is a necessity in times when there is a threat to the national security of the United States.


99. See, e.g., *Bush Sends Iraq War Letter To Congress*, supra note 102. Bush stated in his letter that military action against Iraq was justified by the War on Terror. Id.

100. See, e.g., Mike Mount, *Hussein’s Iraq and Al Qaeda not linked, Pentagon says*, CNN (Mar. 13, 2008), http://articles.cnn.com/2008-03-13/us/alqaeda.saddam_1_alqaeda-targets-of-iraqi-state-iraqi-state-terror-operations?s=PM:US (last viewed: Oct. 17, 2010). After reviewing 600,000 documents that were seized after the invasion of Iraq, there were no connections found between Iraq and Al Qaeda. Id.


103. See, e.g., George W. Bush, State of the Union Address of the President to the Joint Session of Congress (Jan. 29, 2002), C-SPAN.ORG, http://legacy.c-span.org/Transcripts/SOTU-2002.aspx (last viewed: Oct. 17, 2010). In this State of the Union address, President Bush spoke of the dangers that faced the United States and the nations and terrorists who posed a threat to the United States. Id.

104. See, e.g., *Al Qaeda*, GLOBALSECURITY.ORG, http://www.globalsecurity.org/military/world/para/al-qaeda.htm (last viewed: Oct. 17, 2010). Al Qaeda is a global terrorist network who has advocated for attacks against the United States and is responsible for conducting terrorist attacks against the United States. Id.

and necessary. Fear had gripped the nation, and some argue that President Bush tried to minimize people's fears about people of Arabic and Islamic descent.\textsuperscript{106} Although there are some who argue that President Bush’s actions later became that of a “fear-mongerer” who used the September 11, 2001, attacks to justify expanded powers through existing and new legislation,\textsuperscript{109}\textsuperscript{107} President Bush’s actions can be seen as being in the best interest of the country.

The September 11, 2001 attacks arguably changed the role of the President. In a time when threats to national security come from terrorist cells that can blend in the general population, and not from standing armies or navies, the role of commander-in-chief might need special authority that was not available to the President in the past, in order to face this new, emerging strategy.\textsuperscript{108} Although previous presidents have had to deal with terrorist attacks,\textsuperscript{109}\textsuperscript{107} no president has had to deal with such a large devastating terrorist attack as those that took place on September 11, 2001. Although many argue that President Bush used his authority and the fear that Americans had of another terrorist attack to expand his powers and further his agenda,\textsuperscript{110} without an expansion of presidential authority, President Bush might not have been able to fully defend the nation against another terrorist attack.\textsuperscript{111}

Although these arguments can be made in support of the actions of President Bush’s and other presidential uses of fear, the problem of expanded authority and a loss of checks and balances between the various branches is a real threat to the American system of governance. President Bush’s usage of fear led to many different expansions of his power without judicial oversight.\textsuperscript{112} Presidential usage of fear might at times be beneficial for society; however, there is still a need to

\textsuperscript{106} Zelizer, supra note 95. President Bush went to an Islamic center in Washington D.C. where he entreated Americans not to allow their anger and fears to become a war against Muslims. Id.


\textsuperscript{108} Although this argument could be made, there is still a concern about vesting too much power in one branch of government and not having the traditional checks and balances that we have come accustom to in American governance.


\textsuperscript{111} Gellman & Priest, supra note 109. Then House Speaker Newt Gingrich, (R-GA) stated that he had agreed with the actions of President Clinton in responding to the embassy bombings. Id. Although the September 11, 2001 attacks were more severe than the embassy bombings, the usage of fear by President Bush in furthering his authority may not be necessary to conduct operations against Al Qaeda.

\textsuperscript{112} Morgan, supra note 107. Presidential authorization of domestic wiretaps could and should be considered a violation of the right to privacy. See, e.g., Griswold v. Connecticut, 381 U.S. 479 (1965) (recognizing right of privacy).
have congressional and judicial oversight of this usage of fear to determine if there are negative aspects that outweigh the positive benefits of the usage of fear. Although some can justify President Bush's actions throughout his presidency, his usage of fear to justify intrusions into privacy rights and an expansion of presidential authority should rightfully have been denied by the courts and Congress.

IV. PRESIDENT OBAMA'S APPROPRIATE USE OF FEAR, AND THE QUESTIONABLE RESULTS

This part of the paper will look at President Obama and his usage of fear to influence others in addressing the economic crisis that had been gripping the nation when he assumed office. 113 Although presidential usage of fear can cause great injury, presidential usage of fear can be beneficial to the country if the fear is used to benefit a large number of the population. 114 However, it is important to realize that the usage of fear as a political tool can be dangerous and more harmful than good. During times of war or economic downturn, which our nation is currently suffering from both, 115 fear should still only be used by the President as a last resort. Even when justifiable fear is used, it is the duty and responsibility of Congress and the courts to make sure that the usage of fear is kept in check and that the President is not allowed to exercise any powers that might be in violation with the Constitution and allow for the violation of the rights of American citizens.

After assuming the Office of the President, President Obama used fear to help stimulate the economy and push forward toward healthcare reform legislation. 116 These goals would be beneficial for all members of our society. However, several segments reacted negatively to Obama's justifiable use of fear.

Although fear can cause disastrous consequences for our country, there are times when fear has been used to benefit the country. Two examples would be President Obama's usage of fear to help stimulate the economy and to pass healthcare reform legislation. 117 In his speech, President Obama compared the economic problems facing the country to the worst economic times since the Great Depression, 118 and also spoke about the problems facing Americans trying to receive adequate healthcare. 119 President Obama's actions were designed to stimulate a faltering economy and to help many Americans who were struggling with healthcare issues.

These actions may not be popular with many, 121 but Congress did take the

113. See, e.g., Obama's Health Care Speech to Congress, supra note 45.
114. See, e.g., Franklin, D. Roosevelt, First Inaugural, THE HISTORY PLACE, (Mar. 4, 1933), http://www.historyplace.com/speeches/fdr-first-inaug.htm (Last Viewed: Aug. 29, 2010). President Roosevelt, upon his assumption of office, had used fear to influence the decisions of members of Congress to approve his proposed plans for the economy. Id. President Obama made similar statements before he took the oath of office; see also Loven, supra note 11. The usage of fear in these circumstances was used to allow steps to be taken to foster economic recovery in uncertain economic times.
115. Loven, supra note 11.
116. Obama's Health Care Speech to Congress, supra note 45.
117. Id.
118. Id.; see also Loven, supra note 11.
119. Obama's Health Care Speech to Congress, supra note 45.
120. Id.
121. See, e.g., Dana Blanton, Fox News Poll: 55% Oppose Health Care Reform, FOXNEWS
time to fully consider what to do about the economy and healthcare reform, and ultimately decided that President Obama's policies were in the best interest of the nation. The benefits that come from economic recovery and adequate healthcare for all Americans, were designed to be beneficial for society and not to harm or discriminate. The fear that was used to encourage passage of the legislation were not intended to further any military operation, or to discriminate against a class of American citizens, but was designed to provide a benefit for all Americans.

The reactions to such tactics were unprecedented. In the midterm elections of 2010, President Obama's party lost majority control of the House of Representatives as many seemed to blame him for his efforts to try to improve society over the last two years. Why didn't masses of Americans who stood to improve their social conditions under President Obama's leadership fear his policies? President Obama may have used fear to pass a number of his initiatives through Congress but, when Bush and other presidents appealed to fear, the masses complied with their policy requests. Obama's use of fear seems to have actually helped the masses, but harmed him politically, as the majority of voters seemed to be afraid of something even greater than the things Obama urged as realistic fears—a downturned economy and the health insurance plights and bankruptcies of so many.

Why didn't Obama's use of fear work? And, why did voters seem to vote against their own self-interest in the mid-term elections? Did others use fear to control the masses—fear that the underrepresented that Obama bettered would change the flow of society? After the 2010 mid-term elections, it seems that President Obama's usage of fear has not been successful in influencing people to believe that the policies were implemented out of necessity. Although there might be several reasons for this failure of fear, one rationale is that President Obama's usage of fear was not effective enough. Although the President was able to get key legislation passed that helped to avoid a larger economic crisis, the Tea Party movement was able to use fear more effectively than the presidential usage of fear. The Tea Party movement was able to make people more afraid of the legislation that was being passed to avert the economic and healthcare crises, than the crises themselves. The Tea Party was able to use rhetoric to portray the government as the problem and further that the government was forcing people to take government controlled healthcare.

122. Id.
123. Id.
124. President Bush Job Ratings supra note 3. President Bush received a lot of support after the terror attacks because there was a sense of imminent fear about terrorism.
125. Blanton, supra note 121.
126. Id.
V. CONCLUSION: WHAT MUST THE LATCRIT COMMUNITY DO?

The LatCrit community can do many things to help allow people to see past the fear. The best way to overcome the fear is to actively present a solid unified voice. The LatCrit community can and must continue to advocate and educate everyone on the rights of all citizens. However, this voice must be amplified if it is ever going to be able to compete with organizations such as the Tea Party movement or any other groups that advocate senseless fear. Partnerships with other like-minded groups who advocate similar stances and goals might be a way that LatCrit allows its voice to start to dial back the rhetoric and outright hatred that fear can produce.

When I attended the LatCrit conference in October, this was my first academic conference as well as my first formal presentation. I was greatly impressed by all of the activist scholars I met. But, I was also impressed by the great diversity in the panelists with whom I presented. Both of these impressions yielded insights for what LatCrit can do to quell the fears that cheat Americans out of experiencing widespread progress.

One of these insights was that we all had many differences, but we spoke with a similar voice. By this I mean that even though we spoke on different topics, the common ground that we all found was that we should not let our irrational fears of the fears of others to affect our judgment. I sat on a panel of current former students from Mississippi College School of Law. In many ways we were different. Some of us are male, some female. Most of us voted for Obama for President, but some of us did not. We are White, Black, and Asian. Most of us were American citizens, some of us were not. Our great commonality was our desire for justice under the law, and our desire to explore and question our own views. Perhaps we were not a typical LatCrit panel; some of us do not fit within the definition of “activist.” Yet, many activist scholars who have attended LatCrit for many years were impressed by our Mississippi delegation and said, “We need to do more of this.” Notably, our delegation from Mississippi College and our Professor were specially recognized at the banquet. We all learned a lot from each other; an openness to knowledge, and knowledge itself, quells fear. President Obama was elected by a loosely formed collation of individuals seeking change and seeking more welcoming of diversity in our society. I saw our delegation from Mississippi as a coalition of sorts, not fearful of introspection of one’s own belief systems.

So I think LatCrit must do two things. First, as stated above, it must hold on to its scholarly activist agenda. At the same time, it must forge more coalitions among groups where it may differ on some points, yet agree on others. This can occur as long as the interested parties agree on certain fights for justice on which they can jointly wage a successful fight against unconstructive fear of justice for all colors.

Without organizations such as LatCrit, who can offer a loud and clear counterpoint, fear will be allowed to continue without restriction. These unfounded fears are dangerous and costly to the nation, and it is vital that something be done to diminish these blatantly mis-colored fears. It is important to remember that our diversity is one of our greatest strengths. Therefore the unfounded fears of a few people cannot be allowed to diminish the benefits that diversity gives to all people. Whether it be through justifiable presidential usage of fear, or by the American public itself, it is important to overcome prejudicial fear that persecutes and
diminishes those in our society. Although fear has its usefulness, society must never allow fear to turn into bigotry and discrimination.