

What do Pawlenty's executive orders tell us about his executive tendencies?

It is official. After months of previews and hints, former governor Tim Pawlenty formally announced his bid for the nation's top office.

Of Minnesota's two presidential hopefuls, only Governor Pawlenty has executive branch experience – a fact that will doubtlessly become a central part of his campaign narrative. Given Pawlenty's aspirations, it is worth examining what his record tells us about the nature of his executive tendencies.

The governor's role encompasses far more than the management of the state's top executive office. The governor commands the bully pulpit on a number of policy issues, and often acts as a key actor in legislative negotiations. However, it is Pawlenty's purely executive record – his collection of 135 executive orders – that provides the keenest insights into the style and priorities that he would bring to the Presidency.

Exercise of executive authority

During his two terms as Governor, Tim Pawlenty did not shrink from exercising his executive discretion, but the framework and scope of his actions varied widely.

Throughout his years in office, Pawlenty invoked states of peacetime emergency to trigger a variety of activities. His very first executive order (Executive Order 03-01) declared a peacetime emergency in order to exempt over-the-road trucks from weight restrictions imposed by state law. The purpose of the exemption was to speed the removal of septic waste from rural areas hard hit by winter weather. These exemptions became a seasonal fixture of Pawlenty's tenure, occurring almost annually from 2003 to 2010.

Pawlenty also invoked states of emergency related to flood control, fire suppression, and post-storm debris removal. In all of these cases, Pawlenty's executive orders (EOs) read very much like those of his predecessors. In these orders, Pawlenty acts decisively, but does so within bounds of existing law. While routinely articulating a plenary basis for his power, the orders are careful to cite applicable state laws regarding gubernatorial emergency authorities, so that they do not rely entirely on the Governor's more loosely defined powers.

Governor Pawlenty was not always so cautious with his executive actions, and he became particularly emboldened in the face of a political challenge. In 2003, during a public dispute between himself and Attorney General Mike Hatch over the release of civilly committed sexual offenders, Pawlenty issued an executive order (EO 03-10) that mandated the following:

“State agencies will ensure that no person who has been civilly committed under Minnesota law as a sexually dangerous person ... is discharged into the community unless required by law or ordered by a court.”

On its face, the order seems to simply reaffirm what would be standard practice. On an enforcement level, however, the order was interpreted so strictly by state agencies that virtually no discharges were made during the years of the Pawlenty administration, effectively quadrupling the state’s civilly committed population. Toward the end of his tenure as governor, Pawlenty sought \$89 million for the construction of expanded facilities to house this burgeoning populace.

In the long term, the implementation of EO 03-10 may have set up a possible constitutional challenge to the civil commitment law that could lead to its undoing, since the law was not designed to provide indefinite detention in every case. Such a challenge was avoided during Governor Pawlenty’s tenure, but it may come to pass during Governor Dayton’s time in office, due to the tremendous backlog created during the Pawlenty years.

Relationship with federal power

Pawlenty’s executive orders reveal an uneven relationship with federal power. One of Pawlenty’s later orders – EO 10-12 – demonstrates two things. On one hand, it expresses a facet of Pawlenty’s views on federalism and states’ rights. On another, it showcases his ability to finely hone an executive order for political consumption.

In contrast with many of his more routine orders, EO 10-12 relies largely upon Pawlenty’s own assertions of executive authority. EO 10-12 orders state agencies to refrain from seeking grants for demonstration projects related to the implementation of President Obama’s health care reform legislation.

The order’s political dimension is made clear by its language, which departs from many of Pawlenty’s more cautiously worded orders. Written in strident prose, EO 10-12 states that Obama’s health care plan “... represents a dramatic attempt to assert federal command and control over this country’s health care system ...

thereby reducing individual freedom for health care decisions.” In addition, “The Act includes unprecedented federal intrusions into individual liberty.”

Viewed on its face, the order appears to be a full-throated defense of state autonomy against expansive federal legislation. When viewed in the context of some of Pawlenty’s prior actions, its critique seems to be somewhat selective. It also clearly illustrates the broader change in the Republican Party’s stance toward federal intervention that occurred after the 2008 election.

During the eight years of the Bush administration, the philosophy of the national party tilted heavily in favor of aggressive federal action – whether exercised by the President or by Congress. This was witnessed in everything from the passage of the PATRIOT Act, to the sweeping expansion of Medicare benefits. In concert with this prevailing trend, Tim Pawlenty acted to bolster federal authority on a number of occasions.

Immigration, security, and federal authority

In 2008, Pawlenty signed EO 08-02, which allowed Minnesota police to be cross-deputized as federal immigration agents – a practice encouraged by the federal government since shortly after 9/11.

Pawlenty also acted to advance the federal REAL ID program in the face of widespread legislative resistance. The REAL ID Act was passed by Congress four years after the 9/11 attacks, and it aimed to establish national standards for state drivers licenses. Critics likened it to a backdoor national ID card, and several state legislatures refused to implement the act’s provisions – a step necessary to comply with the federal law. Minnesota was one such state, and its legislature passed a REAL ID opt-out bill during the 2008 session.

Undeterred, Pawlenty sought to move REAL ID implementation forward without legislative action. EO 08-08 carefully skirted a confrontation with the legislature, moving ahead with as many changes as possible, in the absence of a state law. In his order, Pawlenty instructed the Commissioner of Public Safety “to take actions to enhance the security of Minnesota driver's licenses, state identification cards, and the systems and databases that relate to these programs.”

Pawlenty did articulate some federalism concerns in his REAL ID order, allowing that the program raised “significant issues for states, including the need to ensure that Minnesota continues to maintain control over its state driver's license

program.” In practice, his executive order served as an attempt to fast track a priority of the federal government that had been broadly rejected by the state’s elected bodies.

Use of military assets

Pawlenty served during a time of national military action, and he ceremonially supervised National Guard troop deployments to federal missions in Iraq, Afghanistan, and elsewhere.

Pawlenty also oversaw much National Guard activity that fell squarely under his own state command. His administration saw frequent deployments of National Guard personnel to the sites of natural disasters - an oft-used practice under previous administrations. Likewise, Pawlenty’s use of military personnel to staff drills at the state’s two nuclear power plants was a continuation of the actions of his predecessors.

Executive order 03-11 reveals that Pawlenty considered deploying National Guard personnel to replace union workers at state hospitals in the face of a possible strike. Pawlenty’s action was similar to that contemplated by Governor Jesse Ventura in August of 2001. His intervention in labor disputes was more modest than the actions of some of his predecessors, including Rudy Perpich, who deployed National Guard troops to quell labor unrest in Austin and International Falls during the 1980s.

During his time in office, Pawlenty did not venture down the path of deploying the Minnesota Guard for civil disturbance suppression. For instance, it was the Saint Paul Police Department – and not Governor Pawlenty - that requested National Guard assistance during the 2008 Republican National Convention.

Over time, Tim Pawlenty issued several executive orders that supplied military hardware to local police agencies. In most of these instances, Pawlenty authorized the provision of armored vehicles to local SWAT teams. By way of comparison, his predecessor Jesse Ventura did not authorize similar aid. It should be noted that the growth of such assistance during the Pawlenty administration should be viewed in a national context, as Pawlenty was hardly alone in this trend. In many states, National Guard transfer activity has become commonplace as military assets have been inserted with increasing frequency into civilian law enforcement.

Fiscal management

Many of Pawlenty's executive orders dealt with financial management issues – including EOs 10-07 and 10-08, which dealt with the aftermath of the governor's use of the “unallotment” power granted by Minnesota state law.

Pawlenty's campaign staff will doubtlessly spend much time grappling with the rolling debate about whether Pawlenty-brokered budget deals represented prudent or cautious fiscal policy. If one looks strictly at Pawlenty's management of the executive branch, however, his EOs clearly demonstrate a recurrent fiscal conservatism.

Throughout his tenure, many of Pawlenty's executive orders sought out cost-cutting opportunities in the executive branch. EO 04-10 sought to improve travel and fleet management, while 05-17 attempted to preserve competition in state construction contracts.

In the wake of the national financial crisis, Pawlenty's orders looked at several cost-sharing arrangements. EO 09-13 examined opportunities to implement shared fire and rescue services in Minnesota. EO 09-02 sought to determine whether Minnesota and Wisconsin might be able to share certain government services. The order directed department commissioners to meet with their Wisconsin counterparts to gauge whether cooperative service arrangements could be worked out.

Pawlenty's fiscal-themed EOs were not bottom-line focused in all instances. In executive order 04-23, Pawlenty directed the Commissioner of Administration to evaluate whether the outsourcing of state contract work to foreign workers constituted a long-term benefit or liability, beyond its cost-saving aspects.

Looking toward the White House

By examining the totality of Pawlenty's executive orders, one can see certain recurring trends. Pawlenty's EOs paint a picture of underlying fiscal constraint, and legal caution on some (but not all) fronts. While some of his EOs are reflective of federalism concerns, others run counter to states' rights in design and practice. In key instances, both caution and prior positions seem to be thrown to the wind in the face of political circumstance.

If recent history demonstrates anything, it is that presidential aspirations can fundamentally change the public face of many elected officials. Minnesotans familiar with Tim Pawlenty's relatively self-effacing persona might have been

surprised by the hyperbolic pronouncements made during his recent press appearances. The self-proclaimed “Sam’s Club” Pawlenty is now the candidate who now favors rhetorical flourishes such as “smash(ing) the windows out of big government.”

The pursuit of national political office can sometimes breed caricature, and can often conceal a politician’s history behind an aggressively managed public relations narrative. For those interested in any candidate’s actual – rather than stage-managed - history, there is still nothing that compares to a read through the musty volumes of the public record.

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