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President Obama “Can” Guarantee Social Security Checks Will Be Paid

President Obama has repeatedly said including in an interview with CBS News that, absent a deal on the debt ceiling, he "cannot guarantee that those [Social Security] checks [will] go out on August 3rd if we haven't resolved this issue. Because there may simply not be the money in the coffers to do it."¹ However, there is no federal law restricting the President's ability to prioritize Social Security benefits. Failing to do so would be solely at the discretion of the Executive Branch.

One constitutional scholar has publicly stated that if the debt ceiling is reached:

*“Presumably, the executive branch will have to make the tough decisions about priorities. No law exists to guide the process. In theory, essential services and payments will keep flowing, and less essential services and payments will be postponed.”*²

In short, the President has broad discretion to decide which programs are funded. The U.S. Constitution vests the executive power in the President,³ and federal law requires the Treasury Department to “manag[e] the public debt.”⁴

In fact, the Chief Actuary of the Social Security Administration admits that the Treasury Department has the power to decide whether to send out Social Security checks.⁵ It is therefore clear that President Obama has the power to assure America's seniors that their Social Security checks will go out on time.

¹ Corbett B. Daly, *Obama says he cannot guarantee Social Security checks will go out on August 3*, CBS NEWS, Jul.12, 2011, available at http://www.cbsnews.com/8301-503544_162-20078789-503544.html (alteration in original).

² Michael McConnell, *The Debt Ceiling is Certainly Not Unconstitutional*, ADVANCING A FREE SOCIETY, HOOVER INSTITUTION, STANFORD UNIVERSITY (July 4, 2011, 8:36 AM), <http://www.advancingafreesociety.org/2011/07/04/the-debt-ceiling-is-certainly-not-unconstitutional/> (emphasis added).

³ U.S. CONST. art. II, § 1, cl. 1.

⁴ 31 U.S.C. § 321 (2010).

⁵ Joe Newby, *GOP Rep: Decision to Withhold Social Security Rests with the Administration*, EXAMINER.COM (Jul. 13, 2011), <http://www.examiner.com/conservative-in-spokane/gop-rep-decision-to-withhold-social-security-rests-with-the-administration>.

Moreover, multiple sources report that even if the debt ceiling is not raised, there will be sufficient funds to pay the U.S. debt as well as other essential programs, including Social Security.⁶ After paying the national debt Social Security, Medicare, active duty military pay, and veterans affairs programs, there will still be \$39 billion remaining each month.⁷

While federal court cases tend to imply that President Obama would not be forced to pay Social Security benefits under the Constitution,⁸ President Obama has the authority and the financial ability to ensure the American people that seniors and the disabled – those who have paid into the system – will receive the benefits they are due.

⁶ Mark Tapscott, *Washington get \$200 billion a month, Social Security costs \$40 billion a month, and Obama is threatening to starve Grandma?*, WASHINGTON EXAMINER, Jul. 12, 2011, <http://washingtonexaminer.com/blogs/beltway-confidential/2011/07/washington-gets-200-billion-month-social-security-costs-50-billio>.

⁷ Kurt Brouwer, *The U.S. Treasury will not default*, WALL ST. J., MARKETWATCH, Jul. 12, 2011, available at <http://blogs.marketwatch.com/fundmastery/2011/07/12/the-u-s-treasury-will-not-default/>.

⁸ See *Flemming v. Nester*, 363 U.S. 603, 609-10 (1960); *Stohler v. Menke*, 998 F. Supp. 836, 839 (E.D. Tenn. 1997).