

# The American Presidency



The role of the American Presidency is one of the most powerful positions in the world. To fully understand the role, compare pictures of the president at inauguration and on the final day in office. You will notice how the president has aged dramatically.

The framers of the Constitution made sure that the president must work with the other branches of government. Many times the president contends with a Congress that has its own agenda, even if the majority is the same party as the president. Some presidents have a **Divided Government**: *when the majority of one or both chambers in Congress is not from the president's party*. The president must also answer to the people of America.

In the American political system, the president is the head of the **Executive Branch**: *the branch of government charged with putting the nation's laws into effect*. The president has to shape policy in all areas – economic, social, domestic, and foreign.

Alexander Hamilton proposed that presidents and senators serve for life, however the delegates settled on four year terms in office with reelection and no limits on the number of terms in office. George Washington set a precedent by not running for a third term. Establishing a precedent came during the presidency of Franklin Roosevelt (1933-1945) who was elected four times. Change came with the **22<sup>nd</sup> Amendment** in 1951 which prohibits presidents from being elected more than twice, and only once if that person had assumed the office due to a death, impairment, resignation, or impeachment more than two years before the end of a partial term in office.

An infographic titled "THE RACE FOR WHITE HOUSE" with the sub-heading "WHO CAN QUALIFY?". It lists five requirements for the presidency: 1. Must be at least 35 years old (represented by a red circle with "35+"). 2. Must have lived within the United States for at least 14 years (represented by a red house icon). 3. Must be a natural-born citizen (represented by a blue house icon with an American flag). 4. Must have not served for 2 terms previously as president (represented by two hands shaking with stars above them). 5. A small icon of the White House is shown at the bottom left. A concluding statement reads: "Anyone who has fulfilled these requirements can run for office to be the United States President. There is nothing about upper age limits, health, or criminal convictions." The logo "Network creative" is at the bottom right.

★ ★ ★ THE RACE FOR WHITE HOUSE ★ ★ ★

**WHO CAN QUALIFY?**

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Alexander Hamilton was aware that the Constitution created a single executive that may have too much power. In response to critics, he addressed the issue in **Federalist No. 70**.

Federalist No. 70 is an essay arguing for a single, strong executive in the U.S. government, emphasizing that "energy" in the executive is essential for effective governance and protection of the community.

Federalist No. 70 was written to persuade the public to ratify the proposed U.S. Constitution, particularly addressing Anti-Federalist concerns about potential executive tyranny. Hamilton explained that a powerful executive, accountable to the people and subject to constitutional checks, was necessary for a stable and well-functioning republic. Hamilton argues that an energetic, single executive will protect against foreign attacks, provide for the administration of laws, and protect liberty and property. He also argues that a single executive can be held more accountable by the public.

### **Key Arguments of Federalist 70**

**A Single Executive is More Effective:** Hamilton argues that unity in the executive branch is crucial for energy and decisiveness. A divided executive, such as a committee, would lead to indecisiveness, internal conflicts, and blame-shifting, which are detrimental to good government.

**Accountability:** With a single executive, it is clear who is responsible for actions, making it easier to hold them accountable to the public. A plural executive can obscure responsibility and allow bad decisions to go unpunished.

**Energy and Decisiveness:** A single president can act more quickly and decisively, which is vital for protecting the nation from foreign attacks and maintaining stability at home.

**Checks and Balances:** While advocating for a strong executive, Hamilton does not overlook the importance of checks and balances to prevent abuse of power. The legislative and judicial branches provide necessary oversight for the executive, ensuring it remains within its constitutional bounds.

Another way of understanding Federalist No. 70 is by looking at a short video from *Heimler's History* called **Federalist 70, EXPLAINED**. Please watch the video at the link shown below. It is only 4 minutes and 12 seconds!

[https://youtu.be/M37VDCB\\_6WI?si=Ve4yGOictxDIhBVT](https://youtu.be/M37VDCB_6WI?si=Ve4yGOictxDIhBVT)



**Formal or Enumerated Powers** are those powers given to the president explicitly in the Constitution.

**Informal Powers** are powers not laid out in the Constitution but used to carry out presidential duties.

The Constitution gives the president the power to issue a **Presidential Pardon**: *presidential authority to release individuals convicted of a crime from legal consequences and to set aside punishment for a crime.*

**Note:** this is not applicable in the case of impeachment and there is no check on the president's power to issue pardons.

Individual presidents have often tried to defend the informal powers when in office or even enlarge the boundaries of their power. Presidents claim **Executive Privilege**: *a right claimed by presidents to keep certain conversations, records, and transcripts confidential from outside scrutiny, such as from the Supreme Court, the general public and especially scrutiny by Congress.*

Presidents can act by themselves (unilaterally) in foreign policy. Unlike treaties, which require a two-thirds vote in the Senate for ratification, the president can sign **Executive Agreements**: *an agreement between a president and another nation that does not have the same durability as a treaty but does not require Senate ratification.* Their details are often kept secret from the public and Congress claiming reasons of national security.

In the president's role in the legislative process, the use of **Signing Statements**: *written comments issued by presidents while signing a bill into law that usually consist of political statements or reasons for signing a bill but may also include a president's interpretation of the law itself* have become more common in recent years.

**Executive Orders** are the informal powers of the president to issue policy directives that do not require congressional approval.

These orders are **implied** by the president’s constitutional power as chief executive. Most are issued under congressional authorization and consist of instructions given by the president to the executive branch agencies, informing them of how they should go about implementing a law or policy. They often deal with routine administration procedures.

Presidents have used executive orders to make major changes in public policy. An excellent example was under President Roosevelt’s **Executive Order 9066** during World War II. His order forced people of Japanese descent into internment camps.

Another example was in August 2022 when President Biden announced an executive order cancelling up to \$ 20,000 per recipient in student loan debt to the federal government for families making less than \$ 125,000 per year. In June 2023, the Supreme Court struck down Biden’s debt-relief order on the grounds that his administration had exceeded its authority. The Court further ruled that the Higher Education Relief Opportunities for Students Act, which passed in Congress in 2003, did not allow the Department of Education to cancel millions of dollars in debt.

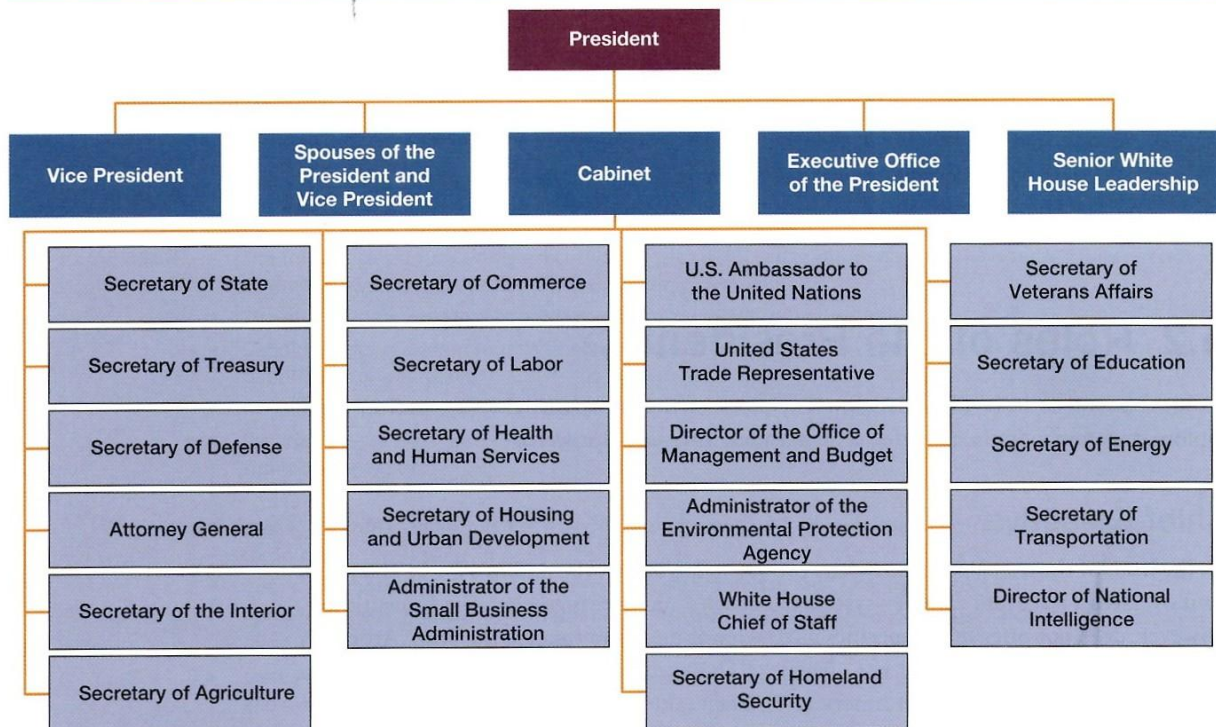
Presidential Powers	
Formal	Informal
Enumerated/Explicit Constitutionally Delegated Power	Persuasion Power: Private Use
<ul style="list-style-type: none"> <li>Commander-in-Chief of the Armed Forces of the U.S.</li> <li>Negotiate Treaties with Foreign Entities</li> <li>Appoint Ambassadors, Judges/Justices, Officers of the U.S.</li> <li>State of the Union Address</li> <li>Power to Pardon Without Conditions</li> <li>Power to Fill Vacancies</li> <li>Receive Representatives of Foreign Nations</li> </ul>	<ul style="list-style-type: none"> <li>Informal Communication</li> <li>One-On-One Negotiation with Members of Congress</li> <li>Use of White House Legislative Liaison Office to Lobby Congress—</li> <li>Lobbying Individual Congressional Members</li> </ul>
Congressionally Delegated Power	
Implementation/Execution of Laws	Persuasion Power: Public Use
Implied/Inherent Power	
<ul style="list-style-type: none"> <li>Establish a Cabinet</li> <li>Executive Privilege (Withholding Information from Congress)</li> <li>Executive Orders</li> <li>Presidential Proclamations/Memorandum</li> <li>Executive Agreements</li> <li>Signing Statements</li> </ul>	<ul style="list-style-type: none"> <li>Public Speaking Engagements/Advocating for Public Policy Agenda</li> <li>Political Rallies</li> <li>Use of Media and Other Communication to Shape Public Opinion</li> <li>Use of Social Media</li> <li>Advocacy for Policy Positions and Agenda on WhiteHouse.gov</li> <li>Attempts to Enhance Personal Popularity to Influence Congress</li> </ul>



**Chief Executive** – as head of the executive branch of the government, the president carries out the nation’s laws. Article II of the Constitution, which is devoted to the presidency, begins “ The executive Power shall be vested in a President of the United States of America.” When taking the oath office the following are used: “faithfully execute the Office of the President of the United States” and “take Care that the Laws be faithfully executed.”

The president’s cabinet consists of the heads of fifteen (15) major executive branch departments plus the vice-president, and the heads of other agencies that the president wishes to assign cabinet-level status. Unlike the majority of federal workers, heads of the executive branch departments are typically replaced with each new administration.

**The Organization of the Cabinet**



Data from the White House.

In choosing cabinet members, the president has to consider several important factors. The Senate has to confirm cabinet heads which can be difficult. Some cabinet secretaries have their own bases of power and can challenge the president's wishes at times. The president must also consider politics and public opinion with his cabinet choices along with the interests of the major business communities. Finally, having a diverse cabinet is seen as a sign of a commitment to representing all Americans and their interests.

The president can issue an executive order instructing his cabinets how to implement policy. The president can also use the budget to reward or punish agencies that followed or opposed his plans. Modern presidents have the authority to appoint individuals to thousands of administrative positions, from the closest advisors and heads of large agencies to lower-level administration staff.

**Chief Diplomat** – which is a responsibility for the president to guide U.S. foreign policy and to interact with heads of other nations. The president is authorized to make treaties, subject to a two-thirds ratification vote in the Senate. The appointment of foreign ambassadors is part of the role as well as enforcing laws that are contained within the foreign policies.

**Chief Legislator** – Article II, Section 3 of the Constitution directs the president to give the **State of the Union Address** – *the annual speech given by the president to Congress on the state of national affairs*. Today, this is done on live television during prime-time and the president speaks to Congress, the Supreme Court, the military, and most important the entire nation. In his address, the president often encourages Congress to pass key pieces of legislation agenda.

The president is given the power to **Veto**: *the constitutional presidential power to formally reject a bill that has passed both houses of Congress*. However, Congress can override a presidential veto with a two-thirds vote in **both** chambers.

A **Pocket Veto**: *an informal veto that occurs when the president chooses not to sign a bill within ten (10) days, during a time when Congress has adjourned at the end of a session*. Pocket Vetoes cause the legislation to expire and cannot be overridden. Individual presidents have varied considerably in the use of the veto.

Congress rarely overrides presidential vetoes. Obtaining the required two-thirds votes can be difficult. The mere threat of a presidential veto is often enough to shape a piece of legislation that is desired by the president. Vetoes are more common in times of divided governments.

**Commander -In-Chief** – in charge of the Army, Navy, Air Force, Marines, Coastguard and Space Force. He is also in charge of the nuclear forces of the nation; the heavy briefcase that holds communication equipment for the nation’s strategic plans and codes to launch nuclear weapons.

Remember: It is Congress that declares war, but it is the president who leads our armed forces. The nation’s military forces have been used hundreds of times without a formal declaration of war as the president can issue both troop deployments and military strikes.

**Checks on Presidential Power**

Presidents cannot accomplish most of their objectives without Congress according to the Constitution. Presidents must have the support of Congress to have their policy initiatives enacted. The president must obtain majority approval in the Senate to confirm appointments to the federal judiciary, cabinet secretaries, and the heads of many executive branch offices. It is important to remember that ratification of a treaty needs a two-thirds vote in the Senate, with a two-thirds vote in each chamber, Congress can override a presidential veto, and through Judicial Review, the Supreme Court can overturn executive orders and other presidential actions that are seen as unconstitutional.

**The Division of Powers between the President and Congress**

<b>Presidential Powers</b>	<b>Congressional Powers</b>
Execute the nation’s laws	Investigate or impeach the president
Submit the annual federal budget	Pass the budget
Appoint and seek the advice of cabinet departments	Confirm, delay, or block nominations
Shape foreign policy by negotiating treaties, appointing ambassadors, and conducting diplomacy	Ratify treaties and confirm ambassadors
Make policy recommendations to Congress; veto congressional legislation	Override vetoes
Act as commander in chief of the armed forces	Declare war and fund the armed forces
Issue pardons	Impeach officials who have been pardoned, but neither the legislature nor the judiciary may override a pardon

**The War Powers Resolution** – an attempt by Congress (in 1973) to restrict presidential power over the military.

It was passed despite President Richard Nixon's veto. The resolution restricts the power of the president to maintain troops in combat for more than sixty days without congressional approval. The resolution was created due to widespread public and congressional dissatisfaction with the expansion of the Vietnam conflict.



Under the terms of the War Powers Resolution, a president may introduce armed forces into a conflict or a likely conflict only if **one of the three** following conditions are present:

- A declaration of war by Congress
- A Specific Statutory authorization by Congress
- A national emergency created by an attack on the United States, its territories, possessions, or armed forces.

Once armed forces are used in a conflict, the president is required to notify Congress within 48 hours. Unless Congress has declared war or passed specific declarations either approving or extending the 48 hours, the president must withdraw the forces within sixty (60) days, with a thirty-day extension if needed to remove the forces safely.

The last official declaration of war by Congress was in 1941 after the attack on Pearl Harbor. Since the American forces have been stationed in more than 100 countries. Presidents have stated that the War Powers Resolution unconstitutionally restricts their powers as commander in chief and many presidents have simply ignored the War Powers Resolution.

**Impeachment** – *the process of removing a president or other officeholder from office; articles of impeachment of a federal officeholder are issued by a majority vote in the House of Representatives, followed by a trial in the Senate, with a two-thirds vote necessary to convict and remove from office.*

The Constitution vaguely defines wrongdoings as “Treason, Bribery, or other high Crimes and Misdemeanors.”

The Chief Justice of the Supreme Court presides over a presidential impeachment. Impeachment and removal from office are **not** the same as a criminal conviction. A person who has been impeached is still subject to criminal charges.

## **Court Decisions**

The Supreme Court can check presidential power by overturning executive actions.

An example was seen during **President Nixon** and the Watergate affair. Nixon refused to hand over audio recordings of himself to his aides as well as other documents relating to the investigation. Nixon said he had executive privilege. In the case of *United States v. Nixon* (1974) the Supreme Court affirmed the power of executive privilege **BUT** the court also told Nixon to hand over the recordings and documents balancing the rule of executive privilege with the need for the rule of law in criminal investigations.

Other recent executive orders have faced court challenges.

**President Obama** issued an executive order to allow four million undocumented immigrants to apply for citizenship. The Supreme Court was deadlocked on the issue which effectively blocked his order.

**President Trump** issued an order which was a travel ban on immigrants from seven predominately Muslim countries. The Supreme Court upheld parts of the ban and blocked other parts. In response, the Trump administration dropped Iraq from the list, revised the travel restrictions and eliminated language that stated specific religious groups.

**President Biden’s** attempt to cancel millions of dollars in student loans was struck down by the Supreme Court on the grounds that the order exceeded the power of Biden’s executive branch.