

Inquiry Set 12.4AD: Presidential Powers

I. Inquiry Set Introduction	
Inquiry Set Title	Presidential Powers
Brief Description	The role of the president has grown since the inception of the Constitution. This source set provides resources for students to address the question How has the role of the presidency expanded? by focusing on historical examples of the expanding role of the president as chief legislator and commander in chief through presidential directives, executive orders, and executive actions in times of war.
Authors	Meghan Selway, Teacher Leader, UC Davis History Project Beth Slutsky, California History-Social Science Project U.C.Davis
Grade Levels	12
Topics/Concepts	presidency, executive branch, Constitution, government, Article II
CA HSS Standards / Frameworks	Principles of American Democracy 12.4 Students analyze the unique roles and responsibilities of the three branches of government as established by the U.S. Constitution. 12.4.4 Discuss Article II of the Constitution as it relates to the executive branch, including eligibility for office and length of term, election to and removal from office, the oath of office, and the enumerated executive powers.
Framework Excerpt	Article II: The Executive Branch In this unit, students document the evolution of the presidency and the growth of executive powers in modern history. Like their study of Article I, students first develop a basic understanding of how the president is elected, the requirements for the office, how a president can be removed, and the specific executive powers enumerated in Article II. Teachers then turn to case studies to give students the opportunity to analyze presidential campaigns, the handling of international crises, and the scope and limits of presidential power (both foreign and domestic) in depth.

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	<p>Close reading of and comparing State of the Union addresses across administrations, analyzing factors that influence presidential public approval ratings as well as the successes and failures of presidential policies, and using role play, simulation, and interactive learning can illuminate the process of presidential decision making.</p> <p>As students study the executive branch, certain guiding questions can connect case studies and discrete examples: How has the role of the presidency expanded? What are the factors that seem to help presidents win election? How does the president interact with the other branches of government, and how has that changed over time?</p>
Standards	<p>California English Language Development Standards for Grades 11-12</p> <p>B. Interpretive</p> <ol style="list-style-type: none">6. Reading closely literary and informational texts and viewing multimedia to determine how meaning is conveyed explicitly and implicitly through language.7. Evaluating how well writers and speakers use language to support ideas and arguments with details or evidence depending on modality, text type, purpose, audience, topic, and content area.8. Analyzing how writers and speakers use vocabulary and other language resources for specific purposes (to explain, persuade, entertain, etc.) depending on modality, text type, purpose, audience, topic, and content area. <p>Common Core State Reading Standards for Literacy in History/Social Studies, Grades 11-12</p> <ol style="list-style-type: none">1. Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.2. Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.4. Determine the meaning of words and phrases as they are used in a text, including analyzing how an author uses and refines the meaning of a key term over the course of a text (e.g., how Madison defines <i>faction</i> in <i>Federalist</i> No. 10).9. Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

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<p>Investigative Question</p>	<p>Has the role of the presidency expanded?</p>
<p>Historical Background</p>	<p>The role of the president has grown since the inception of the Constitution. This source set provides resources for students to address the question How has the role of the presidency expanded? by focusing on historical examples of the expanding role of the president as chief legislator and commander in chief through presidential directives, executive orders, and executive actions in times of war.</p> <p>The Constitution grants power to the president of the United States primarily in Article II (Source 1). However, because the Constitution is vague in detailing specific powers of the president, throughout history presidents have asserted power that they claim is implied by the Constitution.</p> <p>Since George Washington, presidents have issued executive directives in the form of memos, proclamations, and orders that act as law, citing the portion of the Constitution that states the president shall “take care that all laws be executed.” Executive directives have been used by every US president except two. At the beginning, most executive orders were about operating executive departments and agencies and/or managing government officials. The executive order has also been used to establish laws in areas in which Congress has been silent or has failed to act. Two executive directives that had significant impact on Americans are included in this source set: the <i>Emancipation Proclamation</i> (Source 2), which Lincoln issued in 1863 to free the slaves in the Confederate states; and <i>Executive Order 9066 and Directions for its Implementation</i> (Source 3), which Roosevelt issued in 1942 to segregate civilians with Japanese heritage into internment camps.</p> <p>Presidents have also taken the constitutionally designated power from the Oath of the President to “faithfully . . . preserve, protect” to withhold information from Congress and the public. What is today called executive privilege, this power is implied and has grown with presidents throughout the years in both number and scope. Washington’s <i>Response to a Congressional Request for Documents</i> in 1796 (Source 4) was one of the first examples of executive privilege when the president argued he should not have to provide the documents to the House of Representatives for its investigation into whether a treaty with Britain would affect appropriation (funding) and commerce powers. The phrase <i>executive privilege</i>, however, was not coined until the 1950s during the Eisenhower administration, when the president claimed executive privilege for his staff during the McCarthy–Army hearings saying that, “Any man who testifies as to the advice he gave me won’t be working for me that night.”</p> <p>This source set also includes a summary of the Supreme Court’s findings in the famous case <i>United States v. Nixon</i></p>

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	<p>(Source 5), where the Court ruled that President Nixon had to turn over tapes recorded in the Oval Office, despite Nixon's claim of executive privilege. This case proves that the claims of executive privilege can be checked by the courts.</p> <p>Finally, presidents have also taken the constitutionally designated power of commander in chief to direct military action without a full declaration of war by Congress, known as executive power in times of war. This power has been expanded since Washington's administration. The power of the presidency has often been increased by Congress itself through legislation and through the lack of checks on the executive branch's implementation of the law. In an early example, Congress passed the Alien and Sedition Acts during an undeclared war with France in 1798. The acts gave the president the authority to deport any noncitizen as "dangerous to the peace and safety of the United States." Fourteen people were indicted under this law. President James Polk tested these powers when he sent American troops to the Rio Grande in an apparent attempt to draw fire and provide an excuse to enter war with Mexico in 1846. Polk's <i>Message to Congress</i> (Source 6) and Alexander Stephens's <i>Speech on the Mexican War</i> (Source 7) demonstrate how the president justified his actions and how his opponents challenged these powers, even though Congress had sided with the president and voted for war. When Congress passed the War Powers Resolution in 1973 (Source 8), it intended to give the president the official power to send troops without congressional approval. However, presidents have claimed that the resolution is an infringement on the constitutional powers of the commander in chief, and many have found methods of sending troops into foreign countries without violating the War Powers Resolution.</p>
Map	Washington, DC; Texas; California; Philadelphia; Mexico

II. Source Sets	
#1 Primary Source	1a. Article II, U.S. Constitution

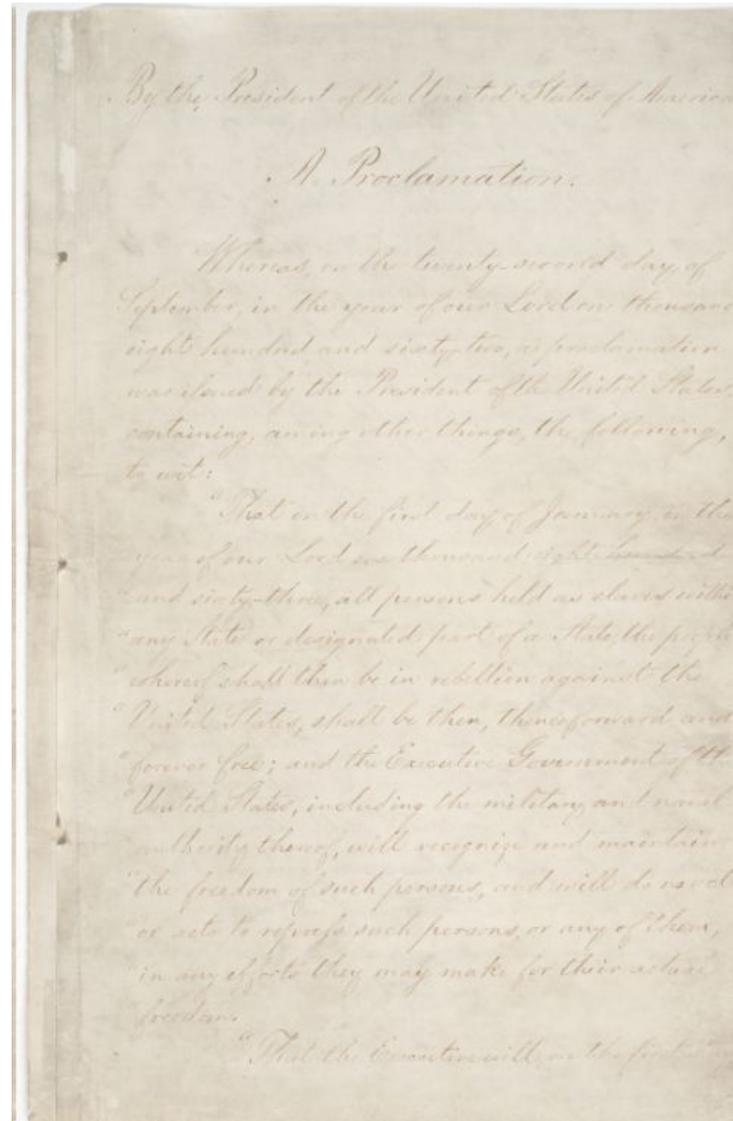
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	<table border="1"> <tr> <td data-bbox="407 245 701 329">Title of Source</td> <td data-bbox="701 245 1860 329">Constitution of the United States</td> </tr> <tr> <td data-bbox="407 329 701 399">Date</td> <td data-bbox="701 329 1860 399">1787 September 17</td> </tr> <tr> <td data-bbox="407 399 701 469">Holding Institution</td> <td data-bbox="701 399 1860 469">National Archives and Records Administration</td> </tr> <tr> <td data-bbox="407 469 701 574">Link to Record</td> <td data-bbox="701 469 1860 574">https://catalog.archives.gov/id/1667751</td> </tr> </table>	Title of Source	Constitution of the United States	Date	1787 September 17	Holding Institution	National Archives and Records Administration	Link to Record	https://catalog.archives.gov/id/1667751
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<p>For the Student</p>	<p><i>Excerpt from Article II, Constitution of the United States:</i></p> <p><i>Section. 2.</i> <i>... Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."</i></p> <p><i>Section. 2.</i> <i>The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.</i></p> <p><i>He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.</i></p> <p><i>The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.</i></p>								

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	<p><i>Section. 3.</i> <i>He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.</i></p> <p>Some of the powers in the Constitution are explicitly stated. These are called expressed powers; they are direct, detailed, and clear. Other powers are implied, or suggested; they are indirect, broad, and vague and have been interpreted in many ways by the various branches of government. The ultimate interpretation of any of these powers lies in the United States Supreme Court, whose sole job is to determine if a law or action violates the Constitution. While the framers detailed what Congress could and could not do, they were much more vague in charting out the duties and powers of the president. What powers do you notice are explicit? Based on just this passage, what powers do you think are implied?</p>
<p>For the Teacher</p>	<p>The Constitution was based on the idea of separate branches of government that would check on each other's powers to avoid abuses by any one branch. This was rooted in the experiences of the framers of the Constitution, who came from governments of Europe in which the monarch, the executive branch of government, wielded the most power. While there are some shared powers in the system the framers created, most powers are divided among the executive, legislative, and judicial branches of government.</p> <p>Some of the powers in the Constitution are explicitly stated. These are called expressed powers; they are direct, detailed, and clear. Other powers are implied, or suggested; they are indirect, broad, and vague and have been interpreted in many ways by the various branches of government. The ultimate interpretation of any of these powers lies in the United States Supreme Court, whose sole job is to determine if a law or action violates the Constitution. While the framers detailed what Congress could and could not do, they were much more vague in charting out the duties and powers of the president.</p>

2a. Emancipation Proclamation



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Transcription:

January 1, 1863

By the President of the United States of America:

A Proclamation.

Whereas, on the twenty-second day of September, in the year of our Lord one thousand eight hundred and sixty-two, a proclamation was issued by the President of the United States, containing, among other things, the following, to wit:

"That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.

"That the Executive will, on the first day [...]

2b. [African American slave families owned by Mrs. Barnwell, ca. 1860-1865]

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Title of Source	2a. Emancipation Proclamation 2b. [African American slave families owned by Mrs. Barnwell, ca. 1860-1865]
Holding Institution	2a. National Archives and Records Administration 2b. Library of Congress
Link to Record	2a. https://catalog.archives.gov/id/2999998 2b. https://www.loc.gov/item/2010651604/

For the Student

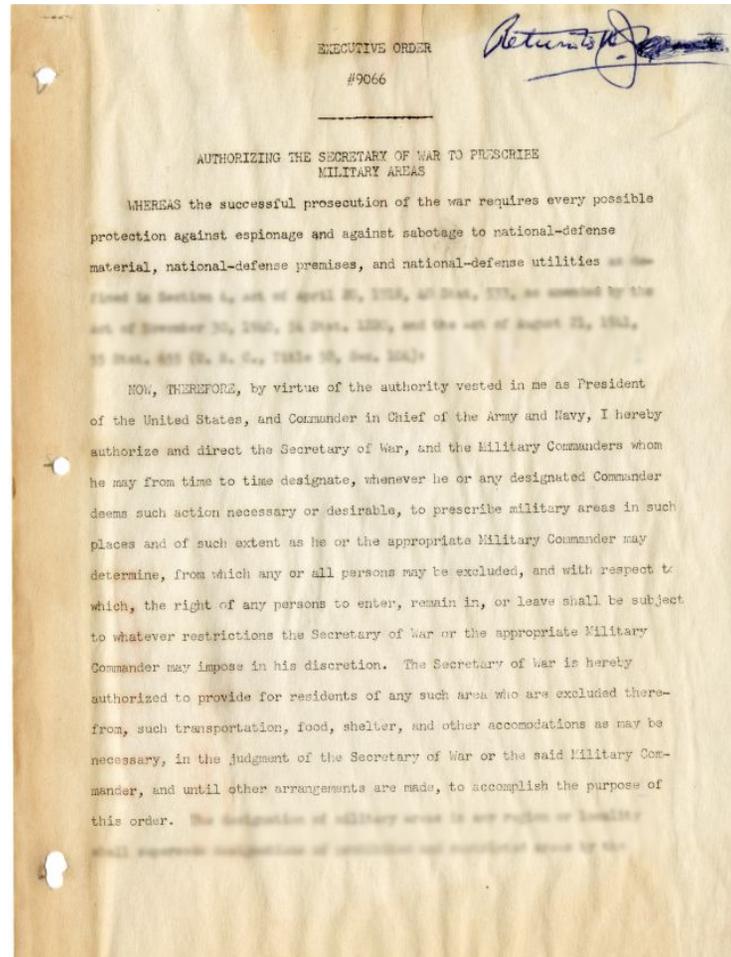
Excerpt from the Emancipation Proclamation, January 1, 1863

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	<p><i>And by virtue of the power, and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States, and parts of States, are, and henceforward shall be free; and that the Executive government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.</i></p> <p><i>And I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defence; and I recommend to them that, in all cases when allowed, they labor faithfully for reasonable wages.</i></p> <p><i>And I further declare and make known, that such persons of suitable condition, will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.</i></p> <p><i>And upon this act, sincerely believed to be an act of justice, warranted by the Constitution, upon military necessity, I invoke the considerate judgment of mankind, and the gracious favor of Almighty God...</i></p> <p><i>By the President: ABRAHAM LINCOLN WILLIAM H. SEWARD, Secretary of State.</i></p> <p>The Emancipation Proclamation was issued during the third year of the Civil War. A first draft was issued on September 22, 1862, giving states that seceded from the Union a chance to respond. When they didn't, the Proclamation of 1863 was issued. Executive directives are proclamations, memos, agreements, orders, and signing statements by the president. Executive directives have been used for managing an executive department, creating new agencies, establishing laws in areas in which Congress has been silent, setting up relief programs in times of crisis, and recruiting for war efforts. What policy does this executive directive specifically enact? This directive is regarded as one of the most important documents in American history. How does this directive take on new roles and a new scope for the presidency? How does this seem to be a break from the past?</p>
<p>For the Teacher</p>	<p>The Emancipation Proclamation was issued during the third year of the Civil War. A first draft was issued on September 22, 1862, giving states that seceded from the Union a chance to respond. When they didn't, the Proclamation of 1863 was issued. Executive directives are proclamations, memos, agreements, orders, and signing statements by the president. When based on the authority of the president as derived from the Constitution or other laws, they may have the force and effect of law. However, the Constitution identifies legislative powers, or the power to make laws, as a sole power of Congress, the legislative branch, rather than the president. Thus, the executive directives are implied powers of the president, since they are not explicitly stated in the Constitution. Executive directives have been used for managing an executive department, creating new agencies, establishing</p>

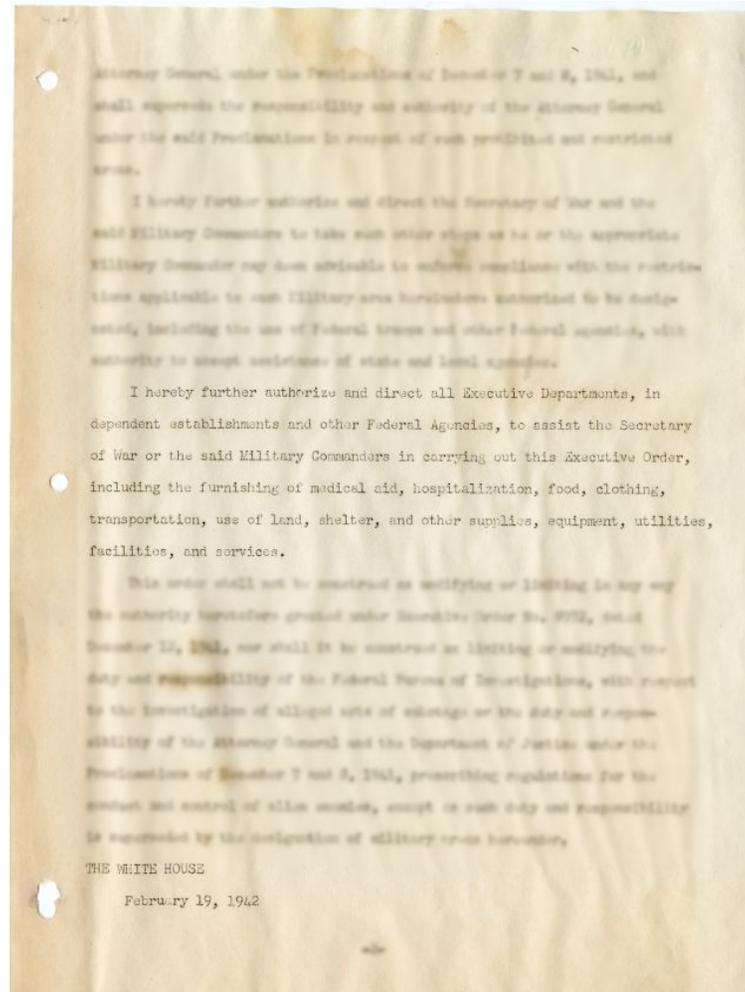
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	<p>laws in areas in which Congress has been silent, setting up relief programs in times of crisis, and recruiting for war efforts. As your students consider both the historical context for the Emancipation Proclamation and the legacy it put in place, the following questions will help them understand its significance: What policy does this executive directive enact? This document is regarded as one of the most important presidential directives in American history. How does it allow the presidency to take on new roles, and in what ways does it alter the scope of the presidency? How does this seem to be a break from the past?</p>
#3 Primary Source	Executive Order 9066 3a.



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3b.



Transcript excerpt:

Executive Order No. 9066

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The President
Executive Order
Authorizing the Secretary of War to Prescribe Military Areas

Whereas the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities ...

Now, therefore, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary, in the judgment of the Secretary of War or the said Military Commander, and until other arrangements are made, to accomplish the purpose of this order.

... I hereby further authorize and direct all Executive Departments, independent establishments and other Federal Agencies, to assist the Secretary of War or the said Military Commanders in carrying out this Executive Order, including the furnishing of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facilities, and services.

Franklin D. Roosevelt
THE WHITE HOUSE
February 19, 1942

Title of Source	Executive Order #9066 Authorizing the Secretary of War to Prescribe Military Areas
Date	1942 February 19

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<p>For the Student</p>	<p>On February 19, 1942, President Franklin Roosevelt signed Executive Order 9066. This use of executive power in time of war was challenged by Fred Korematsu in 1944 in <i>Korematsu v. United States</i>. As this document illustrates, the Court’s majority disagreed with Korematsu’s complaint and let stand the executive order.</p> <p>What reasoning did the court provide in affirming the constitutionality of this executive order?</p>		
<p>For the Teacher</p>	<p>On February 19, 1942, President Franklin Roosevelt signed Executive order 9066. This use of executive power in time of war was challenged by Fred Korematsu in 1944 in <i>Korematsu v. United States</i>. At the time, the Supreme Court affirmed increased executive power in time of war, stating in their opinion: “Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institutions. But when, under conditions of modern warfare, our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger.”</p> <p>Executive directives are proclamations, memos, agreements, orders, and signing statements by the president. When based on the authority of the president as derived from the Constitution or other laws, they may have the force and effect of law. However, the Constitution identifies legislative powers, or the power to make laws, as a sole power of Congress, the legislative branch, rather than the president. Thus, the executive directives are implied powers of the president since they are not explicitly stated in the Constitution. Executive directives have been used for managing an executive department, creating new agencies, establishing laws in areas in which Congress has been silent, setting up relief programs in times of crisis, and recruiting for war efforts.</p>		
<p>#4 Primary Source / Secondary Source</p>	<p>4a. Washington’s Response to Congressional Request</p> <p>To the United States House of Representatives United States March 30th 1796. Gentlemen of the House of Representatives.</p> <p>With the utmost attention, I have considered your resolution of the twenty fourth instant, requesting me to lay before your House, a copy of the instructions to the Minister of the United States, who negotiated the treaty with the king of Great Britain, together with the correspondence and other documents relative to that treaty, excepting such of</p>		

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the said papers, as any existing negotiation may render improper to be disclosed.

... I trust, that no part of my conduct has ever indicated a disposition to withhold any information, which the constitution has enjoined upon the President, as a duty, to give, or which could be required of him by either House of Congress, as a right; ... so far as the trust, delegated to me by the people of the United States, and my sense of the obligation it imposes "to preserve, protect and defend the Constitution," will permit.

The nature of foreign negotiations requires caution; and their success must often depend on secrecy: and even when brought to a conclusion, a full disclosure of all the measures, demands, or eventual concessions, which may have been proposed or contemplated, would be deemed impolitic; for this might have a pernicious influence on future negotiations, or produce immediate inconveniences, perhaps danger and mischief, in relation to the other powers. The necessity of such caution and secrecy was one cogent reason for vesting the power of making treaties, in the President, with the advice and consent of the Senate; the principle, on which that body was formed, confining it to a small number of members. To admit, then, a right in the House of Representatives, to demand, and to have, as a matter of course, all the papers respecting a negotiation with a foreign power, would be, to establish a dangerous precedent.

... I repeat, that I have no disposition to withhold any information, which the duty of my station will permit, or the public good will require to be disclosed; and, in fact, all the papers affecting the negotiation with Great Britain were laid before the Senate, when the treaty itself was communicated for their consideration and advice.

... the papers called for can throw no light; and as it is essential to the due administration of the government, that the boundaries, fixed by the constitution between the different departments, should be preserved: a just regard to the constitution, and to the duty of my office, under all the circumstances of this case, forbid a compliance with your request.

Go. Washington.

4b. George Washington (Lansdowne Portrait)



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	<table border="1"> <tr> <td data-bbox="407 207 680 315">Title of Source</td> <td data-bbox="680 207 1852 315">4a. Washington's Response to a Congressional Request for Documents, 30 March 1796 4b. George Washington (Lansdowne Portrait)</td> </tr> <tr> <td data-bbox="407 315 680 422">Holding Institution</td> <td data-bbox="680 315 1852 422">4a. The Washington Papers, University of Virginia 4b. National Portrait Gallery, Smithsonian Institution</td> </tr> <tr> <td data-bbox="407 422 680 613">Link to Record</td> <td data-bbox="680 422 1852 613">4a. www.gwpapers.virginia.edu/documents/washingtons-response-to-a-congressional-request-for-documents-30-march-1796/. 4b. http://npg.si.edu/blog/gilbert-stuart-paints-george-washington</td> </tr> <tr> <td data-bbox="407 613 680 799">Preferred Citation</td> <td data-bbox="680 613 1852 799">4a. Washington, George. <i>Washington's Response to a Congressional Request for Documents (1796)</i>. University of Virginia, <i>The Washington Papers</i>. www.gwpapers.virginia.edu/documents/washingtons-response-to-a-congressional-request-for-documents-30-march-1796/</td> </tr> </table>	Title of Source	4a. Washington's Response to a Congressional Request for Documents, 30 March 1796 4b. George Washington (Lansdowne Portrait)	Holding Institution	4a. The Washington Papers, University of Virginia 4b. National Portrait Gallery, Smithsonian Institution	Link to Record	4a. www.gwpapers.virginia.edu/documents/washingtons-response-to-a-congressional-request-for-documents-30-march-1796/ . 4b. http://npg.si.edu/blog/gilbert-stuart-paints-george-washington	Preferred Citation	4a. Washington, George. <i>Washington's Response to a Congressional Request for Documents (1796)</i> . University of Virginia, <i>The Washington Papers</i> . www.gwpapers.virginia.edu/documents/washingtons-response-to-a-congressional-request-for-documents-30-march-1796/
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<p>For the Student</p>	<p>In August 1795, a treaty with Great Britain that was drafted under President George Washington by Secretary of State John Jay was ratified by the Senate. Opponents of the treaty in the House of Representatives questioned their lack of involvement in the treaty, especially if it affected their appropriation (allocating funding) powers and commerce powers.</p> <p>How does this document help us understand the executive branch?</p>								
<p>For the Teacher</p>	<p>In August 1795, a treaty with Great Britain that was drafted under President George Washington by Secretary of State John Jay was ratified by the Senate. Opponents of the treaty in the House of Representatives questioned their lack of involvement in the treaty, especially if it affected their appropriation (allocating funding) powers and commerce powers. They launched an investigation into the treaty in the House of Representatives and requested documents from President Washington.</p> <p>The term <i>executive privilege</i> was coined in the 1950s during the Eisenhower administration. Executive privilege is the right of the president or high-ranking government officials to withhold information from Congress, the courts,</p>								

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	<p>and the public. This right is not stated anywhere in the US Constitution; however, presidents have claimed executive privilege throughout history as an implied presidential power. Most executive privilege claims result from a congressional investigation or oversight committee that asks a president for documents or testimony on an issue, treaty, event, or other executive action. Sometimes presidents provide this information freely; other times they refuse. Presidents have asserted executive privilege in instances involving foreign affairs and national security, costs of programs, firings of officials, and implementation of legislation passed by Congress. While the power of the president to exert executive privilege has been challenged in the courts throughout the years, the Supreme Court has deferred to the executive and legislative branches, prompting them to resolve the issue of congressional investigation and executive privilege on their own.</p>
<p>#5 Primary Source / Secondary Source</p>	<p>5a. United States v. Nixon (1974) Summary</p> <p>“...neither the doctrine of separation of powers nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances. The President's need for complete candor and objectivity from advisers calls for great deference from the courts. However, when the privilege depends solely on the broad, undifferentiated claim of public interest in the confidentiality of such conversations, a confrontation with other values arises. Absent a claim of need to protect military, diplomatic, or sensitive national security secrets, we find it difficult to accept the argument that even the very important interest in confidentiality of Presidential communications is significantly diminished....”</p> <p>5b. President Richard Nixon departing the White House on the presidential helicopter for the last time as president</p>

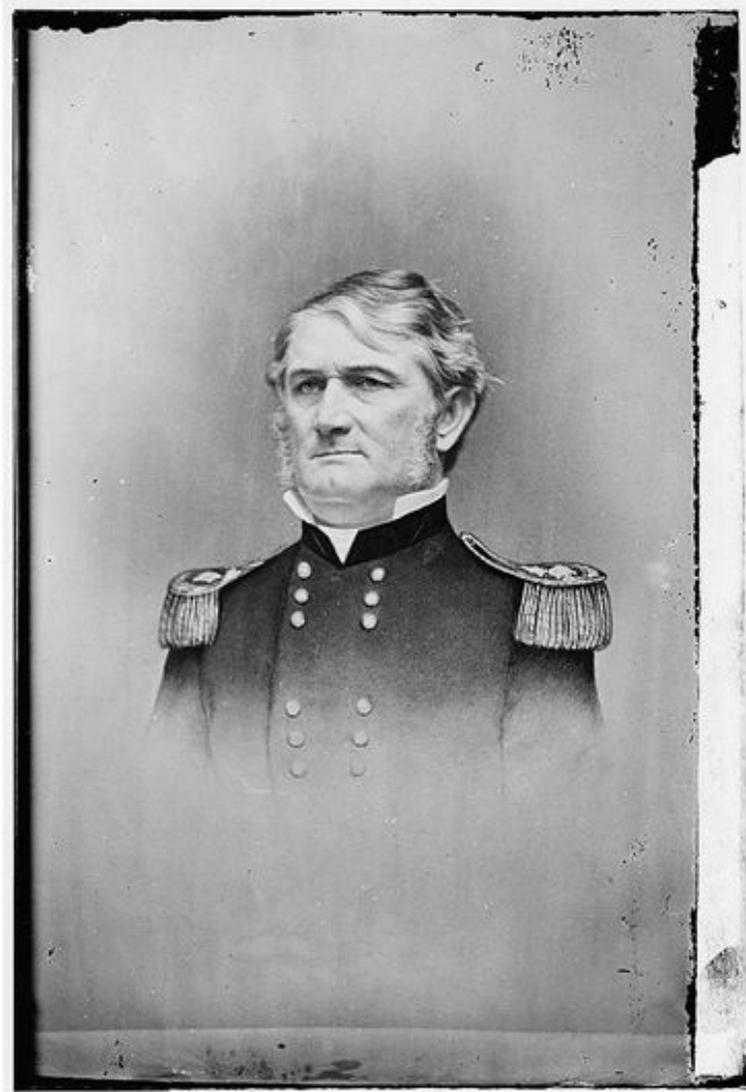


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For the Student	<p>In 1974, the Supreme Court issued a ruling about President Richard Nixon’s claim of executive privilege. This ruling, in which the Court attempted to qualify unchecked limits on executive privilege, came toward the end of the Watergate scandal. Congress had been investigating a burglary at the Democratic National Committee headquarters at the Watergate Hotel in Washington, DC. People associated with the break-in had connections to President Nixon himself. These congressional hearings revealed that Nixon had a recording device in the Oval Office, and Congress requested the tapes be turned over to them for their criminal investigation. Nixon refused to hand over the tapes. On July 8, 1974, the United States Supreme Court heard oral arguments in <i>United States v. Nixon</i> on whether President Nixon’s claim of executive privilege was constitutional.</p> <p>The Court’s opinion, excerpted in the document, explains why an unchecked executive poses potential risks for the nation. What reasoning did the court provide for why it needed to set limits on Nixon? What did the court say in general about the value of executive privilege?</p>								
For the Teacher	<p>In 1974, the Supreme Court issued a ruling about President Richard Nixon’s claim of executive privilege. This ruling, in which the Court attempted to qualify unchecked limits on executive privilege, came toward the end of the Watergate scandal. Congress had been investigating a burglary at the Democrat National Committee headquarters at the Watergate Hotel in Washington, DC. People associated with the break-in had connections to President Nixon himself. These congressional hearings revealed that Nixon had a recording device in the Oval Office, and Congress</p>								

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	<p>requested the tapes be turned over to them for their criminal investigation. Nixon refused to hand over the tapes. On July 8, 1974, the United States Supreme Court heard oral arguments in <i>United States v. Nixon</i> on whether President Nixon's claim of executive privilege was constitutional. The Court's opinion, excerpted in the document, explained why an unchecked executive poses potential risks for the nation. The Court also clarified areas that affirmed the value of executive privilege.</p> <p>An additional helpful link: https://supreme.justia.com/cases/federal/us/418/683/case.html</p> <p>Audio Recording of Majority Opinion Audio: https://www.oyez.org/cases/1973/73-1766 9:45-13:20 OR 11:35-13:20; 14:38-16:15 (You can clip this!)</p>
#6 Primary Source	<p>6a. Polk's Message to Congress on Mexican Relations</p> <p>Anticipating the possibility of a crisis like that which has arrived, instructions were given in August last, "as a precautionary measure" against invasion or threatened invasion, authorizing General Taylor, if the emergency required, to accept volunteers, not from Texas only, but from the States of Louisiana, Alabama, Mississippi, Tennessee, and Kentucky, and corresponding letters were addressed to the respective governors of those States. These instructions were repeated, and in January last, soon after the incorporation of "Texas into our Union of States," General Taylor was further "authorized by the President to make a requisition upon the executive of that State for such of its militia force as may be needed to repel invasion or to secure the country against apprehended invasion." On the 2d day of March he was again reminded, "in the event of the approach of any considerable Mexican force, promptly and efficiently to use the authority with which he was clothed to call to him such auxiliary force as he might need." War actually existing and our territory having been invaded, General Taylor, pursuant to authority vested in him by my direction, has called on the governor of Texas for four regiments of State troops, two to be mounted and two to serve on foot, and on the governor of Louisiana for four regiments of infantry to be sent to him as soon as practicable.</p> <p>In further vindication of our rights and defense of our territory, I invoke the prompt action of Congress to recognize the existence of the war, and to place at the disposition of the Executive the means of prosecuting the war with vigor, and thus hastening the restoration of peace.</p> <p>6b. President James Polk</p>

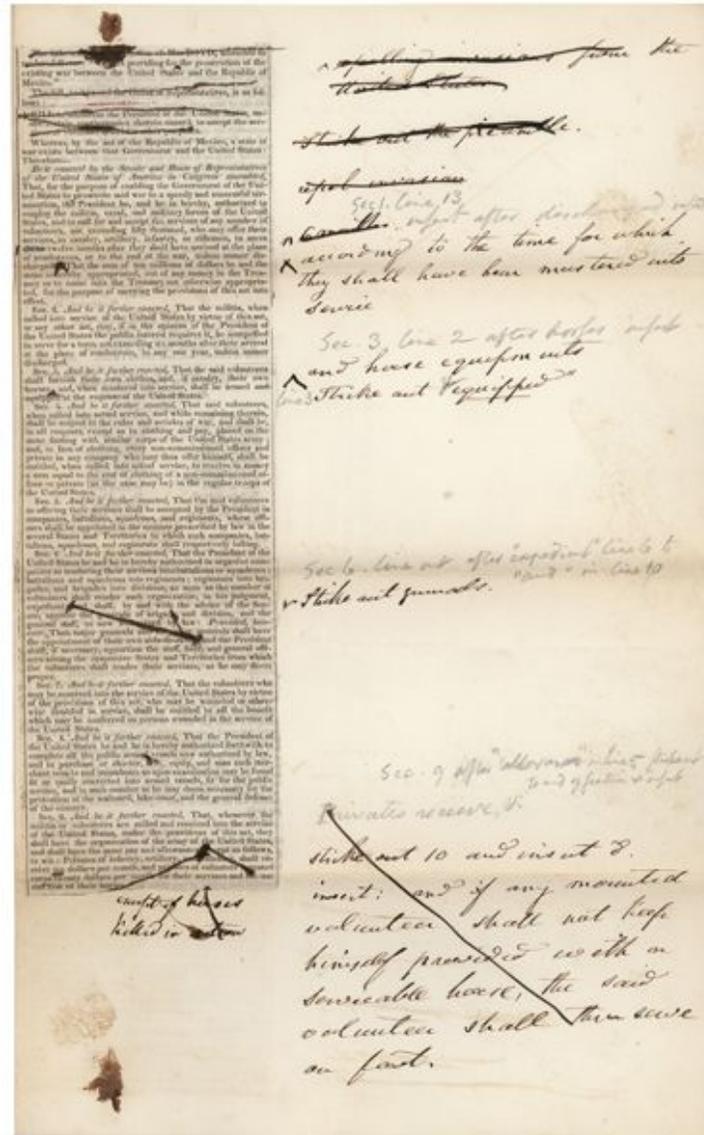


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<p>For the Student</p>	<p>In the US Constitution, the power to “declare war” is explicitly granted to the legislative branch (Congress), as is the power to “raise and support armies.” However, the president is given the power as “Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.” Since the exact powers of commander in chief are not fully defined, presidents have claimed executive power in times of war and crisis as implied powers of the Office of the President. In 1836, Texas declared its independence from Mexico, hoping to be annexed by the United States. Annexation occurred in 1845, which led to a war with Mexico.</p> <p>How did President James Polk argue that he had a right to declare war?</p>						
<p>For the Teacher</p>	<p>Texas declared its independence from Mexico in 1836, but Mexico did not accept its independence. Mexico threatened war if the United States annexed Texas, but Congress approved of the annexation, and in 1845 Texas became a state. President James Polk sent troops to the Texas–Mexico border purportedly to protect the new territory, but he did so without first consulting Congress. The actual boundaries were not clearly defined, and American troop presence heightened tensions with Mexico. When 16 soldiers were killed on the border of the Nueces River, President Polk went to Congress to ask for a declaration of war.</p> <p>In the US Constitution, the power to “declare war” is explicitly granted to the legislative branch (Congress), as is the power to “raise and support armies.” However, the president is given the power as “Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.” Since the exact powers of commander in chief are not fully defined, presidents have claimed executive power in times of war and crisis as implied powers of the Office of the President. Presidents have used</p>						

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	<p>their commander-in-chief powers to create tribunals for prisoners, convene special courts to collect intelligence, deport noncitizens, and intern citizens who pose an alleged threat to national security. They have also used these powers to establish wartime agencies and programs to assist with the war effort. Sometimes these actions have been approved by Congress and sometimes they have not.</p>
#7 Primary Source	<p>7a. Speech about Mexican War</p> <p>... [The war has been literally provoked when there was no necessity for it, and could have been easily avoided without any detriment to our rights, interests, or honor....</p> <p>I trust I shall be able to make it appear equally clear that that step was unnecessary for any of the legitimate purposes for which the army was sent to Texas; also, that it was improper, under the circumstances, as being calculated to irritate and provoke hostilities; and further, that it was a step which the President was not clothed with the proper power legally and rightfully to take, without authority from Congress....</p> <p>I need but refer to the history of the case, given by the President himself in the documents accompanying his message to the House, when he asked us to recognize a state of war with Mexico; a singular request, by-the-by, for the President to make, when the constitution gives Congress the sole power to declare war....</p> <p>Congress alone has the right and power to engage in war. The President has the right to repel hostilities; but not by his policy with other nations to bring on and involve the country in a war without consultation with Congress....</p> <p>7b. H.R. 145 Declaration of War with Mexico, 1846</p>



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For the Student	<p>Because the exact powers of the commander in chief are not fully defined, presidents have claimed executive power in times of war and crisis as implied powers of the Office of the President. Following the declaration of war against Mexico in May 1846, many congressmen like Alexander Stephens spoke out against President James Polk.</p> <p>What arguments did Stephens use? What does this criticism tell us about executive privilege?</p>						
For the Teacher	<p>Although Congress voted to declare war on Mexico in May 1846 following President James Polk's request, many congressmen spoke out against Polk's actions and the congressional declaration of war. The excerpts from Alexander H. Stephens, a Whig representative from Georgia, provides one such argument about Polk's use of executive action in time of war.</p> <p>In the US Constitution, the power to "declare war" is explicitly granted to the legislative branch (Congress), as is the power to "raise and support armies." However, the president is given the power as "Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States." Since the exact powers of commander in chief are not fully defined, presidents have claimed executive power in times of war and crisis as implied powers of the Office of the President. Presidents have used their commander-in-chief powers to create tribunals for prisoners, convene special courts to collect intelligence, deport noncitizens, and intern citizens who pose an alleged threat to national security. They have also used these powers to establish wartime agencies and programs to assist with the war effort. Sometimes these actions have</p>						

	<p>been approved by Congress and sometimes they have not.</p>
<p>#8 Primary Source</p>	<p>8a. War Powers Resolution</p> <p>PUBLIC LAW 93-148-NOV. 7, 1973</p> <p>(a) It is the purpose of this chapter to ... insure that ... both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, ...</p> <p>(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory [laws] authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.</p> <p>The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.</p> <p>(b) Termination of use of United States Armed Forces; exceptions; extension period. Within sixty calendar days after a report is submitted or is required to be submitted ... the President shall terminate any use of United States Armed Forces ... unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.</p> <p>8b. President Richard Nixon points to a map of Cambodia during a Vietnam War press conference</p>



Title of Source	8a. War Powers Resolution (1973) 8b. President Richard Nixon Points to a Map of Cambodia during a Vietnam War Press Conference
Holding Institution	8a. House Library for the House of Representatives 8b. National Archives and Records Administration
Link to Record	8a. http://library.clerk.house.gov/reference-files/PPL_93_148_War_Powers.pdf

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	<p>8b. https://catalog.archives.gov/id/194674</p> <p>Preferred Citation 8a: <i>The War Powers Resolution, Pub. L. No. 93-148, 87 Stat. 555 (November 7, 1973). It is codified in Title 50, Chapter 33, Sections 1541-48 of the United States Code. Available at “50 U.S. Code Chapter 33 - War Powers Resolution” Legal Information Institute, Cornell Law School. Accessed February 14, 2018.</i> http://library.clerk.house.gov/reference-files/PPL_93_148_War_Powers.pdf</p>
For the Student	<p>The War Powers Resolution of 1973, now known as the War Powers Act, was Congress’s attempt to reinsert itself into wartime decision making as granted to it by the Constitution.</p> <p>How does this source attempt to reverse some ways that executive privilege was exercised in the past?</p>
For the Teacher	<p>In the 1950s, President Harry Truman sent troops to Korea without congressional approval as part of a United Nations “police action.” This action and experiences of the long, drawn-out Vietnam War under presidents Kennedy, Johnson, and Nixon led Congress to issue a check on presidential authority during wartime. The War Powers Resolution of 1973, now known as the War Powers Act, was Congress’s attempt to reinsert itself into wartime decision making as granted to it by the Constitution.</p>

III. English Language Development extension activity

The following excerpt from Article II of the Constitution details the president’s authority, as envisioned by the framers in 1787. This excerpt reflects the framers’ preference for a limited executive as well as their interest in a system of checks and balances to ensure that no branch of the federal government becomes too powerful.

Historical Context: The separation of powers outlined in the Constitution was rooted in the young country’s recent experience as an English colony in particular, and the suffering engendered by monarchical rule in general. The framers sought to limit power by dividing it among the executive, legislative, and judicial branches. In Article II, the framers gave a general outline of the powers of the executive

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branch but did not provide as much detail as they did in Article I, which outlines the powers of Congress. Some of the powers in the Constitution are explicitly stated. These are called expressed powers; they are direct, detailed, and clear. Other powers are implied, or suggested; they are indirect, broad, and relatively vague.

Source Text:

Section. 2.

... Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Directions

1. Student Handout 12.4AD breaks up significant phrases from Article II that detail the power of the executive branch.
2. Explain to students that each row in the chart details a separate power of the presidency and that they should highlight one to three important words from each row to help them get a better sense of what the president can do.
3. In the third column, have them select one or more category of powers (explain as necessary).

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4. Have students complete the fourth column using clues from the text and, if necessary, Article I of the Constitution.
5. Finally, have students return to the original investigative question: Has the role of the presidency expanded?

*See Student Handout.