**Guide to Presidential Powers**

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|  | **Key Points** | **Key Vocabulary** |
| **Expressed Powers** | Article Two of the United States Constitution creates the executive branch of the government, consisting of the President, the Vice President, and other executive officers chosen by the President.  Perhaps the most important of all presidential powers is command of the United States Armed Forces as commander-in-chief. While the power to declare war is constitutionally vested in Congress, the president commands and directs the military and is responsible for planning military strategy.  Along with the armed forces, the president also directs U.S. foreign policy. Through the Department of State and the Department of Defense, the president is responsible for the protection of Americans abroad and of foreign nationals in the United States.  The president decides whether to recognize new nations and new governments, and negotiates treaties with other nations, which become binding on the United States when approved by two-thirds vote of the Senate.  The president also has the power to nominate federal judges, including members of the United States courts of appeals and the Supreme Court of the United States.  The Constitution’s Ineligibility Clause prevents the President from simultaneously being a member of Congress. Therefore, the president cannot directly introduce legislative proposals for consideration in Congress. | **ineligibility clause**: The Constitution’s Ineligibility Clause prevents the president from simultaneously being a member of Congress. Therefore, the president cannot directly introduce legislative proposals for consideration in Congress.  **twenty-third amendment**: Under the Twenty-third Amendment, the District of Columbia may choose no more electors than the state with the lowest number of electoral votes. No Senators, Representatives or federal officers may become Electors.  **war powers resolution**: The War Powers Resolution of 1973 (50 U.S.C. 1541-1548)[1] is a federal law intended to check the President’s power to commit the United States to an armed conflict without the consent of Congress. The resolution was adopted in the form of a United States Congress joint resolution; this provides that the President can send U.S. armed forces into action abroad only by authorization of Congress or in case of “a national emergency created by attack upon the United States, its territories or possessions, or its armed forces. “  **senatorial courtesy**: an unwritten political custom (or constitutional convention) in the United States whereby the president consults the senior U.S. Senator of his political party of a given state before nominating any person to a federal vacancy within that Senator’s state |
| **Delegated Powers** | Many presidential powers are delegated powers that Congress has accorded presidents to exercise on its behalf, and that it can cut back or rescind.  The delegated powers are a list of items found in Article I, Section 8 of the U.S. Constitution that set forth the authoritative capacity of Congress. In summary, Congress may exercise the powers that the Constitution grants it.  Strict constructionism refers to a particular legal philosophy of judicial interpretation that limits or restricts judicial interpretation. The phrase is also commonly used more loosely as a generic term for conservatism among the judiciary.  Loose constructionists provide a wider and broader reading of the Constitution and amendments passed historically.  The Enumerated Powers Act is a proposed law that would require all bills introduced in the U.S. Congress to include a statement setting forth the specific constitutional authority under which each bill is being enacted. | **Enumerated Powers Act**: a proposed bill in the United States House of Representatives which requires legislation passed by Congress cite those provisions of the Constitution that give them the power to pass such legislation. The bill has been proposed by Congressman John Shadegg in every Congress since the 104th, and frequently draws many co-sponsors. It has never been passed. However, at the beginning of the 105th Congress, significant portions of the bill were adopted into House rule  **strict constructionism**: a particular legal philosophy of judicial interpretation that limits or restricts judicial interpretation (the phrase is also commonly used more loosely as a generic term for conservatism among the judiciary)  **delegated powers**: The delegated powers – also called enumerated powers – are a list of items found in Article I, Section 8 of the U.S. Constitution that set forth the authoritative capacity of Congress. |
| **Inherent Powers** | The President derives these powers from the loosely worded statements in the Constitution that “the executive Power shall be vested in a President” and that he should “take care that the laws be faithfully executed”; defined through practice rather than through constitutional or statutory law.  The first three presidents, Washington, Adams, and Jefferson established their importance concerning the inherent powers in different ways.  Supporters of the unitary executive theory argue that this means that the president’s power, particularly the inherent power that come with being commander in chief, are open ended and cannot be checked by the other two branches. | **inherent powers**: Inherent powers are assumed powers of the president not specifically listed in the Constitution. Inherent powers come from the president’s role as chief executive.  **unitary executive theory**: Supporters of the unitary executive theory argue that this means that the president’s power, particularly the inherent power that come with being commander in chief, are open-ended and cannot be checked by the other two branches.  **unitary system**: a state governed as one single unit in which the central government is supreme and any administrative divisions (subnational units) exercise only powers that their central government chooses to delegate |
| **Emergency Powers** | A state of emergency is a governmental declaration that may suspend some normal functions of the executive, legislative, and judicial powers; alert citizens to change their normal behaviors; or order government agencies to implement emergency preparedness plans.  At least two constitutional rights are subject to revocation during a state of emergency: The right of habeas corpus, under Article 1, Section 9 and the right to a grand jury for members of the National Guard when in actual service, under the Fifth Amendment.  The Insurrection Act of 1807 is the set of laws that govern the U.S. president’s ability to deploy troops within the United States to put down lawlessness, insurrection, and rebellion.  The National Emergencies Act set a limit of two years on emergency declarations unless the president explicitly extends them, and requires the president to specify in advance which legal provisions will be invoked. | **state of emergency**: A government decree that a particular situation requires the implementation of pre-arranged responses on a large scale.  **habeas corpus**: A writ to bring a person before a court or a judge, most frequently used to ensure that a person’s imprisonment, detention, or commitment is legal.  **insurrection act of 1807**: The Insurrection Act of 1807 is the set of laws that govern the president’s ability to deploy troops within the United States to put down lawlessness, insurrection and rebellion. |
| **Executive Orders** | The term executive order is most commonly applied to orders issued by the President, who is the head of the executive branch of the federal government. Executive orders may also be issued at the state level by a state’s governor or at the local level by the city’s mayor.  Executive orders have the full force of law, since issuances are typically made in pursuance of certain Acts of Congress, some of which specifically delegate to the President some degree of discretionary power.  Although there is no Constitutional provision or statute that explicitly permits executive orders, there is a vague grant of executive power given in Article II, Section 1, Clause 1 of the Constitution.  A Presidential Determination is a document issued by the White House stating a determination resulting in an official policy or position of the executive branch of the United States government.  Presidential memoranda do not have an established process for issuance or publication. Presidential memoranda are generally considered less prestigious than executive orders. | **executive order**: A legally enforceable order, decree, or regulation issued on the authority of the head of the executive branch of government.  **presidential determination**: A Presidential Determination is a document issued by the White House stating a determination resulting in an official policy or position of the executive branch of the United States government.  **presidential memoranda**: Presidential memoranda do not have an established process for issuance or publication. Presidential memoranda are generally considered less prestigious than executive orders. There are three types of memorandum: presidential determination or presidential finding, memorandum of disapproval, and hortatory memorandum.  **executive agreement**: an understanding, less formal than a treaty, between the United States (both the executive and legislative branch, or just the executive branch) and the government of a foreign state |
| **Executive Privilege** | The concept of executive privilege is not mentioned explicitly in the United States Constitution, but the Supreme Court of the United States ruled it to be an element of the separation of powers doctrine.  The Supreme Court confirmed the legitimacy of this doctrine in *United States v. Nixon*, but only to the extent of confirming that there is a qualified privilege.  The Clinton administration invoked executive privilege on fourteen occasions. In 1998, President Bill Clinton became the first President since Nixon to assert executive privilege and lose in court.  On June 20, 2012, President Barack Obama asserted executive privilege, his first, to withhold certain Department of Justice documents related to the ongoing Operation Fast and Furious controversy. | **executive privilege**: In the United States government, executive privilege is the power claimed by the President of the United States and other members of the executive branch to resist certain subpoenas and other interventions by the legislative and judicial branches of government. |