How the president can work around Congress
Executive orders, vetoes and more
President may exercise executive power to act around Congress

Key executive powers

- Executive orders
- Cognitive power
- Federal rules
- Foreign policy powers
- Vetoes
- Recess appointments

Executive order is a vaguely defined power
Constitutional language on executive power and definition

US Constitution

Article II, Section 1. Clause 1
The executive power shall be vested in a President of the United States of America...

Article II, Section 3. Clause 5
...he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Federal register

Executive orders are official documents, numbered consecutively, through which the president manages the operations of the federal government

Analysis
•Historically, related to routine administrative matters and internal operations of federal agencies
•In recent times, used more broadly to mandate programs and policies

Executive orders give the president flexibility to work around Congress to set policy

Functions and examples of executive orders

- **Clarify or alter legislation passed by Congress**
  - Example: Obama signed an executive order forbidding federal funds attached to the ACA from being spent on abortion

- **Respond to current events**
  - Example: Obama signed an executive order setting up a commission to settle a railroad strike

- **Bypass partisan opposition**
  - Example: Obama signed an executive order increasing the minimum wage for federal contractors after congressional inaction on minimum wage legislation

- **Change or reverse a previous executive order**
  - Example: Obama signed an executive order revoking restrictions on executive branch archiving put in place under George W. Bush

Sources: National Journal Research, 2016; Federal Register Executive Orders Disposition Tables.
The number of executive orders has declined

Frequency of executive orders by president

Average number of orders per year, 1900-2016

Cognitive power enables the president to influence national agenda

Cognitive powers

- **Conversion**: Changing public opinion from one side of an issue to another
- **Framing**: Presenting a vision of how to view a particular issue
- **Priming**: Reminding voters of an issue and bringing it to the forefront of discussion
- **Issue Installation**: Introducing voters to an issue for the first time and setting their position on it

**Analysis**

- As the single most visible and well-known figure in domestic politics, the president has a unique platform to alter and affect the public’s view on various issues.
- “Cognitive power,” sometimes called “the bully pulpit,” refers to the president’s ability to influence public opinion through speeches and public announcements.

Federal rulemaking enables the president to direct the activities of federal agencies

Process of federal rulemaking

**Step 1**
Agency realizes a rule is necessary, brought about by either a petition, a lawsuit, congressional order, or a federal order

**Step 2**
Agency proposes rule and solicits comments in the Federal Register

**Step 3**
Agency collects and reviews comments, preparing final draft of regulation

**Step 4**
Agency submits rule to Congress and Government Accountability Office, then publishes final rule in Federal Register

**Step 5**
Regulation enters compliance, interpretation, and review phase

Agency establishes “good cause” for skipping steps if rule has a narrow or minor impact or if problem must be addressed imminently

**Analysis**
- Rulemaking may be a slower route to circumventing Congress than executive orders, which can be signed into law immediately
- However, rules are also harder to revoke by future administrations

Foreign policy powers enable the president to control the nation’s international positioning and agenda

Executive powers in setting foreign policy

**Diplomatic**
- The president is the nation’s main diplomatic point of contact with foreign leaders and also has the ability to dictate entrance into international partnerships and agreements
- Example: One of the first things presidents have done when entering into office is dictate whether or not the U.S. will work with international organizations that support or oppose abortion rights

**Trade**
- The president has the authority to engage in and enforce trade agreements
- Example: Obama chose not to enforce an international trade council ruling which would have prevented Apple from selling iPads and iPhones in the U.S.

**Military**
- As commander-in-chief, the president has nearly unchecked ability to engage in national defense
- Example: The president has unilateral control over the military and can generally enter into international engagements without check; Congress could cut military funding to stop an operation, but such a move would be difficult and likely unpopular

**Veto power enables president to block legislation**

**Forms of executive veto power**

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<th>When can it be used?</th>
<th>Return veto</th>
<th>Pocket veto</th>
<th>Protective return pocket veto</th>
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<td>While Congress is in session</td>
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<td>After the final adjournment of a Congressional session</td>
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<td>During shorter intra- or inter-session recesses</td>
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| Can it be overridden?                                    | Yes; with a 2/3 vote of both chambers of Congress | No                                       | No                           |

President is likely to veto legislation more often when opposition controls both chambers

Presidential vetoes by Congress, 1981-present

- President's party controls at least one chamber
- Opposition controls both chambers

Average number of vetoes when opposition controls both chambers: 15
Average number of vetoes when president's party controls at least one chamber: 6.2

Recess appointments enable the president to select executive branch leaders

Recess appointment process

**Analysis**

- Presidential recess appointments allow the president to impact the policy landscape by appointing new staff to executive agencies.
- The Supreme Court ruling in *NLRB v. Noel Canning* prevents the use of recess appointments when the Senate is in a pro forma session (a session without formal debate or action, where the body is nominally declared in session).

Sources: