



# RESEARCH NOTE

Number 23, 29 March 1995  
ISSN 1323-5664

## Express Constitutional Powers of the President of the United States

Under the constitutions of most states, the executive is organised into various strata of authority with a single individual, who personifies the state, at the top. It is usual to make a distinction between constitutions where the head of state is:

- separate from the head of the executive government, serving mainly as the titular or ceremonial focus of the state (eg Germany);
- constitutions where the head of state is the effective executive officer (eg United States); and
- constitutions where the head of state has more than titular power and while not the effective executive officer enjoys very significant authority (eg France).

This Research Note provides a brief outline of the major express constitutional powers accorded to the President of the United States. For present purposes, an express power is a power that is an unequivocal and unambiguous grant of power.

**Note: Research Notes are also available in relation to the express constitutional powers accorded to the Federal President of Germany and the President of the Republic of France.**

### Election of the President

The United States is a federal republic comprising fifty states and the District of Columbia. Federal legislative power is exercised by Congress which consists of 535 members, 100 in the Senate and 435 in the House of Representatives.

Executive power in the United States is exercised by a president by reason of Article II(1) of the Constitution of the United States.

The President is elected for a four year term by universal adult suffrage. Votes are counted at the State level on a first-past-the-post basis, with each State being assigned a slate of seats in an electoral college equivalent to the sum of its congressional representatives. This college then formally elects the President. The President is restricted to a maximum of two terms and, once elected, cannot be removed except through impeachment by Congress. In the event of a President's removal from office, death,

resignation, or inability to discharge his/her powers and duties of office, executive power devolves to the Vice President.

### Express Powers to Veto Legislation

Article I(7)(2) of the Constitution of the United States accords the President an express power to veto bills passed by Congress. This power is conditional, as the veto can be overridden by a two-thirds vote of each house of Congress.

### Express Powers to Nominate, Appoint and Dismiss the Chief Executive and Ministers

Under Article II(2)(2) of the Constitution of the United States, the President is accorded an express power to nominate and appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States. The power to appoint persons to be federal ministers to existing offices is subject to the advice and consent of the Senate.

### Key Express Powers of the President

- Veto bills passed by Congress.
- With the concurrence of two-thirds of the Senate, make treaties.
- Position of commander-in-chief of the army and navy.

## **Express Powers to Adjourn and Convene the Legislature**

Article II(3) of the Constitution of the United States accords the President an express power, in the case of disagreement between the Houses of Congress with respect to the time of adjournment, to adjourn them to such time as he/she considers proper. In addition, the President may on 'extraordinary occasions' convene both Houses, or either of them. It is settled law that a special session of Congress may be called on any occasion deemed desirable by the President.

## **Express Powers over the Armed Forces**

Article II(2)(1) of the Constitution of the United States, expressly accords the President the position of commander-in-chief of the army and navy of the United States, and the militia of the States.

## **Express Powers over the Judiciary**

The President, under Article 60(1) of the Constitution of the United States, is accorded an express power to nominate and, subject to the advice and consent

of the Senate, appoint judges of the Supreme Court.

## **Express Powers over Foreign Relations**

Express powers relating to foreign affairs are accorded to the President by Articles II(2)(2) and II(3) of the Constitution of the United States. The President is expressly empowered to make treaties, with the concurrence of two-thirds of the Senate, and to appoint ambassadors, public ministers and consuls with the Senate's advice and consent. The President is also expressly accorded the power to receive ambassadors and public ministers.

## **Implied Constitutional Powers**

Many of the powers of the President rest largely on precedent, practice and Congressional authorisation, rather than on express constitutional authorisation. For example, while the Constitution of the United States does not accord the President any express powers over the budgetary process, in actuality, the President has been able to exert considerable influence over the process.

Similarly, while Articles II(2) and II(3) of the Constitution of the United States accord the President a role in foreign relations, in actuality, United States Presidents have gone far beyond these express grants of power in conducting foreign relations. The same can also be said with respect to emergency domestic and war powers.

**Ian Ireland**  
**Law and Public**  
**Administration Group**  
**Parliamentary Research**  
**Service**

Phone: 06 277 2438  
Fax: 06 277 2407

*Views expressed in this Research Note are those of the author and do not necessarily reflect those of the Parliamentary Research Service and are not to be attributed to the Department of the Parliamentary Library. Research Notes provide concise analytical briefings on issues of interest to Senators and Members. As such they may not canvass all of the key issues.*

© Commonwealth of Australia