

**MR. POGREBA, PARKER SCHOOL**

# **UNIT 3: THE PRESIDENT**



## PRESIDENTIAL POWERS QUESTIONS

- ▶ Should President Biden be able to strike down the Texas abortion restrictions?
- ▶ Was President Eisenhower right to send in national guard troops to enforce desegregation orders?
- ▶ Should the Department of Education be able to deny funding to schools that permit discrimination against transgender students?
- ▶ Should President Trump have had the power to delay the 2020 election because of the Covid-19 pandemic?
- ▶ Professor William Marshall says our answers to these questions are less about principle than “our perception about the person holding the office.”





## REQUIREMENTS TO BECOME PRESIDENT

- ▶ To become President, one must be:
  - ▶ 35 years old
  - ▶ Have lived in the United States for 14 years
  - ▶ Be a **"natural born citizen."**
- ▶ President and the Vice President serve **4 year terms**
  - ▶ After the **22nd Amendment**, the maximum length of their service was two terms or ten years.





## SWEET PERKS OF THE OFFICE

- ▶ \$400,000 tax-free salary
- ▶ \$50,000/year expense account
- ▶ \$100,000/year travel expenses
- ▶ Best health care
- ▶ The White House, 132-room mansion
- ▶ Staff of 400-500
- ▶ Limitless use of **Air Force One** and **Marine One**.
- ▶ Secret Service protection for life and a pension of \$219,000/year







**TWO VIEWS OF THE PRESIDENCY**



"I sit here all day trying to persuade people to do the things they ought to have the sense to do without my persuading them. That's all the powers of the President amount to."

Harry Truman

Fear of a presidency burgeoning beyond its constitutionally prescribed role took root in the Nixon years, with Schlesinger, a historian of the Kennedy era, coining the phrase “imperial presidency” and capturing the anxiety of the times. Schlesinger worried that America’s persistent involvement overseas permitted the president to leapfrog over the Founders’ central preoccupation, which was circumscribing the arbitrary exercise of executive power.

Kori Schake



## SUCCEEDING THE PRESIDENT

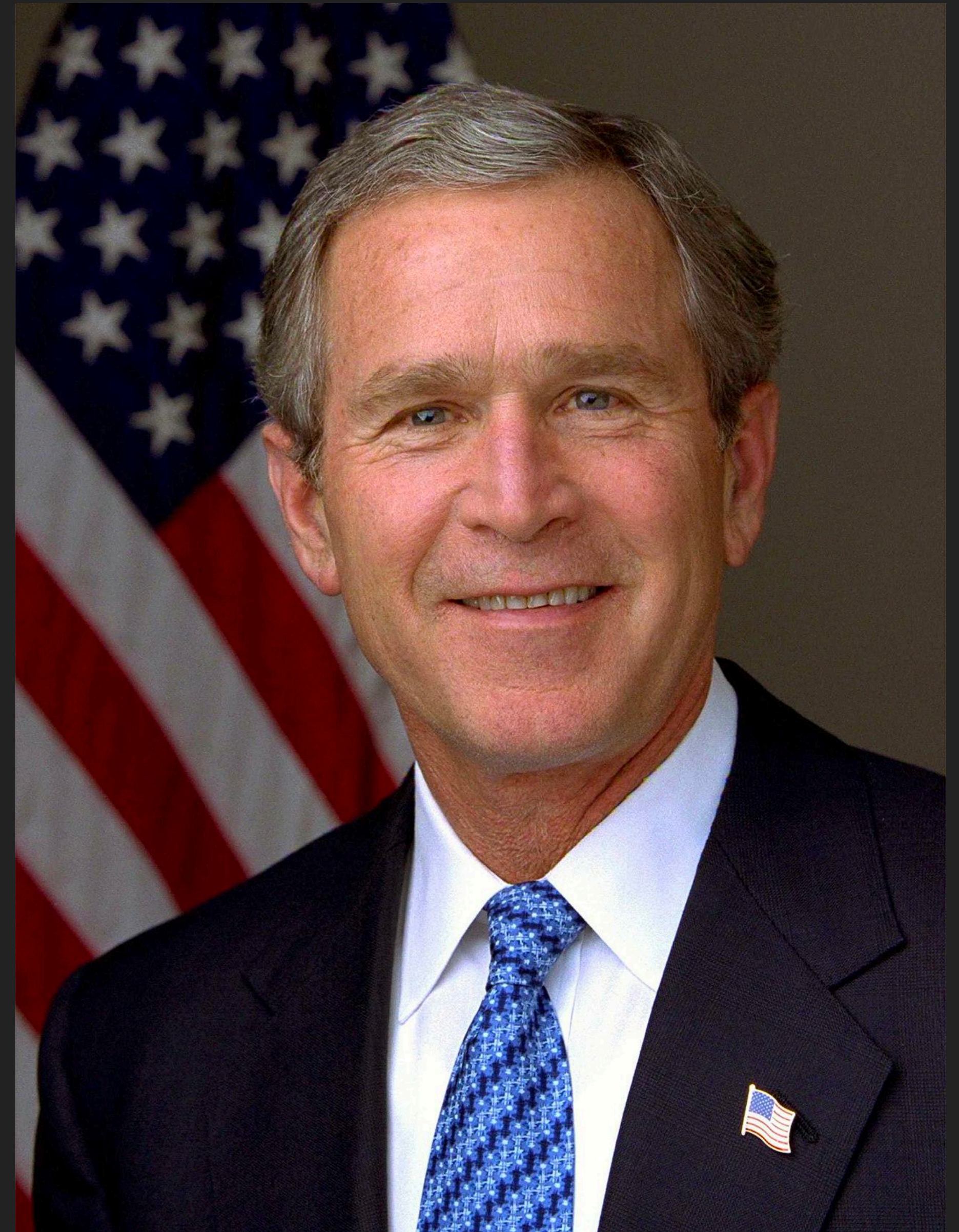
- ▶ If the President dies or is removed from office, the Vice President assumes the role.
- ▶ This was clarified in the **25th Amendment** in 1965.
  - ▶ Vice Presidents have assumed office nine times in American history.
- ▶ The **Presidential Success Act of 1947** laid out the order of succession:
  - ▶ Vice President
  - ▶ Speaker of the House
  - ▶ President of the Senate
  - ▶ Secretary of State down to lower cabinet officials.





## THE 25TH AMENDMENT/THE COLONOSCOPY CLAUSE

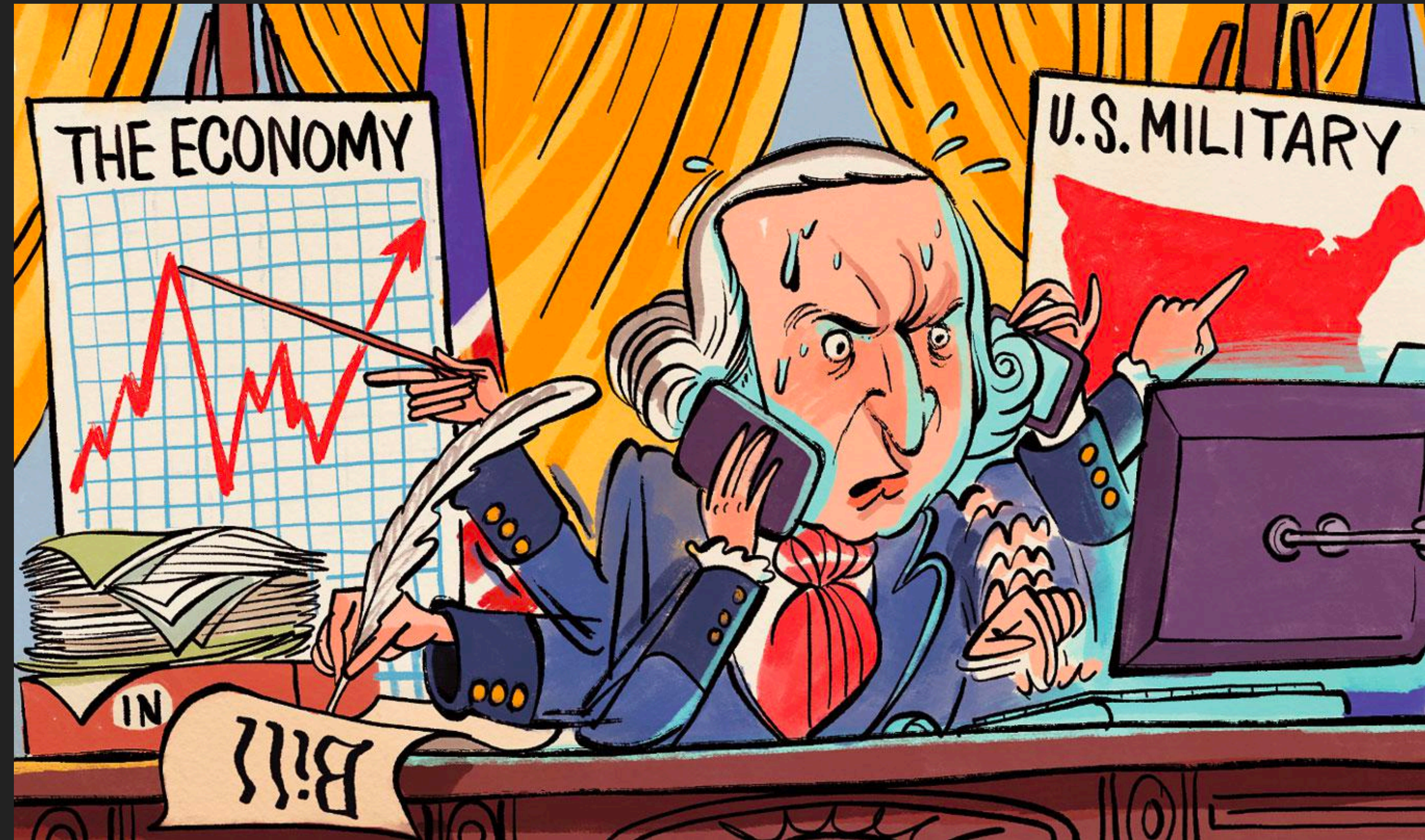
- ▶ The **25th Amendment** added Presidential disability as a reason to be removed from office.
  - ▶ The President can notify Congress in writing
  - ▶ The VP and a majority of the Cabinet can inform Congress in writing that the President is "incapacitated."
- ▶ When has the Cabinet considered invoking the 25th Amendment against the will of the President?





## WHAT ARE THE PRIMARY ROLES OF THE PRESIDENT?

- ▶ **Head of State:** The president leads and dictates American foreign policy.
- ▶ **Chief Executive:** implementer/enforcer of federal policy
- ▶ **Commander-in-Chief:** leader of the military
- ▶ **Chief Legislator:** source of the primary policy agenda
- ▶ **Party Leader:** leader of his political party
- ▶ **Moral Leader:** leader of the nation's moral vision
- ▶ **Crisis Manager:** first responder to national/international crises







**ENUMERATED POWERS**



## THE ENUMERATED POWERS OF THE PRESIDENT

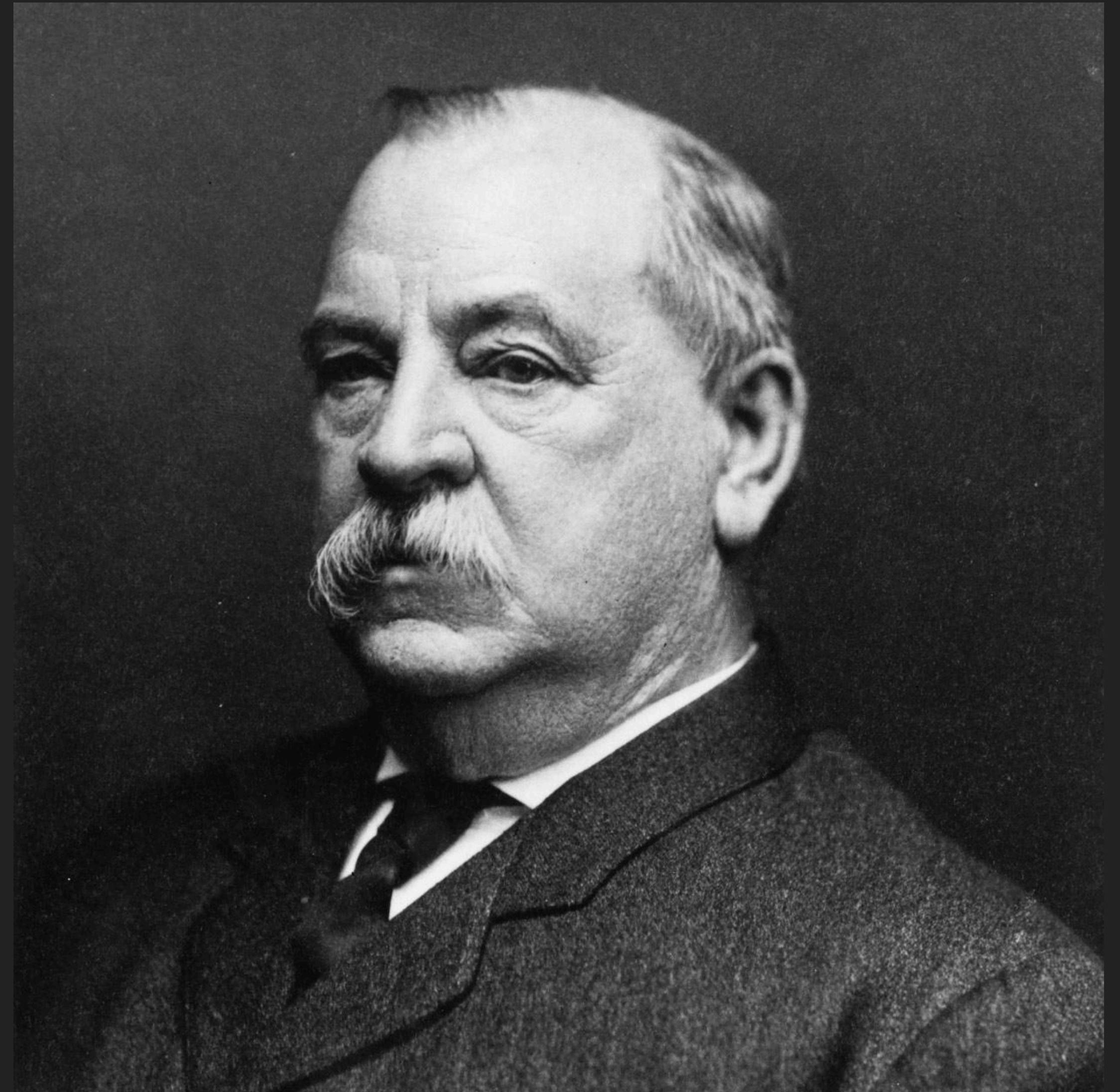
- ▶ The **enumerated powers** of the President are located in **Article II** of the Constitution.
- ▶ These explicit powers of the President are far less defined and far less extensive than those afforded in Article I to the Congress.
- ▶ Most of the founders feared excessive power in the chief executive, but the power of the Presidency has grown. How? Why?
  - ▶ Crises
  - ▶ Increasing complexity of the law
  - ▶ The collapse of Congress





## AS CHIEF EXECUTIVE

- ▶ **“Faithfully execute”** the laws
- ▶ Require the opinion of heads of executive departments
- ▶ Grant **pardons for federal offenses** except for cases of **impeachment**
- ▶ The President can also offer **commutation** (which reduces sentence length) and **remission relief** (which reduces financial penalties.)
- ▶ **Nominate judges of the Supreme Court and all other officers of the U.S.** with consent of the Senate
  - ▶ Fill vacancies that may happen during recess of the Senate





## AS COMMANDER-IN-CHIEF

- ▶ **Commander in Chief of the Army & Navy**
- ▶ **Commander in Chief of the state militias (now the National Guard)**
- ▶ **Commission all officers**
- ▶ **How has this power grown since the time of the Constitution?**
  - ▶ **War Powers Act, Authorization to use Military Force**





## AS HEAD OF STATE

- ▶ The President (through the State Department) dictates American foreign policy. For many years, Americans argued—though without always living up to the claim—that **“politics end at the nation’s borders.”**
- ▶ Appoint ambassadors, ministers and consuls
- ▶ Make treaties subject to Senate confirmation
- ▶ Receive ambassadors





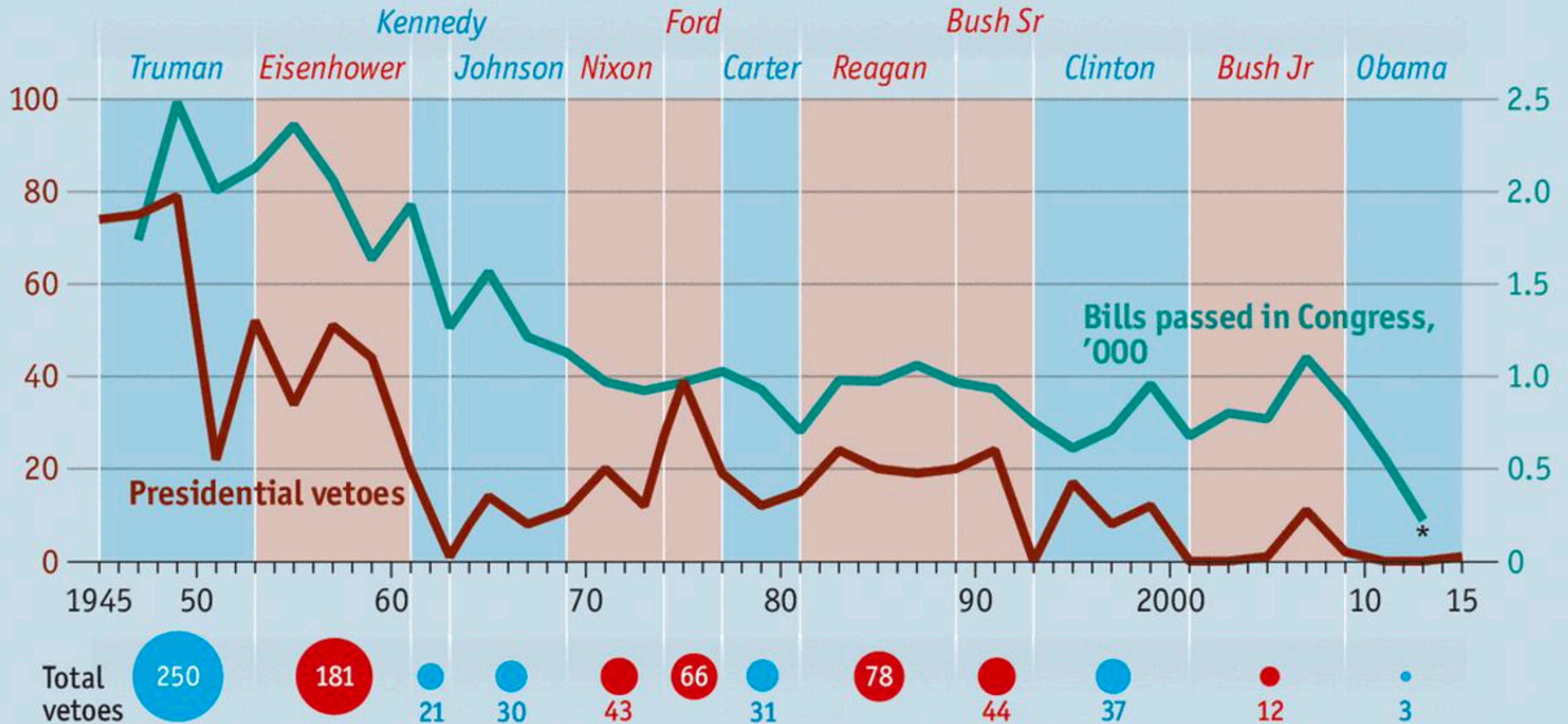
## AS CHIEF LEGISLATOR

- ▶ Give State of the Union address to Congress
- ▶ Recommend "measures" to the Congress
- ▶ Upon "extraordinary occasions" convene both houses of Congress
- ▶ **Can veto legislation from Congress:**
  - ▶ **Veto Message within 10 days** of passing the House of origin
  - ▶ **Pocket Veto**-President does not sign within 10 days
  - ▶ **Congress can override with 2/3 majority** from both house
  - ▶ Congress has only override 7.1% of Presidential vetoes





# Presidential vetoes and bills passed in Congress



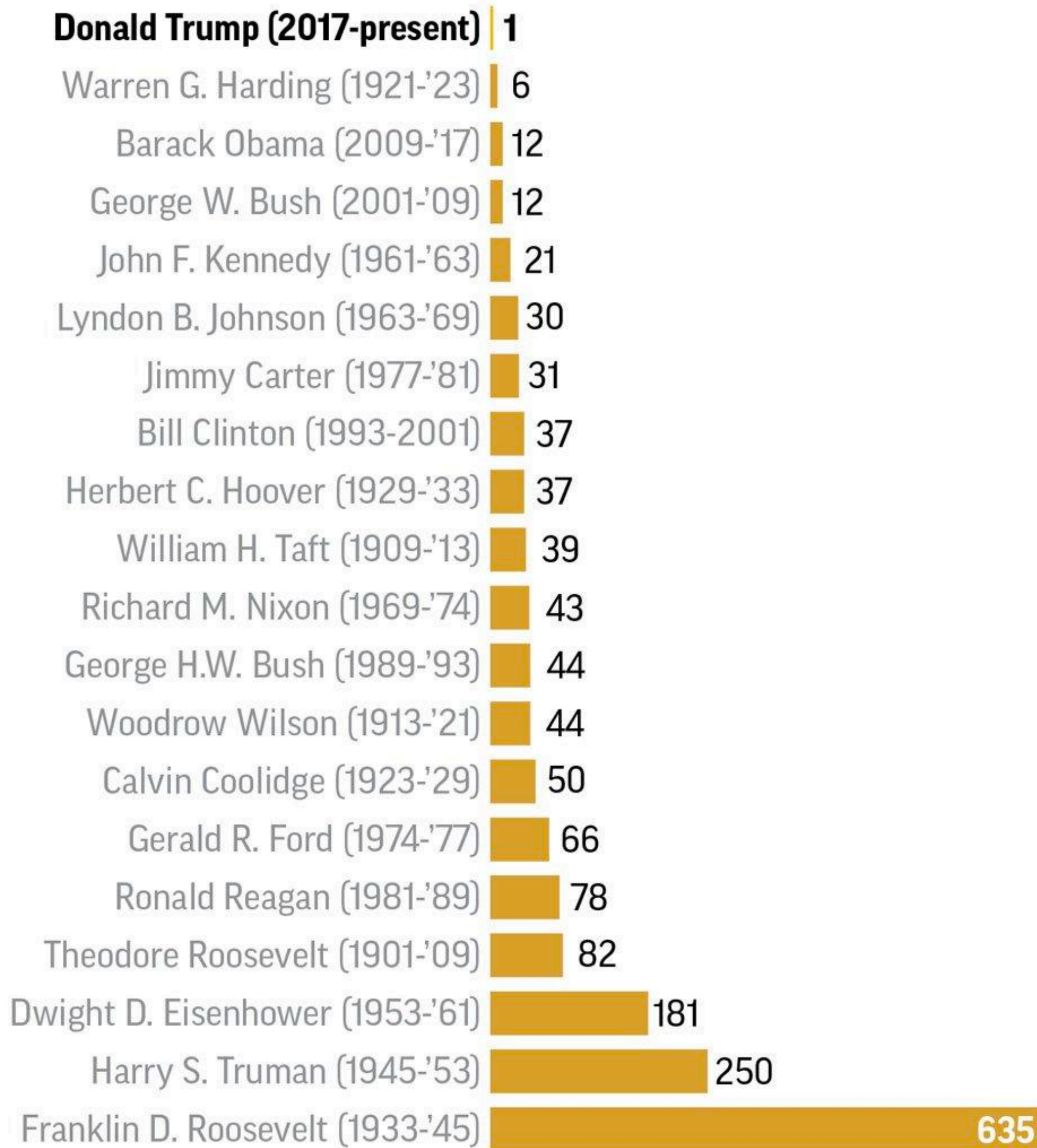
Sources: US Senate; Brookings Institution

\* First session of Congress only



# Presidential vetoes

Congressional bills vetoed since 1901:



SOURCES: U.S. House of Representatives; White House

AP

- ▶ What are some inferences we can make from this chart and our knowledge of US history?





# INFORMAL POWERS

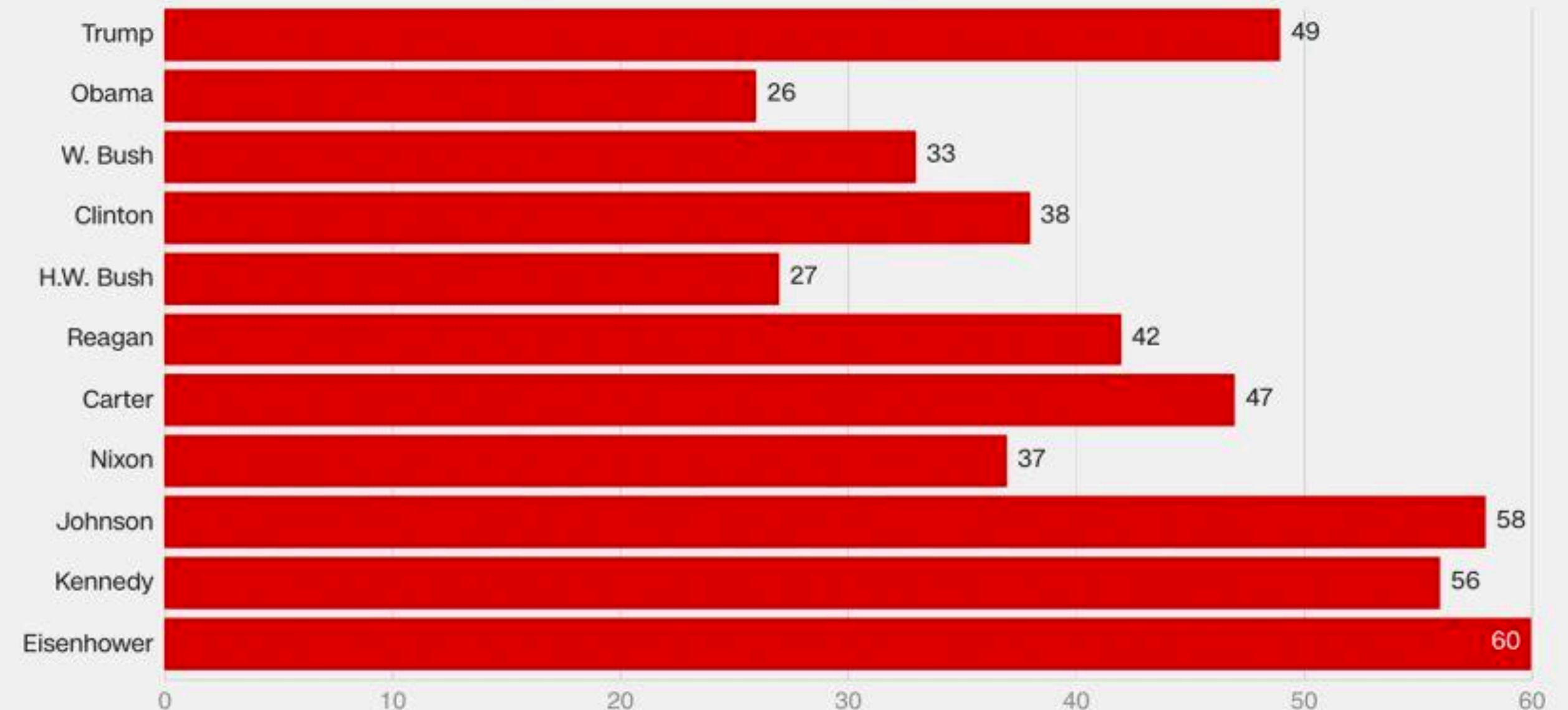


# INFORMAL POWERS

- ▶ Similar to the way Congressional power expanded due to the “**necessary and proper**” clause, Presidential power has expanded through informal means not found in the text of the Constitution.
- ▶ Since 1933, the President’s informal powers have grown to be much more important than his formal powers.
- ▶ This informal power is found in four main areas: **executive orders, executive actions, executive privilege, and signing statements.**

## Executive orders through October 13 of past presidents

Trump's executive orders signing rate breaks with a decades-long trend



Johnson count spans from the 1965 inauguration through Oct. 13 of his full elected term

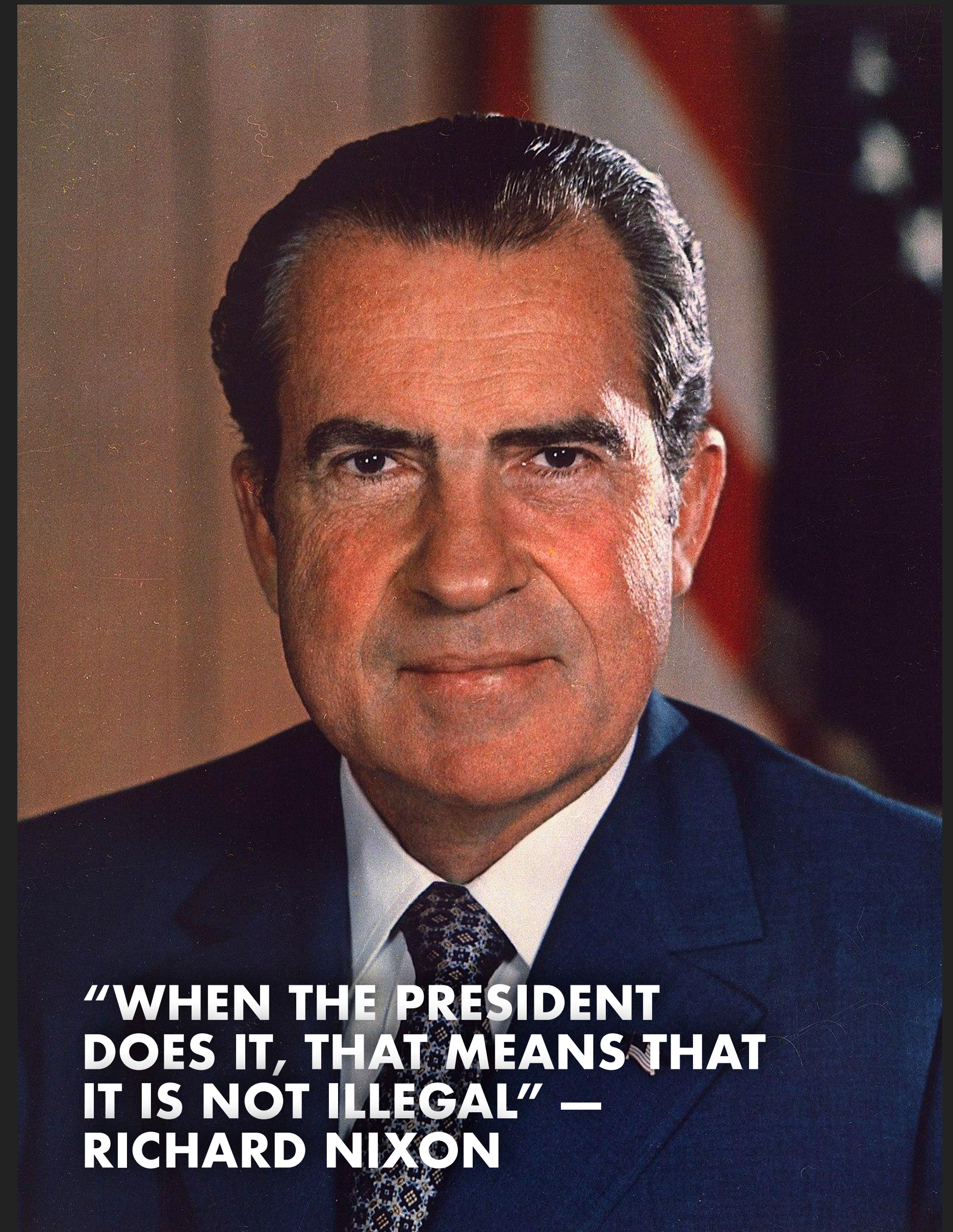


Source: Archives of the American Presidency Project; Federal Register



## EXECUTIVE PRIVILEGE

- ▶ The President has three broad areas of executive privilege:
  - ▶ Military/national security secrets
  - ▶ Communication/deliberation with advisors
  - ▶ Legal advice
- ▶ The expansion of executive privilege has undermined Congressional oversight.
- ▶ Post Watergate, the privilege was defined as "qualified" and it can be overcome in the Courts.



**"WHEN THE PRESIDENT  
DOES IT, THAT MEANS THAT  
IT IS NOT ILLEGAL" —  
RICHARD NIXON**



# EXECUTIVE ACTIONS

- ▶ An **executive action** is when the President issues a directive managing the operations of the federal government.
- ▶ They carry no legal weight and can be undone by the next President.
- ▶ Their power comes in **signaling enforcement policies** or priorities for the nation.
  - ▶ Obama executive action on guns
- ▶ They can range from announcements about foreign policy to proclamations like "Religious Freedom Day."





## EXECUTIVE ORDERS

- ▶ The most significant unenumerated Presidential power is the **executive order**. Used since the Washington Administration, they are written directions for federal action.
  - ▶ **The Emancipation Proclamation/Executive Order 9066**
  - ▶ Civil Rights Enforcement in the 1950s
  - ▶ Mask requirement for federal employees
- ▶ They can be undone by succeeding Presidents
- ▶ Their use has changed over time and depending on circumstances.
  - ▶ President Biden set a record with 30 in his first two weeks.



**“FROM SCRANTON TO WILMINGTON TO THE WHITE HOUSE”**



Trump counted among his enduring achievements his 2017 tax reform bill in Congress and his appointment of three Supreme Court justices. Many of his other signature actions were enacted via executive order, making them vulnerable to rapid reversal. Some had rolled back actions of his predecessor, Barack Obama.

Biden is “going through a lot of the Trump agenda and dismantling it because (Trump’s) agenda was put into place this way,” said Julian Zelizer, a presidential historian at Princeton University.

“So, it’s kind of a very transitory way to govern,” he said.



## LIMITS OF EXECUTIVE ORDERS

- ▶ Courts can overrule executive orders.
  - ▶ **Youngstown Sheet & Tube Co. v. Sawyer**
  - ▶ In his concurring opinion, Justice Jackson said the legality of executive orders falls in three categories:
    - ▶ With Congressional approval (maximum)
    - ▶ Without (least)
    - ▶ The “zone of twilight”



**JUSTICE ROBERT JACKSON**



## TEDDY ROOSEVELT

- ▶ The expansive use of executive order can be traced to **Teddy Roosevelt**, who “issued more than 1,000 executive orders, nearly 10 times as many as his predecessor.”
- ▶ His primary focus was conservation. He used executive power to quadruple protected land, creating 150 new national forests, 18 national monuments, five national parks and 51 wildlife refuges.



**“FROM SCRANTON TO WILMINGTON TO  
THE WHITE HOUSE”**



## EXECUTIVE ORDER CONTROVERSIES

- ▶ Obama's gun control policies
- ▶ Global Gag Rule
- ▶ Trump's "sanctuary cities" policy
- ▶ Trump's suspension of entry for people from seven Muslim-majority countries
- ▶ Obama's Deferred Action for Childhood Arrivals





## SIGNING STATEMENTS

- ▶ Presidential **signing statements** are official statements issued when the President signs a bill.
- ▶ The statements begin with wording such as "This bill, which I have signed today" and are followed with either **political posturing** or **explicit statement of an intent to interpret the law** in a way Congress might not have intended.
- ▶ According to the American Bar Association, they are "contrary to the rule of law and our constitutional separation of powers," a position they took after George W. Bush dramatically expanded their use.





“When President Bush last week signed the bill outlawing the torture of detainees, he quietly reserved the right to bypass the law under his powers as commander in chief.

After approving the bill last Friday, Bush issued a “signing statement” -- an official document in which a president lays out his interpretation of a new law -- declaring that he will view the interrogation limits in the context of his broader powers to protect national security. This means Bush believes he can waive the restrictions, the White House and legal specialists said.”

**Boston Globe, 2006**