

# Chapter 14: The Presidency in Action

## Section 2

### Lecture Notes

# AMERICAN GOVERNMENT

PEARSON

# ► Objectives

1. Identify the sources of the President's power to execute federal law.
2. Define the ordinance power.
3. Explain how the appointment power works and describe the limits on the removal power.
4. Examine the power of executive privilege.

## ▶ Key Terms

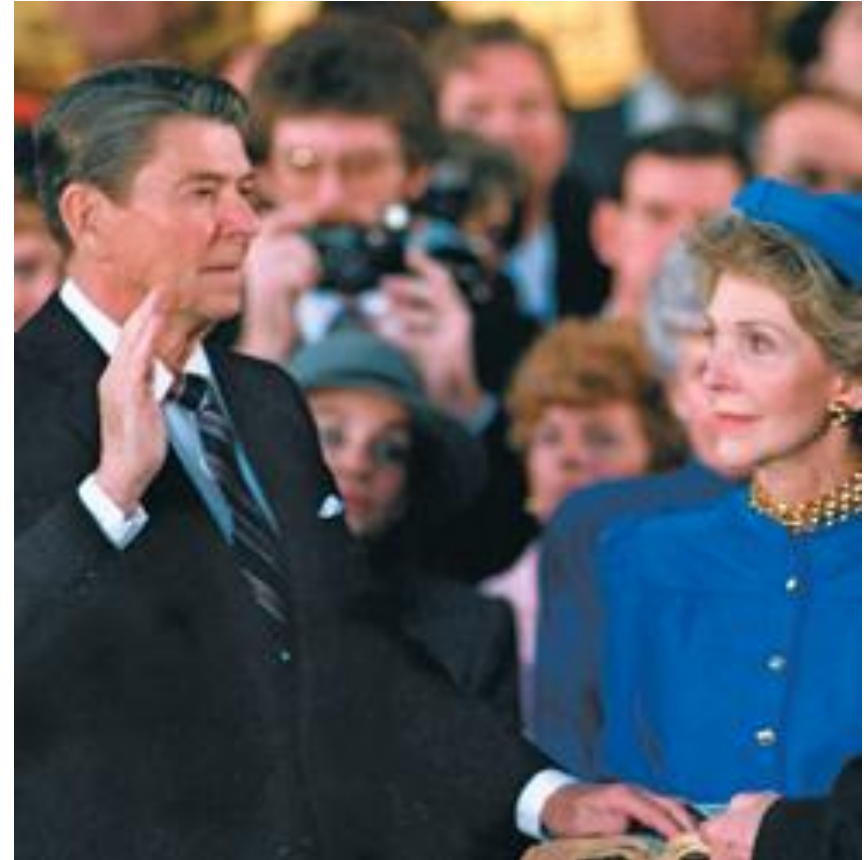
- **executive order:** directives, rules, or regulations issued by the President that have the force of law
- **ordinance power:** the authority to issue executive orders
- **executive privilege:** a right claimed by some Presidents that allows them to refuse to provide certain information to Congress or the federal courts

# ► Introduction

- What are the executive powers and how were they established?
  - The President:
    - Executes and interprets the law of the land
    - Issues executive orders
    - Appoints many public officials
    - Removes appointed officials
    - Can use executive privilege to withhold information from Congress and the federal courts
  - These powers come from the Constitution and from acts of Congress.

# ▶ The Chief Executive

- The President enforces and carries out *all* federal laws. This authority comes from two sources:
  - The **oath of office**, which requires the President to “faithfully execute the Office of President” and “protect and defend the Constitution.”
  - The **constitutional requirement** that the President “take Care that the Laws be faithfully executed.”





# ► Interpreting Laws

- Congress passes many laws that set out broad policies, but do not include specific details for enforcement.
- The President and other members of the executive branch must decide **how** these laws should be administered and enforced.
- To do so, they must often ***interpret the intent*** of these laws.

# ▶ The Ordinance Power

- The President can issue executive orders—rules and regulations that have the force of law. This is called the ordinance power.
  - The President must have this authority in order to use some of the executive powers granted by the Constitution.
  - In addition, Congress has delegated the authority to direct and regulate many legislative policies and programs to the President and the executive branch.

# ▶ The Appointment Power

- The Constitution grants the President appointment power, the ability to appoint some federal officials.
  - This power is necessary to ensure that presidential policies are carried out.
  - The President appoints some 3,000 of the 2.7 million federal workers.
  - The majority of the rest are hired according to civil service laws.



# ▶ Presidential Appointments

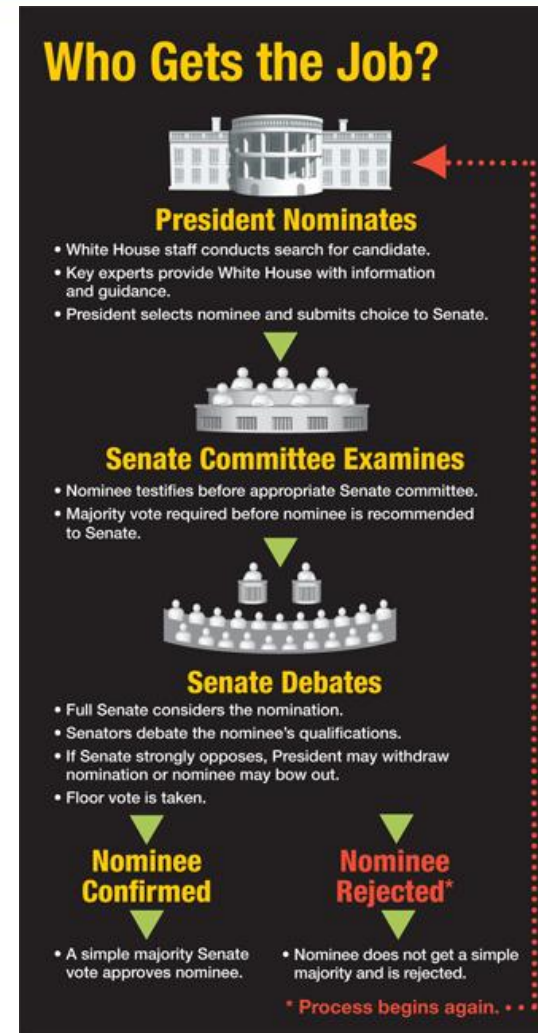
- Presidents appoint top-ranking officials such as:
  - **Cabinet members** and their top aides
  - **Ambassadors** and other diplomats
  - The heads of **independent agencies**
  - All **federal judges**, **U.S. marshals**, and **attorneys**
  - All officers in the **U.S. armed forces**
- These appointments must be approved by a majority vote of the Senate.

# ▶ Recess Appointments

- The president can make recess appointments to fill vacancies when the Senate is not in session.
  - These appointments expire at the end of the congressional term they were made.
  - They are controversial because they allow the President to bypass the Senate confirmation process.

# ▶ The Confirmation Process

- This graphic outlines the process of nominating and approving or rejecting a presidential appointee.
  - Under the custom of senatorial courtesy, the Senate will only approve federal appointees supported by the Senators from their state who belong to the President's party.



# ► Presidential Appointees

- Presidential appointees are sometimes criticized for lacking independence and simply parroting presidential views.
  - How might this parroting actually benefit the President?



# ▶ The Removal Power

- The Constitution does not say how appointed officers should be removed.
  - Some politicians wanted **Senate approval** for removals as well as appointments.
  - Others argued that the President must have the **power to remove incompetent appointees.**

## ▶ The Removal Power, cont.

- The First Congress gave the President the power to remove any appointed officer except for federal judges.
- Congress tried unsuccessfully to take the removal power away from President Andrew Johnson in 1867.



## ▶ The Removal Power, cont.

- In 1962, the Supreme Court ruled that the removal power was a key part of the President's authority to execute the laws.

## ► The Removal Power, cont.

- In 1935, the Court ruled Congress can set the conditions under which members of **independent regulatory agencies**, such as the Federal Trade Commission, may be removed from office.
  - This ruling applies only to a small number of appointed offices.
  - In general, the President can remove whomever they appoint.

# ▶ Executive Privilege

- At times, Presidents have refused to reveal certain information to Congress or the federal courts.
- Congress has never officially recognized the right of executive privilege.
  - The President's advisers and staff must be able to speak freely to give good advice. To do so, they must believe that their words are confidential unless the President chooses to reveal them publicly.
  - What is the court's stand on executive privilege?

# ► *United States v. Nixon*

- In the 1974 case *United States v. Nixon*, the Court ruled unanimously that the President could claim executive privilege in matters involving national security.
  - However, the Court also ruled that executive privilege cannot be used to prevent evidence from being heard in a criminal proceeding, as that would deny the 6<sup>th</sup> Amendment guarantee of a fair trial.



## ► Review

- Now that you have learned what the executive powers are and how they were established, go back to the Chapter Essential Question.
  - How much power should the president have?