

CIVICS IN REAL LIFE

Executive Actions

Civics is all around us. There is a lot to know about the government and how “We the People” interact with the government and each other. Let’s help each other expand our civic literacy.

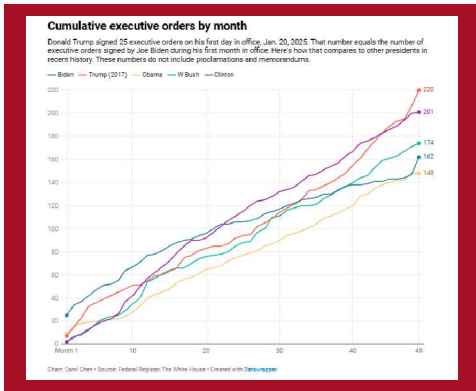


Hours after newly elected President Trump’s [inauguration](#), he sat behind his desk in the Oval Office and [signed](#) several executive orders. In the days that followed, more executive actions were signed, and 78 executive orders signed by his predecessor, President Joe Biden, were [rescinded](#). If the U.S. Constitution [gives](#) the legislative branch the power to create laws, what then are executive actions, and how do they work?

[Article II](#) of the U.S. Constitution grants presidents executive and enforcement power. It is up to the president as chief executive to determine how to enforce the law and manage the resources and staff of the federal government’s executive branch. In modern times, presidents have also used this broad power to influence policy without legislation. Presidents have three options for executive actions: executive orders, memoranda, and proclamations.

Executive orders are directives issued by the president that hold the weight of law. These orders direct the work of government officials and agencies. The purpose of an executive order is not to replace or contradict existing laws passed by Congress but more to fill in any holes when it comes to how the president wants to see a law enforced. It may result in a change to existing practices, implementation of new practices, or a course of action stopped. When writing/signing an executive order, presidents must explain the constitutional or legal authority they have to issue such an order, and all executive orders must be published and made [available to the public](#).

All presidents, except for William Henry Harrison, have issued executive orders. Earlier presidents, such as [George Washington](#), John Adams, and James Madison, used this power sparingly, each only issuing one executive order. Over time, their usage became increasingly popular. President Teddy Roosevelt was the first to issue over 1,000, and President Franklin D. Roosevelt holds the record at 3,721 during his 12 years in office. Most modern presidents tend to average in the hundreds. For example, former President Biden issued 162 executive orders, and President Trump issued 220 during his first term. While not all executive orders have a direct impact on the life of an average citizen, many have had historical significance, such as President Franklin Roosevelt’s [order](#) to intern Japanese-Americans during WWII or President Truman’s 1948 [executive order](#) desegregating the U.S. military.



The presidential power to issue executive orders is not an unchecked authority. While Congress does not need to approve an executive order and cannot overturn it, they do have the power to [pass legislation](#) that invalidates it. If the executive order requires funding, Congress can also stifle the order using the “power of the purse,” as they control government spending. In addition, individuals, groups, and/or states may challenge executive orders in court. The courts have the power to overturn executive orders if they find the president has gone beyond their constitutional authority or the content of the order is unconstitutional. President Lincoln’s order [suspending habeas corpus during the Civil War](#), President Truman’s order directing the Secretary of Commerce to [seize and operate most of the nation’s steel mills](#) during a labor strike, and President Obama’s order related to [immigration reform](#) are all examples of executive actions that were blocked by the courts.

While the executive order holds the most legal weight, presidents can also issue memoranda and proclamations. An executive memorandum is more like a letter or message the president uses to address administrative matters within the federal government. These are not required to be public. For example, in 1986 President Reagan [issued a memorandum](#) in which he outlined how all federal agencies should begin to implement drug-free workplace policies. The final type of executive action, proclamations, do not hold the weight of law and are typically used by presidents to provide information on topics such as holidays or commemorations. For example, President Washington’s [1789 Thanksgiving proclamation](#) or President Biden’s [proclamation](#) to announce the passing of former President Carter. However, sometimes a proclamation can cause public controversy, as it did when President Lincoln issued the [1863 Emancipation Proclamation](#) or President Ford’s proclamation that [pardoned](#) former President Nixon.

To Think and To Do: In his concurring opinion in [Youngstown Sheet & Tube Co. v. Sawyer](#), Justice Robert Jackson wrote,

“When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. . . .

When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. . . .

When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.”

Given Justice Jackson’s classification on the use of presidential power, how might a president best approach his use of executive orders under the Constitution?

Learn More:

- [Current Executive Actions, White House](#)
- [Executive Order Statistics](#)
- [Library of Congress](#)



Lou Frey Institute