

F O U R T H E D I T I O N

The Evolving Presidency

LANDMARK DOCUMENTS, 1787–2010

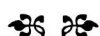
M I C H A E L N E L S O N , E D I T O R

The Evolving Presidency

Landmark Documents,

1787–2010

Fourth Edition



Michael Nelson, Editor

Rhodes College



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The Evolving Presidency

*To my sons, Michael and Sam,
and my grandson, McClain*



May our sons be like plants
growing strong from their earliest days.
(Psalm 144:12)

Preface

A User's Guide to *The Evolving Presidency*

Sometimes new wine actually does fit into old wineskins. E-mail and text-messaging seem to have restored the lost art of note writing, to the astonishment and delight of the parents of college students. Political Web sites offer a newfangled way for like-minded activists to find each other and hold old-fashioned meetings. In classrooms, the Web's vast store of information has revived interest in primary and documentary sources, which for so long relegated to textbook summaries important historical texts, such as what James Monroe actually said in announcing his famous doctrine, or how the Supreme Court reasoned in its decision ordering Richard Nixon to turn over the Watergate tapes. But, as many students have found from experience, the Web's very abundance of information can be overwhelming.

This book is my effort to weave together for students of the presidency the virtues of primary and documentary sources with those of careful, reliable editing and close treatment of political and historical context. The documentary record of the presidency is rich and varied, ranging from laws and Supreme Court decisions to speeches and tape recordings. This edition contains fifty-five documents, including additions that reflect historically significant recent events, such as Barack Obama's speech on race in America as a presidential candidate and his address to Congress and the nation on health care reform as president. It also fills gaps in the previous edition with the inclusion of the *Bush v. Gore* Supreme Court decision and Walter F. Mondale's pathbreaking memo to President Jimmy Carter about the vice presidency.

The emphasis in this edition is still on the founding and the modern presidency, although Thomas Jefferson is represented by two documents, Andrew Jackson by two, and Abraham Lincoln by four. Many documents are printed in full; others have been edited both to highlight those sections that have proven to be of enduring importance and to preserve the flavor of the original. All of the documents are preceded by essays that place them in political and historical context. I have

included a URL with each edited document, when available, for access to the complete, unedited text. Because of the ever-changing nature of the Web, however, readers should not assume that documents will always be available at the listed sites. Typing a phrase from the document into an Internet search engine box is a good alternate strategy.

Students and professors will find that *The Evolving Presidency* fits well in a course on the American presidency or American political development. The table of contents is chronological, but courses that are organized into topical units such as the president and the Constitution, the president and Congress, and presidential elections will benefit from the Topical Guide on pages 341–344.

The Topical Guide shows that a course unit on, say, the president and the bureaucracy can draw profitably on some or all of the following documents in this book: the Constitution (1787); *The Federalist Papers*, Nos. 69 through 73 (1788); James Madison's Defense of the President's Removal Power (1789); Andrew Jackson's First Message to Congress (1829); the Articles of Impeachment against Andrew Johnson (1868); the Pendleton Act (1883); *Myers v. United States* (1926); *Humphrey's Executor v. United States* (1935); Report of the Brownlow Committee (1937); the Cuban Missile Crisis (1962); Walter F. Mondale's Memo to Jimmy Carter on the Role of the Vice President (1976); *Immigration and Naturalization Service v. Chadha* (1983); and George W. Bush's Signing Statement for the Defense Supplemental Appropriations Act (2005). Some of these documents could be used in other units as well, providing ample flexibility for course use. The *Chadha* case, for example, would fit well in units on the president and the Constitution, the president and Congress, the president and the courts, or the president and domestic policy.

Librarians and researchers will find *The Evolving Presidency* to be a one-stop guide to the most important documents concerning the highest office in the land. A majority of presidents are represented in this book, several of them more than once. Ten Supreme Court decisions that have shaped the presidency are included. So are documents bearing on vital events in American history, such as the debate on the Constitution, the Civil War, the Great Depression, the civil rights movement, the Watergate scandal, and the war on terror.

Words generally serve me well, but they are inadequate to express my thanks to those involved in the publication of this book. I especially thank Brenda Carter, the director of CQ Press's College division, who recognized the book's possibilities at an early stage and advised me well at every step on the way to completion, and Charisse Kiino, CQ Press's always perceptive and encouraging College acquisitions editor, as well as Steve Pazdan, managing editor; Carolyn Goldinger, manuscript editor; Gwenda Larsen, production editor; Nancy Loh, editorial assistant; and Kate Stern, proofreader, all of whom worked on the book with grace and skill. I also thank David Barrett (Villanova University), Albert Cover (SUNY Stonybrook), David Greenberg (Rutgers University), Timothy S. Huebner (Rhodes College), Lauri McNown (University of Colorado), and Barry Tadlock (Ohio University) for their helpful comments on the previous editions of the book.

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The Constitution*

(1787)

ON FEBRUARY 21, 1787, Congress passed a resolution calling for “a Convention of delegates who shall have been appointed by the several states to be held in Philadelphia for the sole and express purpose of revising the Articles of Confederation.” The government that had been created by the Articles in 1781 was widely regarded as having a number of weaknesses, including insufficient powers and the absence of an executive branch.

The convention met from May 25 to September 17, 1787. The delegates went far beyond their charter, drafting an entirely new plan of government that, if approved by nine of the thirteen states, would replace the Articles. The proposed Constitution was ratified by the ninth state (New Hampshire) on June 21, 1788, and took effect on March 4, 1789.

The presidency is arguably the Constitution’s most original feature. Yet although Virginia delegate James Madison often is referred to as “the father of the Constitution,” his paternity does not extend to the executive branch. Madison’s views about the national executive were vague and variable. Like most of the delegates, he feared both executive power and executive weakness, regarding the former as the seed of tyranny and the latter as the wellspring of anarchy.

The convention considered a number of proposals in the course of inventing the presidency. The ideas ranged from Connecticut delegate Roger Sherman’s suggestion of a committee-style executive that would be elected by Congress for the sole purpose of “carrying the will of the Legislature into effect,” to New York delegate Alexander Hamilton’s plan for a one-person “Governor” chosen by electors and granted vast powers and lifetime tenure. Hamilton’s plan was considered too extreme, but other delegates—notably James Wilson and Gouverneur Morris, both of Pennsylvania—nevertheless succeeded in

*Go to www.law.ou.edu/bist/constitution.

persuading the convention to create a strong presidency. The near-certain knowledge that George Washington, who presided over the convention, would be the first president was a source of reassurance to many delegates.

Most of what the Constitution says about the presidency is in Article II. It provides that the president is elected by an Electoral College to a four-year term and is empowered, among other things, to recommend legislation to Congress; to appoint, with the Senate's advice and consent, judges and executive officials; to command the army and navy; to negotiate treaties; and to issue pardons. Congress may impeach and remove a president for committing acts of "Treason, Bribery, or other high Crimes and Misdemeanors."

Other provisions of Article II include qualifications for president, the presidential oath, and a restriction on the ability of Congress to change the salary of an incumbent president. The Constitution also created the vice presidency and charged the vice president (originally, the second-place finisher in the presidential election) to serve as president of the Senate and successor to the president should the office become vacant. Article I, which deals with Congress, is the source of the president's power to veto congressional legislation.

Several constitutional amendments have dealt with the presidency and vice presidency. The Twelfth Amendment (1804) adapted the Electoral College to the rise of political parties by requiring electors to cast separate ballots for president and vice president. The Twentieth Amendment (1933) advanced the start of the president's term from the March 4 after the election to January 20. The Twenty-second Amendment (1951) imposed a two-term limit on the president. (The framers had felt strongly that there should be no limit on presidential eligibility.) The Twenty-fifth Amendment (1967) charged the president, with confirmation by Congress, to appoint a vice president when the vice presidency becomes vacant. It also created procedures to govern situations of presidential disability. Other constitutional amendments have affected the circumstances under which presidents are elected, such as the Twenty-third Amendment (1961), which granted the District of Columbia the right to participate in presidential elections, and the Twenty-fourth Amendment (1964), which barred the poll tax from all federal elections.

Article I

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. . . . The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. . . . The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law. . . .

SECTION 6. . . . No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION 7. . . . Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him,