

## Section 2

# Three Branches of Government

### Reader's Guide

#### Key Terms

expressed powers, enumerated powers, elastic clause, federal bureaucracy

#### Find Out

- Why did the Constitution specifically describe the powers of Congress, but remain vague about the powers of the president?
- Which of the three branches of federal government seems to have the most power today?

#### Understanding Concepts

**Separation of Powers** What is the chief function of each of the three branches of the federal government?

### COVER STORY

## Court Says No to Nixon

WASHINGTON, D.C., JULY 1974

The Supreme Court ruled today that President Richard M. Nixon must surrender tape recordings that have long been sought by the House and Senate judiciary committees investigating the 1972 break-in at Democratic Party headquarters. The justices rejected 8-0 the president's argument that recordings of Oval Office conversations are protected by executive privilege and by the doctrine of separation of powers. The Court ordered Nixon to turn over the tapes to Watergate special prosecutor Leon Jaworski. It is widely believed that the tapes contain evidence of the president's involvement in a cover-up of the break-in.

**MR. PRESIDENT:  
RELEASE  
the  
TAPES!**


**A plea for the truth**

Article I of the Constitution created a legislature of two houses: the Senate and the House of Representatives. The House was to be the voice of the people, chosen by popular vote. The Senate represented the broad interests of entire states, and senators were originally chosen by their state legislatures. Qualifications for senators were more rigorous than those for members of the House. Yet, in many ways, the House and Senate had equal powers.

Article II created the executive branch of government. The presidency was an entirely new concept in 1787, and the need for the office of the president was hotly debated by the Founders. The provisions for a four-year term, appointment powers, control of the armed forces, and foreign policy decisions were the result of compromises. A president with specified, limited powers was further guarded by an impeachment clause.

Article III established the judicial branch. The Constitution established only one court—the Supreme Court. It gave Congress authority to set up additional courts as the need arose. In recognition of the already operating state courts, the Constitution limited federal jurisdiction to cases arising under the Constitution, the laws of the United States, or to controversies that went outside the jurisdiction of state courts.

## The Legislative Branch

 The Founders attached great importance to lawmaking and expected Congress to become the most important branch of the national government. At the same time, however, they feared the abuse of power. Their experience with the British Parliament had shown that legislatures with unchecked powers could pass repressive laws and endanger liberty. Consequently, the powers they gave Congress, unlike those enjoyed by the president and the Supreme Court, are **expressed powers**, powers directly stated in the Constitution.



## Seats of Governmental Power

**Present** The U.S. Capitol, located on Capitol Hill, is one of the nation's most familiar landmarks. It contains the current Senate and House chambers.

**Past** The first seat of Congress contained many symbols, such as an American eagle insignia and 13 arrows and the olive branch united, to mark it as a federal building.

**Symbols of Government**  
What does the U.S. Capitol symbolize to you?



**Enumerated Powers** Most of the expressed powers of Congress are itemized in Article I, Section 8. These powers are also called **enumerated powers** because they are numbered 1–18. Five enumerated powers deal with economic legislation—the power to levy taxes, to borrow money, to regulate commerce, to coin money, and to punish counterfeiting. Seven enumerated powers provide for defense—the power to punish piracies, to declare war, to raise and support armed forces, to provide a navy, to regulate the armed forces, to call forth the militia, and to organize the militia. In addition to these powers, Section 8 provides for naturalizing citizens, establishing post offices, securing patents and copyrights, establishing courts, and governing the District of Columbia.

The final enumerated power is the so-called **elastic clause**. This clause gives Congress the right to make all laws “necessary and proper” to carry out the powers expressed in the other clauses of Article I. It is called the elastic clause because it lets Congress “stretch” its powers to meet situations the Founders could never have anticipated.

What does the phrase “necessary and proper” in the elastic clause mean? Almost from the beginning, this phrase was a subject of dispute. The issue

was whether a strict or a broad interpretation of the Constitution should be applied. The dispute was first addressed in 1819, in the case of *McCulloch v. Maryland*,<sup>1</sup> when the Supreme Court ruled in favor of a broad interpretation. The Court supported the idea that the elastic clause gave Congress the right to make any laws necessary to carry out its other powers.

**Congress Then and Now** The first home of Congress was Federal Hall in lower Manhattan, New York. (It moved to Philadelphia near the end of the second year, 1790.) The House met downstairs; the Senate, on the upper floor. Under the direction of Speaker Fredrick A. Muhlenberg, the House named a committee to establish rules and procedures. As soon as the Senate had its twelfth member—a quorum—it informed the House that it was ready for a joint session to count the electoral votes. House members climbed the stairs and helped count the electoral votes that named George Washington and John Adams president and vice president.

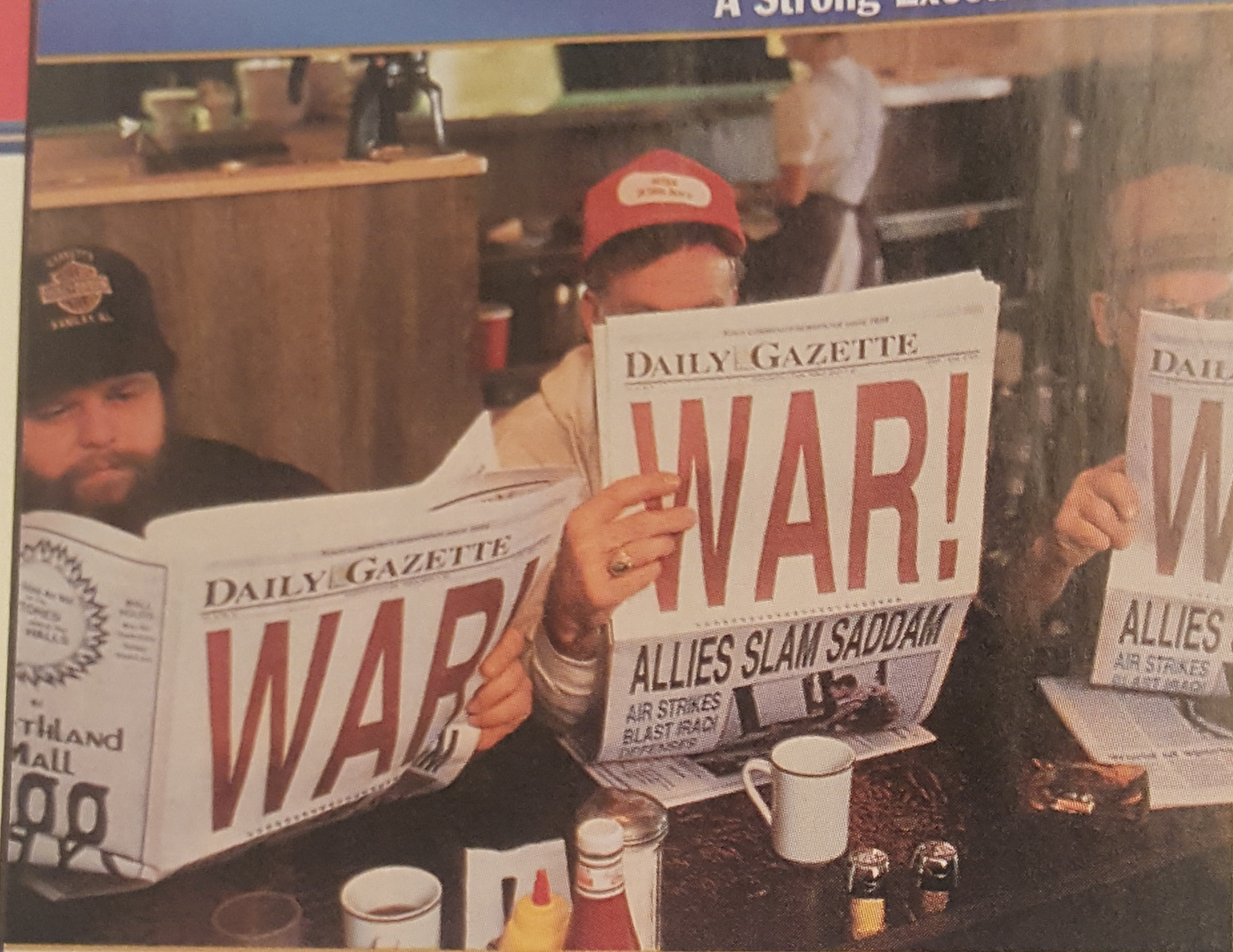
See the following footnoted materials in the Reference Handbook:  
1. *McCulloch v. Maryland* case summary, page 761.

## COOPERATIVE LEARNING ACTIVITY

**Comparing the Executive Branch Then and Now** Organize the class into small groups to create a bulletin board display showing the history of the executive branch. Some groups could do research, others could create illustrations and charts for comparison include the pre-1789 process of travel



## A Strong Executive




### Modern Entanglements

George Washington warned future presidents to avoid foreign entanglements. In 1990, though, President George Bush persuaded other nations to join Operation Desert Shield to free Kuwait from invading Iraqi forces. *In today's world, do you think that it is possible for American presidents to avoid foreign entanglements? Why or why not?*

Once the structure of the House and Senate was in place, each body began to work on legislation. By 1795, four permanent committees had formed. In the first Congress, the Senate introduced only 24 bills, and the House introduced 143. By comparison, today a total of about 10,000 bills are introduced yearly.

Attendance in legislative sessions was only a part-time job for many years. Members had other jobs or were wealthy enough not to work. Congress did not sit in continuous session until the mid-twentieth century. Today members of Congress live and work nearly year-round in Washington, D.C.


## The Executive Branch

 The office of the presidency was initiated in response to the weakness of the Articles of Confederation. It was significant that the office was described in the second, not the first, article of the Constitution. Like those of Congress, presidential responsibilities and powers have grown enormously since George Washington took office in 1789.

**Vague Constitutional Powers** The president is head of the executive branch. The Founders recognized the need for a strong executive to carry

out the acts of Congress. They also distrusted direct participation by the people in decision making, fearing that mass democratic movements might try to redistribute personal property. The executive branch, they believed, could protect liberty, private property, and business. The executive branch could also hold the actions of the legislative branch in check.

The Constitution grants the president broad but vaguely described powers. The exact meaning of the president's power in specific situations is open to interpretation. Article II<sup>1</sup> begins simply by stating: "The executive Power shall be vested in a President of the United States of America." Some scholars call this sentence the "wild card" in the deck of presidential powers. What they mean is that this sentence may be "played," or interpreted, in different ways, like a wild card in a card game. For example, under the executive power, the president can fire officials in the executive branch, make agreements with foreign nations, or take emergency actions to save the nation, even though none of these powers is specifically mentioned in the Constitution.

 See the following footnoted materials in the Reference Handbook:  
1. The Constitution, pages 774–799.



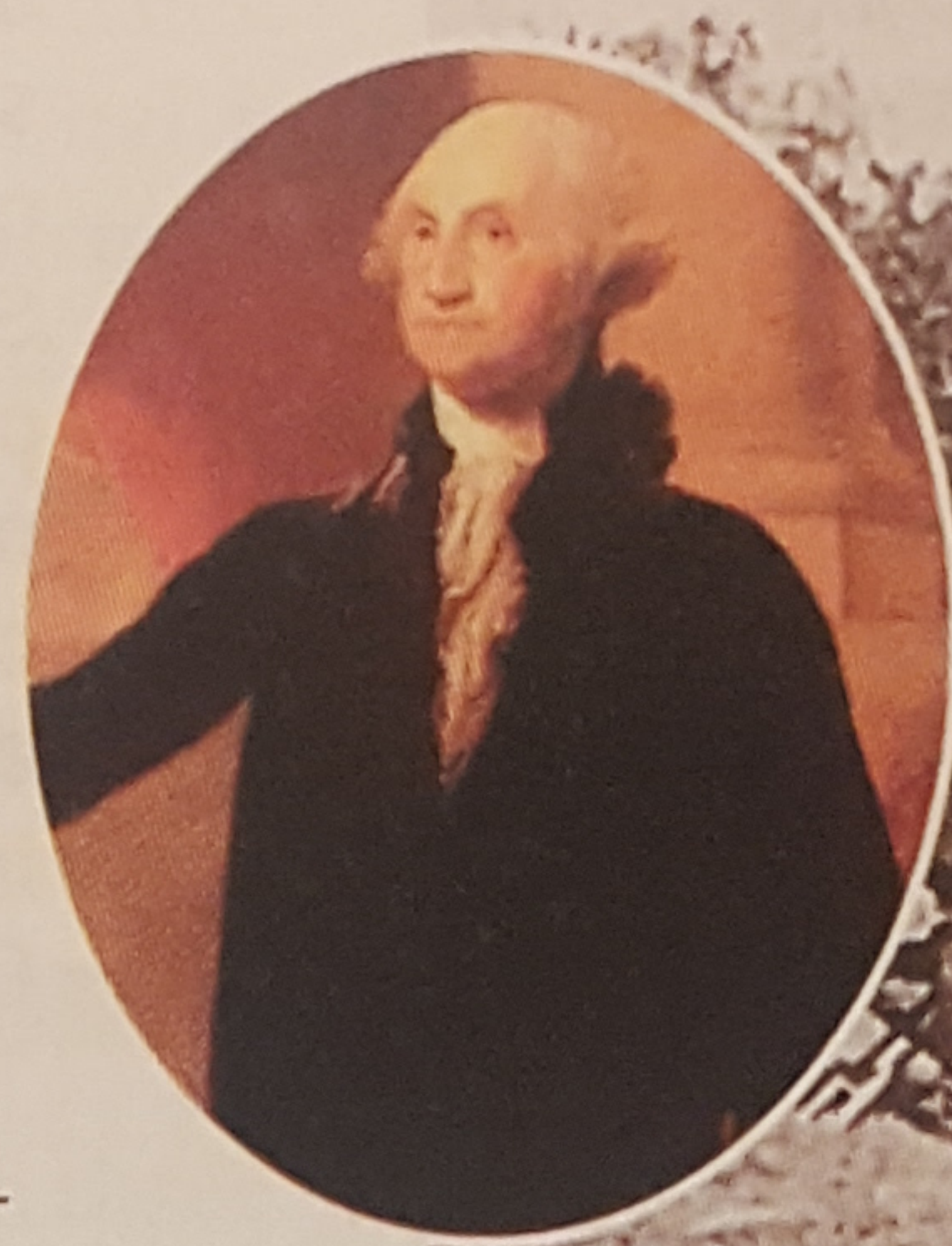
**Specific Powers** Sections 2 and 3 of Article II do define some presidential powers. The president (1) is commander in chief of the armed forces and the state militias (National Guard) when they are called into service; (2) appoints—with the Senate’s consent—heads of executive departments (such as the Department of Labor); (3) may pardon people convicted of federal crimes, except in cases of impeachment, or reduce a person’s jail sentence or fine; (4) makes treaties with the advice and consent of the Senate; (5) appoints ambassadors, federal court judges, and other top officials, with Senate consent; (6) delivers an annual State of the Union message to Congress and sends Congress other messages from time to time; (7) calls Congress into special session when necessary; (8) meets with heads of state, ambassadors, and other foreign officials; (9) commissions all military officers of the United States; and (10) ensures that the laws Congress passes are “faithfully executed.”

**The Presidency Then and Now** Presidential government was a novel idea in 1789. Much would depend on the character of the person holding the office. Everyone knew, and even discussed openly at the Constitutional Convention, that George Washington was the likely choice. Washington did not seek the office. He wrote his friend, the Marquis de Lafayette:

“All that may be necessary to add, my dear Marquis, in order to show my decided predilection [preference], is that (at my time of life and under my circumstances) the [i]ncreasing infirmities of nature and the growing love of retirement do not permit me to entertain a wish beyond that of living and dying an honest man on my own farm.”

—George Washington

When pressed into service, Washington was very careful about the discharge of his duties, knowing that every

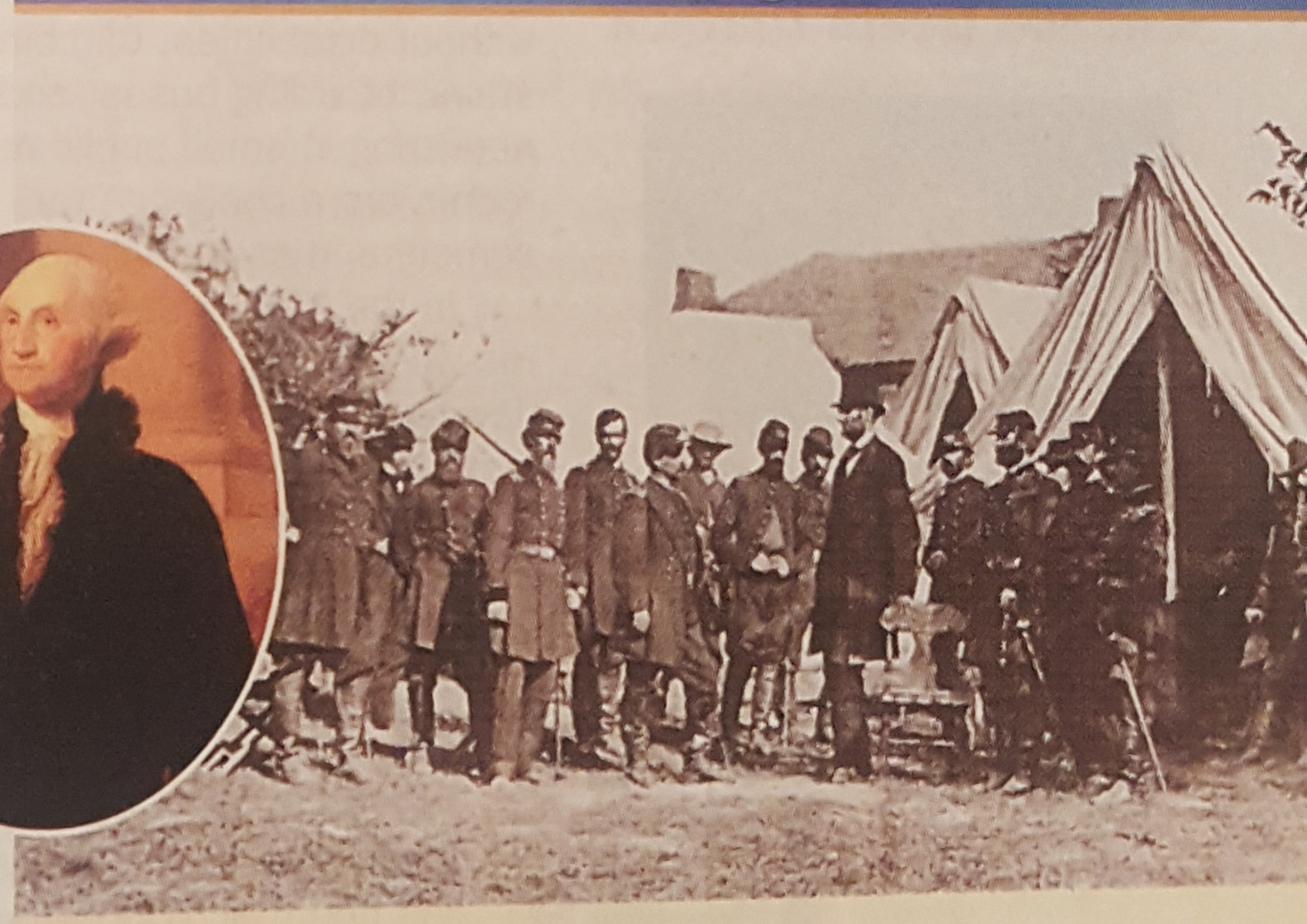


act would set a precedent. Inundated with requests for jobs in the executive branch, he refused to show any partiality to friends and relatives. After two terms he retired to private life, stating that two terms were sufficient for anyone.

Early presidents would not recognize the office today. President Washington had so little to do on some days that he advertised in the newspaper the times when he would entertain visitors. He held tea parties for anyone “properly attired” on Friday evenings. Washington had only a handful of advisers and staff. By 1800, when President Adams moved to Washington, D.C., the second president’s papers were packed in only seven boxes.

In contrast, modern presidents’ schedules are timed minute by minute. Presidents preside over a White House staff numbering in the hundreds, a military force of millions, and a vast **federal bureaucracy** made up of all executive branch employees. The Chief Executive meets with officials on a tight schedule, often working into the night. A fleet of airplanes and helicopters stands ready to carry the president and close advisers to any part of the nation or the world.

**A Changing Office**




**Presidential Leadership** George Washington set many precedents as president. Washington, although a brilliant leader, was cautious. During the Civil War, President Lincoln boldly used measures to quiet opposition, even though such measures violated constitutional guarantees of free speech, press, and assembly. **What outside forces shaped Washington and Lincoln’s view of the presidency?**

**CRITICAL THINKING ACTIVITY**

**Synthesizing Information** Until 1951, when the Twenty-second Amendment was passed, it was legal for a president to be elected to more than two terms in office, although only one president (Franklin D. Roosevelt) actually served more than two terms. Ask students to discuss the pros and cons of the issue. (Pros include the benefits of experience; a president would not include the danger of a president gaining too much



## The Judicial Branch

 If judged by the length of Article III, the judicial branch appears to be the weakest of the branches of government. After naming the Supreme Court, the Constitution allows Congress to establish all “inferior” courts. The Framers were not concerned about the power of the justices, allowing them to hold office for life.

**Jurisdiction of Federal Courts** The judiciary of the United States has two different systems of courts. One system consists of the federal courts, whose powers derive from the Constitution and federal laws. The other includes the courts of each of the 50 states, whose powers derive from state constitutions and laws. Some have described the two-court systems existing side by side as a dual court system.

Every court has the authority to hear only certain kinds of cases. This authority is known as the jurisdiction of the court. Two factors determine the jurisdiction of federal courts—the subject matter of the case and the parties involved in it. Federal courts try cases that involve United States laws, treaties with foreign nations, or interpretations of the Constitution. Cases involving admiralty or maritime law—the law of the sea, including ships, their crews, and disputes over actions and rights at sea—also come under federal court jurisdiction. Federal courts also try cases involving bankruptcy.

**Federal Courts Then and Now** When the federal government moved to Washington, D.C., in 1800, the capital architects forgot to design a building for the Supreme Court! Two weeks before the start of its term, the Court was assigned a small

## We the People

### Making a Difference

#### Sam and Geeta Dardick



Access for those with disabilities



Sam Dardick had polio as a child, resulting in permanent physical disability. Every day he faces obstacles that go unnoticed by most people without disabilities. Climbing stairs, boarding buses, and maneuvering in small public restrooms are a challenge for someone in a wheelchair.

In the 1960s Sam married. His wife, Geeta, who does not have a disability, started to see firsthand some of the challenges her husband faced. At the time there were no national laws requiring businesses to provide access to people with disabilities. “Sam’s wheelchair was a problem for both of us. We’d try to rent an apartment and find that 100 percent of them had stairs. We’d go to the movies: stairs again. We’d plan to take the bus . . . more stairs,” she said.

When the Dardicks moved to California in the

1970s, they found that the state had wheelchair accessibility laws but needed help to enforce them. Geeta and Sam worked thousands of hours to raise community awareness and to police the construction sites of new buildings to make sure people with disabilities were taken into consideration. “We marched for access to public transportation in San Francisco, testified for accessible apartments in Sacramento, busted inaccessible city council meetings in Nevada City, and started an Independent Living Center in Grass Valley,” Geeta said.

The Dardicks helped to bring about the passage of the Americans with Disabilities Act (ADA) in 1990. This was the first national civil rights bill for people with disabilities. The law requires all public places to be wheelchair accessible. It also prohibits job discrimination against persons with physical or mental disabilities.

## INTERDISCIPLINARY CONNECTIONS ACTIVITY

**Architecture** Have students find out about the history and architectural style of Washington, D.C.’s, governmental buildings, such as the Supreme Court Building, the Smithsonian, the National Archives, the Library of Congress, or the White House. Have students present their findings in an illustrated report. Some students may wish to work together to design a model of one of these buildings.



## The Early Presidency




**The Roles of the President** Shown here in *The Republican Court* by Daniel Huntington, the president held this reception in New York City in 1789 to honor his wife, Martha. In his spare time, Washington often entertained guests. **Why have the president's duties increased over the past 200 years?**

chamber on the main floor of the Capitol. In the beginning, justices of the Supreme Court were assigned to "ride circuit," meaning that when the Supreme Court was not in session, they had to hear appeals in faraway district courts. John Jay, the first chief justice, who resigned in 1795, later declined President Adams's nomination to serve again because of the strain of such duty.

Congress created the modern federal court system in 1891, but the Supreme Court did not have its own building until 1935. Despite this humble history, the Supreme Court today heads a powerful branch of government. It has carved out power in a number of landmark cases beginning with *Marbury v. Madison* in 1803. In that case Chief Justice John Marshall announced that the Judiciary Act of 1789 gave the Court more power than the Constitution allowed. Thus, the act was unconstitutional. The power to declare laws unconstitutional, known as judicial review, elevated the Supreme Court to a status balancing the powers of the other branches.

When it rules on constitutional issues, the Supreme Court cannot be overturned except by a constitutional amendment. But Congress can effectively overturn a Supreme Court decision interpreting a federal statute by enacting a new law.

## Shared Power and Conflict

 The Constitution created three separate branches of government. It spelled out some specific areas in which those branches would cooperate, such as in passing legislation, conducting war, and spending money. Many of the working relationships among the three branches, however, are not specifically mentioned in the Constitution. These relationships developed over time during the normal ebb and flow of government operation and policy creation.

**The President as Legislator** The executive and legislative branches must work together closely in order for legislation to become effective policy. Without cooperation among the branches the government can do little, if anything, to address the nation's problems or serve its needs.

In practice, the executive branch provides plans for much of the legislation that Congress considers. The presidential initiative in legislation is mentioned in Article II, Section 3, of the Constitution:

“He shall, from time to time, give the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient . . . .”

—Article II, Section 3

The president proposes much of the legislative agenda and spells out the details of programs that are enacted into law. In order for programs to be

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## EXTENDING THE CONTENT

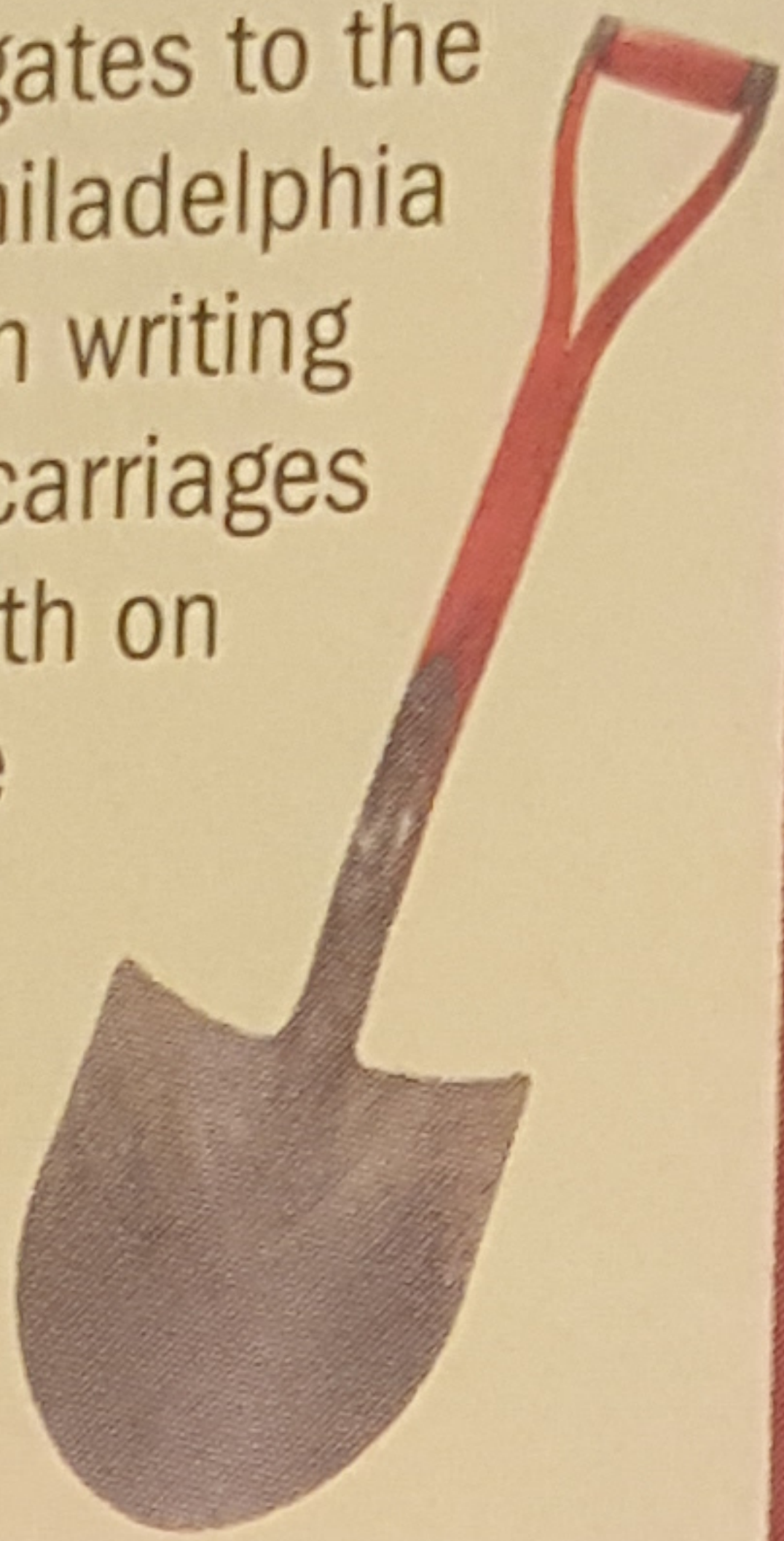
**The Cabinet** George Washington started the tradition of holding cabinet meetings in which the heads of the executive departments were called upon to give their advice on various matters. The first cabinet consisted of Thomas Jefferson (secretary of state), Alexander Hamilton (secretary of the treasury), Henry Knox (secretary of war), and Edmund Randolph (attorney general). Today the cabinet has 15 departments (State, Treasury, Defense [formerly War], Justice, Interior, Agriculture, Commerce, Labor, Housing and Urban Development, Transportation, Energy, Education, Health and Human Services, Veterans Affairs, and Homeland Security).



# TIME

## For the Record

**Quiet, Please!** The delegates to the Constitutional Convention in Philadelphia really needed to concentrate on writing the Constitution. The sound of carriages and carts passing back and forth on cobblestone streets outside the Pennsylvania State House bothered the delegates. Therefore, they hired people to shovel dirt onto the street outside to muffle the noise.



effective, the executive branch must have the power to carry out legislative enactments. This often involves creation of a bureaucracy to carry out the details of policy.

**The President vs. Congress** While cooperation between the executive and legislative branches is necessary, several sources of conflict between these two branches have developed. The expansion of presidential power has changed the structure of the national government without formal changes in the Constitution. The growing power of the executive has, at times, troubled Congress. At other times, presidents have charged Congress with attempts to encroach upon executive power.

Another source of conflict between the branches stems from the responsibility of Congress to monitor the way the executive branch enforces the laws. Sometimes the two branches quarrel over the way the president interprets the will of Congress in bills it has passed. When this happens, the federal courts may be called upon to interpret the intent of Congress on a case-by-case basis.

Occasionally, however, Congress has been accused of yielding too much power to the Chief Executive. For example, in

1935 the Supreme Court nullified the law creating the National Recovery Administration (NRA). In the majority opinion Chief Justice Hughes said:

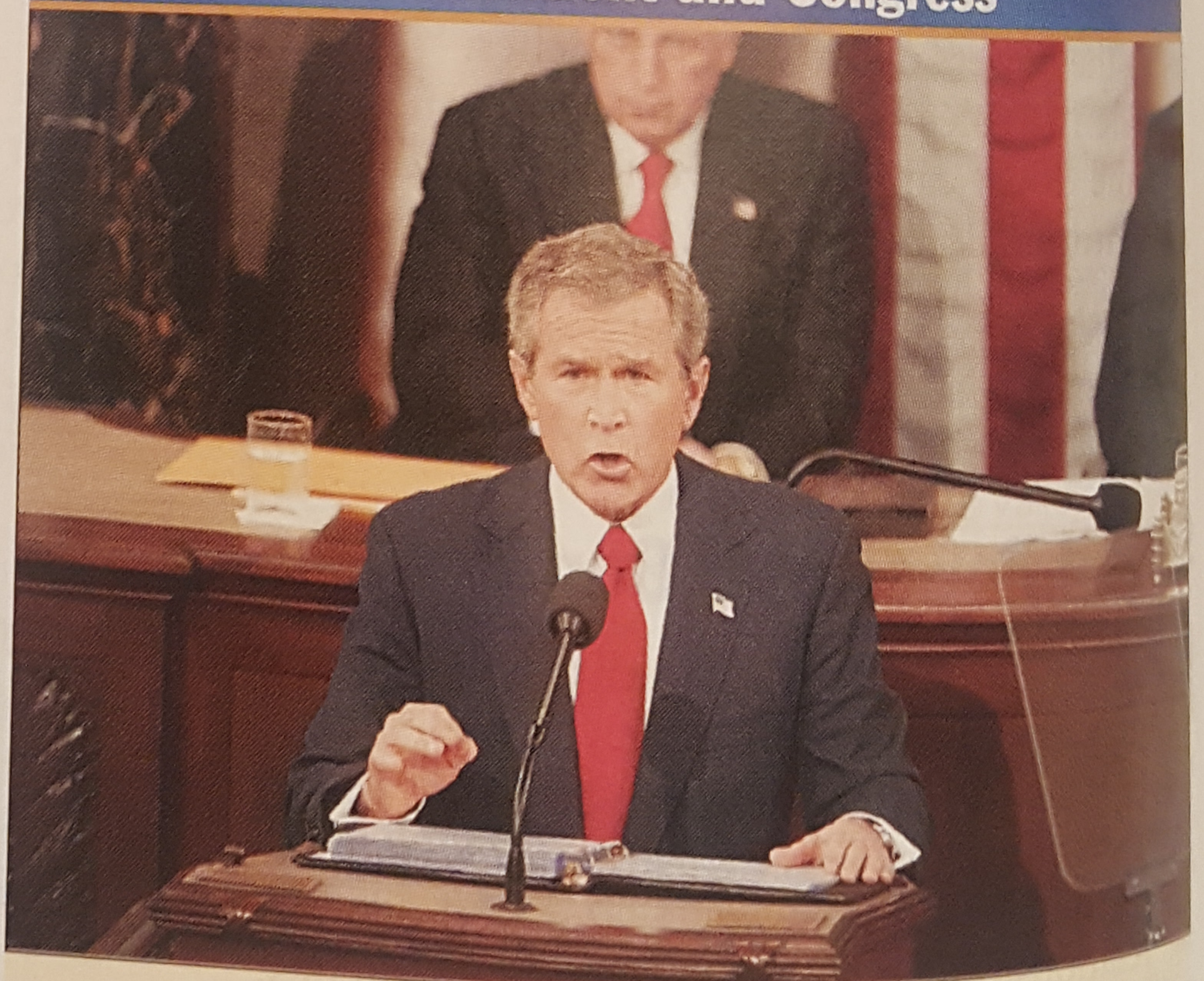
“Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade or industry.”

—Charles Evans Hughes, 1935

Finally, the development of political parties has created a source of conflict. If the executive office is controlled by one party and the legislature by another party, cooperation is unlikely. Each party has a different agenda, different constituents to please, and even a different philosophy of government. At best, different parties in the executive and legislative branches develop carefully studied compromise policies. At worst, they develop gridlock in which nothing productive can be accomplished.

**Congress vs. the Courts** The Constitution gave Congress power both to create the lower federal courts and to limit the jurisdiction of the Supreme Court. Congress, however, has been

### The President and Congress



**Legislative Proposals** President George W. Bush outlines his legislative proposals to Congress. **What is the purpose of the president's annual State of the Union Address?**



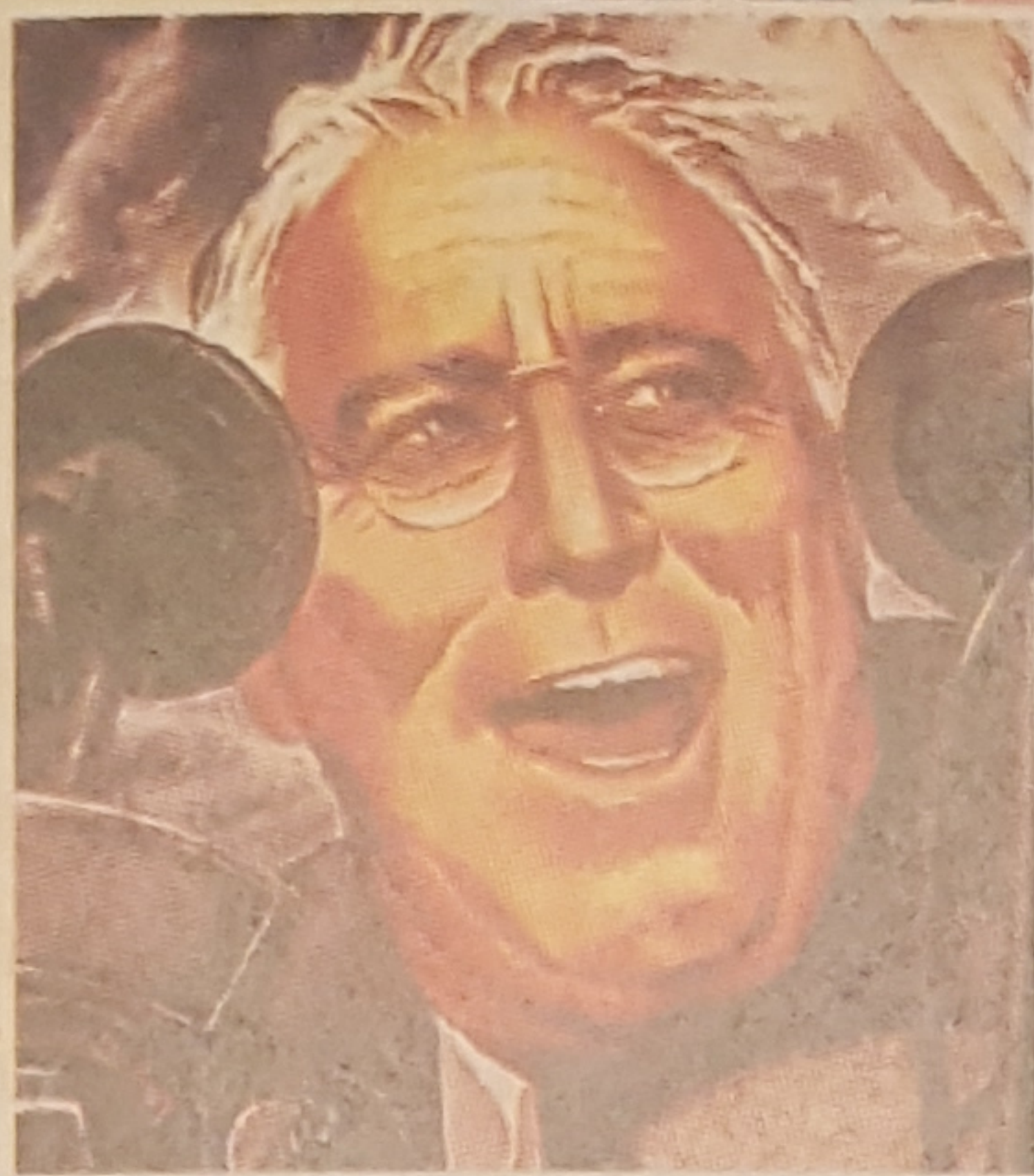
NRA quilt

### A Time of Crisis

#### Separation of Powers

President Roosevelt's New Deal policies challenged many of the traditional views on the separation of powers.

**How can a time of crisis affect the public's opinion on the role of the national government?**



reluctant to use this authority. When the Supreme Court in 1964 ruled that both houses of state legislatures must be reapportioned on a population basis, the United States House of Representatives passed a bill to strip the Supreme Court and all federal courts of jurisdiction over state legislative redistricting. The Senate, however, killed the bill.

#### The Supreme Court vs. the President

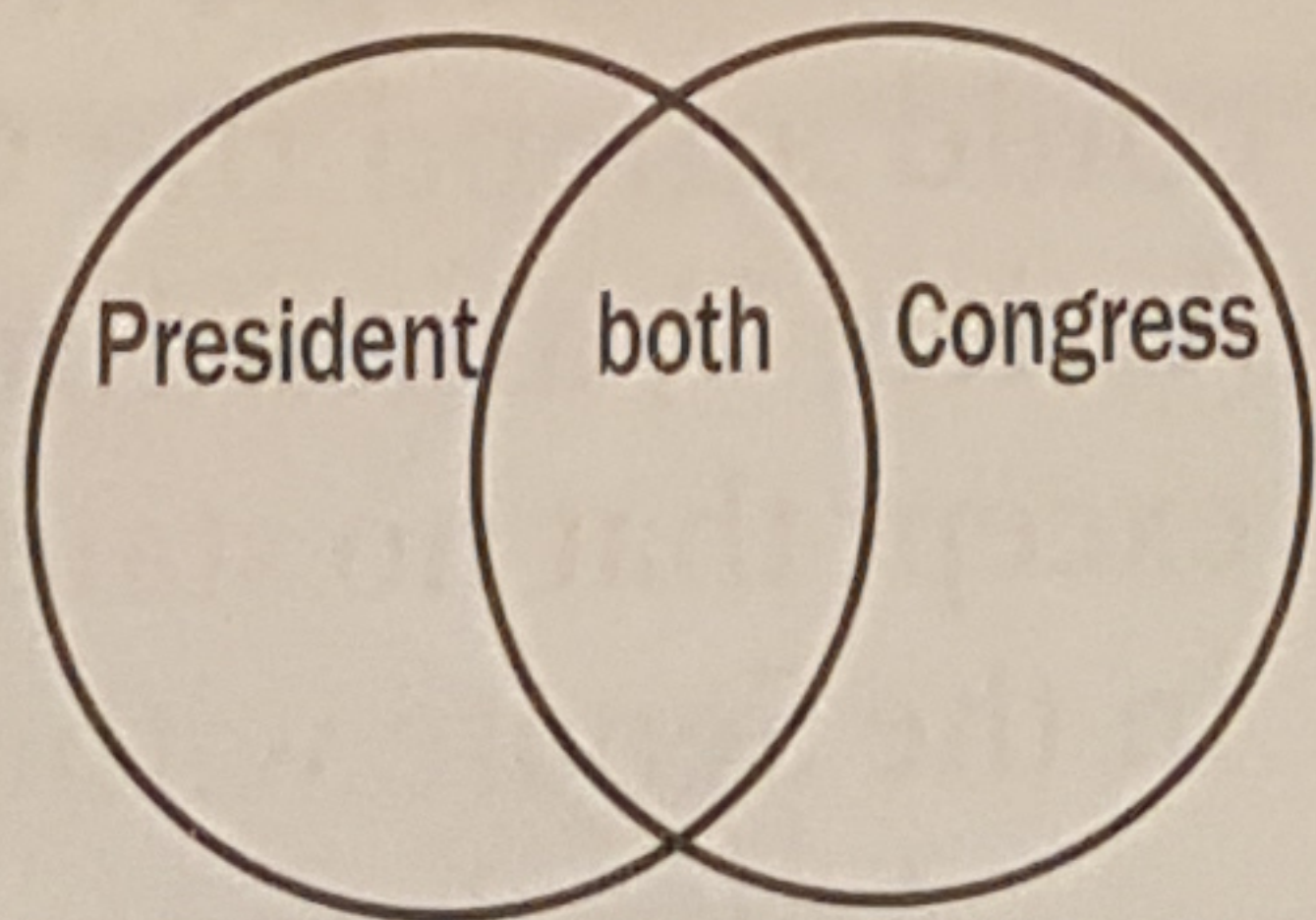
Some Supreme Court decisions require compliance by the president in order that the decisions may be carried out. Occasionally, a president who

disagrees with the Court may refuse to enforce its decision. In the 1830s, the Court upheld the rights of the Cherokee against the state of Georgia. It denied the state of Georgia the power to pass laws affecting Native Americans living there. President Andrew Jackson, however, refused to provide military force to carry out the Court order. In another instance, President Franklin Roosevelt indicated he would not obey adverse decisions in two separate pending cases. In both instances the Court avoided conflict by ruling in favor of the president.

### Section 2 Assessment

#### Checking for Understanding

- Main Idea** Using a Venn diagram, analyze the different functions of the president and Congress in passing legislation and the functions they share.
- Define** expressed powers, enumerated powers, elastic clause, federal bureaucracy.
- Identify** *McCulloch v. Maryland*.
- Identify five powers of the president.
- What two systems of courts make up the judiciary of the United States?
- How can Supreme Court decisions be overturned?



#### Critical Thinking

- Making Comparisons** What information would you need to determine which branch of the federal government has the greatest power? Formulate questions to obtain needed information.

### Concepts IN ACTION

**Separation of Powers** One of the cases heard by the Supreme Court involved the ruling that televising court proceedings does not necessarily deny defendants the right to a fair trial. Conduct an opinion poll to find out whether people favor or oppose televised trials. Chart the responses and summarize the poll results.

### Section 2 Assessment Answers

session; meets with heads of state and other foreign commissions military officers; ensures tha