**How much authority should a president have in times of crisis?**

The proper scope of presidential power remains vigorously debated not only by Congress and presidents but also by the courts and the public. Debate is particularly heated during a time of crisis. Law professor Daniel Farber has summarized five major arguments for presidents taking unauthorized action to meet emergency situations. Each of the arguments has appealing features and significant shortcomings.

In groups of two or three, identify those appealing features as well as the shortcomings of each argument. Be prepared to share your views with the class.

**Argument 1** As chief executive the president has inherent power to preserve society and protect the nation. When the nation is faced with disaster, the people expect the president to take decisive action with or without specific legal authority.

**Argument 2** The vesting clause declares, “The executive power shall be vested [entrusted or granted] in a President of the United States of America” (Article II, Section 1). This means that the president possesses vast and general powers that have never been defined in the Constitution. The president may take whatever action is required under the circumstances so long as it is not solely within the jurisdiction of another branch or prohibited by the Constitution.

**Argument 3** The president is required to take the following oath before entering office (Article II, Section 8):

I do solemnly swear (or affirm) that I will faithfully execute the office of the President of the United States, and will to the best of my ability, preserve, protect, and defend the Constitution of the United States.

No other official is required to take this oath. This language does not grant any additional powers, but it requires the president to use whatever powers he does have as needed to achieve certain ends.

**Argument 4** Article II, Section 3, requires that the president “shall take care that the Laws be faithfully executed and shall Commission all the Officers of the United States.” This is phrased as a duty rather than a grant of power, but it does make the president responsible for seeing that his or her subordinates faithfully enforce the laws. The words “take care” presumably give the president some discretion in implementing the laws.

**Argument 5** In the president’s role as commander in chief (Article II, Section 2) the president exercises a vast array of “war powers” during periods of war or threat of war. The president also is supreme commander of the state National Guard units when they are called into federal service. Under his war powers the president may employ U.S. forces anywhere in the world. As has happened many times in American history, the president may order them into action against a foreign foe without a declaration of war by Congress.

STATE HEARING QUESTIONS

2009–2010

Unit Four: How Have the Values and Principles Embodied in the Constitution Shaped American Institutions and Practices?

1. Presidential power has increased dramatically since the early 1930s. What factors have contributed to that growth of power? On balance, is the growth of presidential power a healthy or a detrimental development? Why?

•How is the system of checks and balances designed to limit the exercise of presidential power and how well does it work?

•How can public opinion affect presidential power?