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**The EXECUTIVE BRANCH**

One of the difficult questions facing the framers was that of a chief executive. Clearly, a single leader with broad but limited powers was needed to carry on the daily business of government. Life under King George III had convinced them they did not want a king, though. Rather, the nation needed an elected official who would work for the interests of a majority of the citizens. **Article II, Section 1** sets up a system for electing a President and lists the requirements for holding office. **Sections 2 and 3** define the President's powers and duties. Because the framers feared that officials might abuse their powers, **Section 4** sets up a system for *impeachment*, or formally charging the President or other officials with misconduct. This is another new and unique feature in our Constitution.



## ARTICLE II



### SECTION 1: President and Vice-President

1. *Term of office.* As the nation's chief executive, the President is responsible for carrying out the laws made by Congress and for upholding the Constitution, the nation's fundamental law.

Most of the framers wanted a strong presidency, believing that strong legislative and judicial branches would be able to "check" the President's power. Others feared a strong executive, however. Finally, the idea of one strong President won out.

The debate then turned to how long a President and Vice-President should serve. Since representatives served for two years, and senators for six, the framers finally compromised on a four-year Presidential term that split the difference. No limit was put on the number of terms, however. After Franklin Roosevelt was elected to a third and then fourth term, an amendment was introduced to limit a President's tenure in office. **Amendment 22** made two terms the legal limit.

### SECTION 1

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:



*John F. Kennedy became the head of the executive branch of government when he became President in 1961.*

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

2. *Electors.* Not all the framers were confident that the common people would do a good job of picking the President and Vice-President. As a result, they set up an indirect system called the Electoral College. When the people voted, they actually chose **electors**, who then voted for the President and Vice-President. Each state was to have as many electors as it had members in Congress. Electors were selected by state legislatures, who decided who was eligible. Originally no individual who already held federal office could be an elector.

3. *Election of President and Vice-President.* The original method of using electors to choose the President and Vice-President was awkward. Each elector was to vote for two candidates. Then all of the votes were counted. The candidate with the most votes became President, and the runner-up became Vice-President. If no candidate received a majority, the House of Representatives picked the President, and the Senate picked the Vice-President.

In actual practice the process did not work very well. In 1800, a dispute arose when Thomas Jefferson and Aaron Burr won an equal number of electors. Finally, the tie was broken and Jefferson became President. As soon as the election was decided, an amendment was introduced to solve the problem. In 1804, **Amendment 12** changed the method of picking the executive.

Today, there are separate ballots for President and Vice-President. Electors vote first for the presidential candidates and then hold a separate vote for the vice-presidential candidates.

Over the last two hundred years Congress has received many proposals to alter or abolish the Electoral College. Although it has caused problems, the Electoral College remains an important part of the way we elect the President and Vice-President.

4. *Time of election.* Congress sets a single date when voters across the nation choose the electors. This date is the Tuesday after the first Monday of November. Congress also sets the date when all electors cast their votes for President and Vice-President. This date is in December. Finally, the House of Representatives counts and declares the votes valid during the first week in January following the election.

5. *Qualifications of President.* To be President, a person must have been born a citizen of the United States. Presidents must be at least thirty-five years old and have lived in the United States for at least fourteen years. The qualifications for President are greater than those for the House or Senate.

6. *Vacancy in the office of President.* If death, resignation, impeachment, or other reasons keep the President from carrying out the duties of office, the Vice-President takes over. If both the President and Vice-President are unable to serve, Congress can decide who should serve.

In 1947, Congress amended the Presidential Succession Act of 1886. This act lists who will succeed, or replace, the President. This succession is: 1. Vice-President, 2. Speaker of the House, 3. President *pro tempore* of the Senate, 4. Secretary of State, and 5. the other members of the President's cabinet in an order defined by the act. **Amendment 25**, passed in 1967, sets up procedures for filling vacancies in the vice-presidency and for dealing with disabled but living Presidents.

7. *Salary.* During the constitutional debate, some argued that the President should receive no salary. Only the President's expenses should be paid, they thought. Otherwise, money might corrupt the President. The majority were convinced, however, that without a salary, only the wealthy would run for public office. The salary cannot be changed during a President's term. Nor can the President accept any other salary while serving in office.

Today, Congress has set the President's salary at \$400,000 per year, with a \$50,000 expense account. The President is also given money for travel and official entertaining. The Vice-President receives \$181,400 per year, and \$10,000 for expenses.

Presidents receive other benefits to help carry out official duties. Specially equipped planes and cars are always ready, free of charge. They live in the White House, with a staff of nearly one hundred servants. When Presidents retire, they get a lifetime pension.

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person except a natural-born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

#### SECTION 2

1. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have the power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

*The President lives and works in the White House, Washington, D.C.*

8. *Oath of office for the President.* Before taking office, the President must take an oath to support the Constitution and faithfully carry out the duties of office.

#### SECTION 2: Powers of the President

At first glance, the powers listed here seem rather limited. But in reality the President's power and influence are enormous. Besides the listed powers, Congress has given the President emergency powers to deal with wars or economic depressions. At other times, Presidents have claimed powers not given specifically to Congress or the judicial branch. As leader of his or her political party, the President also has many allies willing to work and vote for his or her proposals. In addition, the President, as the nation's leader, can rally the American people behind certain causes.

1. *Commander in chief, cabinet, and pardons.* Because they wanted the military to be controlled by civilians, the framers made the President **commander in chief** of the armed forces and of any state militia called to serve the United States.

When making decisions, the President may ask for advice from the department heads within the executive branch. Together these department heads make up the President's cabinet. Although the Constitution does not mention a presidential cabinet or cabinet meetings, this clause implies they can exist.

The President can grant reprieves, or delays of punishment, and forgive crimes against the United States, except for cases of impeachment.



2. *Treaties and appointments.* The President can make treaties, or agreements with other countries. All treaties must be approved by two-thirds of the Senate. The President can also appoint members of the cabinet, ambassadors, Supreme Court justices, and other federal officials. These appointments also need the Senate's approval.

This clause shows another instance of "checks and balances" in the Constitution. The President sets overall foreign policy, but the Senate can check the President's power by disapproving a treaty. The Senate can also disapprove a presidential appointment.

Congress can, however, pass laws giving the President and department heads power to appoint less important officials without congressional approval. This simplifies the day-to-day working of government.

3. *Filling temporary vacancies in offices.* If a vacancy occurs when the Senate is *not* in session, the President can grant appointments to temporarily fill the office. When the next Senate session ends, so does the temporary appointment.

### SECTION 3: Duties of the President

The President must report the nation's condition to Congress. The President usually does this in a State of the Union speech before a joint session of the House and Senate in January. The President often uses this speech to propose laws. This is one of the ways the framers involved the President in lawmaking.

The President can also call special sessions of Congress, such as the joint session for delivering the State of the Union speech. The President can also adjourn Congress in special situations, but this has never happened.

As official host of the United States, the President welcomes ambassadors and other important officials from foreign nations. As chief executive, the President is responsible for making sure that all federal laws are carried out. The President also signs the papers giving federal officers the authority to act.

### SECTION 4: Impeachment of Federal Officers

The President, Vice-President, and other civil officials can be impeached by the House of Representatives. The Senate then acts as a court to decide if the accused official is guilty. If found guilty, the official will be removed from office. Reread Article I, Section 2, Clause 5, and Section 3, Clauses 6 to 7 to review Congress's role in impeachment. To avoid impeachment, President Nixon resigned in 1974. To find out more, read the case study, "*U.S. v. Nixon.*"

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

### SECTION 3

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

### SECTION 4

The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.