

Article II

Section 1

Clauses 1-3

“The President is at liberty, both in law and conscience, to be as big a man as he can. His capacity will set the limit; and if Congress be overborne by him, it will be no fault of the makers of the Constitution.”

— Woodrow Wilson,
*Congressional Government
in the United States* (1908)

WHAT IT SAYS

[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:

[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. [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 chuse 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 chuse the President. But in chusing 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 chuse from them by Ballot the Vice-President.]*

[3] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

* Replaced by the Twelfth Amendment.

WHAT IT MEANS

The Constitution establishes that the President of the United States has the power to run the executive branch of the government. This section, later modified by the Twelfth Amendment, establishes the Electoral College (the process by which the President and Vice President are elected).

This section says that the President and Vice President are elected at the same time and serve the same four-year term. Originally, there was no limit to the number of times a President could run for reelection. George Washington set the tradition of serving for no more than two terms. After Franklin Roosevelt was elected for four terms, the ratification of the Twenty-second Amendment limited Presidents to no more than two four-year terms. A Vice President who assumes the Presidency and serves more than two years of the remaining term is limited to one additional term.

Rather than being elected directly by the people, the President is elected by members of the Electoral College. It is not really a college but a group of people who are elected in each of the states. To keep elections national, rather than to favor any single state, the electors have to choose one candidate for President or Vice President who is not from their own states. The electors then vote for the Presidential candidate who won the majority of the popular vote in their states. (In a few states, laws specify that electors will cast their ballots according to the percentage of votes that each candidate received.) The number of electors from a state is equal to the number of senators and representatives from that state. Neither members of Congress nor other federal officials can serve as electors. The Electoral College gives more weight to the smaller states, rather than allowing the more populous states to control who becomes President, since all states have two senators, regardless of the size of their population. Should no one receive a majority in the Electoral College, then the House of Representatives chooses the President and the Senate chooses the Vice President.

Presidential elections are held on the Tuesday that follows the first Monday in November. After the people cast their votes, the electors meet in their respective states to ballot on the Monday following the second Wednesday in December. The electoral ballots are then counted at a joint session of Congress, held on January 6.

BUSH V. GORE

The election of 2000 reminded Americans that the Electoral College, not a direct popular vote, elects their Presidents. Vice President Al Gore, the Democratic candidate, polled a half-million more votes than did Texas governor George W. Bush, the Republican candidate. Final returns showed Governor Bush winning a narrow lead in the crucial state of Florida, and therefore gaining an electoral majority. Florida's margin was so thin, however, that it triggered an automatic vote recount. Although the recount confirmed Bush's lead, reported problems with the state's antiquated voting machinery became so numerous that Gore called for recounting the ballots by hand in certain districts. The Florida Supreme Court ruled in Gore's favor, but by a 5-to-4 vote the U.S. Supreme Court overturned the state court's decision. Citing the equal protection clause of the Fourteenth Amendment, the Supreme Court justices reasoned that insufficient time remained to conduct a thorough and fair recount, and that Florida lacked any established means of conducting a uniform statewide recount of all eligible ballots. Florida's electoral votes went to Bush, giving him a majority in the Electoral College. This marked the first time since 1888 that a candidate had won the Presidency with fewer popular votes than his opponent.

Article II

Section 1



Clauses 4-7

VICE PRESIDENTS WHO ASSUMED THE PRESIDENCY ON THE DEATH OR RESIGNATION OF THE PRESIDENT

John Tyler (1841)
succeeded William Henry Harrison

Millard Fillmore (1850)
succeeded Zachary Taylor

Andrew Johnson (1865)
succeeded Abraham Lincoln

Chester Allan Arthur (1881)
succeeded James A. Garfield

Theodore Roosevelt (1901)
succeeded William McKinley

Calvin Coolidge (1923)
succeeded Warren G. Harding

Harry S. Truman (1945)
succeeded Franklin D. Roosevelt

Lyndon B. Johnson (1963)
succeeded John F. Kennedy

Gerald R. Ford (1974)
succeeded Richard M. Nixon

WHAT IT SAYS

[4] 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.

[5] 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.

[6] 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.

[7] 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."

Article II Section 2

Clauses 1-3

“It will be the office of the President to nominate, and with the advice and consent of the Senate to appoint. There will, of course, be no exertion of choice on the part of the Senators. They may defeat one choice of the Executive and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice of the President.”

— Alexander Hamilton, *The Federalist*, No. 66, March 8, 1788

WHAT IT SAYS

[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 Power to Grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

[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.

THE CABINET THEN AND NOW

The Constitution refers to the executive departments, and in 1789 Congress created four such departments. President George Washington appointed the first cabinet officers to head them: the secretary of state, secretary of the treasury, secretary of war, and postmaster general. Washington also appointed an attorney general, although there was not yet a Department of Justice.

Two centuries later, the cabinet has grown to include the secretary of state, secretary of the treasury, secretary of defense, attorney general, secretary of agriculture, secretary of the interior, secretary of commerce, secretary of labor, secretary of health and human services, secretary of housing and urban development, secretary of energy, secretary of education, secretary of veterans affairs, and secretary of homeland security. Several other agency heads also have cabinet status: the director of the Office of Management and Budget, the administrator of the Environmental Protection Agency, the United States trade representative, and the director of the Office of National Drug Control Policy, together with the Vice President and the White House chief of staff.

WHAT IT MEANS

The President serves not only as head of the executive branch of government but also as the commander in chief of the armed forces (including the National Guard of each state when they are called upon to serve with the federal armed forces). All U.S. military forces are therefore subordinate to the civilian government. The President appoints a secretary of defense and other civilian officials to supervise the armed forces. Being commander in chief has given Presidents immense power in wartime, and over time has allowed them to assert greater control over foreign and military policy.

As chief executive, the President is responsible for the different executive offices. These include the high-level cabinet departments, such as the Department of the Treasury, and also many smaller, specialized agencies, such as the National Aeronautics and Space Administration (NASA). With the permission of two-thirds of the Senate, the President can make treaties with other nations, and with the approval of a majority of senators, the President appoints U.S. ambassadors to other countries, federal judges including Supreme Court justices, cabinet officers, agency heads, and other officers of the government. Congress may choose to allow the President to appoint lower-level positions without Senate approval. When the Senate is not in session, the president can appoint people without Senate approval. Known as “recess appointments,” these appointees’ terms end when the next Senate session ends—unless the Senate votes to confirm their nominations.

ADVICE AND CONSENT

Section 2, clause 2 grants the President the power to make treaties and appointments with “the Advice and Consent of the Senate.” The Constitution explains how the Senate offers its consent: requiring a two-thirds vote to approve treaties, and a majority to confirm nominations, but it does not define how it should offer its advice. Senators in the First Congress called on President George Washington to present all nominations and treaties in the Senate chamber. Washington declined to deliver nominations personally, as there were far too many nominations to make. Instead, he agreed to bring treaties to the Senate chamber to seek the body’s advice. In August 1789, President Washington and Secretary of War Henry Knox went before the Senate with a list of questions about treaties with Indian tribes in the South. The senators felt uncomfortable debating these questions in front of Washington and referred them to a committee to study. “This defeats my very purpose of being here!” Washington angrily protested. The President returned a few days later when the committee issued its report. After that, he and most other Presidents have chosen to submit treaties to the Senate in writing rather than in person. As agreed Washington sent his judicial nominations to the Senate, rather than delivering them in person. From the start, the Senate resisted simply ratifying the President’s choices. For instance, in 1795, senators rejected Washington’s nomination of John Rutledge for chief justice of the United States, after he gave a speech attacking a treaty that the Senate had just ratified.

Treaty-Making Authority

Washington seeks the Senate's advice on Indian treaties

→ 1798

The Senate requests that President Washington personally deliver treaties to the Senate to seek its advice. On August 22, 1789, he appears in the Senate chamber with a series of questions about treaties with Indian tribes. When senators refer his questions to a committee, Washington exclaims "This defeats every purpose of my coming here!" He returns a few days later to receive the Senate's responses but thereafter discontinues the practice of presenting treaties in person.

The Senate and House consider Jay's Treaty

→ 1795

As a special envoy, Chief Justice John Jay negotiates a treaty in which Great Britain withdraws from its forts in the American Northwest and opens ports in the West Indies to American shipping, in return for payment of America's pre-Revolutionary War debts. Jay's Treaty is highly unpopular, especially in the southern states. The Senate ratifies it, but opponents in the House try to block the treaty by refusing to pass appropriations for its enforcement. President Washington responds that the Constitution requires only Senate approval for treaties. The House then narrowly approves the appropriation.

Louisiana Territory is purchased by treaty

→ 1803

In the Louisiana Purchase, France sells its vast North American territory to the United States, which doubles the size of the nation. As the Constitution makes no mention of purchasing land from foreign nations, President Jefferson considers asking for an amendment to allow him to proceed. Realizing that ratifying an amendment would take too long, Jefferson instead interprets the existing constitutional power to govern territories as implying the ability to purchase them. The Senate approves the treaty by a vote of 24 to 7.

The Treaty of Guadalupe Hidalgo ends the Mexican War

→ 1848

The annexation of Texas leads to war with Mexico, which is concluded by the Treaty of Guadalupe Hidalgo. In it, Mexico agrees to sell to the United States a vast territory covering the future states of California, Arizona, New Mexico, Nevada, Utah, Wyoming, and Colorado. Although President James K. Polk had not authorized the negotiations that led to the treaty, he submits it to the Senate, where it passes by a vote of 38 to 14. An effort by anti-slavery senators to attach to the treaty the Wilmot Proviso, banning slavery from the new territories, fails 38 to 15.

The Supreme Court upholds the Senate's right to amend treaties

→ 1869

In *Haver v. Yaker* (1869) the Supreme Court declares that because treaties are the law of the land, the Senate has the right to amend a treaty like any other law, rather than simply adopting or rejecting it as a whole. Amendments that change the wording of a treaty require only a simple majority vote. The Senate can also pass reservations that indicate a change in interpretation of the treaty. Such adjustments help senators to build the coalitions needed to gain a two-thirds vote for ratification.

The Senate rejects the Treaty of Versailles

→ 1919-1920

President Woodrow Wilson personally negotiates the Treaty of Versailles, ending the First World War and creating a League of Nations to foster international cooperation. Wilson, a Democrat, did not take Republican senators to the peace talks. Republicans win control of the Senate in 1918 and oppose the League of Nations, arguing it gives away too much American sovereignty. When Senator Henry Cabot Lodge offers a series of reservations to make the treaty more acceptable, Wilson rejects them. Wilson takes his case to the American people, but suffers a stroke that leaves him incapacitated. Without his leadership, the Senate twice rejects the treaty, by a vote of 38 to 53 in 1919, and 49 to 35 in 1920. The United States never joins the League of Nations.

TIMELINE

The Treaty of Ghent is approved

1815

House Speaker Henry Clay resigns his position to go to Ghent in Belgium to negotiate an end to the War of 1812 with Great Britain. The treaty restores peace, but settles none of the issues that caused the war. The negotiators sign the treaty on December 24, 1814, but before the news reaches America, General Andrew Jackson scores a dramatic victory over the British at the Battle of New Orleans in January 1815. With the nation's morale boosted, the Senate unanimously approves the Treaty of Ghent.

The Senate rejects its first treaty

1825

By a vote of 40 to 0, the Senate rejects a treaty with Colombia on the suppression of the African slave trade. Senators from slave states had loaded a similar treaty with Great Britain with amendments to make it unacceptable to the British. The Colombia treaty, dealing with the same issues, is caught in the backlash.

The Senate rejects a treaty to annex Texas

1844

After Texas wins its independence from Mexico in 1836, it applies for statehood. President Andrew Jackson hesitates out of concern over northern opposition to adding more slaveholding states and over the possibility of starting a war with Mexico. Jackson instead signs a resolution recognizing Texas as an independent republic. In 1844, Secretary of State John C. Calhoun sends a treaty of annexation to the Senate, but it is defeated by a vote of 35 to 16. The next year, Congress annexes Texas by a resolution, which requires a majority vote in both houses, rather than two-thirds of the Senate.

The Vandenberg Resolution and the North Atlantic Treaty

1948-1949

Before World War II, Michigan senator Arthur Vandenberg argues that the United States should avoid all foreign entanglements. The Japanese attack on Pearl Harbor converts him from isolationism to internationalism. The Republican Vandenberg then works closely with the Democratic President Harry Truman to forge a bipartisan foreign policy. In 1948, he writes the Vandenberg Resolution that endorses regional defense alliances. This leads to the Senate's approval in 1949 of the North Atlantic Treaty, which founds NATO, a defensive alliance between the United States and the Western European nations against the Soviet Union and its Eastern European satellites.

The Senate defeats the Comprehensive Nuclear Test Ban Treaty

1999

In 1994, Republicans win control of both houses of Congress for the first time in forty years. In the majority, they engage in a series of confrontations with Democratic President Bill Clinton. The Comprehensive Nuclear Test Ban Treaty is negotiated in 1996 as a means of stopping the global arms race. Although 154 nations join the treaty, opponents in the Senate point out that many of the nations that possess nuclear weapons have not signed it. The Senate then defeats the treaty by a vote of 48 yeas to 51 nays.

President Bush withdraws from the Kyoto Treaty

2001

In 1997 Vice President Al Gore flies to Kyoto, Japan, to break a diplomatic log jam over a multinational treaty aimed at reducing the carbon dioxide emissions blamed for global warming. The agreement places larger restrictions on industrially developed nations such as the United States than on developing nations such as India and China. Sensing there is no chance of passage, President Bill Clinton does not submit the treaty to the Senate. When Gore runs for President in 2000, he wins the popular vote but loses in the Electoral College. The victor, President George W. Bush, promptly announces that the United States will never sign the Kyoto Treaty.

Article II Sections 3-4



WHAT IT SAYS

He shall from time to time give to the Congress Information on 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.

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.

CHANGING TRADITIONS OF THE STATE OF THE UNION ADDRESS

President George Washington and John Adams both appeared before Congress to deliver their State of the Union messages in person. In 1801, President Thomas Jefferson discontinued this practice, which to him seemed too aristocratic. Jefferson believed it resembled the British monarch's appearances before the Houses of Parliament. He began the practice of sending his annual messages to Congress, where they were read aloud by clerks of the House and Senate. Throughout the nineteenth century, all Presidents followed Jefferson's precedent. In 1913, Woodrow Wilson broke with tradition and appeared in person to deliver his State of the Union message before a joint session of Congress. Wilson believed this dramatic gesture would help build support for his legislative agenda. Since then most Presidents—although not all—have appeared in person. In 1923, Calvin Coolidge's State of the Union message was broadcast over the radio, and in 1947 Harry Truman's message was covered on television, giving Presidents a vastly expanded national audience for this important address.

WHAT IT MEANS

Most years the President reports to Congress about how things are going in the country. Although the Constitution only requires a State of the Union speech “from time to time,” Presidents use the opportunity annually to present their agenda for legislative action. This section also grants the President the power to call the House of Representatives and the Senate back into special session after they have adjourned, to deal with a crisis or some other business that cannot wait. Although the President is also granted the power to adjourn Congress, that has never been done. The President meets with representatives of other nations on behalf of the United States and otherwise runs the country by enforcing the laws and directing its officers and staff.

The President, Vice President, and other federal officers can be removed from office through impeachment and conviction of treason, bribery, or other high crimes. The process begins in the House, where a simple majority is needed to impeach. The accused official then stands trial in the Senate, where a two-thirds vote must be achieved for conviction. President Richard Nixon resigned from office as the House prepared to vote to impeach him. Presidents Andrew Johnson and Bill Clinton were impeached in the House but acquitted in the Senate. If convicted, the official is removed from office.