

# Lesson 9

## OFFICE OF THE EXECUTIVE

### Lesson Objectives:

When you complete Lesson 9, you will be able to:

- Describe the features and members of the executive branch.
- Explain the roles of the President and Vice President.
- List the official qualifications for the President.
- Describe presidential terms, succession policies, and compensation.
- Explain how the Electoral College works.
- Describe how Amendment XII changed the Electoral College.
- Explain the rules of presidential terms and succession policies under Article II, Amendment XX, and Amendment XXV.
- Explain standards for presidential impeachment.
- Describe the presidential term limit under Amendment XXII.

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### Part 1: Role of the Executive

#### Executive Vesting Clause – Article II, Section 1, Clause 1

*Essay by Sai Prakash (pp. 179-182)*

The legislature passes laws but needs someone to carry them into action. Article II establishes the executive branch. In Article II of the Constitution, the Executive Vesting Clause gives to the President the executive power. The President's main role is in executing, or carrying out, the laws of the country. He may do this by giving directions to other officers of the executive branch or removing these officers from their posts. In addition, the President is granted several important powers in foreign affairs and diplomatic matters.

Under the Articles of Confederation, the legislature also held the executive power, creating an inefficient and ineffective executive. Drawing from this experience, the Framers, in making the new executive branch under the Constitution, created an

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energetic executive who was highly visible, responsible and unified for clearly defined tasks. According to Sai Prakash, Anti-Federalists disagreed with this vision of a chief executive, but their concerns did not overturn acceptance of the idea.

Although the executive was granted the whole of the executive power and thereby designated the most powerful individual in the government, his powers were carefully checked. Importantly, Congress holds some crucial executive powers that the President lacks, such as the ability to declare war, grant letters of marque or reprisal, or regulate commerce. The Constitution also limits some presidential powers or requires the President to make certain decisions only with congressional consent.

Prakash writes that scholars and historians have interpreted the Executive Vesting Clause in several different ways. Some have incorrectly argued that the clause gives little actual power and is simply meant to designate a role and title. Other interpretations argue that the clause grants the President several other little-known powers, such as some immunity in court or certain emergency powers during a national emergency over other officers in the executive branch, an argument that the Supreme Court has supported. The Vesting Clause has played a limited role in constitutional litigation. The Court, though, has accepted the interpretation that the Executive Vesting Clause grants powers beyond those enumerated in the Constitution. But there are cases where judicial decisions have limited the clause's reach.



### Before You Read

**Ask:** What is the main role of the President? (The President executes laws.)  
**Why do you think the Framers created a President that way?** (Answers may vary. Sample answer: The Framers would have been wary of creating a new king but still knew the power of a single executive in unifying the nation and carrying out his or her duties effectively.)



### Active Reading

**Ask:** Why do you think the Framers wanted to limit the power of the President? (Giving too much power to one person would not fit a republican form of government.) **What recent experiences likely affected the thinking of the Framers on this matter?** (The recent subjugation of the United States to the King of Great Britain, but also the inefficiency of a plural executive under the Articles of Confederation.)



### Active Reading

**Ask:** The beginning of this commentary lists some of the President's powers. **What are these powers?** (The President may direct and remove executive officers. The President can control the formation and communication of foreign policy and direct America's diplomatic corps.)



### Active Reading

Ask: What type of executive was named in the Articles of Confederation? (A plural executive, meaning more than one.)



### Active Reading

Ask: What are two important limitations on the President's power as stated in the Executive Vesting Clause? (The President does not have authority that is explicitly granted to Congress. For example, he cannot declare war. Specific constitutional provisions may check customary authority. For example, the President can't make treaties without the consent of the Senate.)



### Discussion Question

Prakash notes the differences among the Vesting Clauses of Articles I, II, and III. Read the Vesting Clauses aloud. Why did the Framers have a different Vesting Clause for each branch? (Congress has the legislative power "herein granted," while the executive and the judiciary have the whole of the executive power and judicial power. The Framers limited the scope of issues to be addressed by the federal government: for example, commerce, currency, and foreign affairs. The states retain all other powers.)

## Part 2:

### The President, Vice President, and Cabinet

#### Presidential Eligibility

Article II, Section 1, Clause 5

#### Presidential Term

Article II, Section 1, Clause 1

#### Vice President

Article II, Section 1, Clause 1

#### Paying the President: Compensation Clause

Article II, Section 1, Clause 7

#### Where does the Cabinet come from? Opinion Clause

Article II, Section 2, Clause 1

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### Presidential Eligibility – Article II, Section 1, Clause 5

#### *Essay by James C. Ho (pp. 189-191)*

Article II of the Constitution sets out three eligibility requirements for Presidents. One requirement is that a President be 35 years of age. This minimum age is higher than for Representatives or Senators and reflects the Convention’s belief that an older person would be more mature and knowledgeable and better able to carry out the duties of the office.

The Framers also required that a President must have been a “Resident” of the country for 14 years. By contrast, Members of Congress must be an inhabitant of the states they represent. It is unclear if the use of the word “resident” is on purpose, perhaps to ensure that the President would have developed an attachment to and an understanding of the country. Most scholars suggest that the requirement is met if a candidate has spent most of his time in the United States and maintains a permanent domicile there.

The final requirement deals with citizenship. Presidents must be “natural born Citizens,” meaning that they were citizens who were born in the country (or lived there when the Constitution was adopted). This requirement shows a clear preference for citizens who were born domestically and would therefore be loyal to the United States alone. Some scholars have raised questions about the details of this requirement, such as whether people born to United States citizens in other countries are still considered “native born.”

The Twelfth Amendment extended the eligibility requirements to Vice Presidents as well as Presidents. It does not, however, constitutionally cover officials who serve as temporary Acting Presidents.



## Before You Read

**Ask:** What makes a person a citizen? (Answers may vary but may include birth or residency in a country or moving to a country and passing a citizenship test.) **In the eyes of the Founding Fathers, how may citizens who are born in this country differ from citizens, who were born in other countries but became citizens?** (The Founding Fathers may have thought that citizens born in this country would be knowledgeable of the principles and practices of republican government. Unlike individuals who were born in another country and were subject to the sovereign of that country, natural-born citizens would be loyal only to the United States.)



## Active Reading

Read aloud the second paragraph in the Presidential Eligibility essay on page 189. **Ask:** Do you think this age requirement is appropriate? (Answers will vary.) How may people's ideas about age have changed since the writing of the Constitution? (Possible answer: People tend to live longer. If the Constitution were written today, the age requirements might be higher.)

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## Presidential Term — Article II, Section 1, Clause 1

*Essay by David F. Forte (pp. 182-183)*

Outlining rules for presidential terms was a complicated task for the Constitutional Convention. The Framers faced two main considerations: the length of a single term in office and the possibility of reappointment after the first term. Both of those topics led to significant debate in the Convention.

Most delegates agreed that a President should be eligible for reappointment. The possibility of reappointment would encourage a President to perform his duties well and allow tested and qualified Presidents to serve the country for an extended time. However, delegates disagreed on whether the legislature or the people should reappoint the President. Appointment by the legislature would make the executive too dependent on the legislature, and therefore unable to check it sufficiently. Reappointment would be in the hands of the public.

After determining that reappointment would be possible, the delegates debated the presidential term limit. According to David F. Forte, proposals ranged from three years to 20 years. Convention members compromised on a term of four years, long enough to make a strong positive effect without becoming a threat to democracy.

**Vice President** – Article II, Section 1, Clause 1*Essay by David F. Forte (pp. 183-184)*

The Framers also included another important office within the executive branch: the Vice President. The Vice President would be elected at the same time, for the same term, and the by same constituency as the President. Under Article II, the Vice President would be the individual who received the second most votes in the Electoral College (the person with the majority of votes would be President). The Framers intended the Vice President to be linked closely to the President and the executive branch, but to lack any constitutionally mandated executive powers. There would be no plural executive. Basically, the Vice President had little purpose except to take the President's place should the higher office become vacant.

Even though the Twelfth Amendment changed the selection process for the Vice President, the purpose of the Framers remained: the Vice President and President would be free from legislative control. However, the Vice President has the constitutional duty to serve as President of the Senate. This mixing of power between branches concerned some Framers. In reality, for 140 years, the primary role for Vice Presidents was legislative, though without much influence. Only in the 20th century did Vice Presidents gain more executive responsibilities. Forte writes that by the 1950s, Vice Presidents had become busy and important executive officials.

**Before You Read**

Encourage students to review their existing knowledge before proceeding. That can help them understand new material more efficiently.

**Ask:** How long is a President normally in office? (Four years) What happens if a President dies or becomes unable to lead the country? (He is replaced by the Vice President.) What is the effect of these conventions on our country? (Answers will vary.)

**Discussion Questions**

1. According to Forte, the original understanding of a Vice President is the candidate in a presidential election who got the second-highest vote count (second to the President). Do you think this system would work today? What challenges might it create? (Sample answer: This system would not work today because of the strong political party system in America. Usually, the two top vote-getters are members of different parties and have many different ideas and agendas. If forced to work together, these candidates might be confrontational and ineffective.)

2. How did Vice President John Tyler’s behavior change people’s attitudes toward Vice Presidents? What problem did this pose to future Vice Presidents? (Sample answer: Vice President Tyler succeeded to the presidency after the President’s death. Tyler claimed that he was the new real President, not just a stand-in. Other Vice Presidents have done the same after him. This behavior may cause problems, however, for Vice Presidents that are pushed to replace Presidents who are only temporarily disabled.)
3. Under the Articles of Confederation, there was a group of people who exercised the executive power. The Constitution, though, established a unitary executive. What were the problems with a plural executive? (Sample answer: In the event of disagreement among the executives, no action would be taken. With several people responsible, there is no sole responsibility: Each member of the executive can blame another member for ineffective execution.)

## Compensation Clause — Article II, Section 1, Clause 7

*Essay by Robert Delahunty (pp. 192-193)*

Article II further outlines the presidential office by setting up guidelines for compensation. The Framers decided that Presidents should be paid for their work, although their salary cannot be altered during their time in office. In addition, Presidents were prohibited from accepting any “Emolument” from any federal or state government during presidency.

These requirements, according to Robert Delahunty, would keep the President independent of other branches of government, prevent conflicts of interest, and reinforce the separation of powers. Lawmakers in modern times have examined the Compensation Clause of Article II to render decisions about retirement benefits to Presidents and lawsuits over Presidents’ property.



### Active Reading

Point out the use of the word “emolument” in the Constitution. Read aloud the sentences containing the word. **Ask: What do you think the word “emolument” means?** (Money, privileges, or other advantages a person may gain from a job)



### Make a Real-Life Connection

Point out the two case studies on page 193 about Presidents Ronald Reagan and Richard Nixon and their testing of the Compensation Clause. **Ask: What do you think about this clause and the rulings that clarified it? Do you think it was used correctly in these cases?** (Answers will vary.)

## Where the Cabinet Comes From: Opinion Clause –

Article II, Section 2, Clause 1

*Essay by Todd Gaziano (pp. 201-203)*

The Opinion Clause in Article II of the Constitution sets up a system by which the President may require written information from the heads of the executive departments to assist in decision-making. As Todd Gaziano notes, the Founders were careful not to create a “privy council” or group of prime ministers who share the President’s executive duties. These advisors have no formal constitutional power over the President because the President alone shoulders the responsibility for decisions. In practice, though, this clause enabled Presidents from George Washington forward to assemble a group of advisors known as the Cabinet to advise and serve the President in various ways.



### Check Understanding

Have students complete the following assessment to check their understanding of Lesson 9, Part 1 and 2. Review any material for questions they have missed.

**Multiple Choice: Circle the correct response.**

1. The President is the head of the
  - a. Legislative branch
  - b. Executive branch**
  - c. Judicial branch
  - d. None of the above
2. The official behind the Vice President in the line of succession is
  - a. Majority leader
  - b. Speaker of the House**
  - c. President
  - d. President Pro Tempore
3. The Compensation Clause deals with the question of presidential
  - a. Qualifications
  - b. Compensation**
  - c. Terms in office
  - d. Voting
4. Presidents must be at least \_\_\_\_\_ years old to take office.
  - a. 25
  - b. 30
  - c. 35**
  - d. 40

- 5 Under normal circumstances, a President will stay in office for a term of \_\_\_\_\_ years.
- Two
  - Four**
  - Five
  - Six
6. By the 1950s, Vice Presidents had taken on more \_\_\_\_\_ duties.
- Executive**
  - Economic
  - Judicial
  - Congressional

**Fill in the blank: Write the correct word or words in each blank.**

- The \_\_\_\_\_ Vesting Clause gives the President his powers. **(Executive)**
- Congress, not the President, has the executive authority to declare \_\_\_\_\_. **(war)**
- Members of the Constitutional Convention proposed term limits ranging from three years to \_\_\_\_\_ years. **(20)**
- One of the Vice President's most important roles is to serve as President of the \_\_\_\_\_. **(Senate)**
- Anti-Federalists disagreed with the concept of having only one \_\_\_\_\_. **(President)**

**Short Answer: Write out your answer to each question.**

- What are the age, citizenship, and residency requirements for the President? **(The President must be at least 35 years of age, must be a natural-born U.S. citizen, and must have been a resident of the U.S. for 14 years.)**

**True / False: Indicate whether each statement is true or false.**

- The Constitution requires the President to form a Cabinet. **(False)**
- The Constitution establishes a unitary executive. **(True)**
- The President's compensation ensures he will be independent from legislative control. **(True)**

## Part 3: Selecting a President

### Presidential Electors

Article II, Section 1, Clause 2, 3

### Electoral College

Article II, Section 1, Clause 3

### Amending the Electoral College

Amendment XII

### Presidential Vote

Article II, Section 1, Clause 4

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## Presidential Electors — Article II, Section 1, Clause 2, 3

### *Essay by Einer Elhauge (pp. 184-186)*

The Constitutional Convention designed a unique method to select the President called the Electoral College. This plan called for the creation of a college of electors who would be responsible for choosing the chief executive. Each state would appoint its own electors, the number of which would be determined by the number of Senators plus the number of Representatives in the House. For instance, if a state had one Representative in the House and two Senators, it would have three electors. These electors would select the President and Vice President.

A primary concern for this plan was how the electors would be chosen. The Framers proposed and discussed many options. They chose not to allow Congress to select either the President or the electors, since that would give the legislative branch power over the executive. The Framers also opted against popular election of the President or the electors, because the populace would not have enough information about national candidates to select the President and it would be difficult to form a majority around one candidate for elector. As a result, the Convention finally decided to give the responsibility to the states to choose electors, who would then select the President. State legislators, the Convention believed, would be able to choose knowledgeable electors, who in turn would select the wisest, most virtuous executive.

By 1880, all state legislatures had chosen to allow popular election of presidential electors. Under current practice, citizens were able to choose a President's name on Election Day. Each citizen's vote, however, actually selects a slate of electors who pledge to select the presidential candidate in accordance with the people's vote. (Changes in state law required electors to cast their votes in accordance with the outcome of the popular election.) This system has led to some conflicts between state constitutions and state legislatures. Additional questions occasionally arise about the judicial role in this process, such as in *Bush v. Gore* (2000).



## Make a Real-Life Connection

Have students calculate how many electors their state has. As a class, make a chart of all the electoral voters for each state and the District of Columbia. Have students determine both the least number of states needed for a candidate to receive a majority of votes and the most number of states needed for a candidate to receive a majority of votes. (Answers will vary depending on the last census.)

## Electoral College — Article II, Section 1, Clause 3

*Essay by Tadahisa Kuroda (pp. 186-188)*

Article II of the Constitution articulates specific guidelines for the Electoral College. These handpicked electors were to meet in their home states to reduce the risk of corruption should they all meet in one place. Each elector would cast two votes; one vote had to be for a candidate from another state. This two-vote provision was designed to increase the chances of a presidential candidate winning a majority vote.

The Framers also built in several safeguards against potential future confusion and conflict with electoral votes. For instance, if a state fails to appoint electors, the number needed for a majority vote is reduced accordingly. In the case of tie votes, the House of Representatives is allowed to choose from among the top candidates. According to Tadahisa Kuroda, the House was chosen because it was elected by the people and therefore best represented public interests. The Twelfth Amendment would modify and expand on the procedure for Electoral College voting.

After the Electoral College casts its votes, the Vice President performs one of his two constitutional duties; which is opening the votes. The Vice President, however, does not count the votes. Kuroda notes that the role of the Vice President is closely linked to the creation of the Electoral College voting system, since originally the candidate with the most votes became President, and the runner-up became Vice President.



## Before You Read

**Ask:** What do you know about the Electoral College? Do people generally view it favorably or unfavorably? (Answers will vary. Students may say they've heard criticism of the Electoral College based on the popular belief that it makes elections more complex and less democratic. They may say that the Electoral College preserves the role of states and ensures that the President has broad support.)

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## Amending the Electoral College – Amendment XII

*Essay by Charles Fried (pp. 377-379)*

The original process of choosing the President and Vice President is described in Article II of the Constitution. The Twelfth Amendment, however, changes an important clause in that section. Under this amendment, electors vote for President and Vice President separately. The House of Representatives selects the President if no candidate receives a majority of electoral votes; the Senate has the same power for the Vice President.

According to Charles Fried, the Twelfth Amendment, ratified in 1804, came about in response to conflicts that arose from the original system of voting. In 1796, John Adams and Thomas Jefferson were elected President and Vice President, though they were members of two different parties. Additionally, voting along party lines often resulted in the House of Representatives selecting the President.

The Twelfth Amendment has occasionally been invoked when no candidate received a majority of votes, such as in the disputed elections of 1824 and 1876. In addition, this amendment states that the Vice President shall act as President, if the House has not selected a President by Inauguration Day. This latter use has been revisited and revised by the Twentieth and Twenty-fifth Amendments.



### Before You Read

To ensure understanding, ask: How do third parties usually affect elections? What happens if no candidates receive a majority of votes? (Answers may vary. Students may answer that third-party candidates seldom win but often draw votes away from other candidates from larger parties.)



### Make an Inference

Point out the information about Jefferson and Adams on the bottom of page 378. Ask: What does this suggest about the original selection process for President and Vice President? (The Adams–Jefferson partnership showed that two candidates from opposing parties will not work well together.) How might this process work if it was used today? Imagine real modern candidates forced to work together. (Answers will vary. Students will likely say that no modern candidates, such as Barack Obama and John McCain or George W. Bush and John Kerry, would be very likely to work well together because of their differences of opinion on the role of government.)

## Presidential Vote – Article II, Section 1, Clause 4

*Essay by Einer Elhauge (pp. 188-189)*

Article II, Section 1, Clause 4 gives Congress the power to determine when states appoint their electors and when these electors select the President.

Congress set a uniform day (the Tuesday after the first Monday in November) for states to appoint their electors. If, however, a state does not select its electors on that day, then the state legislature can appoint electors, which functionally extends the time for choosing electors. The historical record indicates that this language was to accommodate inclement weather, flooding, or other factors that kept voters from the polls. There is some ambiguity, though, about when an election fails to make a choice and who gets to decide when no choice was made.



### Active Reading

Ask students to consider reasons why there might be some leeway in voting schedules. Ask: *Why might this have been especially important in the Framers' time?* (Answers will vary. Possible answer: Voting schedules might have been more open back then because most people traveled by foot or on horse, so any trouble with bad weather might delay voters or keep them from participating altogether.)



### Discussion Questions

1. The Constitutional Convention debated the number of electors to be chosen per state. What is the formula they arrived at? Why do you think this is effective or not effective? (Sample answer: The number of electors equals the number of Senators plus the number of Representatives in the state. It ensures that all states participate in the process. It allows a large body of electors that can represent a varied constituency.)
2. How did electoral voting change by the 20th century? What happens when a citizen casts a presidential vote today? (Sample answer: When a citizen votes for a candidate for President, that vote translates into a vote for a slate of electors for the Electoral College. Many state laws require the electors in the Electoral College to cast their votes for President and Vice President in accordance with the election results in their state. So if the citizens of a state vote for Candidate X, the slate of electors sent to the Electoral College pledge to vote for Candidate X.)

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## Check Understanding

### Multiple Choice: Circle the correct response.

- The number of electors from each state is determined by
  - Congress.
  - the state's legislature.
  - the number of the state's Representatives plus the number of the state's Senators.**
  - the number of the state's Representatives minus the number of the state's Senators.
- Electors meet in their home states to reduce the risk of
  - corruption.**
  - miscounted votes.
  - no majority vote.
  - partisanship.
- Who is forbidden from being an elector?
  - Senators
  - Representatives
  - Officeholders in the federal government
  - All of the above**
- The Framers allowed for some leeway in voting schedules primarily due to the threat of
  - foreign intrigue.
  - warfare.
  - impeachment.
  - bad weather.**
- In the case of a tie, the \_\_\_\_\_ has the power to choose a President from the top candidates.
  - Senate
  - House of Representatives**
  - Speaker
  - Supreme Court

### Fill in the blank & True and False.

- \_\_\_\_\_ has the power to choose a President if no candidate receives a majority of electoral votes. **(The House of Representatives)**
- \_\_\_\_\_ has the power to choose a Vice President if no candidate receives a majority of electoral votes. **(The Senate)**
- After the Twelfth Amendment, electors cast one ballot for President and one ballot for Vice President. **(True)**

## Part 4:

# Removing, Replacing, and Term Limiting the President

### Standards for Impeachment

Article II, Section 4

### Presidential Succession

Article II, Section 1, Clause 6

### Presidential Succession

Amendment XXV

### Presidential Terms

Amendment XX

### Presidential Term Limit

Amendment XXII

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## Standards for Impeachment — Article II, Section 4

### *Essay by Stephen B. Presser (pp. 225-229)*

Article II of the Constitution sets out the rules by which the President, Vice President, or other officials may be impeached. The Framers defined impeachable offenses as “Treason, Bribery, or other high Crimes and Misdemeanors.” The Constitutional Convention selected these words after considering and rejecting other descriptions. Though there is disagreement on what these misdeeds entail, impeachment is understood to be a remedy for extreme situations.

Just as the description reflects the extreme and serious nature of the offenses and the impeachment proceedings, so does the procedure of the impeachment itself. Impeachment requires a majority vote in the House of Representatives. The case then moves to the Senate, in which a two-thirds vote is required to remove an official from office. Article I, Section 3, Clause 7 lists the punishments for impeachment: a convicted official is barred from “Office of honor, Trust or Profit under the United States.”

The Framers did not want impeachment to be merely a tool for removing officials or a political stunt. The threat of impeachment would encourage honorable behavior in office and would provide a remedy for removing those who betray the interest of the country. The track record of impeachments of Presidents and judges suggests, according to Stephen B. Presser, that impeachments have been conducted sparingly and cautiously.

Only a few officials have been impeached and removed from office. The three most well-known trials have been those against President Andrew Johnson (for firing a Cabinet official without congressional approval); President William Jefferson Clinton (for several scandals including obstruction of justice and lying to a grand jury); and United States Associate Justice Samuel Chase (for Chase's unusual behavior, short temper, and public criticism of President Thomas Jefferson). None of these men were removed from office.



### Before You Read

Prompt students to recall what they have already learned about impeachment. *Ask: What did you learn about impeachment proceedings in previous lessons about the Senate and House of Representatives? (The House of Representatives has the power to begin the proceedings, and the final determination is made by the Senate.)*



### Make a Real-Life Connection

Ask students to consider what Presser wrote about Jefferson's motivations in impeaching Justice Chase. *Ask: When else might officials use impeachment or other accusations for political reasons? What might occur if a current leader was targeted by a political opponent in such a manner? (Answers will vary.)*

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## Presidential Succession — Article II, Section 1, Clause 6

*Essay by John Feerick (pp. 191-192)*

Article II of the Constitution outlines a system of presidential succession. If the President dies, resigns, or becomes unable to carry out his duties, the Vice President will take charge. If the Vice President is also incapacitated, Congress may choose another officer to serve until a new President can be elected.

This provision led to a great deal of debate and concern in the Constitutional Convention as well as in early Congresses. In 1792, Congress decided that the line of succession would be the President, Vice President, President Pro Tempore of the Senate, and Speaker of the House of Representatives. But, because of criticism, this law was never implemented.

According to John Feerick, it is unclear whether a Vice President becomes President or is just a substitute. In 1841, Vice President John Tyler set a precedent. Following the death of William Henry Harrison, Tyler claimed to be the President. Since then, the operating principle has been that Vice Presidents become Presidents in the event of death, incapacity, or vacancy of the office. This principle was codified in Amendment XXV.



## Before You Read

Point out that Presidents and other officials may create precedents and other informal policies. Ask: *What is a precedent?* (A behavior that demonstrates an idea that is later used as an example) *What are some examples of precedents?* (Answers may vary. Students may point out the precedent set by Vice President John Tyler regarding the powers of an appointed President, as discussed earlier in Lesson 9. Other students may point to the precedent set by President Eisenhower in this section.)

## Presidential Succession — Amendment XXV

*Essay by John Feerick (pp. 429-431)*

The Twenty-fifth Amendment revisits presidential succession as outlined in Article II of the Constitution. Article II is unclear about the circumstances under which a President may be deemed unable to discharge his duties and the status of a Vice President when a President dies, resigns, or is incapacitated.

There have been many cases when a President died and was replaced by a Vice President. Beginning in 1841, when Vice President John Tyler took over the presidency after the death of President William Henry Harrison, succeeding Vice Presidents have generally taken on the full duties of regularly elected Presidents. However, there was much question and concern over whether a Vice President taking the presidency due to the President's disability (as opposed to death) would become a new and permanent President or just a temporary replacement.

According to John Feerick, President Dwight D. Eisenhower adopted an informal policy under which Vice Presidents would serve only as Acting Presidents until the elected President declared himself or herself capable of resuming office. The main tenets of this policy and other guidelines were later added to the Constitution in the Twenty-fifth Amendment, which describes the process by which a vacancy in the vice presidential office may be filled.



## Research It

Point out the listing of Presidents and Vice Presidents on page 430. Ask students to choose one President/Vice President pair and research their time in office, the reason for succession, and the results of that succession. Students may consult their texts, other books, or online resources for more information. Have students write notes on their findings and then share with the class.

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**Presidential Terms** – Amendment XX*Essay by John Copeland Nagle (pp. 419-421)*

According to John Copeland Nagle, the Twentieth Amendment contains mostly technical details and small structural changes to the Constitution and may be considered one of the least controversial amendments. This amendment contains six clauses that deal with presidential term limits and succession and the manner by which the amendment may be approved and enacted.

The first two clauses deal with the “lame-duck” period after an election occurs but before the new officials take office. The creators of the Twentieth Amendment hoped to eradicate lame-duck sessions, since Representatives had been chosen to replace many sitting Members of Congress. In particular, these Framers wanted to ensure that no Presidents would be appointed during lame-duck sessions.

The other major parts of the amendment focus on what should occur if a President or Vice President dies, especially before beginning his term in office. These clauses (Sections 3 and 4) are meant to safeguard the country from any circumstance in which there is no President in office.

Although the Twentieth Amendment was ratified quickly and is not the subject of litigation, its meaning is still debated.

**Before You Read**

Explain to the students that the Twentieth Amendment is known as the lame-duck amendment *Ask: What is a lame duck?* (A person still in office after a successor has been chosen) *How do you think that unusual term came to be?* (The term likely came from a literal lame duck: a duck that could not keep up with the others in its flock and became a target for hunters or predators.)

**Presidential Term Limit** – Amendment XXII*Essay by Bruce Peabody (pp. 424-425)*

According to Bruce Peabody, the Constitutional Convention considered regulating the number of times a person may be elected President but ultimately chose not to do so. When President George Washington retired after two terms, he set a precedent that presidents would serve no more than two terms. When President Franklin D. Roosevelt was elected to four terms in office, Congress passed the Twenty-second Amendment to cap the number of presidential terms at two.

Peabody explains that there are ambiguities about the application of the amendment. The amendment was agreed upon and added to the Constitution without much discussion, debate, or subsequent testing in court.



## Active Reading

Peabody writes that the Twenty-second Amendment has not been challenged in any significant way since its ratification. *Ask: Why do you think that is?* (Answers may vary. Students may say that not many Presidents desire to serve more than two terms, that Washington's precedent worked very well and should not be changed, or that few Presidents have been popular enough to be reelected numerous times.)



## Check Understanding

Have students complete the following assessment to check their understanding of Lesson 9, Part 4. Review any material for questions they have missed.

### Multiple Choice: Circle the correct response.

- The first President to serve two terms in office was
  - George Washington**
  - Harry Truman
  - John Adams
  - Andrew Johnson

### Fill in the blank: Write the correct word or words in each blank.

- \_\_\_\_\_ is the only constitutional way to remove a President. (**Impeachment**)
- There is no doubt that the Framers saw \_\_\_\_\_ as a part of the system of checks and balances to maintain the separation of powers and the republican form of government. (**impeachment**)
- Early on, the acquittal of Justice Samuel Chase set the standard that Supreme Court Justices should not be impeached on the ground of their \_\_\_\_\_ preferences. (**political**)
- The responsibility to carry out impeachment proceedings with loyalty to the text of the Constitution remains that of the \_\_\_\_\_. (**House of Representatives and Senate**)
- A time when an official is still in office even after a new official has been elected is referred to as a \_\_\_\_\_ period. (**lame-duck**)

### Short Answer: Write out your answer to each question.

- What does the Presidential Succession Clause of Article II do?  
(**It provides for the Vice President to serve as President in the event of the President's removal, death, resignation, or inability to serve. It authorizes Congress to establish a line of succession.**)

*Unit 3*

2. What does the Constitution give as grounds for impeachment? (**treason, bribery, other high crimes and misdemeanors**)
3. According to Amendment XX, when do the President and Vice President's terms of office end? (**January 20**)
4. According to Amendment XXII, a person can be elected President for how many terms? (**two terms**)

**True / False: Indicate whether each statement is true or false.**

1. The President of the United States may pardon an individual who has been impeached. (**False**)
2. The Framers placed specific grounds for impeachment in the Constitution because they wanted to prevent impeachment from becoming a politicized offense, as it had been in England. (**True**)

*Unit 3*