

Constitution Class Handout
Instructor: Douglas V. Gibbs
douglasvgibbs@reagan.com

www.politicalpistachio.com
www.douglasvgibbs.com
www.constitutionassociation.com

Lesson 21 Final Amendments

Amendment 22: Presidential Term Limit

The 22nd Amendment was passed in 1951. It was designed to ensure no president could seek a third term. Though the Constitution did not limit the number of terms a president could serve prior to this amendment, many consider the fact that George Washington chose not to seek a third term as evidence the Founding Fathers recognized two terms should be the expected standard.

George Washington's popularity would have easily enabled him to be President for the rest of his life, and many even tried to encourage him to be king. However, Washington saw himself as no different than everyone else, and recognized the presidency as a privilege to serve. He felt that more than two terms opened the opportunity for abuse of power by an Executive, which would hinge on the idea of a monarchy.

Following George Washington, James Madison and James Monroe also adhered to the two-term principle. No Presidents afterward sought a third term, with the exceptions of Ulysses S. Grant, Theodore Roosevelt, and Franklin Delano Roosevelt. No President achieved a third term until FDR.

Franklin D. Roosevelt in 1940 became the only President to be elected to a third term. World War II has often been cited as the reason. The public was not fond of the idea of a change in Commander in Chief during such a crucial event in history. In 1944, while World War II continued to rage, Roosevelt won a fourth term. He died before he could complete it.

The 22nd Amendment was proposed and ratified during the Truman presidency.

The failure of the Founding Fathers to establish a term limit on the President in the early articles of the United States Constitution aligns with a prevailing opinion the Framers held that term limits were the responsibility of the voter. Their belief hinged on a reliance on the people and the Electoral College, and that electorally a third term would be prevented, unless a third term was absolutely necessary.

Under the 22nd Amendment, the only President who would have been eligible to serve more than two terms would be Lyndon B. Johnson. LBJ was the Vice President of the United States at the time of the assassination of President John F. Kennedy, and after serving the remainder of JFK's term, Johnson had only been President for fourteen months. The 22nd Amendment provides that "*No person shall be elected to the office of the President more than twice, and no person who has held the office of President,*

or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once.”

Questions for Discussion:

1. Why do you think the Founding Fathers believed two terms were adequate for the President?
2. What is the cited reason for Franklin Delano Roosevelt’s continued re-election as President?
3. How could an unlimited allowance of terms for President be dangerous?

Resources:

Andrew M. Allison, Jay A. Perry, and W. Cleon Skousen, *The Real George Washington*; New York: National Center for Constitutional Studies (2010)

Catherine Drinker Bowen, *Miracle at Philadelphia: The Story of the Constitutional Convention, May to September 1787*; Boston: Atlantic Monthly Press (1966)

Donald Porter Geddes (ed.), *Franklin Delano Roosevelt - A Memorial*; New York: Pitman Publishing Corporation (1945)

James Srodes, *On Dupont Circle: Franklin and Eleanor Roosevelt and the Progressives Who Shaped Our World*; Berkeley: CounterPoint Press (2012)

James Thomas Flexner, *Washington: The Indispensable Man*; Boston: Back Bay Books (1969)

John Morton Blum, *The Progressive Presidents: Theodore Roosevelt, Woodrow Wilson, Franklin D. Roosevelt, Lyndon B. Johnson*; New York: W.W. Norton & Co. (1982)

Willard Sterne Randall, *George Washington: A Life*; New York: Henry Hold & Co. (1997)

Amendment 23: Washington, D.C., Receives Electoral Votes

The rallying cry during the American Revolution, as we have been taught, was “No taxation without representation.” Yet, despite that famous call for revolution, after the United States became a nation, there were those who were taxed without representation in the United States Government. The most famous case was Washington, D.C. The movement for representation for Washington, D.C., led to the proposal, and ratification, of the 23rd Amendment.

Washington, D.C., is a ten mile by ten mile section of land donated by Maryland and Virginia to serve as the **seat of government**. The land was easy for those two States to let go of because it was undesirable. While it is popular to say that Washington, D.C., sits on swampland, it is actually a tidal plain, land that was a mix of thickly wooded slopes, bluffs and hills, crop land, and several major waterways. The location was chosen by George Washington because of its central location between the northern and southern States as a compromise between Alexander Hamilton and northern States who wanted the new

federal government to assume Revolutionary War debts, and Thomas Jefferson and southern States who wanted the capital placed in a location friendly to slave-holding agricultural interests.

The District was not supposed to be a city in the sense that we see it today. The District of Columbia was not supposed to have a population, for the creation of the district was for the sole purpose of being the seat of the United States Government. The Congress was given full power over the functioning of the city, and the inhabitants were supposed to only be the temporary visitors of government officials, or employees. The Founding Fathers envisioned Washington, D.C., to be the seat of the federal government, and a vibrant **commercial center**.

As time passed, Washington, D.C., attracted residents, eager to partake in the opportunities offered in the way of government jobs. The incoming population largely consisted of Free Blacks prior to the beginning of the American Civil War, and after the abolition of slavery in the District in 1850. After the **War Between the States**, the growth of Washington, D.C.'s population exploded.

John Adams, the second President of the United States, did not like Washington, D.C. He viewed it as hardly being a city at all, and nothing more than a clump of dirty buildings, arranged around "unpaved, muddy cesspools of winter, waiting for summer to transform them into mosquito-infested swamps."

As the population of Washington, D.C., grew during the twentieth century, it became glaringly apparent to the residents that their taxation did not accompany representation. At one point, "Taxation without representation" became such a rallying cry that Washington, D.C., license plates even held the phrase.

After the cries for representation reached a crescendo, the Twenty-Third Amendment was proposed and ratified, allowing the citizens in Washington, D.C., to vote for Electors for President and Vice President. The amendment was ratified in 1961.

Since Washington, D.C., is not a State, the District is still unable to send voting Representatives or Senators to Congress. However, Washington, D.C., does have delegates in Congress that act as observers.

The amendment restricts the district to the number of Electors of the least populous state, irrespective of its own population. That number is currently three.

Terms:

Seat of Government - The location of the government for a political entity. The seat of government is usually located in the capital.

Commercial Center - A central location of commercial activity; an environment for commerce, or business activity.

War Between the States - The Civil War was fought from 1861 to 1865 after Seven Southern slave States seceded from the United States, forming the Confederate States of America. The "Confederacy" grew to include eleven States. The war was fought between the States that did not declare secession, known as the "Union" or the "North", and the Confederate States. The war found its origin in the concept of State's Rights, but became largely regarding the issue of slavery after President Abraham Lincoln delivered the Emancipation Proclamation. Over 600,000 Union and Confederate soldiers died, and much of the South's infrastructure was destroyed. After the War, Amendments 13, 14, and 15 were proposed and ratified to abolish slavery in the United States, and to begin the process of protecting the civil rights of the freed slaves.

Questions for Discussion:

1. Why was the location of Washington DC chosen to be at a central position between the northern and southern States?
2. Why was Washington DC only supposed to be the seat of government?
3. What was the encouragement for people to take up residency in Washington DC?
4. How did the Twenty-Third Amendment satisfy the demand by the districts residents that they be afforded representation?
5. How is Washington DC's representation limited?

Resources:

Joseph Andrews, *A Guide for Learning and Teaching The Declaration of Independence and The U.S. Constitution - Learning from the Original Texts Using Classical Learning Methods of the Founders*; San Marcos: The Center for Teaching the Constitution (2010)

Larry Schweikart and Michael Allen, *A Patriot's History of the United States*; New York: Sentinel (2004)

Smithsonian, Washington, D.C., History and Heritage, (2007)
<http://www.smithsonianmag.com/travel/destination-hunter/north-america/united-states/east/washington-dc/washingtondc-history-heritage.html>

Amendment 24: Poll Taxes and Open Primaries

The 24th Amendment to the U.S. Constitution ratified in 1964 made it unconstitutional for a State to use payment of taxes as a requirement to vote in national elections. Few blacks could vote in States using poll taxes as a requirement to vote because they had little money. The **poll tax** to vote in these states was \$1.50. After the ratification of the 24th Amendment a number of districts continued the practice of requiring a poll tax in order to vote. A woman named Evelyn T. Butts decided to take the poll tax issue to court. In October 1965, the U.S. Supreme Court agreed to hear Evelyn T. Butts' appeal. In 1966 the Supreme Court of the United States declared poll taxes unconstitutional in accordance with the 24th Amendment.

A poll tax is a uniformed tax levied on every adult in the community, called a **capitation** tax by the Founding Fathers. Poll taxes have their roots in ancient tax systems and have been criticized as an unfair burden on the poor. Historically, in the U.S., poll taxes were enacted in the South as a prerequisite for voting, disfranchising many African-Americans and poor whites.

One argument regarding the article claims the spirit of the 24th Amendment also disallows **closed primaries** by leaving out of the process independent voters. As a result, a number of States have been passing laws enabling their States to make their election primaries open to all voters. In an **open primary** you can vote for anyone you want regardless of party affiliation during the **primary election**. Some

proponents of open primaries contend closed primaries are unconstitutional - a violation of the 24th Amendment.

General discontent with the **two-party system** has emerged in American society. A party system, however, is a natural result of human nature. Every issue is divided by those who support the issue, and those that oppose it. As human beings, we tend to gravitate toward those who think like ourselves (birds of a feather flock together), and parties ultimately form out of that natural tendency to organize. Once the groups form, they become organizations, appoint leadership positions, and a political party is born. Political parties are the natural result, fueled by our own human nature, of this kind of political organization.

In a party system such as ours, to allow voters to cross party-lines in the primaries can be dangerous because it opens up the potential for unethical voting techniques that are designed to injure the other party. Open primaries allow members of opposing parties to vote in their opponent's primary in the hopes of affecting the outcome, and putting the weaker candidate on the ballot so that their own party has a better chance to win. If both parties of a two party system is doing such, the result will always be the two weakest candidates facing off against each other. Open primaries nullify the whole point of the primary elections, and often result in the best candidates not being elected.

Not all States have primaries, and the rules for choosing candidates for a particular party varies from State to State - as it should. Some States have **caucuses**, which are meetings of the members of a legislative body who are members of a particular political party, to select candidates. The choosing of the delegates varies from State to State.

States are given the authority to make their own election rules, and maintain the elections in their State, according to Article I, Section 4 of the United States Constitution, and reinforced by Article II. This is why the Florida-Chad controversy in 2000 should have never resulted in the federal courts, or even the State courts, getting involved. According to the Constitution, the decision on what to do regarding the controversy in Florida in 2000 should have remained with the State Legislature.

Some supporters of open primaries contend that closed primaries are in violation of the 24th Amendment because limiting who can vote in a primary by party membership is a poll tax as per **implied law**.

By strict definition, a poll tax is a **tax**, which would be a monetary amount expected as a prerequisite for voting. Closed primaries do not impose a monetary tax, and therefore are not in violation of the 24th Amendment, based on the language of the amendment. One may suggest the 24th Amendment *implies* that no action can be taken to close any election to any person - but primaries are simply party oriented. People who couldn't vote in the primary would have been able to by joining a political party, and regardless of the ability to vote in the primaries, will be able to vote in the general election, and therefore are not being declined the opportunity to participate in the electoral process.

Terms:

Capitation - Head tax; a direct tax on each person.

Caucuses - A meeting of the members of a legislative body who are members of a particular political party, to select candidates or decide policy.

Closed Primary - A primary election in which only party members may select candidates for a general election.

Implied Law - Legal concept serving as a legal substitute for authorities expressly granted by the United States Constitution; an agreement created by actions of the parties involved, but it is not written or spoken, because they are assumed to be logical extensions or implications of the other powers delegated in the Constitution.

Open Primary - A primary election in which voters, regardless of party may select candidates from any party for a general election.

Poll Tax - A tax levied on people rather than on property, often as a requirement for voting.

Primary Election - An election in which party members or voters select candidates for a general election.

Tax - A compulsory monetary contribution to the revenue of an organized political community, levied by the government of that political entity.

Two-Party System - A form of political system where two major political parties dominate voting in nearly all elections, at every level; a political system consisting chiefly of two major parties, more or less equal in strength.

Questions for Discussion:

1. How did poll taxes disallow some people from being able to vote?
2. What is the difference between open primaries, and closed primaries?
3. Why is the existence of a two-party system inevitable in a political system like ours?
4. Who prescribes the times and manner of elections?
5. How was the “hanging chad” controversy mishandled?
6. What are the advantages and disadvantages of open primaries? Closed primaries?

Resources:

Congressional and Presidential Primaries: Open, Closed, Semi-Closed, and "Top Two", Fair Vote: <http://www.fairvote.org/congressional-and-presidential-primaries-open-closed-semi-closed-and-top-two#.T0IVzPGPWHM>

Joseph Andrews, *A Guide for Learning and Teaching The Declaration of Independence and The U.S. Constitution - Learning from the Original Texts Using Classical Learning Methods of the Founders*; San Marcos: The Center for Teaching the Constitution (2010)

Tom Spencer, American-style primaries would breathe life into European elections (2004): <http://www.europeanvoice.com/article/imported/american-style-primaries-would-breathe-life-into-european-elections/49725.aspx>

Ware, Alan. The American Direct Primary: Party Institutionalization and Transformation in the North (2002), the invention of primaries around 1900: <http://www.questia.com/PM.qst?a=o&d=105149213>

Amendment 25: Presidential Disability and Succession

The 25th Amendment, Section 1, reads, *“In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.”*

Section 1 of the 25th Amendment is clear, concise, and to the point. After nearly two centuries of questions regarding if the Vice President actually became President in the case of the removal, death or resignation of the President, or was to merely act as President if such an instance would arise, the 25th Amendment sought to clarify without question the confusion that haunted Article II, Section 1, Clause 6, and the 12th Amendment.

When President William Henry Harrison became the first U.S. President to die in office in 1841, Representative John Williams had previously suggested that the Vice President should become Acting President upon the death of the President. Vice President John Tyler concurred, asserting that he would need to succeed to the office of President, as opposed to only obtaining its powers and duties. Though Tyler took the oath of President (precedent for full succession was established, becoming known as the "Tyler Precedent"), nothing was done to amend the Constitution regarding the procedure.

When President Wilson suffered a stroke in 1919, no one officially assumed the Presidential powers and duties, and the office of President essentially remained unmanned during the remainder of Wilson's second term.

It was clear that a set of guidelines needed to be established.

In 1963, a proposal enabling Congress to enact legislation establishing a line of succession by Senator Kenneth Keating of New York based upon a recommendation by the American Bar Association in 1960 surfaced, but it never gained enough support.

On January 6, 1965, Senator Birch Bayh proposed in the Senate, and Representative Emanuel Celler proposed in the House of Representatives, what would become the 25th Amendment. Their proposal provided a way to not only fill a vacancy in the Office of the President by the Vice President, but also how to fill the Office of the Vice President before the next presidential election.

The line of succession the 25th Amendment establishes is as follows:

If the President is removed from office, dies, or resigns, the Vice President immediately becomes President. Prior to the 25th Amendment there was no provision for Vice Presidential vacancies. Under Section Two of the 25th Amendment the President nominates a successor who becomes Vice President if confirmed by a majority vote of both Houses of Congress, which occurred when President Richard Nixon appointed Gerald Ford to be his Vice President, after Spiro Agnew resigned as Vice President of the United States.

In Section 3 of the amendment, if the President provides a written declaration to the President Pro Tempore of the Senate and the Speaker of the House of Representatives that *“he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.”*

Section 4, which has never been invoked, enables the Vice President, together with a majority of either the leading officers of the Executive Department, or of *"such other body as Congress may by law provide"*, to declare the President disabled by submitting a written declaration to the President Pro

Tempore and the Speaker of the House of Representatives. If the President is unable to discharge his duties as indicated, the Vice President would become Acting President.

If the President's incapacitation prevents him from discharging the duties of his office and he himself does not provide a written declaration, the President may resume exercising the Presidential duties by sending a written declaration to the President Pro Tempore and the Speaker of the House. If the Vice President and the officers of the Cabinet believe the President's condition is preventing him from discharging the duties of President, they may within four days of the President's declaration submit another declaration that the President is incapacitated. If not in session, the Congress must, in this instance, assemble within 48 hours. Within 21 days of assembling or of receiving the second declaration by the Vice President and the Cabinet, a two-thirds vote of each House of Congress is required to affirm the President as unfit. If such actions are satisfied the Vice President would continue to be Acting President. However, if the Congress votes in favor of the President, or if the Congress makes no decision within the 21 days allotted, then the President would resume discharging all of the powers and duties of his office.

Questions for Discussion:

1. Why do you think there was no line of succession clearly defined prior to the 25th Amendment?
2. Why do you believe nobody took on presidential powers after President Wilson's stroke in 1919?
3. How does a President's incapacitation affect the overall functioning of government?
4. Would a President's incapacitation influence government functioning differently in a time of war?

Resources:

Joseph Andrews, *A Guide for Learning and Teaching The Declaration of Independence and The U.S. Constitution - Learning from the Original Texts Using Classical Learning Methods of the Founders*; San Marcos: The Center for Teaching the Constitution (2010)

Understanding the 25th Amendment, Law.com,
<http://constitution.laws.com/american-history/constitution/constitutional-amendments/25th-amendment>

United States Constitution and Citizenship Day: 25th Amendment,
<http://www.usconstitutionday.us/p/25th-amendment.html>

Amendment 26: Voting Age

The 26th Amendment establishes the voting age at the age of 18, rather than 21 as it was previously. The amendment was proposed in 1971, in an attempt to respond to student activism against the Vietnam War. Originally, President Nixon had signed a law making the voting age 18, but a number of States challenged the law, and under pressure the amendment was proposed and ratified.

The slogan, "Old enough to fight, old enough to vote," which surfaced as far back as World War II, had finally become a worn-out enough slogan that the majority began to support it. Arguments of various viewpoints regarding the wisdom of this amendment continue to this day, but one thing is clear, the original argument of "Old enough to fight, old enough to vote," was a ruse.

The Democrat Party was in trouble, and desperate for votes. President Nixon was wildly popular. The 1972 election was coming, and the Democrats needed to find a way to gain more votes, and to gain them fast.

The college-aged population was protesting against the war. The younger generation, molded by left-leaning public school teachers, and leftist college professors, were ripe for the picking, but most of them were too young to vote. The Democrats knew that if the protesting students could vote, they would vote for the Democrat candidate for president, and give the Democrats a fighting chance to gain seats in Congress. The push for the 26th Amendment, though in part about “old enough to fight, old enough to vote,” was in reality an attempt to gain more votes for the Democrats. However, despite the ratification of the amendment in time for the election allowing people as low as the age of eighteen to vote, Richard Nixon still won the election in 1972 by a landslide.

Questions for Discussion:

1. How has the inclusion of voters over 18 and under 21 influenced politics?
2. Was the “old enough to fight, old enough to vote” campaign a new campaign?
3. Did the political strategy being the 26th Amendment succeed?
4. Why do you suppose the Democrats targeted the vote of the younger generation?

Resources:

Joseph Andrews, *A Guide for Learning and Teaching The Declaration of Independence and The U.S. Constitution - Learning from the Original Texts Using Classical Learning Methods of the Founders*; San Marcos: The Center for Teaching the Constitution (2010)

Larry Schweikart and Michael Allen, *A Patriot's History of the United States*; New York: Sentinel (2004)

Old Enough to Fight, Old Enough to Vote, Nixon Foundation,
<http://blog.nixonfoundation.org/2014/06/old-enough-fight-old-enough-vote/>

Repeal the 26th Amendment! by Anne Coulter, Townhall,
http://townhall.com/columnists/anncoulter/2010/11/10/repeal_the_26th_amendment%21

Youth Vote: Dems' Secret Weapon 40 Years in the Making? by Carl M. Cannon, Real Clear Politics,
http://www.realclearpolitics.com/articles/2011/03/25/youth_vote_dems_delayed_time_release_capsule.html

Amendment 27: Congressional Salaries

The 27th Amendment prohibits any law that increases or decreases the salary of members of the Congress from taking effect until the start of the next set of terms of office for Representatives. Ratified in 1992, the proposal remained in waiting for 203 years after its initial submission in 1789.

The reason for ratification was anger over a Congressional pay raise. Wyoming became the last State to ratify the amendment. Four States (California, Rhode Island, Hawaii, and Washington) ratified the amendment after the required number of States was met.

A battle over whether or not cost of living increases are affected by this amendment continues to this day. Currently, cost of living increases take effect immediately, without a vote.

Questions for Discussion:

1. How does the 27th Amendment protect against corruption?
2. Why do you think it took so long to ratify the amendment?
3. Is Congress voting itself raises still a concern among voters?

Resources:

Amendment XXVII: Congressional Compensation, United States History, <http://www.u-s-history.com/pages/h924.html>

Joseph Andrews, *A Guide for Learning and Teaching The Declaration of Independence and The U.S. Constitution - Learning from the Original Texts Using Classical Learning Methods of the Founders*; San Marcos: The Center for Teaching the Constitution (2010)

Members of Congress Haven't Had a Raise in Years, by Jesse Rifkin, USA Today, <http://www.usatoday.com/story/news/politics/2013/08/15/congress-pay-salaries/2660545/>

Notes on the 27th Amendment, Constitution of the United States "Charters of Freedom", http://www.archives.gov/exhibits/charters/constitution_amendment_27.html

Understanding the 27th Amendment, Laws.com, <http://constitution.laws.com/american-history/constitution/constitutional-amendments/27th-amendment>