



NATIONAL CONSTITUTION CENTER

## The Constitution and the Election

### Educational Resources

Teaching the election is only half the battle. Understanding, explaining, and holding civil discourse post-Election Day is key to engaging students in relevant and difficult discourse on constitutional issues surrounding the election.

#### **FROM THE NATIONAL CONSTITUTION CENTER**

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On Wednesday, January 6, 2021, Congress will meet as required by the Constitution to certify the winner of the presidential election between President Donald J. Trump and former Vice President Joseph R. Biden in the Electoral College.

As a resource, here is a list of statutes about Wednesday's joint meeting of Congress, sections of the Constitution related to the Electoral College, and an extensive list of resources from the National Constitution Center about the Electoral College.

#### **Official Government Resources**

This is the official Government Publishing Office version of the rules governing the joint meeting of Congress on Wednesday, incorporating the Electoral Count Act of 1887.

3 U.S. Code § 15 - [Counting electoral votes in Congress](#)

3 U.S. Code § 16 - [Same; seats for officers and Members of two Houses in joint meeting](#)

3 U.S. Code § 17 - [Same; limit of debate in each House](#)

3 U.S. Code § 18 - [Same; parliamentary procedure at joint meeting](#)

[The Electoral College: A 2020 Presidential Election Timeline](#). This Congressional Research Service overview has explanations, key deadlines, and names of statutes related to the Electoral College.

#### **Interactive Constitution**

The National Constitution Center's *Interactive Constitution* contains the Constitution's full text along with interpretations from scholars representing different perspectives on the Constitution. Each Common Interpretation, signed by both scholars, is a joint statement of what they agree about a provision's history and meaning.

#### **Electoral College: The Original Text**

"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

*Additional Resources Added January 8, 2021*

Office of Trust or Profit under the United States, shall be appointed an Elector. ... The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States." - [Click here for all of Article II, Section I](#)

Common Interpretation: [Article II, Section 1, Clauses 2](#)

### **The 12th Amendment: The Original Text**

Passed by Congress December 9, 1803. Ratified June 15, 1804. The 12th Amendment changed a portion of Article II, Section 1. A portion of the 12th Amendment was changed by the 20th Amendment.

"The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists 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 ... - [Click here for all of the 12th Amendment](#).

Common Interpretation: [The 12th Amendment](#)

### **The 20th Amendment: The Original Text**

Passed by Congress March 2, 1932. Ratified January 23, 1933. The 20th Amendment changed a portion of Article I, Section 4, and a portion of the 12th Amendment.

"The terms of the President and the Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin ... [Click here for all of the 20th Amendment](#).

Common Interpretation: [The 20th Amendment](#)

### **The 25th Amendment: The Original Text**

Passed by Congress July 6, 1965. Ratified February 10, 1967. The 25th Amendment changed a portion of Article II, Section 1

"The final section of Article II, which generally describes the executive branch, specifies that the "President, Vice President and all civil Officers of the United States" shall be removed from office if convicted in an impeachment trial of "Treason, Bribery, or other high Crimes and Misdemeanors." Two clauses in Article I lay out the role of the House of Representatives and the Senate in impeachments and in trials of impeachment."

Common Interpretation: [The 25th Amendment](#)

## **Classroom Learning Materials**

### **Electoral College Classroom Materials Page**

On Election Day, American people vote for president and vice president. But, technically speaking, these votes don't directly determine the outcome of the election. These popular votes determine which electors will be appointed to the **Electoral College**—the Electoral College is made up of 538 electors drawn from the states and the District of Columbia. Each state is granted a different number of electoral votes based on the size of its congressional delegation. The electors meet after the general election to cast their votes for president and vice president.

*30-minute Class Videos on the Electoral College*

[Electoral College Disputes and the Founders \(High School and College level\)](#)

[The Electoral College: High School and College Level](#)

[The Electoral College: Middle School Level](#)

[The Electoral College with Tara Ross](#)

### **Article II Classroom Materials Page**

Article II lays out the Executive Branch of the government, headed by the chief executive, also known as the president—the branch is responsible for enforcing the laws. The article outlines the requirements to be president, the election process, and the duties of the office.

### **Constitution Daily Blog Posts**

- [Looking Back: The Electoral Commission of 1877](#)
- [Explaining how Congress settles electoral college disputes](#)
- [The Constitution and contested presidential elections](#)
- [The 23rd Amendment and the Chance of a Tied 2020 Presidential Election](#)
- [On This Day: The First Bitter, Contested Presidential Election Takes Place](#)
- [Can States Control How Presidential Electors Vote?](#)
- [How the president grants pardons under the Constitution](#)
- [How the Constitution's 25th Amendment works](#)

### **Tools for Civil Discourse:**

- [Civil Dialogue Tool Kit](#)
- [Civil Dialogue Activity Sheet](#)
- Video: [Justice Breyer on How the Supreme Court Reaches Decisions](#)
- Video: [Constitutional Conversation and Civil Dialogue With Jeffrey Rosen and David Colman](#)

*Additional Resources Added January 8, 2021*

- [View All Civil Discourse Materials](#)

### **Learning Material Collections:**

Each collection of learning materials on our *Interactive Constitution: Classroom Edition* contains video lessons and recordings of previous Scholar Exchanges, plus links to podcasts, blog posts, *Interactive Constitution* essays, and more. Great topics for election season include:

- [Article II and the Presidency](#)
- [The Electoral College](#)
- [Voting Rights](#)
- [The Branches of Government and the Separation of Powers](#)

### **Podcasts:**

- [The Mob, the Capitol, and the Constitution](#)
- [Can the President Pardon Himself?](#)
- [Why Does the Electoral College Exist?](#)
- [Election 2020 in the Courts](#)
- [The Hayes-Tilden Election of 1876](#)
- [Parties, Platforms, Conventions, and the Constitution](#)
- [Should We Abolish the Electoral College?](#)

### **Recent Town Hall Discussions:**

- [How to Fix Presidential Elections in 2020 and Beyond](#)
- [The Right to Vote: A Constitutional History](#)
- [Social Media Platforms and the Fight Against Election Disinformation](#)
- [America's Contentious Presidential Elections: A History](#)