

# CRS Report for Congress

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## Presidential and Vice Presidential Terms and Tenure

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### Summary

Presidential and vice presidential terms and tenure are governed by Article II, Section 1 of the Constitution, and the 20<sup>th</sup> and 22<sup>nd</sup> Amendments to the Constitution. Article II prescribes a four year term. Section 1 of the 20<sup>th</sup> Amendment provides that terms of office for the President and Vice President end at 12:00 noon on January 20<sup>th</sup> of each year following a presidential election. From 1789 through 1940, chief executives adhered to a self-imposed limit of two terms. That precedent was broken by President Franklin D. Roosevelt, who was elected four times (1932, 1936, 1940, and 1944). The 22<sup>nd</sup> Amendment, proposed and ratified following the Roosevelt presidency, provides that “No person shall be elected to the office of the President more than twice ....” Further, Vice Presidents who succeed to the presidency can be elected to two full terms as President if they have served less than two years of their predecessor’s term (up to 10 years of service). If they have served more than two years of a predecessor’s term, they can be elected to only one additional term (between four and eight years of service, depending on when the Vice President succeeded to the presidency). It is unclear whether a two-term President could succeed to the presidency from the vice presidency or some other office in line of succession; experts disagree on whether this would be constitutional. Proposals for change have included both repeal of the 22<sup>nd</sup> Amendment and the two-term limitation, and substitution of a single six-year term for the President.

### Terms and Tenure in the Constitution

The questions of presidential term length and reeligibility were the subject of considerable discussion at the 1787 Constitutional Convention. The convention faced two basic tenure issues: duration of the President’s term, and whether incumbents would be able to serve multiple terms (reeligibility). The delegates sought to balance the need for energy and stability in the executive (thus suggesting a term longer than the one or two years served by most state governors at the time), with the fear that a too-lengthy term would lead to excessive concentration of power. The question of reeligibility was similarly influenced by fears of tyranny: would an infinitely reelectable presidency lead to dictatorship or monarchy? This issue was further complicated by the fact that most delegates expected the President to be chosen by Congress. If he were, and were also

reeligible, they feared the incumbent would spend much of his time and energy in schemes to ensure reelection, and that this would negatively affect the goal of separation of powers and checks and balances among the branches of government. Would the executive become too dependent on Congress?

Two early drafts of the Constitution (the Virginia and New Jersey plans) specified that the federal executive would be elected by Congress and eligible to serve just one term, but neither suggested what length the term should be. The delegates initially approved a single seven-year term, with no prospect for reelection. They later changed the term to six years, and dropped the prohibition against additional service, but restored the seven-year term, without reeligibility, after further debate. This interim decision was ultimately superseded late in the convention, when the Committee on Unfinished Business submitted a report that provided for a four-year term, with unlimited reeligibility. The committee also addressed the question of executive independence by vesting the President's election in a group of electors chosen in the states, the electoral college.<sup>1</sup> Opponents sought unsuccessfully to reinstate the single term requirement, but the final version, as approved by the convention, states the familiar formula found in Article II, Section 1 of the Constitution:

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 ....<sup>2</sup>

## The Two-Term Tradition

From early 19<sup>th</sup> century through Franklin Roosevelt's 1940 decision to run for an unprecedented third term, American Presidents considered themselves bound by a tradition that they should serve no more than two terms. Although Washington is credited with establishing this tradition, his 1796 Farewell Address made no mention of any such constitutional precedent: "... every day the increasing weight of years admonishes me more and more that the shade of retirement is as necessary to me as it will be welcome."<sup>3</sup> According to modern scholars, the two-term tradition is more properly attributed to Thomas Jefferson, who expressed concern about "perpetual reeligibility" in the presidency as early as 1788.<sup>4</sup> Petitioned to run for a third term in 1807, Jefferson declined, stating his belief that, "If some termination to the services of the chief Magistrate be not fixed by the Constitution, or supplied by practice, his office, nominally four years, will in fact become for life .... I should unwillingly be the person who, disregarding the sound precedent set

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<sup>1</sup> For additional information on the electoral college, see CRS Report RS20273, *The Electoral College: How It Works in Contemporary Presidential Elections*.

<sup>2</sup> For detailed discussions of the presidency at the Constitutional Convention, see: Thomas E. Cronin, ed., *Inventing the American Presidency* (Lawrence, KS: U. of Kansas Press, 1989) or Charles Coleman Thach, *The Creation of the Presidency, 1775-1789: A Study in Constitutional History* (Baltimore: Johns Hopkins U. Press, 1922).

<sup>3</sup> "Washington's Farewell Address," in Henry Steele Commager, ed., *Documents of American History*, 9<sup>th</sup> ed. (Englewood Cliffs, NJ: Prentice-Hall, 1973), p. 170.

<sup>4</sup> Michael Nelson, ed., *Guide to the Presidency*, 2<sup>nd</sup> ed. (Washington: Congressional Quarterly, 1996), p. 59.

by an illustrious predecessor [Washington], should furnish the first example of prolongation beyond the second term of office.”<sup>5</sup>

The two-term limit quickly acquired the force of tradition. Three of Jefferson’s four immediate successors, James Madison, James Monroe, and Andrew Jackson, stepped down at the close of their second terms, while the fourth, John Quincy Adams, was defeated for reelection. In fact, historian Michael Nelson notes that, during the second quarter of the 19<sup>th</sup> century, the Whig Party (and many Democrats) supported a one-term limit, and suggests that this proposal may have influenced presidential tenure for a quarter century following Jackson’s retirement in 1837, during which period no President served more than a single term.<sup>6</sup> Abraham Lincoln was the first President since Jackson to be elected to a second term (in 1864). In the 68 years between the death of Lincoln in 1865, and the inauguration of Franklin D. Roosevelt in 1933, only Ulysses Grant and Woodrow Wilson served two consecutive terms, while Grover Cleveland was defeated for reelection in 1888, but was reelected to a second, non-consecutive, term in 1892. During this long period, only Grant explored the possibility of a third term, in 1880, while Theodore Roosevelt declined to run in 1908, notwithstanding his considerable popularity.<sup>7</sup>

The two-term mold was broken by President Franklin D. Roosevelt in 1940. Following his 1936 reelection, it was widely assumed that Roosevelt would step down at the end of his second term. In 1939, however, the political landscape was transformed by the outbreak of World War II. As the conflict erupted into a world crisis in the spring and summer of 1940, Roosevelt, after a long silence on the subject, let it be known that he would accept the Democratic Party nomination for a third term, if it were offered. The party obliged with considerable enthusiasm, and the President was reelected for a third term that November. With the United States deeply involved in the war by 1944, the injunction not to “change horses in the middle of the stream” seemed even more compelling, and Roosevelt, although in failing health, was elected a fourth time.

## **The 20<sup>th</sup> Amendment: Beginning Presidential Terms on January 20**

From 1789 through 1937, presidential and vice presidential terms ended on March 4 of every year following a presidential election, a date set by the Second Congress.<sup>8</sup> This arrangement led to a four-month interval between presidential elections (held in

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<sup>5</sup> Quoted in *ibid.*, p. 49.

<sup>6</sup> *Ibid.*, pp. 49-50. It is, however, arguable that electoral defeat (Martin Van Buren), death in office (William Henry Harrison, Zachary Taylor), and generally recognized failure in office (Franklin Pierce, James Buchanan) contributed as much, or more, to the single-term presidencies of the period.

<sup>7</sup> Grant found Republican leaders opposed to a third term. Although Roosevelt had been elected President only once, he had served all but six months of William McKinley’s second term, to which he had succeeded as Vice President.

<sup>8</sup> March 4 was selected in 1788 under the Articles of Confederation, when Congress voted that “the first Wednesday in March next be the time” at which the term of the First Congress would begin, a day that fell on March 4 in 1789. The Second Congress confirmed the date and extended it to presidential terms in 1792 (1 Stat. 241).

November) and inaugurations (held on March 4 of the following year).<sup>9</sup> Section 1 of the 20<sup>th</sup> Amendment, proposed by Congress in 1932, and ratified by the states in 1933, changed the date for presidential terms to January 20 (effective in 1937), and that of Congress to January 3 (effective in 1935). The amendment was the culmination of a long campaign to shorten the interval between election and inauguration, eliminate lame duck sessions of Congress, and ensure that a newly elected Congress would count electoral votes and conduct contingent election of the President and Vice President, if necessary.<sup>10</sup> Since 1937, Presidents have been inaugurated on January 20, except when the day falls on a Sunday; in such cases, the President is customarily sworn in at a private White House ceremony on the 20<sup>th</sup>, and the public ceremony is held the next day.

## The 22<sup>nd</sup> Amendment: Term Limits for the President

The 22<sup>nd</sup> Amendment, which effectively limits Presidents to two terms in office, has frequently been described as a reaction to the presidency of Franklin Roosevelt.<sup>11</sup> The Amendment was a top priority for the 80<sup>th</sup> Congress (1947-1948), the first to be controlled by Republicans since 1931. Debate on the proposal was the occasion of considerable rancor, as some Democrats claimed it was both undemocratic and an act of posthumous revenge against Roosevelt, while Republicans argued their goal was the prevention of excess concentration of power in the hands of one person. The idea of term limits was not new, however: one scholar notes that 270 amendments to limit presidential tenure had been proposed prior to 1947. Moreover, the measure passed both houses by wide margins, and with some degree of Democratic support.<sup>12</sup> The Amendment states that, “No person shall be elected to the office of the President more than twice ....” It also provides (in an amendment offered by Senator Robert A. Taft) for Vice Presidents who succeed to the office: they can be elected to two full terms as President if they serve less than two years of their predecessor’s term (up to 10 years of service). If they have served more than two years of the term to which they succeed, they can be elected to only one additional term (between four and eight years of service, depending on when the Vice President succeeded to the presidency).<sup>13</sup> The Amendment also specifically exempted “any person holding the

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<sup>9</sup> During this period, retiring or defeated Presidents were considered to be political cripples, “lame ducks.” At the same time, the second “lame duck” session of a Congress followed congressional elections, leaving a House and Senate that included retiring or repudiated Members to legislate for several months *after* the election.

<sup>10</sup> For additional information on contingent election, see CRS Report RS20300, *Election of the President and Vice President by Congress: Contingent Election*.

<sup>11</sup> Alan P. Grimes, *Democracy and the Amendments to the Constitution*, (Lexington, MA: D.C. Heath, 1978), pp. 114-116. Thomas E. Cronin, “Twenty-Second Amendment,” in *Encyclopedia of the American Presidency*, Leonard W. Levy and Louis Fisher, eds. (New York: Simon and Schuster, 1994), vol. 4, pp. 1511-1512.

<sup>12</sup> Cronin, “Twenty-Second Amendment,” p. 1511. Fifty Democrats voted with Republicans in the House (March 21, 1947), for a margin of 285 to 121 in support of the measure. In the Senate, 16 Democrats contributed to the winning margin of 59 to 23 (March 12, 1947). Grimes, *Democracy and the Amendments to the Constitution*, pp. 119-120.

<sup>13</sup> For example, Lyndon Johnson became President in November 1963, 34 months into the term to which he and John Kennedy were elected. Since he served less than two years of this term, he could

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office of President when this article was proposed ...” that is, incumbent President Harry Truman. Proposed in 1947, the Amendment was declared ratified on March 1, 1951, after being approved by 36 states.

Since its ratification, the 22<sup>nd</sup> Amendment has applied to three Presidents who served two full terms: Dwight Eisenhower (1953-1961), Ronald Reagan (1981-1989), and William Clinton (1993-2001). Of the remaining chief executives, John Kennedy (1961-1963) died in office; Lyndon Johnson (1963-1969) declined to run for a second full term; Richard Nixon (1969-1974) resigned from office; and Gerald Ford (1974-1977), James Carter (1977-1981), and George H. W. Bush (1989-1993) were defeated in reelection bids.

**Is The 22<sup>nd</sup> Amendment an Absolute Term Limitation?** The 22<sup>nd</sup> Amendment prohibits anyone from being elected President more than twice, but could a President who was elected to two terms as chief executive be subsequently elected Vice President, and then succeed to the presidency on the incumbent’s death, resignation, or removal from office? This issue was raised during discussions of the 22<sup>nd</sup> Amendment in 1960, when President Eisenhower was about to become the first President affected by the amendment; while it has received little attention since, the question remains open.<sup>14</sup> Some argue that the 12<sup>th</sup> Amendment statement that “... no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President ....” *ipso facto* bars any term-limited President from serving as Vice President, or succeeding to the presidency from any other line-of-succession position (the Speaker of the House, the President pro tempore of the Senate, the Cabinet, etc.).<sup>15</sup> Others maintain that the 12<sup>th</sup> Amendment’s qualifications arguably apply only to the standard requirements of age, residence, and “natural-born” citizenship. The 22<sup>nd</sup> Amendment’s prohibition, they suggest, can be interpreted as extending only to eligibility for *election*, not *service*; thus, a term-limited President could be elected Vice President, and then succeed to the presidency to serve the balance of his successor’s term (he would not, however, be eligible to run for *election* to an additional term).<sup>16</sup> It seems unlikely that this question will be answered conclusively barring an actual occurrence of the hypothesis developed above. As former Secretary of State Dean Acheson commented when the issue was discussed in 1960, it may be “more unlikely than unconstitutional.”<sup>17</sup>

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<sup>13</sup> (...continued)

have been elected to two full terms. Conversely, Gerald Ford became President in August 1974, 19 months into Richard Nixon’s second term. Since Ford served more than two years of Nixon’s term, he could have been elected to only one full term.

<sup>14</sup> Stephen W. Stathis, “The Twenty-Second Amendment: A Practical Remedy or Partisan Maneuver?” *Constitutional Commentary*, vol. 7, winter 1990, pp. 76-77.

<sup>15</sup> Henry H. Fowler, quoted in Robert E. Clark, “The Constitutional Issues: A ‘Back-door’ Third Term?” *The Sunday Star* (Washington, DC), Jan. 31, 1960, p. C-4.

<sup>16</sup> Edward S. Corwin, quoted in *ibid.*; Johnny H. Killian, CRS Senior Specialist in Public Law, conversation of Feb. 8, 2001.

<sup>17</sup> George Dixon, “Washington Scene ... Ike’s Right to V.P. Spot,” *The Washington Post*, Jan. 21, 1960, p. A-23.

## Proposals For Change

**Repeal of the 22<sup>nd</sup> Amendment.** Proposals for repeal of the 22<sup>nd</sup> Amendment have been advanced on several occasions since its ratification. These proposals have usually been offered during the second term of a President who has enjoyed a degree of success or popularity. Advocates of repeal assert that a popular or successful two-term President should be able to serve additional terms, that the limit imposed by the 22<sup>nd</sup> Amendment prevents the voters from choosing the President they prefer, and that reelection is the ultimate term limit mechanism. Supporters of presidential term limits argue that eight years is enough time in such a powerful office, and that longer presidential tenure could result in excessive concentration of power in the executive. Examples of related proposals include H.J. Res. 690, 99<sup>th</sup> Congress (Representative Dornan); H.J. Res. 156, 100<sup>th</sup> Congress (Representative Vander Jagt); and H.J. Res 17 (Representative Serrano), H.J. Res. 24 (Representative Frank), and H.J. Res. 38 (Representative Hoyer with Representatives Hyde, Frank, Berman, Sensenbrenner, Sabo, and Pallone), all introduced in the 106<sup>th</sup> Congresses; and H.J. Res. 4 (Representative Serrano) in the 107<sup>th</sup> Congress. None of these proposals received any action beyond *pro forma* committee referral. Proposals in the 99<sup>th</sup> and 100<sup>th</sup> Congress were referred to the House Judiciary Committee’s Subcommittee on Civil and Constitutional Rights, now the Subcommittee on the Constitution.

**Six-Year Presidential Term.** Another option for change that has received occasional attention is the six-year term for the President and Vice President, usually coupled with provisions limiting these officers to a single term. Proponents of this reform assert that the six-year term would free the President from partisan political concerns associated with campaigning for reelection, thus allowing the chief executive to concentrate on public policy issues. Further, decisions on these questions would less likely be judged by their impact on the President’s reelection prospects. Finally, advocates suggest that a single term would eliminate the “lame duck” diminution of power and influence experienced by some Presidents during their last years in office. Opponents counter by asserting that a single six-year term would make an incoming chief executive who has no prospect for reelection a lame duck the day he entered office. Lack of the prospect of reelection, they contend, would actually reduce a President’s accountability. The single term provision is undemocratic and would deprive the nation of the services of a capable chief executive. Further, they argue that a six-year term is too long for a failed President, and too short for a successful one: “Six years for an incompetent, erratic, or listless President would have been disastrous on several past occasions, and could be again.”<sup>18</sup> The most recent six-year term proposals were offered in the 101<sup>st</sup> Congress (1989-1991), including H.J. Res. 6 (Representative Brooks), H.J. Res. 52 (Representative Frenzel), and H.J. Res. 176 (Representative Guarini). No action, other than *pro forma* referral to the then-Subcommittee on Monopolies and Commercial Law of the House Judiciary Committee was taken on any of these proposals.

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<sup>18</sup> James L. Sundquist, “Six-Year Presidential Term,” in *Encyclopedia of the American Presidency*, vol. 4, p. 1375.