ARTICLE II

Section 1

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

★ The phrase "executive power," like the "necessary and proper" clause, is another of those terms in the Constitution that have led to endless debate as to just what it means. In Article II, which provides the basic design of the executive branch, the framers invest the president with this power, but never define it at anything like the length at which they set out the powers of Congress in Article I.

As for the president's term of office, at the Constitutional Convention there was considerable debate as to how long it should be. Most of the framers were anxious not to establish the kind of lifetime rule that a monarch ordinarily enjoys. But what would be too brief a term to ensure reasonable stability for the executive branch? Among the ideas put forward at the Convention were, at one end, a term of just two years, and at the other, an unlimited term during "good behavior"—which could have been used to justify a presidency of almost any length.

The delegates to the Convention knew that they were holding their debates in the presence of the man most likely to become the first president, George Washington, who had been elected unanimously as presiding officer of the Convention. Washington interpreted that position to mean he should take no part in the Convention's debates, so he was spared from having to express himself on the duration of the office he was likely to assume. During his presidency, Washington agonized frequently over how long he should serve. Though he would

almost certainly have been elected to a third term, his decision to step down after two set a precedent that all of his successors observed until the 20th century, when Franklin D. Roosevelt ran successfully for the office four times. That led after Roosevelt's death to the adoption of the 22nd Amendment, which made a two-term limit a Constitutional requirement.

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all

the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

★ The electoral college, as we now call it, remains the most perplexing institution established by the Constitution. Strictly speaking, Americans do not elect their president. They choose "electors" on a statewide basis who then meet to choose the president. This convoluted arrangement was arrived at by the framers after lengthy debate over the question of how to select the chief executive. They worried that the American people could not be trusted to make an informed choice about a candidate for the highest national office. Under the system they designed, even Senators, a statewide office, were to be chosen by state legislatures.

For some time the framers considered having the president elected by Congress, but that would have violated the principle of separation of powers. The system they settled on instead provided that electors should meet in their separate states—not jointly in a single national gathering—to vote for two candidates. Their votes would be forwarded to Congress and tabulated by the president of the Senate. The candidate having the largest number—presuming that amounted to a majority of the votes—would become president; the runner up would be vice president. In the event of a tie, or a vote in which multiple candidates meant that none claimed a majority, the choice of president would be left to the House.

Early in the life of the new nation, that arrangement was thrown into crisis by the emergence of political parties, a development the framers did not foresee. They assumed that

voters would choose electors as individuals, voting for them on the basis of individual merits and trusting them in turn to use their best judgment in selecting a president. But by the dawn of the 19th century parties had emerged—the Federalists, headed by then-President John Adams, and the Republicans, led by Thomas Jefferson. Electors ran together as a slate or "ticket," pledging in advance to vote for the candidates of their party. Voters chose electors in the expectation that they were in effect voting directly for their party's presidential and vice-presidential candidate.

In the election of 1800, however, Jefferson, whom the Republicans considered their presidential candidate, and Aaron Burr, whom they regarded as their vice-presidential candidate, both received the same number of electoral votes. That threw the contest into the outgoing House of Representatives, which was dominated by Federalists. This put the Federalists into the unusual position of deciding which member of the opposing party should be president. (Persuaded by the arch-Federalist Alexander Hamilton that Jefferson would be easier to work with, they chose him.) That tumultuous election led to changes in the system that were incorporated in the 12th Amendment in 1804, though even then the basic framework of what we now call the electoral college remained in place.

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

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

★ The requirement that a president should be a "natural born citizen" does not disqualify candidates, like George Romney in 1968 and John McCain in 2008, who were born abroad to parents who were American citizens. For the nation's highest office, the framers also set the highest minimum age requirement—35 years.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

★ Here the framers outline the vice president's most fateful duty—to succeed a president who has left office due to death, resignation or disability. In the 25th Amendment, ratified in 1967, the Constitution would clarify the means for declaring a president too disabled to fulfill the duties of office.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

★ This provision ensures that Congress cannot lower the president's salary as a means to punish him for opposing their will or raise it to reward him for working with them. It also prevents individual states from rewarding him financially for favoring their interests.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

★ Historians disagree as to whether George Washington, when he first took the oath of office on April 30, 1789, spontaneously added the final words: "So help me, God," but those words have become a tradition.

Section 2

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

★ While Article I, Section 8 gives Congress the power "to declare war," here the framers make the president Commander in Chief, setting the stage for a multitude of conflicts between the two branches over their respective power to initiate and oversee military action.

The power to require written opinions from the heads of the various departments of the executive branch was included to emphasize that the president is truly head of the executive and not merely supervisor of semi-autonomous agencies.

After considering the possibility of conferring on the Senate the power to grant reprieves and

pardons, the framers gave that ability exclusively to the president. Alexander Hamilton wrote in the Federalist 74, one of the essays in defense of the new Constitution that he produced after the Convention with James Madison and John Jay, "It is not to be doubted, that a single man of prudence and good sense is better fitted, in delicate conjunctures, to balance the motives which may plead for and against the remission of the punishment, than any numerous body whatever." After President Gerald Ford pardoned ex-President Richard Nixon in 1974, then-Senator Walter Mondale tried and failed to gain approval for an amendment that would give a two-third majority of Congress 180 days to nullify a presidential pardon it disapproved of. The idea was revived, and again failed, in 2001, shortly after President Bill Clinton's pardon of the fugitive financier Marc Rich.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

★ The "advice and consent" power of the Senate with respect to treaties is another that the framers left vague. Early in his Presidency, George Washington went to the Senate chamber to solicit members' views on a proposed treaty with several Native American tribes. He found the experience so inconclusive that he soon stopped seeking Senate advice in formulating the terms of any treaty still in negotiation. Thereafter he merely submitted treaties to the Senate to approve or

reject, but not to revise—a practice followed by his successors. The "advice and consent" power with respect to judges, ambassadors, and other officers is one the Senate still exercises aggressively, as the frequent Supreme Court confirmation battles attest.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

★ Presidents rely sometimes on this clause while the Senate is in recess to appoint nominees who have been refused Senate confirmation or are likely to be refused—no matter that the vacancies they were chosen to fill may have opened long before the Senate went into recess.

Section 3

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

★ The obligation to give Congress "information of the state of the union" provides the basis for today's State of the Union address, though the Constitution does not require it to be delivered annually or even by way of a speech. George Washington planted the seeds of the modern tradition by doing both. But in

1801 President Thomas Jefferson, always on the lookout for any signs of "monarchical" pretensions in the presidency, decided that the annual address was one such sign and decided to send the information to Congress in writing. That continued to be the practice until 1913, when Woodrow Wilson revived the practice of annual remarks. Eleven years later Calvin Coolidge was the first president to broadcast his speech on radio. Even then, it wasn't known as the "State of the Union message," until Franklin D. Roosevelt called it that in 1935. In 1947 Harry Truman became the first president to deliver it on television.

Section 4

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

★ It was only late in the Constitutional Convention that the framers decided that the wide-ranging term "high crimes and misdemeanors" should be added to the more narrowly understood offenses of treason and bribery among the charges that could lead to impeachment. Two presidents have been impeached—Andrew Johnson in 1868 for actions to impede the policies of Reconstruction after the Civil War and Bill Clinton in 1999 for perjury and obstruction of justice in connection with his testimony about his relationship with a White House intern and the subsequent investigation into that testimony. Both men were acquitted by the Senate. In 1974 the House Judiciary Committee brought a bill of impeachment against Richard Nixon for his actions in connection with the Watergate break-in, but before the full House could approve it, which was considered a near-certainty, he resigned.