Elections in the United States of America

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The mechanics of elections in the United States of America (US) can be confusing for foreign observers – and often so for US citizens as well. Much of the confusion flows from the fact that the country's electoral processes are a mix of constitutional provisions that date to the 18th century, a federal model which grants the states a significant degree of autonomy, and two large and entrenched parties that jealously guard their political influence. This brief comment piece seeks to demystify the topic by highlighting key themes, facts, and data points about American elections.

All federal elections in the US occur on the Tuesday after the first Monday in November in even-numbered years. This means that Election Day can fall on the calendar as early as November 2 and no later than November 8 in any given cycle. The provision for determining Election Day in this manner dates to the mid-1800s and is statutory, not constitutional, in its origin.[1]

These biennial general elections include balloting, by single member district, for all 435 seats in the House of Representatives by dint of two-year terms for those lawmakers. By contrast, only a third of the one hundred Senate seats rotate onto the ballot in each cycle, with members in the upper chamber being elected by statewide constituencies

[1] The law to establish a uniform date for presidential elections was passed in 1845. In 1872, Congress moved to align House elections with that same date. For details, see Congressional Research Service Report R46413, 2 November 2023. Accessible at: <https://crsreports.congress.gov/product/pdf/R/R46413>.

for a six-year term.[2] The offices of president and vice president are elected concurrently for four-year terms and appear on the ballot in every other election cycle. Consequently, general elections in the US are commonly referred to as being either 'midterm' or 'presidential' in nature despite the fact that most of the electoral activity in any cycle is for legislative branch offices.

Variation in the length of terms for federal offices is a product of the Constitution. The dispersion of terms ranging from two to four to six years underscores the desire by James Madison (the 'Father of the Constitution') and his fellow framers to have a mix of office holders: some elected to short terms – and thus highly responsive to the voters – with others more immune from popular impulses and able to take a longer view on policy issues by virtue of having more years in office.[3]

The constitutionally-prescribed nature of federal terms also means that there is no flexibility in the election schedule. The concept of a head of government calling a general election is alien to Americans. Instead, the fixed schedule places candidates at the mercy of events. Consider that Abraham Lincoln had to run for re-election as president in November of 1864 with the American Civil War raging into its fourth year. Similarly, Franklin Roosevelt had to take time out from his role as a wartime commander-in-chief to run for a fourth term in the middle of World War II. Still more recently, the presidential and congressional elections of November 2020 were held, on schedule, at the height of the coronavirus pandemic.

The rule of direct, popular election for members of Congress does not apply to the executive branch offices. The Constitution dictates the use of the Electoral College as an indirect means of electing the president and vice president, with each party's candidates campaigning together as a partisan 'ticket.'[4] A state's popular vote typically

[2] The Constitution originally provided for senators to be chosen by state legislatures, but the process changed to popular voting for Senate seats with passage of the Seventeenth Amendment in 1913. United States Constitution, Amendment XVII, 1913.

[3] Shorter terms were the norm in the states at the time the Constitution was adopted. However, there was significant discussion at the Constitutional Convention about creating longer terms for the Senate as a counterweight to the more democratic House. E.K. Swift, The Making of an American Senate. Ann Arbor: University of Michigan, 1996, pp. 37-41.

[4] The original provisions of the Electoral College in Article II, Section 1, of the Constitution were changed with the Twelfth Amendment in 1801. It was that amendment which paved the way for the creation of presidential-vice presidential party tickets. United States Constitution, Amendment XII, 1801.

determines which ticket will win *all* of that state's allotted number of electoral votes in the Electoral College. This winner-takes-all provision, which is the law in 48 of 50 states, skews electoral outcomes and makes it possible for a presidential candidate to win the popular vote but lose the electoral vote and thus be denied the White House. Five US presidents have attained the nation's highest office in this manner after losing the national popular vote, including George W Bush in the election of 2000 and Donald Trump in 2016.

This disconnect between the popular vote and electoral vote is the most visible and consequential of many anomalous outcomes made possible by the Electoral College. These curiosities have been the subject of many books and articles.[5] Although the system is byzantine, difficult to understand, and unpopular with the American people, the Electoral College is anchored in the Constitution.[6] Any effort to abandon it in favour of direct election of the president would have to go through the arduous amendment process.

The president is the only federal office holder governed by term limits. Since ratification of the Twenty-Second Amendment in 1951, US chief executives have been limited to two full terms in office.[7] Term limits at the state level are more common, with two-thirds of governors and one-third of state legislative seats featuring some type of restriction on the number of times an individual can be elected to those offices.[8]

It is important to emphasize that these elections for federal offices are administered by and through the individual states. This accounts for differences in the method of voting, poll hours, early voting options, voter eligibility and ballot access criteria, and

[5] For a recent critique, see G. Edwards III, Why the Electoral College is Bad for America, 3rd edition. New Haven: Yale University Press, 2019.

[6] M. Brenan, '61% of Americans Support Abolishing the Electoral College.' Gallup Organization, 24 September 2020. Accessed at: <https://news.gallup.com/poll/320744/americans-support-abolishing-electoral-college.aspx>.

[7] The Amendment allows for two terms or a maximum of 10 years in office if a vice president's initial succession to the Oval Office occurs upon the death, resignation, or removal of the president with less than half of the term remaining. United States Constitution, Amendment XXII, 1951.

[8] The Book of the States. Lexington, KY: Council of State Governments, 2021, p. 109; and 'The Term Limited States,' National Conference of State Legislatures, 3 August 2023. Accessed at: <https://www.ncsl.org/about-state-legislatures/the-term-limited-states>.

oversight of party primaries and caucuses. A recent example of state-to-state differences in the administration of federal elections revolves around efforts by a handful of states to keep Donald Trump off the presidential ballot, the format of which varies by jurisdiction, because of his role in the 6 January 2021, uprising at the US Capitol.[9]

Individual states can also decide whether Election Day is treated as a defined holiday. Most states have not gone that route, nor is the day designated as a national holiday. The result is that most Americans go to the polls on a Tuesday that looks and feels much like any other day of the work week save for the usual media exhortations on the virtues of voting. There is also no universal provision for paid time off from work to go vote, though approximately half the states have enacted measures along these lines to encourage greater turnout.[10]

In terms of timing, the states have great latitude to decide whether, as a matter of convenience, to append their own elections onto the federal schedule in November or to opt for a different arrangement. The calendar for gubernatorial elections serves to illustrate this point. Of the fifty current governors of American states, three were elected in 2023 (an off year in the federal cycle), eleven will be elected in 2024 (concurrent with the presidential election), two will be elected in 2025 (another off year for federal offices), and thirty-six states will elect their governors in 2026 (concurrent with the federal midterm elections).

Most governors are elected to four-year terms, but New Hampshire and Vermont are exceptions with two-year terms.[11] The vast majority of these elections take place in early November consistent with the federal model, but even that schedule is not universal. The governor of Louisiana was last elected in October of 2023.

The story of American elections gets even more complicated when party primaries and state legislative elections are thrown into the mix. There are also judicial elections in

[9] Those efforts were ultimately struck down by the US Supreme Court in March of 2024. *Trump v Anderson*, 601 US (2024). Accessed at: <https://www.supremecourt.gov/opinions/23pdf/23-719_19m2.pdf>.

[10] A. O'Connell-Domenech, 'Here Are the States Where People Get Time Off to Vote,' *The Hill*, 8 November 2022. Accessed at: <https://thehill.com/changing-america/respect/equality/3725345-here-are-the-states-where-people-get-time-off-to-vote/>.

[11] 'Governors' Powers and Authority,' National Governors Association, 2024. Accessed at: <https://www.nga.org/governors /powers-and-authority/>.

the majority of the states that choose judges in that manner.[12] Finally, there are elections for local municipal and county offices as well as school boards and other special purpose districts. Although local governments in the US are considered creatures of their home state for legal purposes, local elections often occur on a separate schedule that does not align with the calendar for state or federal contests.

If all of this seems complicated, it is! Variety is clearly the order of the day when it comes to US elections. Moreover, the fixed election schedule and staggering of terms, coupled with the interplay of local, state, and federal offices, means that the US stays in a perpetual election cycle. The result is confusion, long and expensive campaigns, voter fatigue, and – not surprisingly – a rate of voter turnout that is low by the standards of peer democracies.[13] With rare exceptions, only presidential elections in the US. manage to stir enough interest to get a majority of the voting age population out to participate.[14]

There are obvious correctives available that could streamline elections and make voting a more appealing proposition in the US.[15] However, progress toward enacting those measures has been limited. The reasons for this inaction are debatable, but it bears mentioning that change would require the approval of the very state and federal lawmakers who have already mastered the rules of the game as currently configured. For those officials, the system - however flawed - has demonstrated its utility by facilitating their own election to office.

[12] Choosing State Court Judges, Brennan Center for Justice, 2024. Accessed at: <https://www.brennancenter.org/our-work/research-reports/judicial-selection-data-other-resources>.

[13] 'U.S. Voting Age Turnout is Still Behind Many Other Countries,' Pew Research Center, 1 November 2022. Accessed at: <https://www.pewresearch.org/short-reads/2022/11/01/turnout-in-u-s-has-soared-in-recent-elections-but-by-some-measures-still-trails-that-of-many-other-countries/ft_22-10-17_globalturnout_dot/>.

[14] Historical Reported Voting Rates, US. Census Bureau. Accessed at: <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/voting-historical-time-series.html>.

[15] E.J. Dionne and M. Rapoport, *100% Democracy: The Case for Universal Voting*. New York: The New Press, 2022.

As evidenced by this summary, electoral processes in the US are broadly reflective of the country's history, size, and diversity. Though far from perfect, they provide legitimacy for those who govern. They also capture the country's democratic spirit. Elections invoke Lincoln's challenge to maintain 'government of the people, by the people, and for the people' and are important in understanding the American political ethos.[16]

[16] A. Lincoln, 'Gettysburg Address.' Speech, Gettysburg, PA, 19 November 1863. 'American Speeches,' US National Archives.