



THE NUMBERS OF THE CONSTITUTION

Eugene Volokh

A PUZZLE for Constitution buffs, and their students: To what do the following numbers refer in the United States Constitution?

THE NUMBERS

1/5: _____

1/3: _____

3/5: _____

2/3 (give at least three of the ten references): _____

3/4: _____

2 (give at least five of the fifteen references): _____

3 (give at least two of the six references): _____

4 (give at least two of the four references): _____

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5: _____

6 (give at least one of the two references): _____

7 (give both references): _____

9 (give both references): _____

10 (give at least three of the four references): _____

12: _____

14: _____

15 (optional, since it's unusually hard): _____

17 (optional, since it's unusually hard): _____

18: _____

20 (give both references): _____

21 (give both references): _____

25: _____

30: _____

35: _____

48: _____

Three numbers greater than 1000: _____

Special bonus question (unusually hard): Where does "Few" occur in the Constitution? _____

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THE RULES

Remember: Amendments are “valid to all Intents and Purposes, as Part of this Constitution.” The provisions superseded by some Amendments also remain parts of the Constitution, though they no longer have effect.

Treat ordinal numbers (e.g., “second”) and multiplicative numbers (“twice”) as equivalent to the cardinal numbers (“two”). Count spelled-out versions of all numbers as equivalent to the numeric versions. Don’t include parts of numbers (“three fifths,” for instance, should count as three fifths but not as three or five).

Don’t include article, section, clause, or amendment numbers, even when used as internal cross-references within the text of the Constitution itself (e.g., “The eighteenth article of amendment to the Constitution of the United States is hereby repealed”). Don’t include the number of representatives that each state was to have in the House of Representatives before the first census (“[U]ntil such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three . . .”).

Don’t consider references to “one,” “first,” and “once,” such as “each Senator shall have one Vote.”

Note for the picky: Some numbers appear several times in virtually identical contexts; when I count references in the parentheticals above (e.g., “give at least two of the six references”), I tend to treat all the nearly identical references – applying my own standard of “near identity” – as one. But how you do it in your answer is, obviously, up to you.

Note for the even pickier: The original hand-written Constitution (visible on the National Archives Web site) contains the Secretary’s attestation of the authenticity of certain corrections, for instance, “The Word, ‘the,’ being interlined between the seventh and eighth Lines of the first Page.” Do not include the numbers from this attestation.

ANSWERS BEGIN ON THE NEXT PAGE; DON’T PEEK!

THE ANSWERS

1/5: “[T]he Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.” Art. I, § 5, cl. 3.

1/3: “[O]ne third [of all Senators] may be chosen every second Year” Art. I, § 3, cl. 2.

3/5: “Representatives and direct Taxes shall be apportioned among the several States . . . , according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons . . . three fifths of all other Persons.” Art. I, § 2, cl. 3.

2/3: “[N]o Person shall be convicted [in a trial of an Impeachment] without the Concurrence of two thirds of the Members present.” Art. I, § 3, cl. 6.

2/3: “Each House may . . . , with the Concurrence of two thirds, expel a Member.” Art. I, § 5, cl. 1.

2/3 (I treat this as one occurrence): “If after such Reconsideration [following a veto] two thirds of that House shall agree to pass the Bill, . . . and if [it is] approved by two thirds of [the other] House, it shall become a Law.” Art. I, § 7, cl. 2; see also Art. I, § 7, cl. 3, a similar provision for “Order[s], Resolution[s], or Vote[s].”

2/3: “[A] quorum for this Purpose [of choosing the President should no candidate have a majority of the votes] shall consist of a Member or Members from two thirds of the States” Art. II, § 1, cl. 3; see also Amend. XII.

2/3: “He [the President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur” Art. II, § 2, cl. 2.

2/3 (two occurrences): “The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments” Art. V.

2/3: “[A] quorum for the purpose [of choosing the Vice-President] shall consist of two-thirds of the whole number of Senators” Amend. XII.

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2/3: “But Congress may by a vote of two-thirds of each House, remove [a rebel’s disability from office-holding].” Amend. XIV, § 3.

2/3: “If the Congress . . . determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President” Amend. XXV, § 4.

3/4 (I treat this as one occurrence): “[Amendments] shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof” Art. V; there are similar but more specific provisions in Amend. XX, § 6 and Amend. XXII, § 2.

2: “The House of Representatives shall be composed of Members chosen every second Year” Art. I, § 2, cl. 1.

2: “The Senate of the United States shall be composed of two Senators from each State” Art. I, § 3, cl. 1; Amend. XVII.

2 (I treat this as two occurrences): “The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, [and] of the second Class at the Expiration of the fourth Year . . . , so that one third may be chosen every second Year” Art. I, § 3, cl. 2.

2: “Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn . . . to any other Place than that in which the two Houses shall be sitting.” Art. I, § 5, cl. 4.

2: “The Congress shall have Power . . . To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years.” Art. I, § 7, cl. 12.

2 (two occurrences): “The Electors shall meet in their respective States, and vote by Ballot for two Persons [for Vice President] [I]f there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.” Art. II, § 1, cl. 3; see also Amend. XII.

2: “The judicial Power shall extend . . . to controversies between two or more States.” Art. III, § 2, cl. 1.

2: “No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act” Art. III, § 3, cl. 1.

2: “[N]or [shall] any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.” Art. IV, § 3, cl. 1.

2: “[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb.” Amend. V.

2: “[I]f no person have a majority [of votes for Vice-President], then from the two highest numbers on the list, the Senate shall choose the Vice-President” Amend. XII.

2 (two occurrences): “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” Amend. XXII, § 1.

3: “The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States” Art. I, § 2, cl. 3.

3: “[Senators] shall be divided as equally as may be into three Classes.” Art. I, § 3, cl. 2.

3: “The Seats of the Senators of the . . . third Class [shall be vacated] at the Expiration of the sixth Year” Art. I, § 3, cl. 2.

3: “Neither House . . . shall, without the Consent of the other, adjourn for more than three days” Art. I, § 5, cl. 4.

3: “[I]f no person have such majority [of votes for President], then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President.” Amend. XII.

3: “[T]he terms of Senators and Representatives [shall end] at noon on the 3d day of January” Amend. XX, § 1; see also Amend. XX, § 2, providing for assembly of the new Congress on the same day.

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4: “The Seats of the Senators of the . . . second Class [shall be vacated] at the Expiration of the fourth Year” Art. I, § 3, cl. 2.

4: “[The President] shall hold his Office during the Term of four Years” Art. II, § 1, cl. 1.

4: “[I]f the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President” Amend. XII.

4: “Thereafter, . . . [the President] shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days . . . their written declaration [to the contrary].” Amend. XXV, § 4.

5: “[I]f no Person have a Majority [of electoral votes], then from the five highest on the List the said House shall in like Manner chuse the President.” Art. II, § 1, cl. 3.

6: “Senators [shall be] chosen . . . for six Years” Art. I, § 3, cl. 1; see also a similar provision in Amend. XVII.

6: “The Seats of the Senators of the . . . third Class [shall be vacated] at the Expiration of the sixth Year” Art. I, § 3, cl. 2.

7: “No Person shall be a Representative who shall not have . . . been seven Years a Citizen of the United States” Art. I, § 2, cl. 2.

7: “This article shall be inoperative unless it shall have been ratified . . . within seven years from the date of the submission hereof to the States by the Congress.” Amend. XVIII, § 3; see also Amend. XX, § 6; Amend. XXI, § 3; Amend. XXII, § 2, all of which include similar provisions.

9: “No Person shall be a Senator who shall not have . . . been nine Years a Citizen of the United States.” Art. I, § 3, cl. 3.

9: “The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.” Art. VII.

10: “The actual Enumeration shall be made within . . . every subsequent Term of ten Years” Art. I, § 2, cl. 3.

10: “If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law” Art. I, § 7, cl. 2.

10: “The Congress shall have Power . . . To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may . . . become the Seat of the Government of the United States” Art. I, § 8, cl. 17.

10: “[A] Tax or duty may be imposed on such Importation [of Persons into any State], not exceeding ten dollars for each Person.” Art. I, § 9, cl. 1.

12: “[D]one in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven, and of the Independence of the United States of America the Twelfth.” Art. VII.

14: “[N]either shall any Person be eligible to that Office [of President] who shall not have . . . been fourteen Years a Resident within the United States.” Art. II, § 1, cl. 5.

15: “Sections 1 and 2 [of this Amendment] shall take effect on the 15th day of October following the ratification of this article.” Amend. XX, §5.

17: “[D]one in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven” Art. VII.

18: “The right of citizens of the United States, who are 18 years of age or older, to vote shall not be denied or abridged by the United States or any state on account of age.” Amend. XXVI, § 1.

20: “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved” Amend. VII.

20: “The terms of the President and Vice President shall end at noon on the 20th day of January” Amend. XX, § 1.

21 (I treat this as one occurrence): “[W]hen the right to vote . . . is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, . . . the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of

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male citizens twenty-one years of age in such State.” Amend. XIV, § 2.

21 (I treat this as one occurrence): “If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President” Amend. XXV, § 4.

25: “No Person shall be a Representative who shall not have attained to the Age of twenty five Years” Art. I, § 2, cl. 2.

30: “No Person shall be a Senator who shall not have attained to the Age of thirty Years” Art. I, § 3, cl. 3.

35: “[N]either shall any Person be eligible to that Office [of President] who shall not have attained to the Age of thirty five Years” Art. II, § 1, cl. 5.

48: “Congress shall decide the issue [of Presidential disability], assembling within forty-eight hours for that purpose if not in session.” Amend. XXV, § 4.

1787: “Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven” Art. VII.

1808: “The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight.” Art. I, § 9, cl. 1; see also Art. V, limiting the amendment of this provision and the No Direct Tax Clause.

30,000: “The Number of Representatives shall not exceed one for every thirty Thousand” Art. I, § 2, cl. 3.

Few: One of the Constitution’s signers was William Few.

