EXPLORING ELECTIONS AND VOTING IN THE CONSTITUTION

While the original Constitution left the issue of voting largely to the states, a series of new constitutional amendments shaped elections and voting in America, including by banning discrimination at the ballot box based on race (15th Amendment) and sex (19th Amendment). While state governments continue to play a central role in elections today, these new amendments carved out a new—and important—role for the national government in the context of elections and voting.

When examining how the Constitution shapes elections and voting, we must address the following questions:

- What does the Constitution say about voting rights? What's in there, and what isn't?
- Who can vote in America (and when)?
- Before the Constitution, who could vote, and which governments controlled elections and voting?
- How did Reconstruction transform voting rights in America? What were its limits?
- Which groups benefited from the 12th, 15th, 17th, 19th, 23rd, 24th, and 26th Amendments?

Let's begin—as we always do when interpreting the Constitution—with the Constitution's text. When it comes to voting rights, it's worth pausing on a series of provisions.

Beginning with the original Constitution, there are four main provisions addressing elections and voting:

- Article I, Section 2: Sets qualification for voters in the U.S. House elections. These qualifications must match the qualifications for voters for the lower house of each state legislature. These houses of the state legislatures were designed to be the elected branch closest to the people themselves. For its day, this is a fairly democratic provision—requiring states to elect national representatives with the same rules that apply to the most democratic component of each state government—its lower house.
- Article I, Section 3: Leaves the election of U.S. senators to the state legislatures. (Revised by the 17th Amendment.)

- Article I, Section 4: Leaves the time, place, and manner of elections to the state legislatures, but subject to regulation by Congress.
- Article II, Section 1: Sets up the Electoral College for electing the U.S. president.

Turning away from the original Constitution, we see many constitutional amendments touching on elections and voting.

- 12th Amendment: Alters the Electoral College.
- 14th Amendment: Section 2 provides a mechanism for penalizing states when they deny African American men over the age of 21 access to the ballot box. Many suffragists were outraged that the 14th Amendment wrote gender explicitly into the amendment. It uses the word "male." The Supreme Court eventually uses the 14th Amendment's Equal Protection Clause to protect voting in a series of 20th-century cases.
- 15th Amendment: Bans racial discrimination in voting.
- 17th Amendment: Provides for the popular election of U.S. senators.
- 19th Amendment: Bans sex discrimination in voting.
- 23rd Amendment: Grants the District of Columbia three electors in the Electoral College—giving D.C. a voice in presidential elections.
- 24th Amendment: Bans poll taxes in national elections.
- 26th Amendment: Protects voting rights for those 18 and older, effectively setting a floor for the national voting age at 18. (This was, in part, in response to the Vietnam War. Many young people who were drafted were still unable to vote.)