

# Electing and Impeaching the President of the United States of America

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## Abstract

The presidency of Donald Trump has been controversial. Just two years, and talk of cutting short his presidency by impeachment is already swirling through Washington and the media. Many find the situation confusing and inexplicable. In the context of the events and mood of Trump's era, this article considers the practical and Constitutional framework for electing a president and for impeaching one.

**Keywords:** Election, Impeachment, Presidency

## Introduction

Trump's winning sweep began with his triumphs in 41 Republican primaries, which reflected his widespread appeal among voters. In the 2016 presidential election that followed, he won 30 of 50 states, including the two well-known swing states, Florida and Ohio, which are known to decide elections.

The Democratic candidate, Hillary Clinton, received many more popular votes than Trump, but those votes were not enough to win the election. It was that quaint mechanism, the Electoral College, enshrined in the Constitution to reassure Colonial America's concern for States' rights, which awarded the presidency to Donald Trump. While Clinton received 2.87 million more votes than Trump nationwide (the largest margin ever for a candidate who lost in the Electoral College), Trump had the most electoral votes. He won with a total of 306 electors from 30 States (among them, unexpected victories in the pivotal Rust Belt region<sup>3</sup>). In order to appreciate this awkward story, one should look more closely at the political process of electing the U.S. President.

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<sup>3</sup> The Rust Belt begins in central New York and traverses west through **Pennsylvania**, **West Virginia**, **Ohio**, **Indiana**, and the **Lower Peninsula** of **Michigan**, ending in northern **Illinois**, eastern **Iowa**, and southeastern **Wisconsin**. **New England** was also hard hit by industrial decline during the same era.

## 2016 Electoral College Map



**Figure 1** 2016 Electoral College Map

### Selecting Candidates for President: Before the Election, the Primaries

In the process to elect the President, the U.S. Constitution mandates a **national popular vote** as a necessary step.<sup>4</sup> Ideally, the vote is cast by all citizens who are eligible and who wish to participate. But before a vote can be taken, a critical step is necessary: the candidates must be selected. Political primaries fulfill this essential role in today's presidential elections. Primaries are competitions in which leading figures from the nation's major political parties demonstrate how they might fare in a real run for the presidency. During the primaries, prominent candidates travel through many states, competing for votes within their own party. Millions of registered party members then cast their votes in this pre-election process to decide who their party will nominate to stand in the real election.

Although mandated neither by the Constitution nor by federal or state law, today's primary elections have become an important part of America's culture of open political participation. They are part of the historic development of a stable political system in the United States. Primaries decentralize control beyond the hands of small groups of influential persons and spread power among much larger numbers of citizens. Until the early 20<sup>th</sup> century, only very influential and powerful party members were invited to the nominating **caucuses**<sup>5</sup> of major parties to select their candidate for the presidency. Nowadays, millions of voters participate to select presidential candidates in today's more open caucuses and primaries. This is considered to be a step forward for American democracy.

In 41 of 56 Republican primaries, Donald Trump challenged the party luminaries and beat them decisively. Although he was more familiar as a television reality show celebrity than as a leading figure in the Republican Party, Trump was welcomed by many registered Republican voters precisely because he was an outsider, a maverick. After his election, Trump immediately raised eyebrows and caused some grumbling by breaking a long-standing

<sup>4</sup> In the United States, Election Day is the day set by law for the general elections of federal public officials. It is statutorily set as "the Tuesday next after the first Monday in the month of November" or "the first Tuesday after November 1". The earliest possible date is November 2, and the latest possible date is November 8. (Wikipedia)

<sup>5</sup> Caucus: (in some US states) a meeting at which local members of a political party register their preference among candidates running for office or select delegates to attend a convention. "Hawaii holds its nominating caucuses next Tuesday" 2. a conference of members of a legislative body who belong to a particular party or faction

tradition and refusing to make public his most recent tax returns. His supporters let it pass. They were delighted with their larger-than-life iconoclast and did not demand that he meekly follow protocol. Casting himself as a dynamic and modern ‘captain of industry’, Trump revels in his image as a deal-making, ball-breaking, no-nonsense CEO, ready to ‘Make America great again’.

## Two Years after Election, Talk of Impeachment

After two years in office, the image of this media personality who captivated American audiences before he mesmerized Republican voters has been growing thin. Continuing evidence and disturbing news of the President’s questionable business activities during his campaign refuse to go away. The role of members of the Trump family representing the president abroad while at the same time managing the Trump business empire has also given rise to convoluted tales of ethically questionable deals.<sup>6</sup> Trump, however, maintains the loyalty of his base by appearing to carry out his promises, even though the actual gains made for his constituents overall are debatable. As his term of office completes its second year, clouds of impropriety, an on-going investigation by Special Counsel Robert Mueller at the FBI focusing on widespread and far-reaching Russian interference in the 2016 presidential election, and the President’s increasingly erratic behavior and unorthodox decision-making style have led his critics to begin discussing the case for impeachment and the impact it would have on the country.

Commentators on the losing side of the 2016 election have expressed some bitter opinions related to those problems. A year and a half into the new presidency, *The Guardian* newspaper’s international edition was asking (and answering) a rhetorical question: “*Why is Trump Still So Popular? He gives his base what they want.*” *The Guardian’s* U.S. correspondent, *Cas Mudde*, offered a gloomy assessment of the unhealthy foundation of America’s democracy today:

“...*The really bad news: if things continue this way, Trump will be comfortably re-elected in 2020. Of course, the main reason for Trump’s re-election, as well as his election, is the dysfunctional political practice and system of the United States. Like in other western democracies, the white majority is overrepresented because minorities vote at much lower levels. However, unlike in most other democracies, various types of old and new acts of voter suppression actively discourage the electoral participation of non-white minorities. On top of that, gerrymandering further strengthens the disproportionate power of the white electorate, particularly in the conservative rural areas of the individual states and the country as a whole.*”<sup>7</sup>

The sad irony of *The Guardian’s* complaint is that, according to the popular vote of 2016, Trump was *not* elected to the Presidency. In the election of 2016, he received *far fewer* popular votes than his rival. Trump was elected because, in addition to a national popular vote, the Constitution also stipulates one more step that must be carried out, after the people have had their say. That is, the Electors from all the States must also cast *their* votes. Looking closely at the Constitution’s fine print, we find that in the American republic, the president is elected *indirectly*.

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<sup>6</sup> Even the appearance of impropriety of a president is disturbing, but presidential conflicts of interest are not new. The connections between wealth from the oil industry and the Bush family also raise many disheartening doubts about the American democratic system.

<sup>7</sup> *The Guardian*, Fri. 29 June 2018, ‘Why is Trump still so popular? He gives his base what they want.’ *Cas Mudde*

## America's Presidential Election: By Direct (Popular) and Indirect (Electoral College) Votes

The institution of the Electoral College reflects the conservative political environment among the American States when the nation was first founded more than 200 years ago. In a tradition that is still jealously guarded with varying degrees of radical zeal, the individual States insist that they should each have the right to cast some sort of vote, as well, in the election of the president who will have authority over them all. As a result of this significant added layer of complexity, candidates who receive *fewer* votes in the popular election are still sometimes the winners. The Constitution is very clear and concrete about this process, and the American people have historically bowed to it, though sometimes grudgingly. The clarity and concreteness of the law reminds the nation that the States, themselves, have a voice in the election, not just the populace.

The attention of the media and the public has traditionally focused on the popular vote when a presidential election is in progress. After the 2016 election, however, Americans will be reminded to be more alert to the tallying of the electoral vote as well. They will be clear again, perhaps as never before, that the winner of the election must, above all, receive a majority of votes from State electors.<sup>8</sup> In the presidential election, Donald Trump captured a total of 306 electoral votes from the 30 states where he won a majority. He thereby won 57% of the 538 possible votes in the Electoral College and became the new president. The reason why many people were taken by surprise by this win appears to be in part because Trump was carried to the Presidency on the votes of virtually all the poorest and most economically struggling States in the Union, by States with the lowest income and highest unemployment and under-employment.<sup>9</sup> He was elected in States where people felt threatened by immigrants, especially illegal immigrants, and more precisely, non-white immigrants. He was elected in States abandoned by U.S. manufacturing firms which chose to transfer their manufacturing plants overseas. Their poverty put these people at a competitive disadvantage in many ways. Their poverty and scarcity were against them, but their States still had their electoral votes, which strengthened their voice. When these many poorer, weaker States swung the same way, they showed themselves to have unexpected and formidable power in the Electoral College.

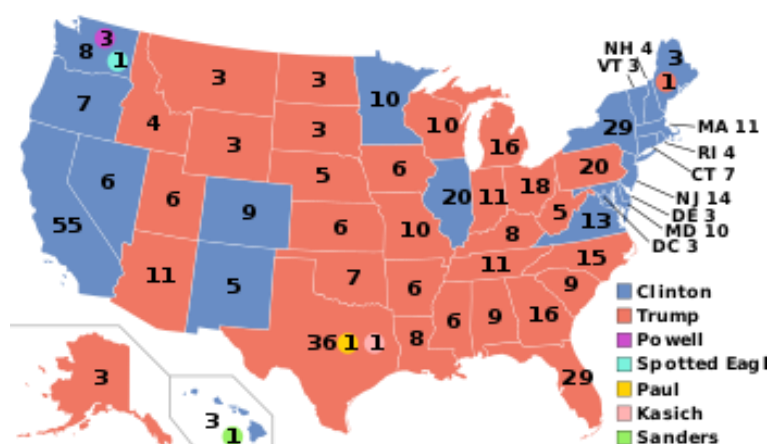
In the national government in Washington D.C., individual States are represented in the House of Representatives proportionally, according to their population. In the US Senate, the 50 States are represented equally with two senators apiece. The voting in the Electoral College mirrors this representation. The House has a total of 435 (+3) members; the Senate has 100 members. Likewise, the total number of possible votes in the Electoral College is 538. California, for example, has a very big population and has 55 representatives voting in the House. By contrast, the sparsely populated states of Montana, North and South Dakota, and Wyoming have only 3 votes each. The number of votes which can be cast in the House (435+3) and in the Senate (100) equals the number of possible votes in the Electoral College: 538.

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<sup>8</sup> There are 435 voting members in the House of Representatives and six non-voting delegates, i.e. American Samoa, Guam, the U.S. Virgin Islands, the Commonwealth of Northern Mariana Islands, Washington DC and Puerto Rico. The '535+3' Electoral College vote refers to the votes cast by 435 electors representing the House, 100 representing the Senate, and three cast by an elector from the District of Columbia.

<sup>9</sup> Poorest States in the United States of America: These states have the highest percentages of poverty in the country: Louisiana, Mississippi, New Mexico, West Virginia, Alabama, Arkansas, Kentucky, South Carolina, Arizona, and Georgia. Alaska, which also went for Trump, has one of the highest unemployment rates in the nation.

In most elections in the U.S., States use a ‘Winner Takes All’ approach.<sup>10</sup> That is, the candidate that gets the most votes, wins the election, no matter how small the margin is separating winner and loser. California has 55 electoral votes, Texas has 34; New York has 31; Florida, 27; Pennsylvania 21, and so on. Whoever wins in the polling in each individual state during the election, whether by much or by little, will take all the electoral votes from that state. Partly because of the ‘winner take all’ approach, winners of the popular vote have several times lost the election because they failed to gather enough votes in the Electoral College. A number of men who failed in their first bid for the presidency lost their first chance because of the Electoral vote: Andrew Jackson first lost to John Adams for this reason; Grover Cleveland similarly was defeated by Benjamin Harrison; Al Gore was defeated by George W. Bush, who won Florida’s 27 electoral votes by a hair’s breadth. Hillary Clinton’s loss, despite winning almost three million more popular votes than Donald Trump, is just the latest historical example of the flexing of State muscle in the Electoral College.<sup>11</sup>



**Figure 2** Electoral Votes for Trump. and Clinton, 2016 Election

## Removing the U.S. President from Office: Impeachment

The Trump presidency has been troubled by so much disruption at the highest levels of the federal government, so much social upheaval and disorder, and so many scandals and improprieties associated with the White House and the President and his family, that America’s allies, who depend on the stability and credibility of the U.S. Presidency, have repeatedly expressed concern, sometimes dismay. The BBC News online<sup>12</sup> has been following the story of suspicious connections dogging Donald Trump’s presidency. What follows are a very few of the matters which may be raised if there is a move to impeach: (1) Allegations that Russia interfered in the 2016 U.S. presidential election; (2) The inquiry led by Robert Mueller, a widely respected former director of the FBI making one of the most high-profile political inquiries in history; (3) the charging of five people connected with Donald Trump’s campaign and presidency with criminal offences; (4) the guilty verdict against Trump’s former lawyer for colluding with Russian agents to influence the US election in Trump’s favor when Trump was the Republican candidate; 5) contacts with Russians by at least 12 Trump associates with at least 19 face-to-face interactions with Russians or Kremlin-

<sup>10</sup> Only two states, Maine and Nebraska, do not follow the ‘winner takes all’ practice. In their own elections, they divide their electoral votes (Maine, 4; Nebraska, 5) proportionally between the candidates.

<sup>11</sup> The map pictured (picture credit: Wikipedia) shows Red/Republican states won by Trump and blue/Democratic states won by Clinton.

<sup>12</sup> BBC news (online) US & Canada, ‘Trump Russia Affair: Key questions answered.’ 12 December 2018 Russia-Trump Inquiry.

linked figures and at least 51 individual communications during the 2016 election campaign; and 6) possibly improper negotiations with the Russians between Mr. Trump's son-in-law, Jared Kushner, and ranking members of the Trump campaign in the months prior to the election.

A new book published by Oxford University Press reflects the present unrest in the media over the apparent flirtation between Donald Trump and powerful Russian interests, including Vladimir Putin. The book is "*Cyberwar: How Russian Hackers and Trolls Helped Elect a President—What We Don't, Can't, and Do Know*," by Kathleen Hall Jamieson, a well-known and highly respected professor of communications at the University of Pennsylvania. More information about Russian hacking and trolling to influence the 2016 election is coming out daily. *Cyberwar* is a comprehensive study and forensic analysis of the available evidence which concludes that Russia very likely delivered Trump's victory. Widely respected by political experts in both parties, Professor Jamieson expressed confidence that unbiased readers would accept her conclusion that it is not just plausible that Russia changed the outcome of the 2016 election—it is "*likely* that it did."

As it becomes more likely each day that some attempt to impeach Donald Trump in the third year of his first term, it is useful to consider the process set forth by the framers of the Constitution by which a sitting president can be forced from office before the legally appointed completion of his/her term. The process has two constitutionally mandated stages.

### **Impeachment in the House of Representatives and in the Senate**

An impeachment trial of a sitting American president takes place, first, in the House and, second, in the Senate of the U.S. Congress. Only a majority vote from members of the House of Representatives can legally impeach, that is, formally attempt to remove the president. Causes for impeachment are: treason, offering or accepting bribes, or "high crimes and misdemeanors". If there is such a vote in the House, the president is 'impeached'. That means that his integrity is being very seriously called into question. This is the first step.

Senator Elizabeth Warren has stated that conflicts of interest could be grounds for impeaching President Trump. In December 2016, Democratic Senators introduced a bill that would require the President of the United States to divest any assets that could raise a conflict of interest, including a statement that the failure to divest such assets would constitute "high crimes and misdemeanors" under the impeachment clause of the U.S. Constitution. *Vanity Fair*<sup>13</sup> characterized this as a preemptive effort to lay the groundwork for a future impeachment argument.

After Trump dismissed FBI Director James Comey, a number of Democratic members of Congress agreed that the President might be impeached for obstruction of justice. The President had asked Comey to drop the investigation of Michael Flynn<sup>14</sup>. Later news that Trump had disclosed classified information to Russia led to further discussions about the possibility of impeachment. Two Republican Representatives called for impeachment on the grounds that obstruction of justice charges against Trump had been proven true. Concerns have been expressed that Trump's extensive business and real estate dealings, especially with respect to government agencies in other countries, may violate the 'Foreign Emoluments'<sup>15</sup> clause of the Constitution.

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<sup>13</sup> *Vanity Fair* is a magazine of popular culture, fashion, and current affairs published by Condé Nast in the United States.

<sup>14</sup> Michael Flynn is a retired U.S. Army Lt. General who served briefly as Trump's National Security Advisor.

<sup>15</sup> The *emoluments clause*, also called the foreign *emoluments clause*, is a provision of the U.S. Constitution (Article I, Section 9, Paragraph 8) that generally prohibits federal officeholders from receiving any gift, payment, or other thing of value from a foreign state or its rulers, officers, or representatives.

Immediately after Trump's inauguration, *The Independent* and *The Washington Post* newspapers each reported on efforts already underway to impeach Trump for conflicts of interest arising from his ability to use his political position to promote the interests of "Trump"-branded businesses, and because of ongoing payments by foreign entities to businesses within the Trump business empire. These also qualify as violations of the 'Foreign Emoluments' clause. In March 2017, China provisionally granted 38 "Trump" trademark applications that were set to take permanent effect in 90 days. It was noted that these favorable decisions by the Chinese came in close proximity to Trump making policy decisions favorable to China.

Investigative journalists in the many American newspapers and news magazines have followed the issues and stories surrounding President Donald Trump's exceedingly unorthodox first two years in the White House. Their work is online for the world to study and learn from. Contrary to what the President says about 'fake news' and the evils of the press, journalistic coverage of this presidency has collected, analyzed, and digested information that will provide important material for future historians.

If and when the Senate of the U.S. Congress accepts from the House of Representatives the evidence under consideration and votes, a two-thirds vote to impeach would be enough to unseat the sitting president.

In the history of the United States, no president has ever been removed by impeachment. Some have been impeached, however. Andrew Johnson was impeached in 1868, the year that King Chulalongkorn, 5<sup>th</sup> King of the Chakri Dynasty, ascended the throne. President Bill Clinton was impeached in 1998. The late former president, Richard Nixon, was forced out of office in 1984, not by impeachment, but as a result of the Watergate scandal.

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