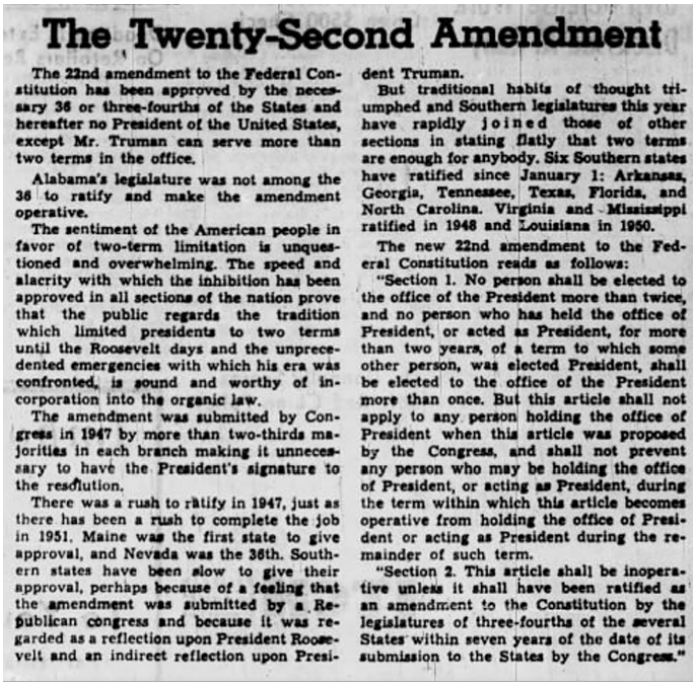
Alabama

The 22nd Amendment to the Constitution, which limits a person to being elected to the presidency two times, and sets additional eligibility conditions for presidents who succeed to the presidency, was voted out of Congress by a supermajority vote in both chambers. Between 1947 and 1951, the 22nd Amendment was ratified by 41 state legislatures and officially came into effect after 36 states ratified the amendment in February 1951. Since the history of the 22nd Amendment's passage and the intent of those who ratified it has become relevant again, this factsheet is part of a series covering each state's ratification process.

Alabama's consideration of the 22nd Amendment:

- Alabama's state legislature voted to ratify the 22nd Amendment on May 4, 1951, becoming the 41st and final state to do so.
- Alabama's ratification of the 22nd Amendment is notable because it was one of a few states that ratified the amendment after it crossed the 36 state threshold to become part of the Constitution.
- Earlier that year, the *Alabama Journal* noted that although the 22nd Amendment had been ratified by 36 states, "Southern states [including Alabama] have been slow to give their approval, perhaps because of a feeling that the amendment was submitted by a Republican Congress and because it was regarded as a reflection upon President Roosevelt and an indirect reflection upon President Truman."
- Despite that partisan angle, on May 1, 1951, the Alabama Senate, which was controlled by Democrats, voted in favor of S.J.R. 2 to ratify the 22nd Amendment by an overwhelming margin of 27 to 1.
- The amendment's supporters included Senate pro-tem and Chairman of the Interim Legislative Committee on Segregation in the Public Schools Albert Boutwell.



The Twenty-Second Amendment

The 22nd amendment to the Federal Constitution has been approved by the necessary 36 or three-fourths of the States and hereafter no President of the United States, except Mr. Truman can serve more than two terms in the office.

Alabama's legislature was not among the 36 to ratify and make the amendment operative.

The sentiment of the American people in favor of two-term limitation is unquestioned and overwhelming. The speed and alacrity with which the inhibition has been approved in all sections of the nation prove that the public regards the tradition which limited presidents to two terms until the Roosevelt days and the unprecedented emergencies with which his era was confronted, is sound and worthy of incorporation into the organic law.

The amendment was submitted by Congress in 1947 by more than two-thirds majorities in each branch making it unnecessary to have the President's signature to the resolution.

There was a rush to ratify in 1947, just as there has been a rush to complete the job in 1951. Maine was the first state to give approval, and Nevada was the 36th. Southern states have been slow to give their approval, perhaps because of a feeling that the amendment was submitted by a Republican congress and because it was regarded as a reflection upon President Roosevelt and an indirect reflection upon President Truman.

But traditional habits of thought triumphed and Southern legislatures this year have rapidly joined those of other sections in stating flatly that two terms are enough for anybody. Six Southern states have ratified since January 1: Arkansas, Georgia, Tennessee, Texas, Florida, and North Carolina. Virginia and Mississippi ratified in 1948 and Louisiana in 1950.

The new 22nd amendment to the Federal Constitution reads as follows:

"Section 1. 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. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.

"Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years of the date of its submission to the States by the Congress."

- On May 4, 1951, on motion from Democrat Representative Walter Coats Givhan, the Alabama House suspended the rules and concurred in and adopted S.J.R. 2, ratifying the 22nd Amendment.

Cases involving the 22nd Amendment in Alabama:

- There is next to no case law involving the 22nd Amendment in Alabama. The only mention is in *McInnish v. Bennett*, where the dissenting opinion seems to accept that President Obama would have been barred from running for a third term by the 22nd Amendment.
- In *McInnish v. Bennett*, the Supreme Court of Alabama affirmed the dismissal of a "birther" complaint demanding that the Alabama Secretary of State verify Barack Obama's eligibility for presidential office or remove him from the ballot. The Court issued a *per curiam* decision with no opinion, but both concurrences expressed the view that the Secretary of State has no "affirmative duty" to investigate the eligibility of candidates for presidential office. 150 So. 3d 1045 (Ala. 2014).
- Chief Justice Roy Moore dissented, arguing that regardless of explicit statutory authorization, the Secretary of State had a mandate to investigate the underlying qualifications of a presidential candidate, and implicitly accepting that President Obama could not run for a third presidential term under the 22nd Amendment.
- In a footnote, Chief Justice Moore explained: "The Secretary of State argues that this case is not capable of repetition because President Obama may not constitutionally run for a third term. Secretary of State's brief, at 8–9 (citing U.S. Const. amend. XXII, § 1). President Obama, however, is not the defendant in this case; the Secretary of State is, and her refusal to investigate the eligibility of presidential candidates for the general-election ballot is capable of repetition." 150 So. 3d at 1060.