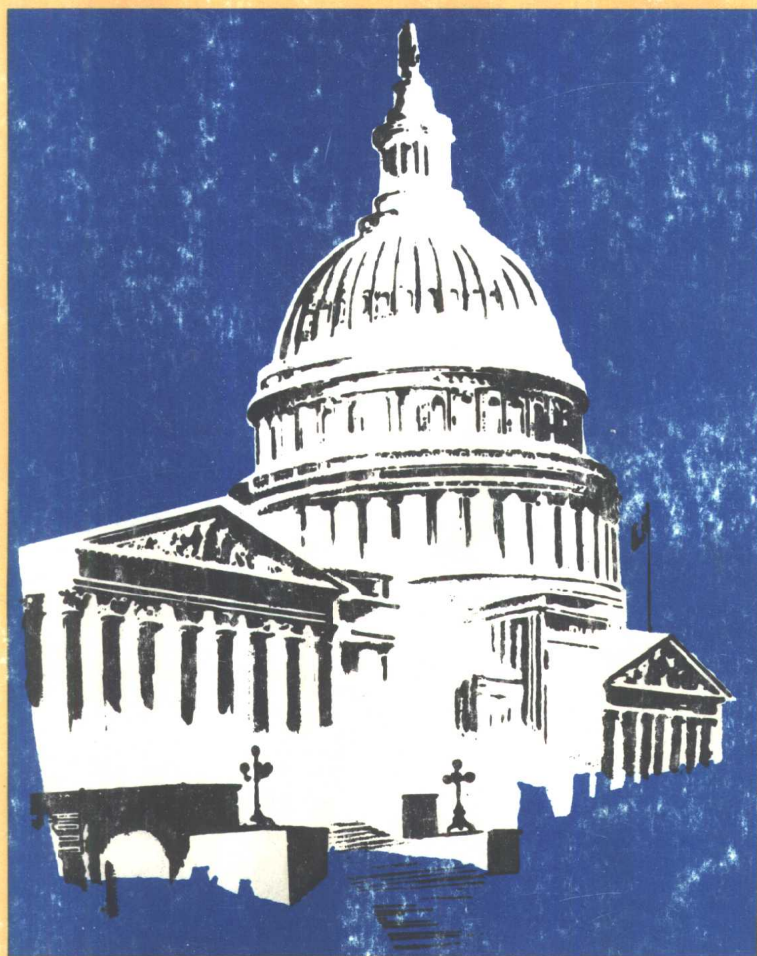


# 美國如何制定法律

查爾斯·J·津恩著

陳若桓譯

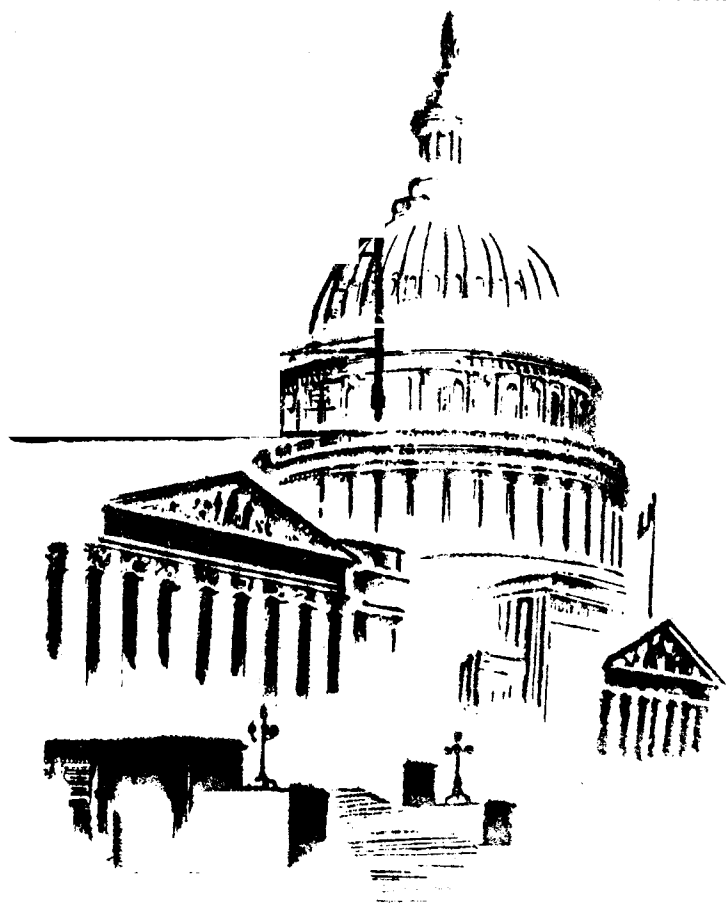


HOW OUR LAWS ARE MADE

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查爾斯·J·津恩著  
陳若桓譯

今日世界出版社



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Revision Counsel, Committee on the Judiciary, House of  
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How Our Laws Are Made

美國如何制定法律

267/06

## FOREWORD

By Hon. Peter W. Rodino, Jr., Member of Congress

The framers of the United States Constitution, with unparalleled foresight, embodied in our system of Government the principle of "separation of powers," by establishing three equal and independent branches of Government—the Legislative, Executive, and Judicial.

The very first provision of the Constitution of the United States (Article I, Section 1) creates the Legislative Branch by providing that "All legislative Powers herein created shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The Federal legislative process, which has developed as a result of this constitutional mandate, is extremely complex. Therefore, it is necessary for the American people to have access to documents and materials which will enable them to achieve a greater understanding and appreciation of this legislative process.

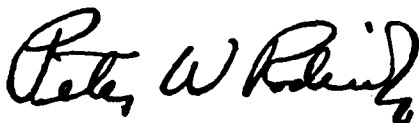
This need was recognized over twenty years ago by the late Dr. Charles J. Zinn, then Law Revision Counsel for the Committee on the Judiciary, when the first printing of "How Our Laws Are Made" was authorized in 1953.

Since that time this House Document has been widely distributed not only in the United States, but around the world. In addition, it has been translated and published in eight different languages and is frequently used as a model for similar governmental publications in many foreign countries. The pamphlet furthermore continues to be a valuable source material for classroom study and discussion throughout the United States.

Today, as much as anytime in our American history, the process of our American government is extremely important to all of us. The better we understand our government the better we can serve it and the better our government can serve us.

This edition was revised and updated by the Law Revision Counsel for the Committee to reflect changes in the legislative procedure brought about by legislation and changes in the rules of the House of Representatives since the last edition.

It is my sincere hope that this pamphlet will be helpful and informative to all persons interested in how our laws are made.

A handwritten signature in black ink, reading "Peter W. Rodino, Jr." in a cursive style.

*Chairman, Committee on the Judiciary.*

## 序

國會議員彼得·W·羅迪諾

美國的立憲者以無比的遠見，成立了立法、行政和司法三個平等而獨立的政府部門，在美國的政府制度裡，體現了「三權分立」的原則。

美國憲法開宗明義在第一條第一節裡便創立了立法部門，規定「所有在本憲法規定的立法權，全都屬於合眾國的國會，國會由參議院及眾議院組成之。」

由這項憲法授權發展出來的聯邦立法程序是極端複雜的。因此，美國人民必須有機會讀到一些文獻和資料，才能對這種立法程序得到進一步的瞭解和認識。

二十多年前，「美國如何制定法律」一書在一九五三年首次獲准付印時，已故的查爾斯·J·津恩博士就已認識到這種需要，當時他是眾議院司法委員會的法律修訂顧問。

從那時起，這份眾議院文獻不但在美國而且在全世界廣泛發行。此外，它已被譯成八種文字出版，而且在許多國家往往被採用為同類政府出版物的範本。還有，這本小冊子不斷在全美各地成為課室研究和討論的寶貴參考資料。

今天，一如美國歷史上任何時期，美國政府的辦事程序，對全體美國人民極為重要。我們對我們的政府瞭解越多，我們就可以更好地為它服務，它也可以更好地為我們服務。

這個版本由司法委員會現任法律修訂顧問增訂和補充，以反映自上一個版本問世以來，因立法和眾議院議事規程改變而產生的立法程序上的改變。

我確實希望這本小冊子對所有對美國立法程序發生興趣的人能有所幫助，並能提供資料。



眾議院司法委員會主席彼得·W·羅迪諾

## I. INTRODUCTION

This handbook is intended to provide a readable and nontechnical outline of the background and the numerous steps of our Federal lawmaking process from the origin of an idea for a legislative proposal through its publication as a statute. This is a matter about which the average citizen should be well informed so that he may be able to understand the everyday news reports and discussions concerning the work of the Congress.

The Federal legislative process is ordinarily a lengthy and somewhat complex one that is often the butt of ridicule by the uninformed and by those who seek to undermine our Constitutional way of life. On the one hand, complaints are heard about "the law's delays" both with regard to the administration of justice by our courts and the enactment of laws by the Congress. On the other hand, it is not uncommon for the same individuals to charge that a particular bill has been "steamrollered" through the Congress. Manifestly, no system of enacting laws to govern more than 210 million persons can be perfect in all its details with respect to every single piece of legislation. However, by and large, neither of these complaints is justified and, discounting the sly but vicious attacks by hostile persons or groups that often make dupes of otherwise well-intentioned persons, the invective against our deliberative lawmaking procedure is quite likely to stem from a fundamental lack of information and understanding regarding that procedure.

Rather than being an object of petty criticism, the Federal legislative process should be recognized as one of the bulwarks of our representative system and deserves the fullest support and understanding.

One of the most practical safeguards of the American democratic way of life is that process which, with its jealous care for the protection of minorities, gives ample opportunity to all sides to be heard and make their views known. The fact that a proposal cannot become a law without consideration and approval by both Houses of the Congress is an outstanding virtue rather than a defect of the Congressional system. Open and full discussions provided for under our Constitution frequently results in the notable improvement of a bill by amendment before it becomes law, or the complete defeat of a bad proposal.

Inasmuch as the large majority of laws originate in the House of Representatives this discussion will be directed principally to the procedure in that body.

# **HOW OUR LAWS ARE MADE**

BY DR. CHARLES J. ZINN

Revised and Updated

By

Edward F. Willett, Jr., Esq.



## 目 錄

- 一・導言 1
- 二・國會 2
- 三・法案的來源 5
- 四・國會立法所採取的形式 7
  - 議案・聯合決議・共同決議・簡單決議
- 五・議案的提出和提交委員會 10
- 六・委員會的審查工作 14
  - 公開聆訊・業務會議・委員會會議・委員會點名表決結果  
可公開查閱・委託投票・有關違背委員會議事程序的質  
詢・廣播委員會聆訊過程
- 七・議案報告書 18
  - 報告書的提交・報告書及聆訊紀錄的分發・報告書內的開  
支估計
- 八・常設委員會進行法律研討 21
- 九・議事日程 22
  - 聯邦議事日程表・眾議院議事日程表・一致同意議事日程  
表・私人議事日程表・哥倫比亞特區事務
- 十・使議案獲得審議 24
  - 特別決議・前次決議要處理的議案的審議・動議中止委員  
會的審議・動議暫停執行規則・星期三議事日程表・有特  
權的事項
- 十一・審議 28
  - 全體委員會・二讀・表決・委員會「休會」・電子表決・  
眾議院的行動・對議案重新研究的動議・燈光及鈴聲規  
則・口頭點名和檢查法定人數・議員「配對」的不投票  
協議
- 十二・議案的正式寫成和提交參議院 36
- 十三・參議院的行動 38
  - 委員會審議・參議院議事程序
- 十四・對修正案的最後行動 42
  - 請求召開協商會議・協商代表的權限・協商會議的舉行及  
行動・協商會議報告書・文件的保管
- 十五・最後騰清 50
- 十六・總統簽署 51
  - 否決咨文
- 十七・法案的公佈 53
  - 「活頁法律」・法律彙編・美國法典・哥倫比亞特區法典

## CONTENTS

- I. Introduction 1
- II. The Congress 2
- III. Sources of legislation 5
- IV. Forms of congressional action 7
  - Bills • Joint resolutions • Concurrent resolutions • Simple resolutions
- V. Introduction and reference to committee 10
- VI. Consideration by committee 14
  - Public hearings • Business meetings • Committee meetings • Public inspection of results of roll call vote in committee • Proxy voting • Points of order with respect to committee procedure • Broadcasting committee hearings
- VII. Reported bills 18
  - Filing of reports • Availability of reports and hearings • Cost estimates in reports
- VIII. Legislative review by standing committees 21
- IX. Calendars 22
  - Union Calendar • House Calendar • Consent Calendar • Private Calendar • District of Columbia business
- X. Obtaining consideration of measures 23
  - Special resolutions • Consideration of measures made in order by previous resolution • Motion to discharge committee • Motion to suspend the rules • Calendar Wednesday • Privileged matters
- XI. Consideration 28
  - Committee of the Whole House • Second reading • Voting • The Committee "rises" • Electronic voting • Action by the House • Motions to recommit • System of lights and bells • Roll calls and quorum calls • Pairing of Members
- XII. Engrossment and message to Senate 36
- XIII. Senate action 38
  - Committee consideration • Chamber procedure
- XIV. Final action on amended bill 42
  - Request for a conference • Authority of conferees • Meetings and action of conferees • Conference reports • Custody of papers
- XV. Enrollment 50
- XVI. Presidential action 51
  - Veto message
- XVII. Publication 53
  - 'Slip laws' • Statutes at Large • United States Code • District of Columbia Code

## 一．導 言

這本手冊的目的，是用淺顯易懂而非專門性的文字，給美國聯邦立法程序的背景和為數衆多的步驟，從打算提議一個法案到公佈成為法律，作一個概括性的說明。這是一件要讓普通公民充分明瞭的事，這樣他才能夠明白日常有關國會工作的新聞報導和討論。

聯邦立法程序通常是一個冗長而頗為複雜的程序，因此往往成為缺乏認識或企圖破壞立憲生活方式者的笑柄。一方面，我們聽到有人埋怨在法院執法和國會立法兩方面，「法律諸多延悞」。在另一方面，同一批人往往又要指責某一議案是在高壓之下匆匆獲得通過的。很明顯，沒有一個為治理二億一千萬人而制訂法律的制度，能在制訂每一項法律時，使所有細節都十全十美。但總的說來，這兩種指摘都是無的放矢。同時，有些懷有敵意的個人或團體常常欺騙本來是善意的人，除了這些人的惡意中傷而外，對我們的慎重討論的立法程序的抨擊，很可能是出於根本對這種程序缺乏了解和認識。

聯邦立法程序不應該成為吹毛求疵的對象，而應被視為美國代議制度的一個堡壘，並應獲得最充分的支持和了解。

美國民主生活方式最實際的保障之一就是這種程序，由於它熱心維護少數人的利益，使各方面都有充分發言和表示意見的機會。一個提案未經國會兩院審議和批准不能成為法律的事實，非但不是國會制度的缺點，而且是它一個顯著的優點。美國憲法所規定的公開和充分討論，往往使一個議案在成為法律以前經過修訂有了顯著改善，或者使一項不好的提案一敗塗地。

由於絕大多數的法律都首先在衆議院提出，這本手冊主要的討論目標是衆議院的立法程序。

## II. THE CONGRESS

Article I, section 1, of the United States Constitution, provides that—

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

The Senate is composed of 100 Members—two from each State, irrespective of population or area—elected by the people in conformity with the provisions of the 17th amendment to the Constitution. That amendment changed the former Constitutional method under which Senators were chosen by the respective State legislatures. A Senator must be at least 30 years of age, and have been a citizen of the United States for nine years and, when elected, a resident of the State for which he is chosen. The term of office is six years and so arranged that the terms of both Senators from a particular State do not terminate at the same time—one-third of the total membership being elected every second year. Of the two Senators from a State serving at the same time the one who was elected first—or if both were elected at the same time, the one elected for a full term—is referred to as the “senior” Senator from that State. The other is referred to as the “junior” Senator. The Constitution further provides that, in case of the death or resignation of a Senator during his term, the governor of the State must call a special election unless the State legislature has authorized him to appoint a successor until the next general election, at which time a successor is elected for the balance of the term. Most of the State legislatures have granted their governors the power of appointment.

Each Senator has one vote.

As constituted in 1973—the 93d Congress—the House of Representatives is composed of 435 Members elected every two years from among the 50 States, apportioned to their total populations, exclusive of untaxed Indians. The permanent number of 435 was established following the Thirteenth Decennial Census in 1910, as directed in article I, section 2, of the Constitution, and was increased temporarily to 437 for the 87th Congress, to provide for one Member each for Alaska and Hawaii. It seems undesirable to make a considerable increase in the number of Members, because a larger body, similar to the British House of Commons, consisting of 630 members, would be too unwieldy. The Constitution limits the number of Representatives to not more than one for every 30,000 of population, and, under a former apportionment in one State a particular Member represented more than 900,000 constituents, while another in the same State was elected from a district having a population of only 175,000. The

## 二．國　會

美國憲法第一條第一節規定：

「所有在本憲法規定的立法權，全都屬於合眾國的國會，國會由一個參議院和一個眾議院組成之。」

參議院由議員一百名——每州二名，不論人口多寡及面積大小——組成，議員是由人民依照憲法第十七次修正案的規定選舉出來的。這次修正改變了憲法過去規定的參議員由各州議會選出的辦法。參議員必須至少三十歲，必須具有九年的美國公民資格，而且在當選時，必須是他所代表的那一州的居民。參議員任期六年，並須作出安排，使每州兩名參議員的任期不能同時屆滿——參議院每兩年有三分之一的議員改選。同一州的兩位參議員中，較先當選的一位稱為該州的「資深」參議員——如果兩位議員同時當選，任期六年的那一位稱為「資深」參議員。另一位則稱為「資歷較淺」的參議員。憲法又規定，如果一位參議員在任內逝世或辭職，州長必須下令舉行特別選舉，除非州議會授權給他委派一個繼任者，繼任至下次大選，那時當選的繼任者可繼任至任期屆滿。大多數州議會都把委任權授予州長。

每名參議員有一票表決權。

在一九七三年成立的第九十三屆國會裏，眾議院由四百三十五名議員組成，議員每兩年由五十個州選出。議員人數是按照人口比例分配給各州的，人口中並不包括沒有繳稅的印第安人。四百三十五這個永久性的數字，是遵照憲法第一條第二項的指示，在一九一〇年舉辦的第十三次「十年一度」人口普查以後訂定的。到了第八十七屆國會，眾議員人數臨時增到四百三十七人，使阿拉斯加和夏威夷兩州各有一位眾議員。眾議員的人數似乎不宜大量增加，因為一個像由六百三十名議員組成的英國下議院那樣的大機構，運用起來，不大靈便。憲法限制眾議員人數，使其每三萬人口不超過一名，但在某一個州裡按照以前的分配辦法，一位眾議員代表九十餘萬

Supreme Court<sup>1</sup> has since held unconstitutional a Missouri statute permitting a maximum population variance of 3.1 percent from mathematical equality. The Court said that the variances among the districts were not unavoidable and, therefore, were invalid. This is an interpretation of the Court's earlier decision that "as nearly as is practicable one man's vote in a Congressional election is to be worth as much as another's".

A law enacted in 1967 has abolished all "at-large" elections (i.e., Members elected by the voters of the entire State rather than in a Congressional district within the State) except, of course, in States entitled to only one Representative. (2 U.S.C., § 2c)

A Representative must be at least 25 years of age and have been a citizen of the United States for seven years and, when elected, a resident of the State in which he is chosen. In case of the death or resignation of a Member during his term, the governor of his State may call a special election for the choosing of a successor to serve for the unexpired portion of the term.

Each Representative has one vote.

In addition to the Representatives from 50 States, there is a Resident Commissioner from the Commonwealth of Puerto Rico, as authorized by an act of 1917 (48 U.S.C., § 891) and in 1970 the Congress by Pub. L. 91-405 (D.C. Code, § 1-291), created the office of Delegate to the House of Representatives from the District of Columbia. In 1972 the Congress by Pub. L. 92-271 (48 U.S.C. § 1711), granted nonvoting Delegate representation to the territories of Guam and the Virgin Islands, as well. The Resident Commissioner and the Delegates have most of the prerogatives of Representatives, with the important exception of the right to vote on matters before the House.

Representatives and Senators are both technically "Members of Congress," since the Congress consists of the two bodies, but the term "Member" is popularly used to refer to a Member of the House of Representatives only.

Under the provisions of section 2 of the 20th amendment to the Constitution, Congress must assemble at least once every year, at noon on the 3d day of January, unless by law they appoint a different day.

A Congress lasts for two years, commencing in January of the year following the biennial election of Members.

Unlike some other parliamentary bodies, both the Senate and the House of Representatives have equal legislative functions and powers (except that only the House of Representatives may initiate revenue bills), and the designation of one as the "upper" House and the other as the "lower" House is not appropriate.

The Constitution authorizes each House to determine the rules of its proceedings. Pursuant to that authority the House of Representa-

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<sup>1</sup> *Kirkpatrick v. Peltier*, 394 U.S. 526.

選民，而同一州裏的另一位衆議員，則是由一個只有十七萬五千人口的地區選舉出來。米蘇里州有一項法律容許計算選民和平均數字最多可有百分之三點一的差別，結果被最高法院判定違憲。最高法院說，各選區間的人口差別並不是不能避免的，因此也是無效的。這是對最高法院較早的一項裁決的解釋，那項裁決說：「要盡可能做到一個人在國會選舉中所投的票，和另一個人所投的票有同樣的價值。」

一九六七年制訂的一項法律，廢除了一切「代表整個州的議員」（就是由全州選民而非由州內國會選區選民選出的議員）選舉，但只能選出一名衆議員的州當然例外。（美國法典第二號第二條第三節）。

衆議員必須至少二十五歲，必須具有七年美國公民資格，而在當選時，必須是他所代表的那個州的居民。如果一位衆議員在任期內逝世或辭職，其本州的州長可宣佈舉行特別選舉，選出繼任人繼任至任期屆滿為止。

每名衆議員有一票表決權。

除了代表五十個州的衆議員之外，一九一七年的一項法例（美國法典第48號第891節）批准加設一位來自波多黎各聯邦的常駐專員；一九七〇年國會依公法第91——405號（哥倫比亞特區法典第1——291號）增設哥倫比亞特區駐衆議院代表辦事處。一九七二年，國會又依公法92——271號（美國法典第48號第1711節）准許關島及維爾京群島派出無表決權的代表。常駐專員和代表享有衆議員大部分的特權，但有一項重要例外，就是他們在衆議院裏對各種事項都沒有表決權。

由於國會由參衆兩院組成，衆議員和參議員在技術上都是「國會議員」，但議員一詞通常只用以指衆議員而言。

按照憲法修正案第二十條第二節的規定，國會應每年至少開會一次，除國會以法律另行規定日期外，會議應於一月三日中午開始。

每屆國會歷時兩年，從兩年一次的議員選舉結束後的一月份開始。

參衆兩院和某些其他議會機構不同，它們具有同等的立法職責和權力（除了祇有衆議院才能夠提出徵稅法案），因此把其中一院稱為「上」議院而把另一院稱為「下」議院是不適當的。

憲法授權參衆兩院各自決定其議事規則。衆議院根據這項授權，在每屆國會的開幕之日制訂規則。參議院則依照一八八四年通過的規則辦事，

tives adopts its rules on the opening day of each Congress. The Senate operates under its rules adopted in 1884 and amended from time to time since then.

The chief function of the Congress is the making of laws. In addition, the Senate has the function of advising and consenting to treaties and to certain nominations by the President. In the matter of impeachments, the House of Representatives presents the charges—a function similar to that of grand juries—and the Senate sits as a court to try the impeachment. Both Houses meet in joint session on January 6th, following a presidential election, to count the electoral votes. If no candidate receives a majority of the total electoral votes, the House of Representatives chooses the President from among the three candidates having the largest number of votes, and the Senate chooses the Vice President from the two candidates having the largest number of votes for that office.



但是從那時起曾不時加以修正。

國會的主要職責是制訂法律。此外，參議院還負有對條約和總統某些任命表示意見和同意的職責。在彈劾方面，應由衆議院提出控告（這和大陪審團的工作相類似），由參議院像法庭那樣負責審訊。每次總統選舉後，參衆兩院在一月六日舉行聯席會議計算選舉人票。如果沒有候選人得票過半數，就由衆議院從三位得票最多的候選人中選出一位擔任總統，而參議院則從得票最多的兩名候選人中選出一位擔任副總統。