

Twelfth Amendment

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(1804)

WHAT IT SAYS

The electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for, as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest Number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, 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. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if 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, as in the case of the death or other constitutional disability of the President.]* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

* Superseded by the Twentieth Amendment, Section 3.

WHAT IT MEANS

As the Electoral College was originally constituted, the candidate who received the most electoral votes became President and the runner-up became Vice President. With the rise of a two-party system, this meant that the President and Vice President might be chosen from different parties. This occurred in the election of 1796, when John Adams, a Federalist, received the most electoral votes, and his opponent, Thomas Jefferson, a Democratic-Republican, received the second largest electoral vote and became Vice President. In 1800, Jefferson ran for President on the Democratic-Republican ticket with Aaron Burr. They won, but both received the same number of electoral votes. With the Electoral College unable to cast a majority of votes for either of them, the election was thrown into the House of Representatives, where the Federalist Party still had a majority. After numerous attempts to reach a majority, the House finally elected Jefferson President and Burr Vice President.

The turmoil of the 1800 election urged the passing of the Twelfth Amendment, which solved this problem by allowing for separate Electoral College votes for President and Vice President, and by allowing the parties to nominate a team for President and Vice President. The Twelfth Amendment strongly suggests that the President and Vice President not be from the same state, as electors from that state cannot vote for both offices.

If the Electoral College fails to elect a President, the House of Representatives will select the new President from the top three candidates. The vote within the House is by state, not by representatives. Lastly, the Twelfth Amendment extends all the eligibility requirements for the President (a natural-born citizen, at least thirty-five years of age, who has resided in the United States for fourteen years) to the Vice President.

THE ELECTORAL CRISIS OF 1876

The Presidential election of 1876 took place as the post-Civil War Reconstruction of the South was coming to an end. As federal troops withdrew from the South, Democrats replaced the Republicans, who had gained office in the South during Reconstruction. In three states, the secretaries of state of the outgoing Republican governments and the incoming Democratic governments each filed election certificates informing the federal government that their Presidential candidate had carried the state. Although the Democratic candidate, Samuel J. Tilden, had won the popular vote, Republicans charged that many African Americans in the South had been kept from the polls by intimidation, and they refused to concede the election. Further complicating the process, Republicans held a majority in the Senate, while Democrats held a majority in the House. The Vice President had died, so the president pro tempore of the Senate, a Republican, would open the ballots. Republicans wanted him to count the Republican ballots, but Democrats objected. To break this stalemate, early in 1877, both parties agreed to an extra-constitutional compromise. They created a joint electoral commission composed of five senators, five representatives, and five Supreme Court justices to hear evidence and determine which electoral ballots to count. Seven commissioners were Republican, seven were Democrats, and one, a Supreme Court justice, was known to be independent. At the last minute, the independent justice resigned and the Supreme Court replaced him with a Republican justice. The commission voted 8 to 7 to award all the disputed electoral ballots to the Republican candidate. The House and Senate then met in joint session, counted the ballots, and declared Rutherford B. Hayes President of the United States. Democrats reluctantly accepted the outcome on the understanding that Hayes had agreed to withdraw the rest of the federal troops from the southern states and end Reconstruction.

Twelfth Amendment

The Constitution establishes the Electoral College

→ 1787

Rather than being elected directly by the people, Article II of the Constitution specifies that the President and Vice President will be elected by the Electoral College. Electors assemble in their states in January following the November election and vote for the Presidential candidate who won the majority of votes in their state. The candidate who receives the highest vote in the Electoral College becomes the President and the person with the next highest number of votes becomes the Vice President.

George Washington is unanimously elected President

→ 1789

In the first Presidential election, General George Washington of Virginia receives one vote from each of the sixty-nine electors, making him the only President to achieve a unanimous vote in the Electoral College. As each elector casts two ballots without designating which is for President or Vice President, John Adams of Massachusetts, receiving the next highest number of electoral votes, is elected as Vice President. There are not yet any formal political parties.

Candidates from two parties are elected

→ 1797

John Adams, running as a Federalist, receives the largest number of votes and is elected President. Thomas Jefferson, who ran against Adams as the Democratic-Republican candidate, receives the next highest vote and is elected Vice President. The two rivals disagree strongly over federal policies.

Jackson defeats Adams

→ 1828

Galvanized by their anger over the previous presidential election, Jackson and his supporters mount an intense campaign against President John Quincy Adams, who is defeated for reelection. This time, in a two-person race, Jackson wins both the majority of the popular and electoral votes and ousts Adams from the Presidency.

The Senate elects a Vice President

→ 1837

A number of Democrats oppose the choice of Richard Mentor Johnson to run for Vice President on the ticket with Martin Van Buren. When the members of the Electoral College cast their ballots, Van Buren receives 170 electoral votes and is duly elected President. But Johnson receives only 147 electoral votes, more than his closest contender, but one less than the majority needed for his election. Under the Constitution, the Vice Presidential election then goes to the U.S. Senate. With forty-nine of the fifty-two senators present and voting along party lines, Johnson receives 33 votes, which is enough for the Senate to declare that he has been elected Vice President of the United States.

An electoral commission decides the Presidential election

→ 1877

On Election Day, Democrat Samuel Tilden wins the popular vote by a margin of less than 250,000 votes (out of 8.5 million votes cast) against Republican Rutherford B. Hayes. But, Tilden's 184 electoral votes are 1 short of the necessary majority, while Hayes's 165 electoral votes leave him 20 votes shy of winning the Presidency. Several of the southern states under Reconstruction rule, submit two slates of electors, one for Tilden and the other for Hayes. Because Republicans control the Senate and Democrats hold the majority in the House, they cannot reach agreement on which ballots to count. They establish an Electoral Commission, composed of senators, representatives, and Supreme Court justices. Voting on party lines, the commission awards all the disputed electors to Hayes, giving him a one-vote victory in the Electoral College, and the Presidency.

TIMELINE

The House of Representatives votes to break an electoral tie

1801

In the Presidential election of 1800, Thomas Jefferson runs for President and Aaron Burr for Vice President on the Democratic-Republican ticket. Both get 73 votes in the Electoral College. This forces the election into the House of Representatives, where the Federalist Party holds the majority. Opposition to Jefferson causes many Federalists to vote for Burr. Repeatedly casting ballots, the House is unable to reach a majority for any candidate until former treasury secretary Alexander Hamilton intervenes with Federalists and persuades them to vote for Jefferson on the thirty-seventh ballot. This event spurs demand for the Twelfth Amendment.

An elector changes his vote

1820

During the Era of Good Feelings, when only one political party exists, President James Monroe runs unopposed for reelection in 1820. Former senator William Plumer of New Hampshire casts his electoral vote for John Quincy Adams rather than for Monroe, to whom he is pledged. Otherwise, Monroe would have received a unanimous vote in the Electoral College. Plumer says he feels that only George Washington deserves a unanimous election.

The popular vote is overridden by the Electoral College

1824

For the first time the winner of the popular vote does not become the President. In a multiple candidate race, Andrew Jackson receives 41 percent of the popular vote, more than his opponents but less than a majority. Four candidates receive electoral votes, but none has enough to constitute a majority. The House of Representatives then meets to decide the winner. House rules call for a vote on the top three contenders from the Electoral College, Speaker Henry Clay, who comes in fourth, is removed from consideration. Clay throws his support to John Quincy Adams, who has come in second to Jackson. When the House picks Adams as President, Adams appoints Clay secretary of state. Jackson and his supporters call this a “corrupt bargain.”

The electoral college reverses the popular vote

1888

Running for reelection, the Democratic incumbent President Grover Cleveland wins the popular vote by 90,596 votes (out of 11.3 million votes cast). But Cleveland loses the Electoral College vote to the Republican candidate Benjamin Harrison. Cleveland accepts the outcome, but comes back to defeat Harrison in 1892.

Electors pledge to particular candidate is not binding

1952

In the case of *Roy v. Blair*, the United States Supreme Court holds that a state cannot constitutionally require its electors to vote for the candidates to whom they are pledged. There have been at least four instances in which individual electors failed to vote for their party’s candidate. The first occurred after the 1820 election, then 1956, 1960, and 1968, each peculiar to the wishes of an individual elector. None of these instances affected the election’s outcome.

Presidential election of 2000 is disputed

2000

Vice President Al Gore, the Democratic candidate for President, wins the popular vote by a half-million vote margin, but the outcome of the Electoral College vote depends on the state of Florida, which gives a slim margin to the Republican candidate, Texas governor George W. Bush. A machine recount confirms Bush’s lead, but Gore protests significant voting irregularities and calls for more extensive recounting by hand. The Florida Supreme Court supports Gore’s position, but the U.S. Supreme Court overturns that decision, clearing the way for Bush to become President.