

AMENDMENT XII.³

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 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 presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;— * * *

³See article II, section 1 of the Constitution. The 12th amendment to the Constitution was proposed to the legislatures of the several States by the Eighth Congress on December 12, 1803, in lieu of the original third paragraph of the first section of the second article, and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States. The dates of ratification were: North Carolina, December 21, 1803; Maryland, December 24, 1803; Kentucky, December 27, 1803; Ohio, December 30, 1803; Virginia, December 31, 1803; Pennsylvania, January 5, 1804; Vermont, January 30, 1804; New York, February 10, 1804; New Jersey, February 22, 1804; Rhode Island, March 12, 1804; South Carolina, May 15, 1804; Georgia, May 19, 1804; New Hampshire, June 15, 1804. Ratification was completed on June 15, 1804. The amendment was subsequently ratified by Tennessee on July 27, 1804. The amendment was rejected by Delaware, January 18, 1804; Massachusetts, February 3, 1804; and by Connecticut at its session begun May 10, 1804.

The electoral count occurs in a joint session of the two Houses in the Hall of the House (III, 1819) at 1 p.m. on the sixth day of January succeeding every meeting of electors (3 U.S.C. 15). The Vice President, as President of the Senate (or the President pro tempore in the Vice President’s absence), presides over the joint session (3 U.S.C. 15). The date of the count has been changed by law as follows: (1) the 1957 count was changed to Monday, January 7 (P.L. 84–436); (2) the 1985 count was changed to Monday, January 7 (P.L. 98–456); (3) the 1989 count was changed to Wednesday, January 4 (P.L. 100–646); and (4) the 1997 count was changed to Thursday, January 9 (P.L. 104–296).

Sections 15–18 of title 3, United States Code, prescribe in detail the procedure for the count. Nevertheless, the two Houses traditionally adopt a concurrent resolution providing for the meeting in joint session to count the vote, for the appointment of tellers, and for the declaration of the state of the vote (III, 1961; Deschler, ch. 10, § 2.1). Under the law governing the proceedings, the two Houses divide to consider an objection to the counting of any electoral vote or “other question arising in the matter” (3 U.S.C. 15–18; Jan. 6, 1969, pp. 145–47; Jan. 6, 2001, p. 101; Jan. 6, 2005, p. —), but only when in writing and signed by both a Member and a Senator (Jan. 6, 2001, p. 101; Jan. 6, 2005, p. —). Examples of an “other question arising in the matter” include: (1) an objection for lack of a quorum (Jan. 6, 2001, p. 101); (2) a motion that either House withdraw from the joint session (Jan. 6, 2001, p. 101); and (3) an appeal from a ruling by the presiding officer (Jan. 6, 2001, p. 101). Such questions are not debatable in the joint session (3 U.S.C. 18; Jan. 6, 2001, p. 101). When the two Houses have divided, a motion in the House to lay the objection on the table is not in order (Jan. 6, 1969; pp. 169–72). A Vice President-elect, as Speaker of the House or as a sitting Vice President, has participated in the ceremonies (*e.g.*, VI, 446; Jan. 6, 2005, p. —). See Deschler, ch. 10 for further discussion. When addressing a controversy over the election of President and Vice President in the State of Florida, the Supreme Court indicated its view of a section of the statute (3 U.S.C. 5) addressing a determination of controversy as to the appointment of electors. *Bush v. Palm Beach County Canvassing Bd.* (531 U.S. 70 (2000)). Ultimately, the Supreme Court found that the Florida Supreme Court violated the Equal Protection Clause of the 14th amendment by ordering certain counties to conduct manual recounts of the votes for President and Vice President without establishing standards for those recounts. *Bush v. Gore* (531 U.S. 98 (2000)).

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[AMENDMENT XII]

§ 221

* * * 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 ineli-

gible to the Office of President shall be eligible to that of Vice-President of the United States.

The 20th amendment to the Constitution has clarified some of the provisions of the 12th amendment. In 1801 (III, 1983), the House of Representatives chose a President under article II, section 1, clause 3 (see § 152a, *supra*), the constitutional provision superseded by the 12th amendment.

§ 222. History of original provision for failure of electoral college to choose.

In 1825 the House elected a President under the 12th amendment (III, 1985); and in 1837 the Senate elected a Vice President (III, 1941).

§ 223. Occasions of election by House and Senate after 1803.

AMENDMENT XIII.⁴

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall

§ 224. Prohibition of slavery and involuntary servitude.

⁴The 13th amendment to the Constitution of the United States was proposed to the legislatures of the several States by the 38th Congress, on February 1, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December 1865, to have been ratified by the legislatures of 27 of the 36 States. The dates of ratification were: Illinois, February 1, 1865; Rhode Island, February 2, 1865; Michigan, February 2, 1865; Maryland, February 3, 1865; New York, February 3, 1865; Pennsylvania, February 3, 1865; West Virginia, February 3, 1865; Missouri, February 6, 1865; Maine, February 7, 1865; Kansas, February 7, 1865; Massachusetts, February 7, 1865; Virginia, February 9, 1865; Ohio, February 16, 1865; Indiana, February 13, 1865; Nevada, February 16, 1865; Louisiana, February 17, 1865; Minnesota, February 23, 1865; Wisconsin, February 24, 1865; Vermont, March 9, 1865; Tennessee, April 7, 1865; Arkansas, April 14, 1865; Connecticut, May 4, 1865; New Hampshire, July 1, 1865; South Carolina, November 13, 1865; Alabama, December 2, 1865; North Carolina, December 4, 1865; and Georgia, December 6, 1865. Ratification was completed on December 6, 1865. The amendment was subsequently ratified by Oregon, December 8, 1865; California, December 19, 1865; Florida, December 28, 1865 (Florida again ratified on June 9, 1868, upon its adoption of a new constitution); Iowa, January 15, 1866; New Jersey, January 23, 1866 (after having rejected the amendment on March 16, 1865); Texas, February 18, 1870;

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