

Handout 2- *What changes did the 12th Amendment make to the Electoral College process?*

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The Election of 1800

The article that established the Electoral College in the Constitution stated that the electors would vote for two persons (at least one of whom had to be from outside the elector's home state). The second was that the electors did not differentiate between the two persons as potential presidents or vice presidents. Electors should simply vote for the two persons they viewed as most qualified to become president. The person gaining the most votes (if a majority) would become president. The runner-up (presumably the second-most-qualified person) would become vice president. This result reflects the desire of the Framers of 1787 to avoid development of political parties and focus indeed on some notion of "best men."

The election of 1800 was one of the most important in American history. The incumbent was John Adams, who had been Washington's Vice President for two terms and was then elected in his own right in 1796. His Vice President was Thomas Jefferson. Any such hopes were quickly frustrated, however. Even by 1796, Adams was associated with the Federalist Party, while Jefferson was supported by the Democratic-Republican Party. They ran against each other again in 1800, and both Adams and Jefferson had "running mates," Charles Cotesworth Pinckney from South Carolina in the case of Adams (and the Federalist Party) and Aaron Burr of New York, for Jefferson.

The Federalist Party electors figured out that it was important not to cast both of their votes for Adams and Pinckney, for that would create a tie and, if both got a majority of the vote, throw the election into the House; the Democratic-Republican electors were not so sagacious (wise). They dutifully cast both of their votes for their party's champions, creating a tie majority vote that forced the House to choose between Thomas Jefferson and Aaron Burr.

The tie vote exposed deep problems in the Electoral College system. The one-state/one-vote rule had the practical effect of giving Delaware's sole Representative Bayard, an ardent Federalist, the same voting power as Virginia, then the largest state (and home, of course, of Jefferson).

Only on the 36th ballot did Bayard agree to vote for Jefferson and to break the deadlock. Jefferson was peacefully inaugurated on March 4. Yet the original Electoral College system was exposed as problematic, and there was widespread agreement that something had to be done. But what?

The 12th Amendment

The answer is quite simple: electors would in the future continue to cast two votes (and one of them, as before, would have to be for a non-native of the elector's home state), but, crucially,

one of the two votes would explicitly be to fill the presidency, while the other designated who should become vice president. Never again could presidential candidates and their running mates face the embarrassing kind of tie vote that forced the House to choose between Jefferson and Burr. This splitting of the presidency and vice-presidency did not go uncontested.

The 12th Amendment made another important change: The original Constitution provided that the failure of any candidate to achieve a majority would require the House to choose as president one of the five top-ranking candidates, with the person coming in second to serve as vice-president unless there was tie for second place, in which case the Senate would choose between them.

Now, however, the House would choose only the President from the top three choices of the electors; the Senate would now choose the Vice President from the top two choices of the electors for that specific office. This guaranteed, in effect, that there would always be a vice president, who could presumably take the reins of the presidency should the House be hopelessly divided among the top three candidates for the presidency.

Source: Levinson, Sanford. Interpretation of the Twelfth Amendment (excerpted). *The National Constitution Center*. (n.d.) Retrieved from: <http://constitutioncenter.org/interactive-constitution/amendments/amendment-xii>