

ELECTION 2016 AND THE ELECTORAL COLLEGE: THE NUMBER IS 270

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I. PRESIDENTIAL ELECTIONS IN PERSPECTIVE

Presidential elections are a unique phenomenon. They combine law, politics and history. In the deliberations of the founders over the constitution, the method and mechanics of electing the president consumed more time and effort than most other issues. Yet, of all constitutional issues, Americans appear to know the least about the constitutional issues involved in presidential elections. The primary reason is that, although elections can be tumultuous and chaotic, they have followed a consistent pattern at least since 1912. The candidate who received the majority count of the electoral vote on election night became president even in those elections where the candidate did not have receive a majority of the popular vote. Consequently, unresolved constitutional issues as to how electoral votes are counted and how contingent elections in the House of Representatives are conducted never had to be considered.

To some extent, this pattern was broken in Bush - Gore 2000. But even this election did not involve the electoral college. The issue was how the electoral votes of Florida would be counted under Florida law. It implicated the little known Electoral Count Act of 1887 (ECA), which is still the law (see Section III Electoral Count Act). The Supreme Court effectively ignored the ECA in its decision *Bush v. Gore*, 531 US 98 (2000).

The debates, the obsequious surrogates, the self-important interviews, allegedly

scientific predictions, electioneering, and useless polls will intensify as we approach November 8, 2016. Out of all of this, however, the only vote that matters is the vote of the electoral college. The only number that counts is 270 which is the number of electoral votes necessary to elect a president.

If no candidate receives 270 electoral votes, the U.S. House of Representatives elects the president and the Senate elects the vice president. The popular vote is meaningless except to historians and biographers. There have been four elections in our nation's history in which the candidate who received 270 electoral votes, and thus became president, won less than a majority of the national popular vote.

II. THE ELECTORAL COLLEGE AND ITS OPERATION

The function and operation of the electoral college is set forth in the U.S. Constitution as supplemented by federal law.¹ The means by which a president is elected was one of the most vigorously debated issues at the Constitutional Convention of 1787.² The proposals ranged from popular vote to vote by the state legislatures to vote by the governors of the states.

Leaving aside jokes about the electoral college not having a football team, the electoral vote is the single most significant event in U.S. presidential elections. In seventh grade civics we learn that the electors from each state elect the president. We may also learn that if no candidate receives a majority of 270 electoral votes out of a total of 538 votes, the House of Representatives elects the president. Our education on this matter usually stops here.

The term "electoral college" does not appear in the Constitution. It probably derives from the English Parliaments of the mid-1600s during the British Civil War.

Members were organized into “colleges”, similar to the committee system in Congress, to conduct the business of Parliament. The term appears in the U.S. Code to describe the electors as a group.³ The Electoral College is not an organization or entity. It does not have an address or a staff. Each state has a number of electors which is equal to its representation in Congress—two senators and a set number of representatives in the House based on population.⁴ Generally, there is one representative for every 500,000 people in a state. The District of Columbia is allotted three electors.⁵

A. Selection of Electors

The Constitution leaves it to the state legislatures to decide the method by which the states choose the persons to be their electors.⁶ The only constitutional requirement is that an elector cannot be a person who holds an “Office of Trust or Profit under the United States,” nor can an elector be a person who has “engaged in insurrection or rebellion against the [United States], or given aid and comfort to the enemies thereof.”⁷

The states use one of three methods to select electors:

1. The political parties select the electors on a popular vote basis,
2. The executive committees of the political parties select the electors,
or
3. The party conventions choose the electors.

In the District of Columbia, the executive committee of each party selects the persons to be electors. In Maryland, the selection of electors is left up to the parties. In Virginia, electors are chosen at each the convention of each party.

The profiles of the persons who are selected to be electors vary widely. Usually these persons have demonstrated loyalty to the party such as state or local elected

officials, state and local appointees, and persons who are otherwise connected to the party.

B. Election of Slate of Electors

On Election Day the voters elect the electors. In some states the individual electors which each party has selected are listed on the ballot under the names of the party's presidential and vice presidential candidates. In other states, only the names of the presidential and vice presidential candidates appear on the ballot. Even though it may appear that the voter is voting for the president and vice president, he or she is actually voting for the slate of individual electors which is supposedly pledged to the president and vice president which the voter has chosen. Whichever ballot is used, the voter must vote for only one slate of electors. The voter is not able to vote for some electors but not other electors on the slate. In 48 of the 50 states and the District of Columbia, the slate of electors that receives a simple majority of the statewide popular vote is the electoral slate of the state.

Both Maine and Nebraska use the congressional district method of distributing their electoral votes (the former since 1972, and the latter since 1996). The candidate who wins a majority/plurality of the popular vote in a congressional district is allotted one electoral vote. The candidate who wins a majority/plurality of the statewide popular vote is allotted the state's remaining two electoral votes. In April 2016, and for the 15th time, the Nebraska legislature considered a bill that would have returned to the winner-take-all method of choosing its electors. The bill failed, and Nebraska still uses the congressional district method.

Before 1804, the electors were presented with one slate of candidates. The

electors cast two votes from that one slate, one for his preferred candidate and one for his second preferred candidate. The candidate who received a majority of the electoral votes was elected president, and the candidate who received the next highest vote total was elected vice president.⁸ The disputed election of Thomas Jefferson and Aaron Burr in 1800 demonstrated a flaw in this system. Under this method, the electors cast their two votes for individual candidates rather than one vote for president and one vote for vice president. The drafters did not anticipate or appreciate that political parties would rapidly develop. Instead of certifying one neutral slate, some of the states were certifying slates on which the electors were selected based on their preference for a candidate to be president and their preference for a candidate to be vice president.⁹ Consequently, a conflict arose between the voting method of the electors under the Constitution and the voting method in practice.

The Twelfth Amendment, which took effect in 1804, resolved this conflict. It eliminated the method in the Constitution and replaced it with a method whereby the electors states certify to Congress a slate of electors who are selected to vote for a named candidate to be president and a slate of electors who are selected to vote for a named candidate to be vice president. The Twelfth Amendment also addressed the method by which the House of Representatives would resolve an election where no candidate received a majority of the electoral votes, referred to as a contingent election. However, it left certain basic issue unresolved, (See Section IV Contingent Elections).

Once the national election is over, the public usually ignores the Electoral College. However, the election process continues under the Electoral Count Act of 1887 (see Section III Electoral Count Act). The only significance of the election results on

November 8 will be that, based on the popular vote of each state, each presidential and vice presidential candidate is allocated electoral votes. No president and or vice president is elected until the electors have voted.

III. THE ELECTORAL COUNT ACT OF 1887

Other than mandating that the candidate who receives a majority of the electoral votes, the Constitution is silent on the procedure for counting the electoral votes and who decides which electoral slate to count if a state submits more than one slate or an uncertain slate of electors. The Constitution states only that the electoral votes “shall be counted”.¹⁰ Before the 1876 election between Republican Rutherford B. Hayes and Democrat Samuel Tilden, Congress was able to resolve the issue how to count the electoral votes and the issue of disputed slates of electors when they arose on an *ad hoc* basis without a constitutional crisis. This changed with the Hayes-Tilden Election of 1876.

A. Hayes - Tilden Election of 1876

The Hayes - Tilden election occurred only ten years after the end of the War of Southern Secession (the Civil War). Tension and passions stemming from the War and reconstruction were reflected in the election campaign. On election night, the Democrat, Tilden had received a solid majority of the national popular vote including the state popular vote in each of the former Confederate states. However, he received 184 electoral votes out of a total of 369 electoral votes which was one vote less than the 185 which was required for a majority of the electoral vote. Hayes received 165 electoral votes which was 20 votes less than a majority. Tilden needed only one more electoral vote to reach the majority of 185.

A total of 19 electoral votes in Florida (4), Louisiana(8), and South Carolina (7) were disputed and one vote in Oregon Tilden had received the majority of the state popular vote in each of these states which should have entitled him to the electoral vote of each state and a majority of the electoral votes. However, in each of these states, the Republicans controlled the state election returning boards. The returning boards were empowered to determine the validity of each popular vote that was cast. The Republican dominated returning boards in each state were able to disallow just enough popular votes to deny to Tilden a majority of the popular votes and allot the electoral votes to Hayes. The grounds for the disallowing the votes was that they had been obtained by force and intimidation to prevent newly enfranchised blacks from voting Republican.

None of those states had a law that mandated that the state submit only one slate of electors for each of president and vice president. Each of Louisiana and South Carolina declared that the Democratic candidate for governor had been elected and each them submitted an electoral vote for Tilden. The Republican candidates for governor in each state maintained that they were lawfully elected and submitted an electoral vote for Hayes. In Florida, the state supreme court, in a contradictory opinion, allowed the Hayes vote to stand. But the newly elected Democratic governor appointed a Democratic returning board which concluded that Tilden had received the majority of the popular vote and, thus, the electoral vote. There was no process in Florida to resolve the difference between the determination of the state supreme court and the returning board. Consequently, each of Florida, Louisiana and South Carolina submitted rival electoral slates to Congress. Hayes had received the popular vote in Oregon so that its

three electoral votes were allocated to Hayes. However, the Democrats challenged one of the electors on the grounds he was a federal employee and, thus, barred by the Constitution from being an elector. The Democratic governor of Oregon replaced him with a Democratic elector. The Republican electors refused to recognize the Democratic elector and recognized the replaced Republican elector. The Republican electors submitted three electoral votes for Hayes to Congress. The Democratic elector submitted two votes for Hayes and one vote for Tilden.

In this election, none of the *ad hoc* solutions of previous elections worked and, at the same time, the Constitution did not set forth a means of resolving competing or uncertain slates of electors. After much political wrangling, Congress created an electoral commission to decide the issue. After more political wrangling, the commission ultimately selected the Republican slates, and Hayes became president.¹¹

The constitutional crisis created by the Hayes-Tilden election traumatized Congress and the nation. Because a majority of the nation had voted for Tilden, a substantial portion of the electorate considered Hayes to be illegitimate. Also, some historians consider the political bargains reached to elect Hayes to have attenuated the objectives of the Reconstruction and led to the “Jim Crow” era and a prolonged aftermath. Politics were less civilized in the late 19th century than they are today, and name calling was common. (Hayes was called “His Fraudulency” or “His Accidency”). Almost immediately after Hayes took office, Congress began debating bills, the purpose of which was to avoid a similar constitutional crisis in the future. While it took another ten years, Congress finally passed the Electoral Count Act of 1887 (the ECA) and it was enacted. The ECA has not been amended since 1887 and is the law today. The ECA

addressed two issues, one, the procedure under which the electoral votes are conducted and, two, the method by which competing or uncertain slates of electors are resolved.

B. Vote of the Electors and Tally by Congress under the ECA

As soon as possible after November 8, the governor of each state will certify to the Archivist of the United States the names of the electors who were elected on November 8 and the number of votes cast for each elector.¹² On or before December 19, 2016 the governor also will deliver the same certificate to each elector.¹³ The electors listed in the certificate are the electors from each state who are credentialed to vote for president and vice president.

On December 19, 2016 the slates of electors named in the certificates will meet, usually in their state capitals, and vote for president and vice president.¹⁴ They vote separately for president and vice president and place the results in six certificates.¹⁵ The electors then transmit the certificates as follows:

1. To the president of the Senate who is also the sitting vice president;
2. To the state official designated by the governor, usually the secretary of state of each state;
3. To the Archivist of the United States; and
4. To the judge of the district in which the electors meet to vote.¹⁶

If the foregoing officials have not received the certificates from one or more states by December 28, 2016, the president of the Senate, or in his or her stead, the Archivist, is authorized to obtain the certificates from the aforementioned district judge by special messenger.

On January 6, 2017, Congress will meet in a joint session to tally the electoral

votes.¹⁷ There is an elaborate procedure for counting the electoral votes.¹⁸ Once Congress has tallied the electoral votes and declared the results, the presidential and vice presidential candidates who have received a majority of the electoral votes are elected. They become president and vice president after they are inaugurated on January 20, 2017.

C. Disputed or Uncertain Slates of Electors

The ECA effectively puts Congress in the place of the electoral commission which resolved the Hayes -Tilden election. It mandates that:

1. If a state submits one slate, then Congress must count that slate as long as:
 - (a) the state designated its electors under state laws that were enacted before the November election, and
 - (b) the slate was certified no later than six days before the day on which Congress sets for the electors to vote.
2. If a state submits more than one certified slate of electors, the House of Representatives and the Senate must agree on which slate of electors to count.
3. If the House of Representatives and Senate do not agree, then only the slate certified by the state governor is counted.
4. If the state governor does not certify a slate, or certifies more than one slate, none of the electoral votes from that state is counted.

D. Unresolved Issues under the ECA

The ECA is a political compromise. While it is an improvement on the electoral commission used in the Hayes-Tilden election of 1876, it leaves unresolved crucial issues. The primary issue is whether the ECA is even constitutional. During the ten - year debate over the ECA, opponents argued that a process for counting electoral votes

can only be made by an amendment to the Constitution. Supporters of the ECA argued that the right of Congress to establish an electoral vote process was incident to its power to count electoral votes so that an amendment was not necessary.¹⁹ Other unresolved issues are:

1. Where the state submits one certified slate, whether Congress can review the state law under which the slate was selected to determine if the law is legally proper.
2. The means and margins by which the Senate and the House of Representatives must decide which slate to count when a state certifies more than one slate of electors.
3. Whether Congress can reject a certified slate on the grounds that the election of the slate was fraudulent or corrupt even though the state law was legally valid.

The only elections in which the ECA has figured prominently were those between Benjamin Harrison and Grover Cleveland in 1892, and between George W. Bush and Al Gore in 2000. Ultimately, in each of these elections, a majority of the electoral votes was allocated to each of Harrison and Bush. Each of them became president without having to address any of these issues.

IV. CONTINGENT ELECTIONS

Because the president and vice president must be elected by a definite number of electoral votes, the drafters of the Constitution had to provide a process for electing a president and vice-president if no candidate receives a majority of the electoral votes. The solution was to have the House elect the president. An election that is decided by the House is referred to as a contingent election. Except for the 1824 election between John Quincy Adams and Andrew Jackson, in every presidential election in U.S. history the candidate who received a majority of the electoral vote became president. However,

commentators have analyzed elections which were closely contested and found that slight changes in the events or different interpretations of the law could have reversed the results of those elections.²⁰

A. The Faithless Elector

Neither the Constitution nor any federal law requires that an elector vote for the presidential and vice presidential candidate on whose slate the elector appears.²¹ An elector may even vote for a person who is not on the ballot. Known by a somewhat inaccurate term, the “faithless elector” is an elector who does not vote for the presidential and vice presidential candidate on whose slate the elector was selected to serve.

Twenty nine states and the District of Columbia attempt to prevent the faithless elector by making each elector take a pledge, by imposing fines, or by nullifying the faithless elector’s vote. Twenty one states do not have any penalties so that the elector can vote however he or she so chooses without regard to the slate for which he or she was selected. The District of Columbia and Maryland require a combination of pledges and fines. Virginia law addresses the issue but is ambiguous. Most likely, none of these measures is constitutional. There have been reportedly 157 instances of faithless elector votes over the decades. However, no election result has ever been changed because of the vote of a faithless elector.²²

B. The Twelfth Amendment

Under the Twelfth Amendment, if no candidate receives a majority of the votes of the electors or there is a tie vote, the House elects the president from the list of the three candidates who had received the most votes.²³ Each state has one vote. The method by

which the representatives of each state determines for whom the state would vote was left up to the states to decide. To this day the Twelfth Amendment is and remains the highest and only the legal authority on how a contingent election is conducted. The only presidential election that was a contingent election was John Adams - Andrew Jackson in 1824. A contingent election for vice president between Martin Van Buren and William Henry Harrison in 1836 was conducted by the Senate.

The Twelfth Amendment does not address all of the issues that could arise in a contingent election, but it does address the following:²⁴

1. The House must immediately choose the president.
2. The election must be conducted by ballot.
3. Each state casts one vote.
4. There must be a quorum of two-thirds of the states present, which is 34. A state is present as long as at least one representative of the state is present.
5. A candidate must receive a majority of the votes of the states, which is 26.
6. If the House does not elect a president before the date on which the term of the incumbent president expires, which is noon EST on January 20, 2017, the vice president elected by the Senate serves as acting president until the House elects a president.

The Twenty-Third Amendment enables citizens of the District of Columbia to vote in presidential elections and it has three electoral votes. However, because the District is not a state, it does not have a vote in a contingent election.

C. House Precedents for a Contingent Election

The House makes its own rules of procedure.²⁵ The current rules of the House do not address procedures it would use in a contingent election.²⁶ In the first instance the

House would consider the procedures used in the Adams–Jackson 1824 election as persuasive but not binding precedents.²⁷ In that election, the House appointed a select committee with one representative from each state to draw up special rules for the contingent election. The basic rules were:

1. The House meets in closed session.
2. Motions to adjourn are not heard unless offered and seconded only by the state delegations and not by individual representatives. The House must conduct the contingent election to the exclusion of any other business.
3. The vote is taken by secret ballot.
4. Each state delegation chooses a candidate. The candidate who receives a majority of the votes cast is the choice of the delegation. The state then casts its one vote for that candidate in the House election. This rule is silent on the role, if any, of the House where a state delegation is deadlocked or the rules by which the representatives decided on the state vote were ambiguous or the process of deciding on the state vote was improper.

D. Twentieth Amendment

The Twentieth Amendment is relevant to a contingent election. It alters the date on which the term of the incumbent president and vice president expires from March 4 to January 20 and sets January 3 as the date on which the term of the Congress elected in November begins. The Twentieth Amendment also sets forth the means and method of presidential succession.²⁸

The electoral vote will be official on January 6, 2017 which is the date on which Congress will tally the votes. Whether a contingent election is necessary will not be known for sure until that tally is complete. Because the new Congress is sworn in on January 3, 2017, which is before the tally has occurred, the Congress which was elected

on November 8, 2016 conducts the contingent election.

If a contingent election is necessary, the new Congress has from January 6 to January 20, only 15 days, to conduct the contingent election. Presumably, the election process for president in the House will be more complicated than the election process for vice president in the Senate. It is possible, though unlikely, that the House will elect a president but the Senate will elect a vice president. In this event, the vice president becomes the acting president until the House elects a president.²⁹ If no president or vice president is elected before noon on January 20, Congress is empowered to make a law but not a rule for this event.

E. The Presidential Succession Act of 1947

Congress passed the Presidential Succession Act of 1947 (the Act) to address the situation where neither a president nor a vice president is elected by January 20.³⁰ The Act sets forth a line of succession of persons who would serve as acting president. The only persons in the line of succession who can serve as acting president are those who meet the qualifications for president set forth in the Constitution. The person must be a natural born citizen over the age of 35 years and must vacate any office that he or she currently holds.

The first person in the line of succession is the Speaker of the House. The next in line is the President Pro Tempore of the Senate, and after him or her is the Secretary of State. The line then goes down the list of cabinet secretaries according to the date on which the cabinet was established from the oldest to the newest.

As a practical matter, it is most likely that, if the presidency and vice presidency are vacant on January 20, the Speaker will succeed or possibly the President Pro

Tempore of the Senate. It is unlikely that it would become necessary for the Cabinet secretaries to succeed. However, this raises a constitutional question which was debated before the Act was passed. The Succession Clause states that only an “Officer” of the United States can succeed to the presidency.³¹ Arguably, neither the Speaker nor the President Pro Tempore of the Senate are “Officers” within the meaning of the Succession Clause, though the Cabinet secretaries are without question “Officers” of the United States. This is why the succession law which preceded the Act made the Secretary of State as first in the line in succession. Consequently, the Act may be unconstitutional.

F. Proposed Reforms to the Electoral College

The Electoral College was controversial even before the Constitution. The delegates argued over it even during the deliberations for the Articles of Confederation. Over the years, commentators have proposed that the Electoral College be reformed. Proposals have ranged from eliminating it altogether to allocating one electoral vote per congressional district like Maine and Nebraska to having a contingent election be decided by the vote of each representative rather than by the vote of each state.³² Another proposal, which has been adopted in different forms by some states, is that each state enact a law that requires the governor to certify only the slate of electors for the presidential and vice presidential candidates who receive the highest number of votes of the popular votes in the state.

V. EVENTS CAUSING A CONTINGENT ELECTION

There are only two events, the occurrence of which would deny 270 electoral votes to a candidate. The popular vote totals in the states could align in such a way that, as a matter of mathematics, each candidate receives a total of 265 electoral votes or less.

Also, a losing candidate could challenge the state popular vote totals in some states such that the vote totals are reversed which causes the electoral vote count to be reversed.

A. Mathematics

Because of the way in which electoral votes are distributed among the states, it is mathematically possible that, in an election between two candidates, each candidate could receive 265 electoral votes. Considering the voting patterns of the states in the last few national elections, it is unlikely that neither candidate would receive at least 270 electoral votes.

The issue is more complicated when there is a credible third party candidate in the election. It is possible that a third party candidate could garner the popular vote in enough states and receive enough electoral votes to deny either of the other candidates 270 electoral votes. Third-party candidates have not been successful.

1. Former president Theodore Roosevelt was denied the nomination for president of the Republican Party for the election of 1912. He created the Bull Moose Party and ran as a third party candidate. He received 88 electoral votes which was more than the number of electoral votes which the Republican nominee, President William Howard Taft, received. Roosevelt still lost to Democrat Woodrow Wilson in the election of 1912.
2. In the Nixon - Humphrey election of 1968, George C. Wallace ran for president as the nominee of the American Independent Party. He received 13.5 percent of the national popular vote, the popular vote of five southern states and garnered 45 electoral votes and one faithless elector vote.
3. In the Clinton-Bush election of 1992, third-party candidate Ross Perot received about 19 percent of the national popular vote but, because he did not prevail in any state, he did not receive any electoral votes.

In the 2016 election, the Libertarian Party has nominated former governors for

president and vice president and claims to be on the ballot in each of the 50 states and the District of Columbia. The Green Party also claims to be viable in at least some states. The Libertarian candidates will not receive 270 electoral votes. However, it is possible that they could prevail in just enough states to deny 270 electoral to each of the major party candidates.

B. Legal challenges to the state election

Even if one of the candidates has 270 electoral votes after the November election, the other candidate(s) can seek to challenge that result. State elections are conducted according to state law not any federal law. The quality of state laws varies from state to state. In some states election processes differ from county to county. Many states reviewed their elections laws after Bush - Gore 2000.

A candidate(s) could challenge the result of the state popular vote on the following grounds:

1. The election laws in key states are unconstitutional in substance,
2. The election laws are vague or ambiguous,
3. The election was conducted in a corrupt or abusive manner or there was voter fraud, or
4. The election count was conducted in an unlawful manner.

In many states, any such challenge must be asserted in the administrative process of the state. After exhausting the administrative remedies, the aggrieved party would assert its challenge in the state courts and possibly in federal courts as well. If the courts ultimately upheld the original state popular vote count then the candidate who received the highest total of that popular vote receives the state electoral. However, the governor

or the legislature can refuse to certify the slate of electors in the court decision and certify another slate of electors.

C. Legal challenges to the ECA

The primary challenge to the ECA is that it is unconstitutional. For the Congress which passed the ECA, whether it was constitutional was the most hotly debated issue. The Constitution states that “The President of the Senate shall in the Presence of the Senate and the House of Representatives, open the all Certificates, and the Vote shall be counted.”³³ But this clause does not state who counts the votes nor how the vote is counted.

The ECA purports to resolve this issue raised by setting forth a “safe harbor” when the governor certifies one slate of electors and a process for resolving the issue if a slate of electors from the same state is submitted to Congress in addition to the slate certified by the governor. The opponents of the ECA argued that the uncertainty as to who counts the electoral vote can only be resolved by an amendment to the Constitution and not by a statute passed by Congress.

VI. CONCLUSION

Several novels have been written setting forth scenarios which lead to contingent elections.³⁴ It is possible to conceive of scenarios that could lead to a contingent election but it is impossible to predict when and whether events will occur that cause a contingent election. The point is that unresolved issues with the electoral college and the ECA are not issues until they become issues. A contingent election will cause a constitutional crisis. Ultimately, the nation will look to attorneys to resolve such a crisis.

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ENDNOTES

1. U.S. Const. art. II, § 1; 3 U.S.C. §§ 1–17.
2. Max Farrand, ed., *The Records of the Federal Convention of 1787*, vol. 1 at 68 (rev. ed. 1966).
3. 3 U.S.C. § 1.
4. *Id.* § 3.
5. U.S. Const. amend. XXIII; 3 U.S.C. § 21(a).

6. U.S. Const. art. II, §1
7. U.S. Const. art. II, § 1; U.S. Const. amend. XIV.
8. U.S. Const. art. II, § 1.
- ⁹ Political parties are not mentioned anywhere in the Constitution.
10. U.S. Const. art.II, § 1
11. Ari Hoogenboom, *Rutherford B. Hayes: Warrior & President*, University Press of Kansas (1995).
11. U.S.C. § 6
13. *Id.*
14. 3 U.S.C. §§ 7, 8.
15. *Id.* § 9
16. *Id.* § 11.
17. *Id.* § 15.
18. *Id.*
19. Stephen A. Siegel, *The Conscientious Congressman's Guide to the Electoral Count Act of 1887*, 56 Fla. L. Rev. 514 (2004).
20. Edward B. Foley, *Ballot Battles: The History of Disputed Elections in the United States*, Oxford University Press (2016).
21. *Ray v. Blair*, 343 US 214 (1952).
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- ²³ U.S. Const. art. II, § 1
24. Nathan L. Colvin and Edward B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb*, 64 U. Miami L. Rev. 475 (2010).
25. U.S. Const art. I, § 5.
26. *Rules of the House of Representatives*, 114th Congress (January 6, 2015).
27. U.S. Congress, *Hinds' Precedents of the House of Representatives*, vol. 3 ch. 58 (GPO 1907).
28. U.S. Const. amend. XX, § 1.
29. U.S. Const. amend. XX, § 3; 3 U.S.C. § 19.

30. 3 U.S.C. § 19.

³¹ U.S. Const. art. II, § 1.

32. John C. Fortier, ed., *After the People Vote: A Guide to the Electoral College*, 3d ed., AEI Press (2004).

³³ U.S. Const. art. II, § 1.

³⁴ See e.g. Roy Neel, *The Electors*, Recount Press, 2016.