

# Understanding the Process for Electing the President on January 6, 2021

Source: <https://constitution.congress.gov/constitution/amendment-12/>

The information below is a resource for teachers regarding information to discuss the controversy surrounding a challenge to the certified ballots from the Electoral College when the Congress meets on January 6, 2021.

## Twelfth Amendment

Twelfth Amendment Annotated (I separated the paragraphs and added cross outs and underlining)

*“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. (the three persons would likely be Joseph Biden, Donald Trump, and Howie Hawkins of the Green Party)

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 January 20 ~~the fourth day of March next following~~, then the Vice-President shall act as President, as in 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.”

**Discussion:** (These questions are generic and not for any specific grade level)

1. What would happen if the President-elect died or was incapacitated (unconscious) before the election results were accepted in both houses of Congress on January 6, 2021?
2. Research the states with divided members from both parties in the House and Senate. Some states like New Jersey have a clear majority of representatives from the Democratic Party and some states like Florida have a clear majority of representatives from the Republican Party. In 22 states both senators are Republican and in 19 states both senators are Democrats, with 9 states have a divided vote. According to the 12<sup>th</sup> Amendment a majority vote of 26 states is needed to select the Vice-President. [House: Sort by District](#)     [Senate: Sort by State](#)
3. If the House cannot select a President and the Senate cannot select a Vice-President by January 20, 2021, who will the president be? (Donald Trump or Nancy Pelosi)
4. If the vote for Vice-President takes place in the Senate by a vote of the states and it is tied at 50 for Kamala Harris and 50 for Michael Pence, does the President of the Senate vote to break the tie? (Michael Pence is the President of the Senate) **\*See the election of 1836**
5. Is it possible for the House to select a President without the Senate selecting a Vice-President and then have the President invoke the process under Section 2 of the 25<sup>th</sup> Amendment (Presidential Succession Act)?

***“Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.”***

6. Is it possible for the House to select a president from one political party and the Senate to select a Vice-President from a different political party?

### **A Crisis in January**

1. **What if** the United States was attacked or became involved in an undeclared military conflict after the Electoral College voted in December but before Inauguration Day?
2. **What if** Speaker of the House, Nancy Pelosi, claims that Mike Pence and the Republicans are stealing the election and she uses the 25<sup>th</sup> Amendment (Presidential Succession Act) to become the ‘Acting President’ on January 20, 2021?? **What if** the House selected someone other than Nancy Pelosi as Speaker of the House in January?
3. **What if** Speaker of the House Nancy Pelosi asserted that she should be the Acting President if the election results are not decided as of January 20, 2021 with Chief Justice John Roberts administering the Oath of Office and Attorney General William Barr challenging her because she is from the Legislative Branch and the opposite political party of Trump and Pence and the Senate majority. **What if** William Barr administers the Oath of Office to Secretary of State Mike Pence?