

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.

#### ELECTION OF PRESIDENT

This Amendment,<sup>1</sup> which supersedes Article II, § 1, clause 3, was adopted so as to make impossible the situation that occurred after the election of 1800 in which Jefferson and Burr received tie votes in the electoral college, thus throwing the selection of a President into the House of Representatives, despite the fact that the electors had intended Jefferson to be President and Burr to be Vice President.<sup>2</sup> The difference between the procedure that the Amendment defines and the original is in its providing for a separate designation by the electors of their choices for President and Vice President, respectively. As a consequence of the disputed election of 1870, Congress enacted a statute providing that if the vote of a state is not certified by the governor under seal, it shall not be counted unless both Houses of Congress concur.<sup>3</sup>

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<sup>1</sup> A number of provisions of the Amendment have been superseded by the Twentieth Amendment.

<sup>2</sup> Cunningham, *Election of 1800*, in 1 HISTORY OF AMERICAN PRESIDENTIAL ELECTIONS 101 (A. Schlesinger ed., 1971).

<sup>3</sup> 3 U.S.C. § 15.