

# "An Act To Provide For And Regulate The Counting Of Votes For President And Vice-President..." January 29, 1877

PROCEEDINGS OF THE COMMISSION  
APPOINTED UNDER

THE ACT OF CONGRESS APPROVED JANUARY 29, 1877, ENTITLED "AN ACT TO PROVIDE FOR AND REGULATE THE COUNTING OF VOTES FOR PRESIDENT AND VICE-PRESIDENT, AND THE DECISIONS OF QUESTIONS ARISING THEREON, FOR THE TERM COMMENCING MARCH 4 A.D. 1877"

The act of the Congress of the United States, approved by the President on the 29th of January, A.D. 1877, under which the Electoral Commission was organized, is in the following words:

AN ACT to provide for and regulate the counting of votes for President and Vice President, and the decision of questions arising thereon, for the term commencing March 4, A.D. 1877.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Senate and House of Representatives shall meet in the hall of the House of Representatives, at the hour of one o'clock post meridian, on the first Thursday in February, anno Domini eighteen hundred and seventy-seven; and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate, and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates, and papers purporting to be certificates, of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers having then read the same in the presence and hearing of the two houses shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted as in this act provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, and the names of the persons, if any, elected, which announcement shall be deemed a sufficient declaration of the persons elected President and Vice President of the United States, and, together with a list of the votes, be entered on the journals of the two houses. Upon such reading of any such certificate or paper when there shall be only one return from a State, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw and such objections shall be submitted to the Senate for its decision, and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision, and no electoral vote or votes from any State from which but one return has been received shall be rejected except by the affirmative vote of the two houses. When the two houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the question submitted.

SECTION 2. That if more than one return, or paper purporting to be a return from a State, shall have been received by the President of the Senate, purporting to be the certificates of electoral votes given at the last preceding election for President and Vice President in such State (unless they shall be duplicates of the same return,) all such returns and papers shall be opened by him in the presence of the two houses when met as aforesaid, and read by the tellers, and all such returns and papers shall thereupon be submitted to the judgment and decision as to which is the true and lawful electoral vote of such State, of a commission constituted as follows, namely:

During the session of each house on the Tuesday next preceding the first Thursday in February, eighteen hundred and seventy-seven each house shall, by viva voce vote, appoint five of its members who with the five associate justices of the Supreme Court of the United States, to be ascertained as hereinafter provided, shall constitute a commission for the decision of all questions upon or in respect of such double returns named in this section.

On the Tuesday next preceding the first Thursday in February, anno Domini eighteen hundred and seventy-seven, or as soon thereafter as may, be, the associate justices of the Supreme Court of the United States now assigned to the first, third, eighth, and ninth circuits shall select, in such manner as a majority of them shall deem fit, another of the associate justices of said court, which five persons shall be members of said commission, and the person longest in commission of said five justices shall be the president of said commission. The members of said commission shall respectively take and subscribe the following oath:

"I, \_\_\_\_\_, do solemnly swear (or affirm, as the case may be) that I will impartially examine and consider all questions submitted to the commission of which I am a member, and a true judgment give thereon, agreeably to the Constitution and the laws: so help me God," which oath shall be filed with the Secretary of the Senate.

When the commission shall have been thus organized, it shall not be in the power of either house to dissolve the same, or to withdraw any of its members; but if any such Senator or member shall die or become physically unable to perform the duties required by this act, the fact of such death or physical inability shall be by said commission, before it shall proceed further, communicated to the Senate or House of Representatives, as the case may be, which body shall immediately and without debate proceed by viva voce vote to fill the place so vacated, and the person so appointed shall take and subscribe the oath hereinbefore prescribed, and become a member of said commission, and, in like manner, if any of said justices of the Supreme Court shall die or become physically incapable of performing the duties required by this act, the other of said justices, members of the said commission, shall immediately appoint another justice of said court a member of said commission and, in such appointments, regard shall be had to the impartiality and freedom from bias sought by the original appointments to said commission, who shall thereupon immediately take and subscribe the oath hereinbefore prescribed, and become a member of said commission to fill the vacancy so occasioned.

All the certificates and papers purporting to be certificates of the electoral votes of each State shall be opened, in the alphabetical order of the States as provided in section one of this act; and when there shall be more than one such certificate or paper, as the certificate and papers from such State shall so be opened, (excepting duplicates of the same return,) they shall be read by the tellers, and thereupon the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one member of the House of Representatives before the same shall be received. When all such objections so made to any certificate, vote, or paper from a State shall have

been received and read, all such certificates, votes, and papers so objected to, and all papers accompanying the same, together with such objections, shall be forthwith submitted to said commission, which shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two houses acting separately or together, and, by a majority of votes, decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many' and what persons were duly appointed electors in such State, and, may therein take into view such petitions, depositions, and other. papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration; which decision shall be made in writing, stating briefly the ground thereof, and signed by the members of said commission agreeing therein; whereupon the two houses shall again meet, and such decision shall be read and entered in the journal of each house, and the counting of the votes shall proceed in conformity therewith, unless, upon objection made thereto in writing by at least five Senators and five members of the House of Representatives, the two houses shall separately concur in ordering otherwise, in which case such concurrent order shall govern. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

SEC. 3. That while the two houses shall be in meeting, as provided in this act, no debate shall be allowed and no question shall be put by the presiding officer, except to either house on a motion to withdraw, and he shall have power to preserve order.

SEC. 4. That when the two houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or upon objection to a report of said commission, or other question arising under this act, each Senator and Representative may speak to such objection or question ten minutes, and not oftener than once; but after such debate shall have lasted two hours, it shall be the duty of each house to put the main question without further debate.

SEC. 5. That at such joint meeting of the two houses, seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators in the body of the hall upon the right of the presiding officer; for the Representatives, in the body of the hall not provided for the Senators, for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either house, acting separately, in the manner hereinbefore provided, to direct a recess of such house not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon. And while any question is being considered by said commission, either house may proceed with its legislative or other business.

SEC. 6. That nothing in this act shall be held to impair or affect any right now existing under the Constitution and laws to question by proceeding in the judicial courts of the United States, the right or title of the person who shall be declared elected or who shall claim to be President or Vice President of the United States, if any such right exists.

SEC. 7. That said commission shall make its own rules, keep a record of its proceedings, and shall have power to employ such persons as may be necessary for the transaction of its business and the execution of its powers.

---

WEDNESDAY, January 31, 1877.

The members of the Commission appointed for the decision of certain questions relating to the counting of the electoral votes for the offices of President and Vice-President of the United States under the act entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A.D. 1877," approved January 29, 1877, met in the Supreme Court room at the Capitol, at eleven o'clock in the forenoon, this 31st day of January, 1877.