

## January 6, 2021, Will Be Vice President Pence's Biggest Day in Congress

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According to the 12<sup>th</sup> Amendment to the U.S. Constitution, ratified by the States in 1804, as implemented by the Electoral Count Act of 1887, “Congress shall be in session on the sixth day of January succeeding every meeting of electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o’clock in the afternoon on that day, and the President of the Senate shall be their presiding officer.” 3 U.S.C. §15.

“The Vice President of the United States,” Mike Pence, pursuant to Article I, Section 3, of the Constitution, “shall be President of the Senate, but shall have no Vote, unless they be equally divided.”

On 6 January, therefore, Vice President Pence will preside over “objections” to electoral votes, including objections to counting the electoral votes from seven disputed States, each of which has transmitted both Democrat and Republican sets of electoral votes: Pennsylvania (20 electors); Georgia (16); Michigan (16); Wisconsin (10 votes); Arizona (11); Nevada (6); and New Mexico (5). As explained below, Vice President Pence also has a sworn duty, as President of the Senate, not to acknowledge unconstitutional electoral votes – the courageous exercise of which duty may well decide whether or not President Donald Trump is re-elected.

“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 at least one Member of the House of Representatives before the same shall be received.” 3 U.S.C. §15.

According to Peter Navarro’s recently released [report](#), “The Immaculate Deception: Six Key Dimensions of Election Irregularity”: “From a review and analysis of this evidence, six major dimensions of alleged election irregularities have been identified and assessed on a state-by-state basis across six key battleground states: Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin. These six dimensions include outright voter fraud, ballot mishandling, contestable process fouls, Equal Protection Clause violations, voting machine irregularities, and significant statistical anomalies.”

In my last [article](#), I pointed out the proverbial elephant in the living room of ongoing election challenges in these six states: “the pre-meditated attempt to corrupt the election process through unprecedented, inherently corrupt mail-in ballots,” which can aptly be challenged under the Civil Rights Act of 1871, aka the Ku Klux Klan Act, enacted by Congress shortly after the 14<sup>th</sup> Amendment, as an illegal “Conspiracy to interfere with civil rights,” [42 U.S.C. §1985](#). Peter Navarro in his report describes this conspiracy as, “a coordinated strategy to effectively stack the election deck against the Trump-Pence ticket.”

So how will both Houses of Congress and Vice President Pence deal with this “Conspiracy to interfere with civil rights” on January 6, 2021?

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The Constitution Center, in an [article](#) titled, “Explaining how congress settles electoral college disputes,” outlines the process of the upcoming 6 January joint session of Congress:

Objections at that meeting about electors will be settled using a process established by the Electoral Count Act of 1887. The law has its origins in the contested presidential election of 1876 between Samuel Tilden and Rutherford B. Hayes. Several states during the 1876 election sent rival electoral ballots to be considered by Congress, which lacked a procedure to decide among contested slates of electors. The short-term solution was a special 15-person commission (including five House Representatives, five Senators, and five Supreme Court justices) to decide the election, which went to Hayes. In the end, the participating Supreme Court justices cast the deciding votes, after the House and Senate members voted on party lines.

What the Constitution Center article does not address is what happens when six States have submitted, as they have, two slates of electoral votes. As explained below, there is a recent precedent that helps explain what will likely happen.

Under the 12<sup>th</sup> Amendment, the election could be decided in the U.S. House of Representatives, where each State gets one vote, and where the GOP currently controls 26 of the 50 State delegations in the House of Representatives. According to the 12<sup>th</sup> Amendment:

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. 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. . . .

Republican electors from the six disputed States sent in “provisional” electoral votes, consistent with procedures in the 1960 Hawaii presidential election, wherein Richard Nixon won that State by a slim margin, after which both Democrats and Republicans in Hawaii transmitted electoral votes to Congress.

When a recount was performed by Hawaii, John F. Kennedy was announced the winner of the Hawaiian electoral votes, and the provisional democratic electoral votes for Kennedy therefore replaced the ones for Nixon. In that case, Hawaii’s electors did not decide the outcome of the election, and Kennedy’s provisional electoral votes were counted without controversy. Unlike the 1960 election, the electoral votes associated with the six currently disputed states *will* decide the outcome of November 3, 2020 presidential election.

According to Todd Ruger’s June 2020 [article](#), “Old law could leave 2020 presidential race in stalemate,” if two sets of electoral votes are cast when the election is contested “the law’s language is unclear.” Under 3 U.S.C § 15, upon receipt by Vice President Pence of written objections, “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. . . .”

If both Houses dismiss the objection(s), the original electoral votes are counted and the joint session proceeds, and Joe Biden presumably wins – assuming no judicial intervention. If both Houses accept the objection and decide “such votes not be the lawful votes of the legally appointed electors of such State,” 3 U.S.C. § 15, then the contested electoral votes are thrown out and the joint session proceeds. If this happens, Donald Trump presumably is reelected.

“But if the two Houses shall disagree in respect to the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted.” 3 U.S.C. § 15. In this scenario, the election might turn on the Governors of each of the six disputed States, two of whom are Republican (Arizona and Georgia).

Alabama Representative Mo Brooks and North Carolina Representative Ted Budd have already announced plans to object to the electoral votes cast in the disputed States. A few senators are reportedly prepared to join this objection or these objections.

According to Congressman Brooks, in an interview published under the title “Lawmakers Vow to Oppose Electoral Votes in Congress,” in the [The Epoch Times](#), “The only thing that will get the congressmen and senators to do what is right for our country on this issue of voter fraud and election theft is active participation by American citizens who want honest and accurate elections. . . . Very simply, they have to call their congressmen and their senators and demand that they support this effort to protect our election system from fraud and illegal conduct. . . . If you do not have an honest and accurate election system, you have no Republic.”

According to a 2005 CNN [article](#), an objection to the counting of Ohio’s electoral votes after the 2004 Bush v. Kerry presidential election was raised by Democrat Senator Barbara Boxer and Representative Stephanie Tubbs Jones due to “numerous, serious election irregularities.” The objection was dismissed in both the Senate and House of Representatives by large margins, and the original electoral votes cast for George Bush were counted.

Due to the ambiguity of the law and highly contested nature of the 2020 election, there is no way to know for sure the outcome of the upcoming joint session of Congress. In the case of an objection -- or objections -- being raised, Congress will have to decide which set of electoral votes were, to quote 3 U.S.C § 15, “regularly given by electors whose appointment has been lawfully certified.” Furthermore, in the case of irregular and contested electoral votes being thrown out, it is a possibility that neither Donald Trump nor Joe Biden will receive the necessary 270 electoral votes to win the election.

In this scenario and pursuant to the 12<sup>th</sup> Amendment, the election could well be decided in the House of Representatives, “where the votes shall be taken by states, the representation from each state having one vote,” and where the GOP controls 26 of the 50 State delegations – which underscores the need for all Republicans to support their current leader, President Donald Trump, and object to the proverbial elephant in the living room: a deliberate conspiracy to deprive American citizens of what the U.S. Supreme Court has described as our essential right to vote: “Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

Before that happens in the House of Representatives, however, Vice President Mike Pence will be presiding over the joint session of Congress on January 6, 2021, to resolve objections under the 12<sup>th</sup> Amendment, as implemented by the Electoral Count Act of 1887.

A December 26, 2020, “American Thinker” [article](#), titled “It’s for Mike Pence to Judge whether a Presidential Election Was Held at All,” suggests:

If the votes of all seven contested states are registered as zero, President Trump will have 232 votes, and Joe Biden will have 222. The 12th Amendment says, “[T]he votes shall then be counted[.] ... The person having the greatest number of votes for President, shall be the President[.]”

In plain language, Donald Trump will be re-elected, since he has a majority of the actual electoral votes. There will be no need to involve the House of Representatives to resolve a contingent election.

The one part of the 12th Amendment this suggestion glosses over is this: “if such number be a minority of the whole number of Electors appointed,” which follows, “The person having the greatest number of votes for President, shall be the President.”

This brings us back to Article II, Section 1, of the Constitution: “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.”

So, the key to the 2020 election appears to be Vice President Pence having the courage to acknowledge that certain States have not “appoint[ed], in such Manner as the Legislature thereof may direct, a Number of Electors.” It would be easier for the Vice President to acknowledge this if a court already would have made this legal determination before the 6th of January, but it is not necessary for a court to so rule -- especially if no court has ruled to the contrary!

After all, the Vice President took the same oath of office as every Senator and every Member of the House of Representative, to “support and defend the Constitution of the United States, against all enemies, foreign and domestic; . . . . So help me God.” 5 U.S.C. §3331.

If The Navarro Report is correct, that “From the findings of this report, it is possible to infer what may well have been a coordinated strategy to effectively stack the election deck against the Trump-Pence ticket,” including documented “Equal Protection Clause Violations in the six Battleground States,” the Vice President has a sacred duty NOT to acknowledge electors from those six still-disputed States.

An unconstitutionally appointed elector, like an unconstitutionally enacted statute, is no elector at all. As the Court explained in *Hubbard v. Lowe*, “That an unconstitutional statute is not a law at all is a proposition no longer open to discussion.” 226 F. 135, 137 (SDNY 1915), appeal dismissed, 242 U.S. 654 (1916).

May God give Vice President Pence the courage to do the right thing when he presides over the electoral vote count on January 6, 2021.