

Election Day to Inauguration Day: What Happens in Those 78 Days?

**Sept. 15
– Nov. 3**

1. Early voting takes place in the form of early in-person voting, absentee ballots, and mail-in voting. It begins as early as 45 days before Election Day. Some states pre-process mail-in/absentee ballots to verify the voters' identities. This pre-processing enables some states to "tee up" absentee ballots so that they are ready to be counted as soon as state law allows.

Early Voting

Nov. 3

2. On the first Tuesday after the first Monday in November, voters cast their votes in-person at the polls. Votes are counted, though every state allows time after Election Day for provisional or mail-in votes to be counted.

Election Day

**Nov. 10
– Dec. 11**

4. Starting one week after Election Day, state governments begin certifying election results. December 8 is the "Safe Harbor" deadline—the date by which states are meant to have counted votes, settled disputes, and determined the winner of their Electoral College votes. Governors prepare "Certificates of Ascertainment" that list the electors chosen to represent the state.

States Certify Election Results

**Nov.
4 – 23**

3. The exact deadlines for postmarking and receiving mail-in ballots vary by state. Many states still count ballots received in the days following Election Day.

Vote Counting Continues

Dec. 14

5. Electors meet in their respective states and officially cast electoral votes for president and vice-president. After counting the votes, electors prepare six "Certificates of the Vote" that list the electoral votes for the president and the vice-president.

Electoral Votes Cast

Jan. 6

7. The vice president presides over a joint session of Congress in which the electoral votes are counted. Members of both houses may object to the returns from any state. If one ticket of candidates receives a majority of electoral votes (270), the vice president announces that ticket as the election winner and listens for objections.

Congress Counts Votes; Declares Results

Dec. 23

6. Electors combine and send the "Certificates of Ascertainment" and "Certificates of the Vote" via registered mail to the president of the U.S. Senate (a.k.a. the vice president of the United States) and other officials.

Results Delivered to Officials

Jan. 20

8. In accordance with the 20th Amendment, the newly elected or re-elected president takes the oath of office at noon on January 20.

Inauguration Day

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What does the Constitution say about election and voting dates?

Article I, Section 4, Clause 1: The Constitution allows states to choose the “Times, Places and Manner of holding Elections,” but it permits Congress to “make or alter” those state rules “except as to the Places of [choosing] Senators.”

Article II, Section 1, Clause 4: The Constitution also gives Congress the power to determine the date on which all states’ electors vote for president and vice president. It states, “The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.”

I. Early Voting

September 15–November 3, 2020

Voting before Election Day by early voting, absentee ballots, and mail-in voting:

- Earliest ballots cast 45 days before election.
- On average states start voting 22 days before the election.
- 5 states are all mail-in in 2020: Colorado, Hawaii, Oregon, Utah, and Washington.
- 30 states in 2020 have “no-excuse” absentee ballot voting, which gives voters an option to request a ballot and vote by mail or in-person at the polls.
- 12 states now mail absentee applications to everyone registered.
- 10 states send a mail-in ballot to all voters.
- Likely will be over 75 million votes cast in 2020.

Some states pre-process mail-in/absentee ballots:

- Pre-processing varies by state. It often involves matching the affidavit signature on the outside of the return envelope against the voter’s signature on record or verifying the voter’s identity in another way.
- In some states once the signature is verified the envelope can then be opened and the ballot prepared for tabulation.
- By processing ahead of Election Day, states can “tee up” absentee ballots so that they are ready to be counted as soon as the law allows in that state. By permitting election officials to do a lot of the work ahead of time, the counting process on Election Day is quicker. Results are not released ahead of time.
- Wisconsin and Pennsylvania (swing states) do not begin processing until Election Day.

- Michigan begins pre-processing 10 hours before Election Day.
- Florida allows pre-processing 40 days before Election Day (September 24 in 2020).
- Four states pre-process upon receipt: Arizona, Nevada, Minnesota, and Georgia.

2. Election Day

November 3, 2020

Election Day: “the first Tuesday after the first Monday in November”; set by [1845 law](#).

- Voters vote in-person at the polls.
- Votes are counted.
- News networks may project winners in certain races, based on partial vote counts and/or exit polls, but every state allows time after Election Day for provisional or mail-in votes to be counted.

3. Popular Vote Counting Continues

November 4–November 23, 2020

- The deadline for postmarking and receiving mail-in ballots varies by state.
 - Mail-in ballots must be postmarked on or before Election Day in every U.S. state.
 - Ballots can be received late and still counted in many states. In most cases, they must be received within a day or two of Election Day.
- In the battleground states* ...
 - North Carolina and Pennsylvania—mail-in votes can be received until November 6.
 - Minnesota and Nevada—they can be received until November 10.
 - Ohio—they can be received until November 13.
 - Florida and Arizona—do not permit ballots received after Election Day to count.

*as of 10/28/2020 with potential changes due to ongoing litigation

4. States Certify Election Results

November 10–December 11, 2020

- Starting a week after Election Day, state governments begin to certify election results.
- Deadlines can be changed in the event of a state recount if there is an extremely close result.
- In most states certification occurs in the last two weeks of November.
- **December 8:** “Safe Harbor” Deadline; certification is mandated to occur six days before the electors’ meetings ([3 U.S. Code § 5](#)).

- This is the date by which states are meant to have counted votes, settled disputes, and determined the winner of their Electoral College votes.
- Governors create “Certificates of Ascertainment” for the slate of electors and the electors chosen to represent the state.

Relevant SCOTUS decision: *Bush v. Gore* (2000)—After the presidential election of 2000, the Supreme Court ended a recount in Florida in part because it could not be completed by the “Safe Harbor” date.

5. Electoral Votes Cast

December 14, 2020

Electoral votes are cast the “first Monday after the second Wednesday in December” ([3 U.S. Code § 7](#), 1948)

- Six days after the “Safe Harbor” deadline, electors meet in their respective states and officially cast electoral votes for president and vice-president of the United States. [3 U.S. Code § 5](#)
- The electors vote by paper ballot, casting one ballot for president and one for vice president.
- The electors count the results and then each elector signs six certificates known as “Certificates of the Vote” containing a list of the votes for the president and a list of the votes for the vice president, each of which includes the names of persons receiving votes and the number of votes cast for them. Some states have laws requiring their electors to support the winner of their state’s election and can replace or levy fines against “faithless electors” who go their own way.

Relevant SCOTUS decision: *Chiafalo v. Washington* (2020) and *Colorado v. Baca* (2020): Finding nothing conclusive in the Constitution, the U.S. Supreme Court found that there is nothing expressly prohibiting the states from passing and enforcing laws that “bind” electors to honor the oath they made to vote based the popular vote. In 2020, 33 states and D.C. have such laws. In states without these laws, electors may still vote using their own discretion.

6. Results Delivered to Officials

December 23, 2020

Results delivered to the president of the Senate and designated officials on the fourth Wednesday in December:

- Electors combine and send the “Certificates of Ascertainment” and “Certificates of the Vote” via registered mail to the president of the U.S. Senate (who is also the vice president of the United States); their state’s secretary of state; the national archivist; and the judge of the U.S. District Court in the jurisdiction where the elector cast their vote.
- The certified electoral votes have nine days to get from their states to Capitol Hill.

- If certificates from any state are not delivered, the president of the Senate/vice president of the United States (or the archivist) must request that the secretary of state send a copy of the certificate by registered mail.

7. Congress Counts Votes; Declares Results

January 6, 2021

Joint session of Congress to count electoral votes and declare official election results ([3 U.S. Code § 15](#), 1948)

- Electoral votes counted.
- Members of the House and the Senate meet in the House chamber. The president of the Senate (Vice President Mike Pence in 2020) presides over the joint session.
- The vice president opens the certificates in alphabetical order (by state name) and presents them to four tellers, two from each chamber.
- Members of both houses may object to the returns from any state as they are announced. Objections to state returns must be made in writing by at least one member each of the Senate and House of Representatives. Debate on the objection will be held in both houses separately for up to two hours, and at the conclusion a vote will be taken in each house to accept or reject the objection. An objection must be accepted in both houses for the contested votes to be excluded.
- The tellers list the votes and after all states' votes have been announced, give their tallies to the vice president.
- If one of the tickets of candidates receives a majority of electoral votes (270), the vice president announces that ticket as the election winner and listens for objections.

What if there is no winner? If no candidate receives a majority or 270 electoral votes, the House of Representatives will decide the election. Each state gets one vote. It requires a majority of state votes to become president. The House has until noon on January 20 to select the president. According to the 12th Amendment, senators pick the vice president. It is possible the House could be unable to choose the president and the Senate could pick a vice president who would become president. If there is a 50-50 tie in the Senate, it is possible that the vice president could cast the deciding vote.

What if a state submits two slates of electors? A state might submit two slates of electors if one candidate received the most in-person votes on Election Day but there were still a large number of mail-in and absentee votes left uncounted until the days after November 3rd.

In 2020 this is likely in some states because a much greater number of votes are being cast by mail than in the past due to the COVID-19 pandemic. There are currently lawsuits in progress and potentially more to come addressing deadlines for receiving and counting absentee ballots. There may also be suits over election security and voter suppression. This atmosphere might increase the chances that 1) a governor would declare one winner and certify that party's electors and 2) the state legislature, perhaps believing that vote count to be fraudulent or inaccurate, would certify a slate of electors for the opposing candidate.

To determine which electoral votes would be counted, some scholars point to the language in Article II of the Constitution that states, “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors...” to support the argument that the slate of electors from the legislature should be counted.

The 12th Amendment (1804) states that 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.” This could be construed by some to mean that the vice president of the United States could choose the set of electoral votes to be opened and counted.

In the election of 1876, four states (Florida, Louisiana, Oregon, and South Carolina) sent votes from two slates of electors. In part to address this issue, the Electoral Count Act of 1887 was passed. The law ([3 U.S. Code § 15](#)) states, “the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted.” Some legal scholars interpret the law to mean that in this scenario Congress would count the electoral votes certified by the governor (the executive of the state). However, a 2001 report by the Congressional Research Service concluded that if a state submitted two slates, the state’s electoral votes would not be counted at all.

This ambiguity could lead to involvement of the Supreme Court in the 2020 election results if a state submits two slates of electoral votes.

8. Inauguration Day

January 20, 2021

The 20th Amendment states, “The terms of the President and the Vice President shall end at noon on the 20th day of January... and the terms of their successors shall then begin.” The newly elected or re-elected president takes the oath of office at noon.

What if?

- If the president-elect dies between Election Day and Inauguration Day, the vice president-elect takes the oath of office and becomes president. ([3 U.S. Code § 19](#))
- In a disputed election, if the House has not chosen a president but the Senate has chosen a vice president, the vice president-elect becomes acting president until the House makes a choice. ([3 U.S. Code § 19](#))
- If there is no president-elect and no vice president-elect, the House of Representatives appoints a president until one is chosen, likely the Speaker of the House. ([3 U.S. Code § 19](#))

Suggested Resources

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