

Electing the President

FROM ELECTION DAY TO THE JOINT SESSION

THE ELECTORAL COUNT REFORM ACT (ECRA) PROVIDES A DETAILED FRAMEWORK FOR ELECTING THE PRESIDENT OF THE UNITED STATES. FROM BALLOTS CAST BY INDIVIDUAL VOTERS IN THE STATES TO AN OFFICIAL WINNER, THE ECRA DEFINES EACH STAGE IN THE PROCESS, ASSIGNING RESPONSIBILITIES, SETTING TIMELINES AND OUTLINING HOW ONE STEP CONNECTS TO ANOTHER.

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EXECUTIVE SUMMARY

For more than 130 years, the Electoral Count Act (ECA) served as the primary legal framework for finalizing the election of the president and vice president of the United States. Congress enacted the ECA in 1887, following the disastrous and disputed Hayes-Tilden election, to provide a formal process for casting and counting electoral votes.¹ However, the law included outdated language and perceived ambiguities. In 2022, a bipartisan group led by Senators Susan Collins (R-ME) and Joe Manchin (D-WV) — Sen. Manchin was a member of the Democratic party at the time — drafted the Electoral Count Reform Act (ECRA)² to address those concerns. It was signed into law by President Biden in late 2022.³

The ECRA provides much-needed clarity for the timeline and procedures of a presidential election, including by:

- **Replacing the ECA's problematic "failed election" provision**, which has been improperly used to suggest that a state legislature could appoint electors itself, after voters had cast ballots, if the legislature declared an election "failed." The ECRA establishes that each state's electors must be appointed pursuant to the rules in place on Election Day, with a limited exception for extending the period to cast votes in true emergencies.

- **Setting a deadline for each state to certify its appointment of electors** and clarifying that the governor of each state is the default official tasked with such certification.
- **Creating an expedited pathway** for candidates to bring legal challenges in federal court concerning a state's certification of electors, which seeks to ensure the timely resolution of disputes and conclusivity of the results before the electoral votes reach Congress.
- **Specifying that the vice president's role** in overseeing Congress's counting of electoral votes is "ministerial."
- **Raising the threshold for congressional objections** to electors or electoral votes to one-fifth of each chamber of Congress, reducing the risk of frivolous or bad-faith objections to a state's certified election results.

The 2024 presidential election will be the first where these updated rules are in effect. The following report outlines what to expect between Election Day and the joint session of Congress on January 6, 2025.

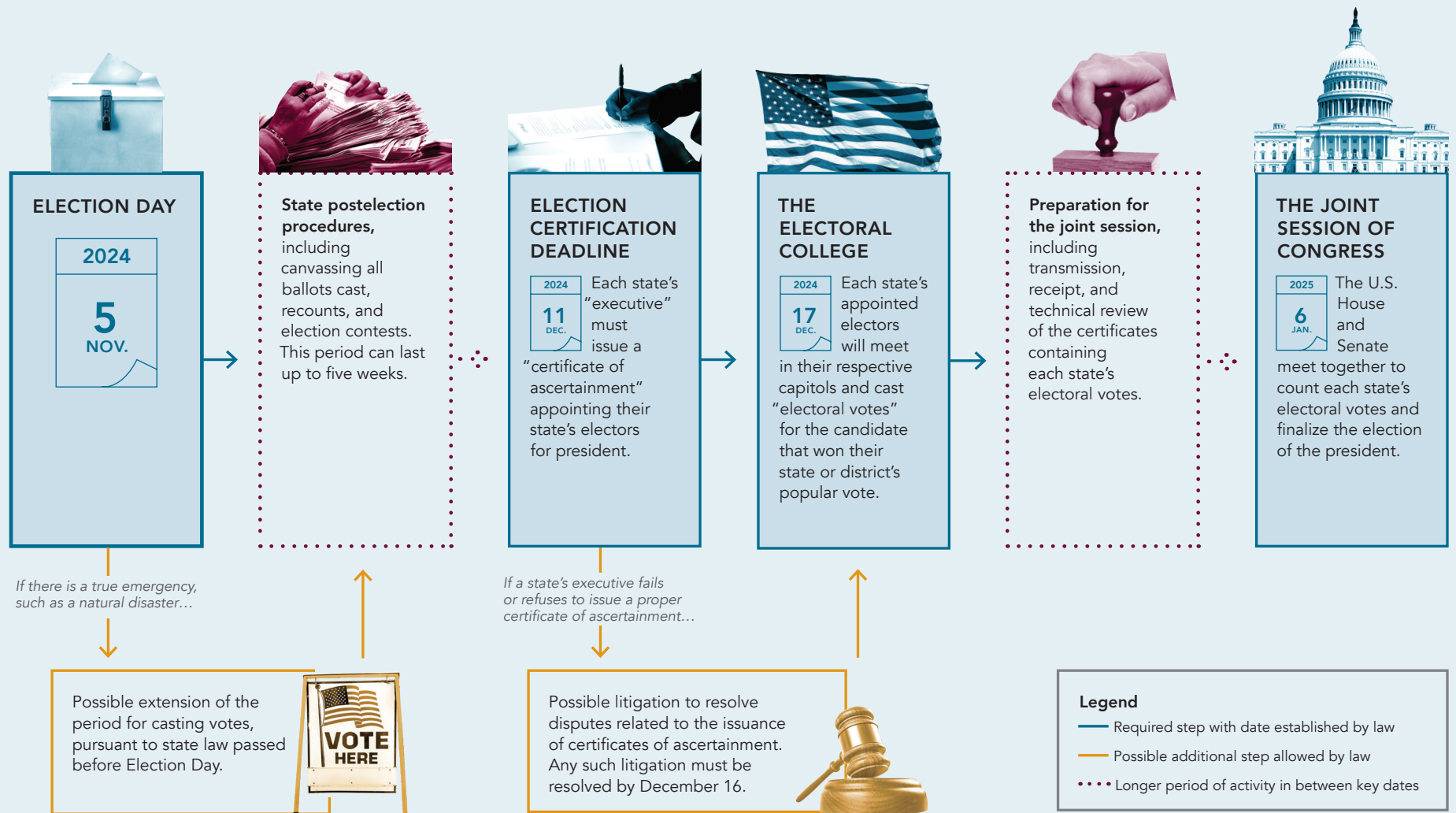
LEGAL FRAMEWORK

The U.S. Constitution, federal statutes, state laws, and local rules all govern different parts of a presidential election. Article II of the Constitution, as modified by the 12th Amendment, establishes the Electoral College, which is composed of individuals called “electors” from each state who vote to select the president.⁴ These electors are appointed according to state law, and in the modern era, all states have chosen to appoint electors based on a popular vote in their state.⁵ As a result, when Americans cast their ballots for president, they are actually voting for a slate of electors who will act on their behalf in the Electoral College. The appointed electors cast “electoral votes” for the winner of their state’s popular vote, and they transmit those results to a number of federal and state officials, including Congress. The House and the Senate then meet in a joint session to count the electoral votes, with the candidate receiving the majority of the votes becoming president.⁶

The ECRA — a federal law — provides an overarching framework for each stage of this process, assigning responsibilities, setting timelines, and outlining how each step connects to another. The following sections explain how these procedures will work in 2024.



Electing the President Under the Electoral Count Reform Act (ECRA)





NOVEMBER 5, 2024

Election Day

Federal law defines “Election Day” as “the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President.”⁷ In 2024, that means Election Day is Tuesday, November 5.

Under the Constitution and the ECRA, Election Day is when each state must formally choose its electors for president, using the procedures the state established by law prior to this date.⁸ Because all the states have chosen to appoint electors through a popular vote, Election Day is therefore the day on which people’s ballots begin getting translated into electoral votes.⁹

Although Election Day is scheduled for a set date, the ECRA contains a narrow exception that allows states to extend the period for casting votes in limited emergency circumstances. Specifically, a state

may modify its period of voting “as necessitated by force majeure events that are extraordinary and catastrophic.”¹⁰ This exception is limited to true emergencies, such as a natural disaster. Claims of misconduct or fraud, commonplace missteps in election administration, or general dissatisfaction with election results are not sufficient. In addition, any modification of the period for casting one’s vote must occur according to state law in place before the election.¹¹

Once all votes have been cast, states will begin their postelection processes to certify the results.





NOVEMBER 5–DECEMBER 11, 2024

State Postelection Processes and Certification

After the end of voting, local, county, and state administrators will work together to tabulate the results and determine the winning presidential candidate. This step is typically called the “canvass.”¹² Canvassing is different and more comprehensive than the estimated vote counts that are often released on election night, as the “process aggregates and confirms every valid ballot cast and counted, including mail, uniformed and overseas citizen, early voting, Election Day, and provisional ballots.”¹³

Specific canvassing procedures can vary from state to state, but the last step is always the same: When the counting is over, a designated official will “certify” the results and announce a final tally for their jurisdiction.¹⁴

ELECTION CERTIFICATION IS A MINISTERIAL ACT THAT IS THE CULMINATION OF ROBUST VOTE COUNTING AND VERIFICATION PROCEDURES; IT IS NOT DISCRETIONARY OR AN OFFICIAL'S SUBJECTIVE DETERMINATION THAT THE RESULT IS CORRECT.¹⁵

Once an entire state’s election results have been certified, it will be clear which presidential candidate won that state’s electoral votes.

A state’s canvass is never concluded on Election Day. Depending on several factors, including the number of votes cast and the rules for processing ballots received prior to Election Day, canvassing may take several weeks after November 5. In rare circumstances, the final certification of a state’s election results could take additional time due to a legitimate recount or postelection legal challenge.¹⁶

This period of activity cannot go on indefinitely, however. The ECRA imposes a deadline for states to certify their presidential electors, which will happen after the state certifies its final election results. Specifically, the ECRA requires a designated “executive” from each state to issue a document known as a “certificate of ascertainment of appointment of electors” at least six days before the Electoral College convenes.¹⁷ By default, this executive is a state’s governor, unless state law gives the responsibility to another official.¹⁸



State Postelection Process and Certification (continued)

IN 2024, THE ELECTORAL COLLEGE WILL MEET ON DECEMBER 17.¹⁹ THAT MEANS EACH STATE MUST CONCLUDE ITS POSTELECTION PROCEDURES AND ISSUE ITS CERTIFICATE OF ASCERTAINMENT NO LATER THAN DECEMBER 11, 2024.

The certificate of ascertainment declares who will serve as a state's slate of electors. All states appoint electors chosen by the presidential candidate who wins the popular election in the state or relevant district, so the certificate of ascertainment effectively records which candidate won those electoral votes.

These dates give election administrators five weeks from Election Day to complete all necessary processes. Of course, state officials do not need to wait for the deadline to act, but the law does give them until December 11 to resolve any outstanding issues concerning the results of the presidential election. Voters and the media should be prepared for the time it may take to get final results in each state.

Once the executive formally issues a certificate of ascertainment, they must transmit it to both the National Archives of the United States and their state's appointed electors.²⁰ A complete and proper certificate will name a state's electors, include the state's official seal, and contain a security feature that can verify the authenticity of the document.²¹

By establishing these detailed rules and clearly assigning the certification responsibility to the governor (or a state's designated alternative executive official), the ECRA prohibits anyone besides the legitimate electors from falsely claiming to represent their state in the Electoral College.

THESE WELL-DEFINED PROCEDURES WILL ALSO ENABLE CONGRESS TO CLEARLY IDENTIFY THE CORRECT ELECTORS AND ELECTORAL VOTES FROM EACH STATE WHEN IT MEETS TO COUNT THE RESULTS.



UP TO DECEMBER 16, 2024

Potential Litigation

The December 11 deadline imposes a duty on each designated executive to timely certify their state’s appointed electors in accordance with federal and state law. To ensure they complete this task and to remedy any potential violations, the ECRA provides an expedited federal judicial review process to resolve disputes related to the issuance of certificates of ascertainment.

Specifically, the ECRA enables candidates aggrieved by an executive’s refusal or failure to issue a proper certificate of ascertainment — including issuing a certificate that does not reflect their state’s accurate slate of electors — to file a lawsuit in the federal district court covering the relevant state’s capital city.²² The candidate’s claim(s) would be heard by a three-judge panel deciding the issues on an expedited basis,²³ and the case may include direct, discretionary appeal to the Supreme Court of the United States, if necessary.²⁴ The entire proceeding must be concluded by the day before the Electoral College votes.²⁵

IN 2024, THIS MEANS ANY POTENTIAL LITIGATION OVER STATE CERTIFICATES OF ASCERTAINMENT MUST BE RESOLVED BY DECEMBER 16.

Through this judicial process, federal courts would have the authority to ensure that the correct certificate of ascertainment is issued in each state. The ECRA also makes clear that any certificate of ascertainment required to be issued or revised by court order to reflect the legitimate results before the Electoral College convenes will supersede any prior certificate, and rulings by federal courts on federal issues must be

accepted as conclusive by Congress when it meets in its joint session.²⁶

Finally, it is also worth noting that the ECRA’s expedited judicial review procedures are focused on resolving disputes related to the issuance and transmittal of a state’s certificate of ascertainment. The ECRA does not “preempt or displace” other existing causes of action in state or federal courts.²⁷ Accordingly, some types of state or federal postelection claims that are not within the purview of the ECRA’s judicial review mechanism may continue to be filed apart from the ECRA.



DECEMBER 17, 2024

The Electoral College Meets

The 12th Amendment to the Constitution declares that the “Electors shall meet in their respective states and vote by ballot for President and Vice-President,” as well as send a record of their votes “to the seat of the government of the United States.”²⁸ Thus, the Electoral College is not a single convening, but the colloquial name for a collective set of meetings across all the states. In other words, “the Electoral College is a process, not a place.”²⁹

The ECRA implements this constitutional provision by providing a set of logistical rules for the electors to follow. First, the statute specifies that the electors “shall meet and give their votes on the first Tuesday after the second Wednesday in December.”³⁰

IN 2024, THIS MEANS THE ELECTORS ARE SCHEDULED TO MEET ON DECEMBER 17.

Second, the ECRA requires the electors to prepare six certificates recording their votes, and to attach to each a copy of the certificate of ascertainment that appointed them to the role of electors.³¹ This formality helps to ensure that only the lawfully appointed electors

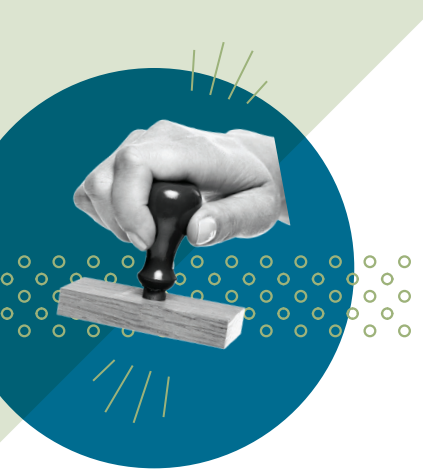
are casting electoral votes on behalf of their state.

Third, the ECRA instructs the electors to “immediately transmit ... by the most expeditious method available” the six copies of their certificates to the President of the Senate, the National Archives, and other state and federal officers.³² This distribution not only ensures Congress has the documentation it needs for the joint session, but also that there are sufficient backup copies and an extensive public record as to how the electors voted.

Given that the only role of an elector is to cast a vote for their state or district’s winning presidential candidate, the meetings of the electors are usually brief



and relatively simple. Once these logistical steps are completed and the electors have cast their votes, the process will move to Congress.



DECEMBER 18–JANUARY 5, 2025

Final Preparations

After the Electoral College, there will be a brief pause in public activities related to the election. The current Congress, the 118th, must finish its legislative work for the year, and lawmakers who were not reelected will be ending their terms in office. Under the 20th Amendment, a new Congress will be sworn in on January 3, 2025.³³ It is this next Congress, the 119th, that is scheduled to meet in a joint session to count the electoral votes for the 2024 presidential election.

During this two-and-a-half-week period, the National Archives and congressional staff will work together to prepare for the joint session. This includes making sure the certificates of ascertainment and electoral votes have been received from each state, as well as reviewing whether these certificates satisfy the proper formatting requirements. If any technical corrections are needed, the Archives and congressional staff will work with state election officers to remedy the situation.³⁴ Finally, these parties will ensure both chambers of Congress are logistically ready and equipped with all documentation needed to count every state's electoral votes.³⁵



JANUARY 6, 2025

The Joint Session of Congress

The Constitution outlines the last step in a presidential election as follows: “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.”³⁶ Elsewhere, the Constitution also establishes that the president of the Senate is the vice president of the United States,³⁷ and that the current vice president will remain in this role after Election Day until the inauguration of the next administration.³⁸

Beyond these constitutional requirements, the ECRA provides the rest of the legal framework for Congress’s role. The law requires both chambers to “be in session on the sixth day of January succeeding every meeting of the electors,” instructs the House and Senate to meet together in the House chamber at 1 p.m., and establishes that the president of the Senate shall preside over the final counting of electoral votes.³⁹

Taken together, this means that the 119th Congress is scheduled to meet in a joint session at 1 p.m. on January 6, 2025, to count the electoral votes from the 2024 presidential election, and that

Vice President Kamala Harris — the current holder of the office — is set to preside.⁴⁰

The ECRA limits the vice president’s role “to performing solely ministerial duties.”⁴¹ In other words, the vice president’s job is to administer the proceedings, and the law explicitly denies the vice president any power to “solely determine, accept, reject, or otherwise adjudicate or resolve disputes” over a state’s electors or their electoral votes.⁴²

The ECRA additionally requires the House and Senate to each appoint two “tellers” to assist the vice president during the joint session.⁴³ These tellers are members of their



respective chambers and, according to long-standing congressional precedent, should represent both major political parties.⁴⁴ Their role is also purely ministerial.

The Joint Session of Congress (continued)

The vice president will conduct the counting process by opening each state’s electoral certificate in alphabetical order of the states.⁴⁵ Proceeding one state at a time, she will hand this documentation to the tellers, who are required to read aloud the electoral votes for the rest of Congress to hear.⁴⁶ Following the individual reading for each state, the vice president must ask the joint session if there are any objections.⁴⁷ An objection is essentially a request to not count a particular state’s electoral votes in the presidential election.

THE NEW 119TH CONGRESS IS SCHEDULED TO MEET IN A JOINT SESSION AT 1 P.M. ON JANUARY 6, 2025, TO COUNT THE ELECTORAL VOTES FROM THE 2024 PRESIDENTIAL ELECTION, AND THE VICE PRESIDENT IS SET TO PRESIDE.

The ECRA provides only two grounds for a member of Congress to object during the joint session. The first is an objection to the underlying appointment of a state’s electors, on the basis that one or more electors were “not lawfully certified” under the ECRA’s process for issuing a certificate of ascertainment.⁴⁸ The second is an

objection to an electoral vote itself, on the basis that the “vote of one or more electors has not been regularly given.”⁴⁹

For the first category of “not lawfully certified,” the ECRA requires Congress to treat a certificate of ascertainment issued by its deadline and under its rules as “conclusive.”⁵⁰ This is intended to limit legislators’ ability to object to a state’s electors if all appropriate procedures were followed and if the certified slate accurately reflects that state’s certified election outcome.

In the second category of objections, the phrase “regularly given” is best understood as a “relatively narrow” reference to “post-appointment problems or controversies.”⁵¹ According to the drafters of the ECRA, this category includes “an instance when an elector cast a vote for a constitutionally ineligible candidate ... an elector cast an electoral vote at the wrong time or in the wrong place ... or the electors’ vote is the product of duress, bribery, or corruption.”⁵² Importantly, it must not include objections based on a lawmaker’s dissatisfaction with the outcome of any state’s popular election, nor allegations that a state’s certified election results are inaccurate or the result of misconduct or fraud.



In addition, an objection under either category has no effect unless it is made in writing and signed by at least one-fifth of the Senate and one-fifth of the House of Representatives.⁵³ The ECRA includes this threshold — increased from one member in each chamber under the prior law — to prevent individual members of Congress from raising frivolous objections and disrupting the counting process.

Throughout U.S. history, most joint sessions have not featured any objections, and Congress has counted each state’s electoral certificates without issue. But if an objection is raised in 2025 that satisfies the ECRA’s threshold requirements, the House and Senate will be required to separate to their respective meeting locations and debate the objection.⁵⁴

The Joint Session of Congress (continued)

The ECRA provides procedures to govern this consideration of objections. First, it requires all objections to a given state's electors or electoral votes to be considered at the same time.⁵⁵ Second, it imposes a two-hour limit for each chamber's debate and allows each member of Congress to speak once for up to five minutes.⁵⁶ The purpose of these rules is to ensure the joint session can resume in a timely manner.

Following these two-hour debates, each chamber must separately vote on whether to sustain an objection.⁵⁷ An objection will be upheld only if both the House and Senate vote to sustain it.⁵⁸ In that scenario, the rejected electoral votes will not be counted by the joint session. However, if either chamber does not sustain the objection, the relevant state's electoral votes will be counted when the joint session resumes.

If there are objections to multiple states' electors or electoral votes that garner a sufficient number of congressional signatures, the two chambers will separate once for each such state. Each debate period would be subject to the ECRA's timing requirements, and the statute does not allow the joint session to adjourn until the counting is

done and a final result is declared, although certain brief recesses can be permitted.⁵⁹

ONCE THE JOINT SESSION HAS FINISHED REVIEWING THE CERTIFICATES FROM EVERY STATE, THE TELLERS WILL MAKE A LIST OF THE FINAL TALLY OF ELECTORAL VOTES. THE WINNER OF THE PRESIDENTIAL ELECTION WILL THEN BE THE CANDIDATE WITH THE GREATEST NUMBER OF ELECTORAL VOTES, AS LONG AS THAT NUMBER IS A MAJORITY OF THE TOTAL NUMBER OF ELECTORS APPOINTED ACROSS ALL STATES.

Once the joint session has finished reviewing the certificates from every state, the tellers will make a list of the final tally of electoral votes.⁶⁰ The winner of the presidential election will then be the candidate with the greatest number of electoral votes, as long as that number is a majority of the total number of electors appointed across all states.⁶¹ If any state's slate of electors is rejected by Congress for not being "lawfully certified" under the ECRA's certificate of ascertainment process, that state's electors

are subtracted from the number of total electors for the purpose of calculating a majority.⁶² Otherwise, a majority is simply calculated from the total number of electors in the Electoral College.

Every state is allotted a number of electors equal to the number of legislators in their congressional delegation.⁶³ This means there are currently a total of 538 electors in the Electoral College and a candidate needs 270 electoral votes to win. If no candidate obtains a majority of the electoral votes, the 12th Amendment instructs the House of Representatives to hold a "contingent election" to select the next president.⁶⁴ A contingent election is a complex process with its own procedures that are outside the scope of this particular report. Importantly, it has only been used twice in U.S. history to elect the president.⁶⁵

After Congress counts the electoral votes, the vice president will announce the final results, and their announcement "shall be deemed a sufficient declaration of the persons ... elected President and Vice President of the United States."⁶⁶ Congress will record the winner in its journals, and the presidential election process will officially be complete.

CONCLUSION

As this report makes clear, the Electoral Count Reform Act provides a significant and detailed framework for finalizing the election of the president of the United States. It connects each stage of the process from Election Day to the joint session of Congress, with updated rules that are important for the public, media, and elected officials to understand.

For more information on the ECRA or any topic in this report, please contact Catie Kelley (ckelley@campaignlegalcenter.org), Holly Idelson (holly.idelson@protectdemocracy.org) and Michael Thorning (mthorning@bipartisanpolicy.org).

ACKNOWLEDGMENTS

This report was written by Eric Kashdan, Catie Kelley and Adav Noti of Campaign Legal Center; Ben Berwick, Holly Idelson, Hayden Johnson, Anne Tindall and David Weinberg of Protect Democracy; and Matthew Weil and Michael Thorning of the Bipartisan Policy Center. A special thanks to Matty Tate-Smith, Mannal Haddad, Courtney McKay, Barbara Bernal Monroy and Daniel Brophy for their contributions and feedback.

The materials and information contained in this report provide general information only and not legal advice. Providing this material does not create an attorney-client relationship and is not a substitute for legal advice from a qualified attorney tailored to a specific jurisdiction's or state's laws. Released September 2024.



ENDNOTES

- 1 *National Task Force on Election Crises, The Electoral Count Act & The Process of Electing a President*, 2–3 (2020), <https://electiontaskforceenginepowered.com/wp-content/uploads/2024/01/ElectoralCountAct.pdf>.
- 2 Senator Susan Collins, *Senators Introduce Reforms to the Electoral Count Act of 1887* (2022), <https://www.collins.senate.gov/newsroom/senators-introduce-reforms-to-the-electoral-count-act-of-1887>.
- 3 Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, Div. P, tit. I (2022).
- 4 U.S. Const. amend. XII, § 1, cl. 2–3; U.S. Const. amend. XXIII.
- 5 U.S. Const. art. II, § 1, cl. 2.
- 6 U.S. Const. art. II, § 1, cl. 3.
- 7 3 U.S.C. § 21(1).
- 8 3 U.S.C. § 1; see also U.S. Const. art. II, § 1, cl. 4.
- 9 Importantly, states have discretion to enact policies that permit ballots cast on or before Election Day to be received and/or processed in the days afterward. See, e.g., *Bost v. Illinois State Bd. of Elections*, 684 F. Supp. 3d 720, 736 (N.D. Ill. 2023). See also, *Republican Nat’l Comm. v. Wetzel*, No. 1:24CV25-LG-RPM, 2024 WL 3559623, at *6 (S.D. Miss. July 28, 2024).
- 10 3 U.S.C. § 21(1).
- 11 *Id.*
- 12 U.S. Election Assistance Commission, *Election Results, Canvass, and Certification* (2022), <https://www.eac.gov/election-officials/election-results-canvass-and-certification>.
- 13 *Id.*
- 14 *Id.*
- 15 Protect Democracy, *Election Certification Is Not Optional* (March 25, 2024), <https://protectdemocracy.org/work/new-guidance-on-preventing-election-certification-interference>.
- 16 Camilla Rodriguez Guzman & Katie King, *The Voting Is Over. What Happens Next?: Post-Election Steps Range from Counting Ballots to Potential Court Cases*, National Conference of State Legislatures (Apr. 25, 2024), <https://www.ncsl.org/state-legislatures-news/details/the-voting-is-over-what-happens-next>.
- 17 3 U.S.C. § 5(a)(1).
- 18 3 U.S.C. § 21(3).
- 19 3 U.S.C. § 7 (“The electors of President and Vice President of each State shall meet and give their votes on the first Tuesday after the second Wednesday in December next following their appointment at such place in each State in accordance with the laws of the State enacted prior to election day.”).
- 20 3 U.S.C. § 5(b). Under this provision of the ECRA, each state’s executive must transmit their certificate of ascertainment to the National Archives immediately after issuing it. The law, meanwhile, requires the executive to transmit this certificate to their state’s appointed electors on or before the day of the Electoral College.
- 21 *Id.* § 5(a)(2).
- 22 *Id.* § 5(d)(1)(A); see also Electoral Count Reform and Presidential Transition Improvement Act, 168 Cong. Rec. S.9765-67 (2022) (statement of Senator Susan Collins) (“During bipartisan discussions about this legislation, Senators debated concerns about the prospect that a state’s executive might take deliberate actions to controvert or delay the issuance of the certificate of ascertainment required under the Electoral Count Act. That is why this section of the bill provides an expedited process in Federal court for aggrieved Presidential or Vice Presidential candidates to address such an unprecedented action, which could include a State’s executive failing to issue or transmit a certificate of ascertainment prior to the specified deadline, or issuing or transmitting a certificate of ascertainment that does not reflect the State’s accurate slate of electors.”).
- 23 3 U.S.C. §§ 5(d)(1)(B)-(C). The three-judge panel will be comprised of two judges from the circuit court of appeals in which the district lies and one judge from the district court where the action is brought.
- 24 *Id.* § 5(d)(1)(D).
- 25 *Id.*
- 26 *Id.* § 5(c).
- 27 *Id.* § 5(d)(2)(B). However, it is conceivable that other types of federal claims could be consolidated or otherwise considered within the jurisdiction of the ECRA’s three-judge court.
- 28 U.S. Const. amend. XII.
- 29 National Archives and Records Administration, *What is the Electoral College?* (2023), <https://www.archives.gov/electoral-college/about>.
- 30 3 U.S.C. § 7.
- 31 3 U.S.C. § 9.
- 32 3 U.S.C. § 11.
- 33 U.S. Const. amend. XX.
- 34 National Archives and Records Administration, *Instructions and Guidance for State Officials and Points of Contact* (2023), <https://www.archives.gov/files/electoral-college/state-officials/state-officials-instructions.pdf>.
- 35 National Archives and Records Administration, *Roles and Responsibilities in the Electoral College Process* (2023), <https://www.archives.gov/electoral-college/roles>.
- 36 U.S. Const. amend. XII.
- 37 U.S. Const. art. I, § 3, cl. 4.
- 38 U.S. Const. amend. XX.
- 39 3 U.S.C. § 15(a).
- 40 There is extensive precedent for vice presidents presiding over the counting of electoral votes for their own election, beginning with Vice President John Adams announcing his own election in 1797. More recent examples include Vice President George H.W. Bush presiding over the count of his successful presidential campaign in January 1989 and Vice Presidents Al Gore and Mike Pence announcing their defeats in 2000 and 2021, respectively.
- 41 3 U.S.C. § 15(b)(1).
- 42 *Id.* § 15(b)(2); see also Electoral Count Reform and Presidential Transition Improvement Act, 168 Cong. Rec. S.9765-67 (2022) (statement of Senator Susan Collins) (“As amended by the Electoral Count Reform and Presidential Transition Act, section 15(b) reaffirms that the role of the President of the Senate in the joint session of Congress is ministerial in nature, and that the President of the Senate has no power to solely determine, accept, reject, or otherwise adjudicate or resolve disputes over the proper certificate of ascertainment, the validity of electors, or the votes of electors.”).
- 43 *Id.* § 15(c).
- 44 Traditionally, the appointed tellers are the chair and ranking member of each chamber’s committee with jurisdiction over election law (i.e., the House Administration Committee and the Senate Rules Committee).
- 45 3 U.S.C. § 15(d)(1)(A).
- 46 *Id.* § 15(d)(1)(B).
- 47 *Id.* § 15(d)(2)(A).
- 48 *Id.* § 15(d)(2)(B)(i)(I).
- 49 *Id.* § 15(d)(2)(B)(ii)(I).
- 50 3 U.S.C. § 5(c)(1). As noted above, this process incorporates the effects of postelection litigation that may require a certificate of ascertainment to be issued or revised to reflect the state’s accurate and legitimate results, superseding a prior certificate.
- 51 Statement of Senator Susan Collins on the Electoral Count Reform and Presidential Transition Improvement Act, 168 Cong. Rec. S.9765-67 (2022).
- 52 *Id.*
- 53 3 U.S.C. § 15(d)(2)(B)(i).
- 54 *Id.* § 15(d)(2)(c)(i).
- 55 3 U.S.C. § 17(1).
- 56 *Id.* § 17(2)-(3).
- 57 *Id.* § 17(4).
- 58 3 U.S.C. § 15(d)(2)(c)(ii).
- 59 3 U.S.C. § 16.
- 60 3 U.S.C. § 15(e)(3).
- 61 U.S. Const. amend. XII.
- 62 3 U.S.C. § 15(e)(2).
- 63 U.S. Const. art. II, § 1, cl. 2.
- 64 See generally Congressional Research Service, *Contingent Election of the President and Vice President by Congress: Perspectives and Contemporary Analysis* (2020), <https://crsreports.congress.gov/product/pdf/R/R40504/7>.
- 65 *Id.*
- 66 3 U.S.C. § 15(e)(3).



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