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## The Electoral College: A 2020 Presidential Election Timeline

Every four years, the election process for President and Vice President follows a familiar timeline of events. At the same time, a related series of procedures governing electoral college actions proceeds on a parallel track. This report focuses on the electoral college timeline for the 2020 presidential election. For additional information on the electoral college, see CRS Report RL32611, *The Electoral College: How It Works in Contemporary Presidential Elections*, by Thomas H. Neale.

### The 2020 Nomination and Election Campaign Timeline

In a presidential election year, campaigns for the nation's highest offices include a number of sequential processes and events that take place over a period that may begin years before election day. Broadly defined, these include the informal campaign of candidate declarations, fundraising, organizing, and intraparty debates (various start times through February of the election year); the formal nomination campaign, in which candidates contest nominating caucuses and primaries (February-July); the national party conventions, where the presidential and vice presidential candidates are nominated (July-August); the general election campaign (August-November), including presidential and vice presidential debates (September-October); and general election day, November 3, 2020.

### The 2020 Electoral College Timeline

During the election campaign, a series of events related to electoral college operations proceeds on a parallel timeline, overlapping both the nomination and general election schedules. It includes nomination of candidates for the office of elector; choice of the electors by the voters on election day; ascertainment of results in the states; meetings and votes by electors in their respective states; and reporting results as directed by law. It culminates with the joint session of Congress to count the electoral votes and declare the President and Vice President to be elected. The electoral college timeline is governed by the U.S. Code at 3 U.S.C. §§1-18, the Twelfth and Twentieth Amendments to the Constitution, and state laws and political party rules.

### May-August 2020: Elector Candidates Nominated

In each state, political parties and independent candidates that qualify for ballot access nominate a ticket (or slate) of candidates for the office of elector for President and Vice President. The number of elector-candidates nominated by each party or group is equal to the number of the state's electoral votes. Most candidates are nominated by state party committees or at a state party convention. Electors may not be U.S. Senators, U.S. Representatives, or anyone holding an "Office of Trust or Profit under the United States." In practice, nominees tend to be a mixture of state

and local elected officials, party activists, celebrities, and ordinary citizens.

### Faithless Electors: Independent or Bound to Vote for the People's Choice?

The role of presidential electors has been widely debated. Some observers claim they are free agents, while others maintain they must vote for the candidates to whom they are pledged, although this is not required by the Constitution. In some years, "faithless electors" have voted against their party's nominees, although they have never influenced a presidential election outcome. Thirty-three states and the District of Columbia have laws or party regulations that require electors to vote for the people's choice in their state, and in some states faithless electors may be replaced or may be subject to various penalties.

### July 6, 2020: Supreme Court Ruling on Faithless Electors, *Chiafalo v. Washington*

The constitutionality of state measures to prohibit or penalize faithless electors has been debated for many years. On July 6, 2020, the Supreme Court ruled in *Chiafalo v. Washington* that state laws penalizing or replacing faithless electors are constitutionally valid. For further information and a legal analysis, see CRS Legal Sidebar LSB10515, *Supreme Court Clarifies Rules for Electoral College: States May Restrict Faithless Electors*, which explains the Court's decision and reviews its broader implications.

### November 3, 2020: General Election Day

General election day for electors for the President and Vice President is set by law (3 U.S.C. §1) as the Tuesday after the first Monday in November in presidential election years. Voters cast a single vote for a joint ticket of their preferred candidates for President and Vice President. When they do so, they are actually voting for the electors committed to support those candidates.

### November 4-December 14, 2020: Counting Popular Votes and Filing Certificates of Ascertainment

Following election day, the states are to count and certify popular vote results according to their respective statutory and procedural requirements. When the states have completed their vote counts and ascertained the official results, the U.S. Code (3 U.S.C. §6) requires the state governors to prepare, "as soon as practicable," documents known as Certificates of Ascertainment of the vote. The certificates must list the names of the electors chosen by the voters and the number of votes received in the popular election results, also the names of all losing candidates for elector, and the number of votes they received. Certificates of Ascertainment, which are often signed by state governors, must carry the seal of the state. One copy is forwarded to the Archivist of the United States (the

Archivist), while six duplicates of the Certificate of Ascertainment must be provided to the electors by December 14, the date on which they meet.

#### **December 8, 2020: The “Safe Harbor” Deadline**

The U.S. Code (3 U.S.C. §5) provides that if election results are contested in any state, and if the state, prior to election day, has enacted procedures to settle controversies or contests over electors and electoral votes, and if these procedures have been applied, and the results have been determined six days before the electors’ meetings, then these results are considered to be conclusive, and will apply in the counting of the electoral votes. This date, known as the “Safe Harbor” deadline, falls on December 8 in 2020. The governor of any state where there was a contest, and in which the contest was decided according to established state procedures, is required (3 U.S.C. §6) to send a certificate describing the form and manner by which the determination was made to the Archivist as soon as practicable.

#### **December 14, 2020: Electors Vote in Their States**

Monday after the second Wednesday in December of presidential election years is set (3 U.S.C. §7) as the date on which the electors meet and vote. In 2020, the meeting is on December 14. Electoral college delegations meet separately in their respective states and the District of Columbia at places designated by their state legislature. The electors vote by paper ballot, casting one ballot for President and one for Vice President. The electors count the results and then sign six certificates, each of which contains two lists, one of which includes the electoral votes for the President, the other, electoral votes for the Vice President, each of which includes the names of persons receiving votes and the number of votes cast for them. These are known as Certificates of the Vote, which the electors are required to sign. They then pair the six Certificates of Ascertainment provided by the state governors with the Certificates of the Vote, and sign, seal, and certify them (3 U.S.C. §§8-10). The six certificates are then distributed by registered mail as follows: (1) one certificate to the President of the U.S. Senate (the Vice President); (2) two certificates to the secretary of state (or equivalent officer) of the state in which the electors met; (3) two certificates to the Archivist; and (4) one certificate to the judge of the U.S. district court of the district in which the electors met (3 U.S.C. §11).

#### **December 23, 2020: Certificates Must Be Delivered to the Designated Officials**

Certificates of electoral vote results must be delivered to above mentioned officers by the fourth Wednesday in December, in 2020, by December 23 (3 U.S.C. §12).

#### **Failure to Deliver Certificates by December 23**

If the certificates from any state have not been delivered by December 23, 2020, the President of the Senate, or in their absence the Archivist, is required to request the secretary of state or equivalent officer in that state to send one of the copies they hold to the President of the Senate by registered mail (3 U.S.C. §12, 13). The Code also directs them to send a messenger to the judge of the U.S. district court in the state directing the judge to transmit the certificate they hold by “hand ... to the seat of government.”

#### **January 6, 2021: Joint Session of Congress to Count Electoral Votes and Declare Election Results Meets**

On January 6, or another date set by law, the Senate and House of Representatives assemble at 1:00 p.m. in a joint session at the Capitol, in the House chamber, to count the electoral votes and declare the results (3 U.S.C. §15). The Vice President presides as President of the Senate. The Vice President opens the certificates and presents them to four tellers, two from each chamber. The tellers read and make a list of the returns. When the votes have been ascertained and counted, the tellers transmit them to the Vice President. If one of the tickets has received a majority of 270 or more electoral votes, the Vice President announces the results, which “shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President.”

#### **Joint Session Challenges to Electoral Vote Returns**

While the tellers announce the results, Members may object to the returns from any individual state as they are announced. Objections to individual state returns must be made in writing by at least one Member each of the Senate and House of Representatives. If an objection meets these requirements, the joint session recesses and the two houses separate and debate the question in their respective chambers for a maximum of two hours. The two houses then vote separately to accept or reject the objection. They then reassemble in joint session, and announce the results of their respective votes. An objection to a state’s electoral vote must be approved by both houses in order for any contested votes to be excluded. For additional information, see CRS Report RL32717, *Counting Electoral Votes: An Overview of Procedures at the Joint Session, Including Objections by Members of Congress*, coordinated by Elizabeth Rybicki and L. Paige Whitaker.

#### **January 20, 2021: Presidential Inauguration**

On this date, the President and Vice President are to be inaugurated. The Twentieth Amendment set the date for inaugurations as January 20, beginning in 1937. Since 1981, the ceremony has, with one exception, been held on the West Front of the Capitol. The Vice President takes the oath first, followed at noon by the President.

#### **Legislative Proposals to Extend the Post-Election Electoral College Timeline**

Concern has been expressed by some that contested or delayed state popular vote results in the 2020 presidential election might prolong counting and ascertainment of results and encroach on the electoral college timeline. Two bills introduced in the 116<sup>th</sup> Congress would extend the time available for this process. S. 4517, introduced by Senator Marco Rubio, would be effective for the 2020-2021 election. It would change the Safe Harbor date to January 1, 2021, and the date on which electors vote to January 2. H.R. 8492, introduced by Representative David E. Price, would change the Safe Harbor date and also reschedule the electoral college meetings to the first day after January 1. It would also expedite delivery of certificates of the electoral vote and reschedule the joint session of Congress to count electoral votes to the second day after a revised deadline for election certificate delivery to the Vice President or the Archivist.

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