

Common Questions After Election Day: A Student Guide



Created for faculty, staff and students

After Election Day, there may still be lingering questions about the process of electing a president. How does the Electoral College work? Why is my ballot taking so long to be counted? What happens if there is not a clear winner of the presidential election by Inauguration Day? In this guide, we answer some of students' most common questions about the process of electing a president.

The Electoral College

What Is the Electoral College?

When people vote for presidential and vice-presidential candidates on their ballot, they are not actually voting for the candidates. Rather, they are electing a slate of “electors” that represent them in each state. The electors from every state combine to form the Electoral College. The Electoral College consists of 538 electors. A majority of electoral votes (270 or more) is required in the Electoral College for a presidential candidate to win the election. The [National Archives](#) lists the number of electors in each state (including the District of Columbia).

How Are the Number of Electors in Each State Chosen?

A state's number of electors is equal to their number of U.S. House representatives plus two electors for their U.S. Senate members. The number of U.S. House representatives each state has is based on their respective population determined by the census.



CAMPUS ELECTION ENGAGEMENT PROJECT

How Are the Electors Chosen for the Political Parties?

The political parties in each state submit to their state's [chief election official](#) a list of individuals pledged to their candidate for president and equal in number to the state's electoral vote. The political parties typically do this at their state party conventions or form state party committees to decide their electors.

Do Electors Have To Vote for the Candidate They Pledged To Vote For?

Not exactly. An elector who does not vote for the presidential and vice-presidential candidates they pledged to vote for is called a faithless elector. The issue of faithless electors has been brought up recently to the U.S. Supreme Court in **Chiafalo v. Washington** (2020) and **Colorado Department of State v. Baca** (2020). The Court ruled that states may enforce state-level laws to punish faithless electors, which usually entails a fine. There have been a total of 165 instances of faithless electors as of 2016. In the 2016 presidential election, 10 members of the Electoral College voted or attempted to vote for a candidate different from the ones to whom they were pledged.

How Was the Electoral College Established?

The Electoral College was established in Article 2, Section 1 of the U.S. Constitution. The language reads as follows:

“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: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.”

The Electoral College process was clarified in the 12th and 23rd Amendments.

Why Is It That One Candidate Can Win the Popular Vote, but Another Wins the Electoral Vote?

If you remember, Democratic nominee Hillary Clinton won the popular vote but lost the Electoral College to President Donald Trump in 2016. The Electoral College was devised at the Constitutional Convention in 1787. It was a compromise between those who wanted direct popular elections for president and those who preferred to have Congress



CAMPUS ELECTION ENGAGEMENT PROJECT

decide. The [Associated Press](#) developed a five-part animation series to discuss the differences between an electoral vote and a popular vote. There is much debate about whether a direct popular vote or electoral vote best represents the American people, as an electoral vote favors smaller states with more electoral votes per person. For instance, each individual vote in Wyoming counts nearly four times as much in the Electoral College as each individual vote in Texas.

Counting Ballots

What Does the Ballot Counting Process Look Like? What Does It Start?

Each state has its own guidelines for how they count ballots. In 13 states, they can count absentee/mail-in ballots before Election Day. In another six, it is up to the discretion of local officials to decide when they start counting absentee/mail-in ballots. The remaining states and D.C. allow ballot counting to begin during the day on Election Day or after polls close. To see your state's process of counting ballots, check out [Ballotpedia](#).

Why Is It a Longer-Than-Usual Process of Counting and Reporting Results This Election Cycle?

This is for a variety of reasons. First, there is a massive increase in voting by mail because of COVID-19. In many states, election systems are not set up to accommodate the increase in people voting by mail. Second, voters who are new to voting by mail may request their ballots late or send them back at the last minute. Finally, ongoing court litigation and anticipated record turnout could also contribute to the delay.

When Are All States Required to Have Their Ballots Counted?

The 1887 Electoral Count Act requires all states to have all ballots counted by 41 days post the election. This means that people should know the results by mid-December. However, Congress does have the power to amend this Act.

Election Results

What Happens if Trump and Biden Tie or if a Majority Is Not Met in the Electoral College?

The Constitution is clear on how this plays out. If there is no winner in the Electoral College for president, the decision goes to the House of Representatives while the Senate



CAMPUS ELECTION ENGAGEMENT PROJECT

picks the vice president. In the vote for vice president, each senator has one vote. In the House, each state has only one vote for president regardless of its size and a presidential candidate needs 26 states to win. This process is described in Article 2, Section 1, but was later refined in the 12th Amendment.

What Happens if a Majority Is Not Reached for President and Vice President by Jan. 20?

If a majority is not reached for president within the House by Jan. 20 (Inauguration Day), the elected vice president serves as acting president until the House is able to decide. If the vice president has not been elected either, the sitting Speaker of the House serves as acting president until Congress is able to decide. If a president has been selected but no vice president has been selected by Jan. 20, the president then appoints the vice president, pending approval by Congress.

If the Presidential Election Ends in a Tie, Does that Hold up the Results of Every Other Election?

No. The Electoral College was created only in service to the offices of the president and vice president. U.S. Senate members and U.S. House members are directly elected by the people who vote them into office.

Article 1, Section 2 of the Constitution lays out this process for U.S. House members:

“The U.S. House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.”

The 17th Amendment lays out this process for U.S. Senate members:

“The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote.”

For state elected positions, your state’s constitution and legislative code will describe how they are elected. For local elected positions, it depends. Your state’s legislative code will generally have the main authority over local elections. However, your city may provide for additional processes through its city charter and/or code of ordinances.



Inauguration Day

Why Is Inauguration Day Jan. 20?

In order to ensure a smooth transition of power, there is a need for a period of time between the election and the swearing in of the new period. New presidents have to choose cabinet members and other key administration members. The 20th Amendment defines this period as follows:

“The terms of the President and the Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.”

What Is the Lame-Duck Period?

A lame duck is a politician whose successor has already been elected or will be soon. A lame duck is free to make decisions with little fear of consequences because they do not have to worry about another election. For a president, this lame-duck period occurs after Election Day and lasts until the new president is sworn into office on Jan. 20. During this time, presidents tend to issue executive orders and pardons.

Courts and Elections

Could the Election Results for a State Be Decided Again by the U.S. Supreme Court like Bush v. Gore (2000)?

It depends. A case needs to be appealed to the Supreme Court first from a lower court regarding election results in a state, or there needs to be a case between two or more states regarding election results. Once a case is ripe (ready to be litigated before the Supreme Court), then the justices have to decide whether they want to take the case that could make or break the election.

What Is the Role of Lower Courts in Elections?

Lower courts can decide many important aspects of voting in your state. This includes restrictions on when, where and how voters can cast their ballots, residency requirements, college-issued credentials for voter identification purposes, polling locations and absentee ballot requirements.



CAMPUS ELECTION ENGAGEMENT PROJECT

About Us

Campus Election Engagement Project (CEEP) is a national nonpartisan project that helps administrators, faculty, staff and student leaders at America's institutions of higher education engage students in federal, state and local elections. CEEP views voting as a means to promote a more equitable and inclusive democracy and to address past and present disenfranchisement. To learn more, visit campuselect.org or contact us at info@campuselect.org.