

- What is the Electoral College (EC)?¹
 - The EC is a method for indirectly electing the president of the United States. It was established by Article II, Section 1, Clause 2 of the Constitution, and modified by the 12th and 23rd Amendments.
 - The EC consists of a total of 538 members, one for each Senator and representative, and three additional electors representing DC.
 - Each state has a number of electoral votes equal to the combined total of its congressional delegation, and each state legislature is free to determine the method it will use to select its own electors.
 - Currently, all states select electors through a popular vote (although how that vote works can differ), but that was not always the case. In many states, the state legislature selected electors, a practice which was common until the mid-1800s.
 - The electoral college meets every four years, a few weeks after election day.
 - Each elector represents one electoral vote, and a candidate needs to gain a majority of the votes - 270 or more - to win the presidency.
 - Most states award all their electoral college votes to whoever won the popular vote in the state.
 - There are two states (Maine and Nebraska) that divide up their electoral college votes according to the proportion of votes each candidate receives.
 - Five presidents have been elected without winning the popular vote:
 - John Quincy Adams
 - Rutherford B Hayes
 - Benjamin Harrison
 - George W Bush
 - Donald Trump
 - December 8 is known as the “safe harbor” deadline for appointing the 538 members of the Electoral College. The electors do not meet until six days later, but each state must appoint them by the safe-harbor date to guarantee that Congress will accept their credentials. The controlling statute says that if “any controversy or contest” remains after that, then Congress will decide which electors, if any, may cast the state’s ballots for president.
 - We are accustomed to choosing electors by popular vote, but nothing in the Constitution says it has to be that way.
 - Article II provides that each state shall appoint electors “in such Manner as the Legislature thereof may direct.”
 - Since the late 19th century, every state has ceded the decision to its voters. Even so, the Supreme Court affirmed in *Bush v. Gore* said that a state “can take back the power to appoint electors.” How and when a state might do so has not been tested for well over a century.

¹ The Electoral College - National Conference of State Legislatures
<https://www.ncsl.org/research/elections-and-campaigns/the-electoral-college.aspx>

- The 1887 Electoral Count Act²
 - Some experts worry that this 133-year-old relic of the US Code could endanger the whole republic.
 - “The law itself is a relic of the last time the partisan divide got so intense that it nearly ripped apart the country. But no one ever clarified the buts of it that are ambiguous, and no one ever came back to revise or update it. The law is a “morass of ambiguity, which is the exact opposite of what is required in this situation.” wrote Edward-Isaac Dove of The Atlantic
 - The measure originated in the aftermath of the 1876 presidential election, between Rutherford Hayes and Samuel Tilden, which decided the fate of Reconstruction in the American South.
 - The law requires electors to be chosen for the EC, no more than 41 days after Election Day.
 - This year, that date is December 14, but because of the many unique circumstances surrounding this election, we could go beyond this date without clear results in every state.
 - By the simplest reading of the act, whoever is ahead on December 14 gets the electors.
 - One key factor that could distinguish this year’s situation from 200: The litigation that went to the Supreme Court was over a recount, not a count itself. And legislators whose terms are expiring and who will soon be out of power are disincentivized to help delay initial counts into the beginning of next year.
 - After the elections of 2000 and 2004, there were attempts to challenge electors once they were reported to Congress, using a process that requires one member of the House and one member of the Senate.
 - In 2001, Gore presided over this process as the sitting vice president, overruling objections from Democratic House members defending his candidacy, having told senators he didn’t want them to join in.
 - In 200, then-Vice President Dick Cheney was in the same presiding roles as president of the Senate when the electoral votes came in. That year, a Democratic senator and Democratic House member each challenged the results from Ohio. Their challenge was debated in special sessions, and then defeated.
 - Outside of mentions of its safe-harbor provision in the Supreme Court’s Bush v. Gore decision in 2000, the Electoral Count Act of 1887 as been relevant only once: in 1960.
 - It was Hawaii’s first presidential election, after becoming a state the year before. Nixon was ahead in early counting, despite decisively losing in the overall Electoral College vote. There was a recount and JFK took the lead.
 - Two competing sets of electors were sent to Congress. Nixon, then the sitting vice president, presided over the decision. Because it wouldn’t

² The Deadline That Could Hand Trump the Election - The Atlantic
<https://www.theatlantic.com/politics/archive/2020/09/trump-biden-electoral-count-act-1887/615994/>

change who the ultimate winner was, Nixon went for being a gracious loser, said that he wasn't looking to set a precedent, and accepted the Kennedy electors, based on the results of the recount.

- Why was the EC the chosen system?³⁴
 - At the time of the Constitutional Convention, no other country in the world directly elected its chief executive. Further complicating things was a deep-rooted distrust of executive power after just fighting its way out from under a tyrannical king and overreaching colonial governors.
 - One group of delegates felt strongly that Congress shouldn't have anything to do with picking the president. Another group was strongly against letting the people elect the president by a straight popular vote.
 - When the Constitution was being drawn up, a national popular vote to elect a president would have been tough because of the size of the country and the difficulty of communication. The founders also thought 18th-century voters lacked the resources to be fully informed about the candidates, especially in rural areas.
 - They also feared a headstrong "democratic mob" steering the country astray and a populist president appealing directly to the people could command dangerous amounts of power.
 - A compromise based on the idea of electoral intermediaries was met. These intermediaries wouldn't be picked by Congress or elected by the people. Instead, the states would each appoint independent "electors" who would cast the actual ballots for the presidency.
 - Determining how many electors to assign to each state was another sticking point. Here the divide was between slave-owning and non-slave-owning states. It was the same issue that plagued the distribution of seats in the House of Representatives: should or shouldn't the Founders include slaves in counting a state's population?
 - In 1787, roughly 40% of people living in the Southern states were enslaved and couldn't vote.
 - The result was the "three-fifths compromise," in which enslaved Black people would be counted as three-fifths of a person for the purpose of allocating representatives and electors and calculating federal taxes.
 - The compromise ensured that Southern states would ratify the Constitution and gave Virginia, home to more than 200,000 slaves, a quarter (12) of the total electoral votes required to win the presidency (46).
- The EC in 2020 and a timeline of how a president takes power:⁵⁶

³ Why Was the Electoral College Created? - History

<https://www.history.com/news/electoral-college-founding-fathers-constitutional-convention>

⁴ US election 2020: What is the electoral college? - BBC

<https://www.bbc.com/news/world-us-canada-53558176>

⁵ The Electoral College - National Conference of State Legislatures

<https://www.ncsl.org/research/elections-and-campaigns/the-electoral-college.aspx>

⁶ After the vote: A timeline of how a president take power - AP News

- Spring and Summer 2020: Nomination of Electors
 - The political parties in each state nominate their electors. Parties and states have different ways of going about this, but a party's presidential electors are generally loyal or consistent party members. The parties want to be sure they can rely on their electors to cast their votes for the party's nominee for president.
- Nov. 3, 2020: Election Day
 - The day when voters in each state will select their presidential electors. The names of electors are not on the ballot in most states. Rather, when a voter casts a vote for a presidential candidate, they are also casting a vote for the electors already selected by the party of that candidate. If a majority of voters in a state vote for the Republican candidate for president, the Republican slate of electors is elected.
- Late November/Early December:
 - Each state has its own deadline to certify the election. However, if ballot disputes, litigation or other factors delay the count, blowing this deadline doesn't invoke a penalty in the presidential race.
- Dec. 8, 2020: Deadline for Resolving Election Disputes (safe harbor deadline)
 - All state recounts and court contests over presidential election results must be completed by this date (3 U.S.C. 5). For the majority of states the date of certification is the same as for all contests, but in eight states there is a deadline that either directly references 3 USC 5 or uses similar language, requiring that disputes surrounding the selection of presidential electors be resolved in time to meet the "safe harbor" deadline: Indiana, Iowa, New Jersey, North Carolina, Ohio, Tennessee, Texas, and Virginia.
 - The safe harbor deadline means that Congress cannot challenge any electors by this date in accordance with state law. Most states want their electors named by this deadline, to ensure Congress cannot disregard them.
- Dec. 14, 2020: Meeting of the Electors
 - The electors meet in each state and cast their ballots for president and vice president. Each elector votes on his or her own ballot and signs it. The ballots are immediately transmitted to various people: one copy goes to the president of the US Senate (who is also the vice president of the US); this is the copy that will be officially counted later. Other copies go to the state's secretary of state, the National Archives and Records Administration, and the presiding judge in the district where the electors meet (this serves as a backup copy that would replace the official copy sent to the president of the Senate if it is lost or destroyed).
 - Missing this deadline could mean a state's electors don't count in the presidential tally. Any electors seated between Dec. 8 and this date can still vote, but they could theoretically be challenged by Congress.

- Also, by this date the governor of each state must certify the state's presidential election and slate of electors.
- Dec. 23, 2020: Deadline for Receipt of Ballots
 - The electors' ballots from all states must be received by the president of the Senate by this date. There is no penalty for missing this deadline.
- Jan. 3, 2020
 - The new Congress is sworn in.
- Jan. 6, 2021: Counting of the Electoral Ballots
 - The US Congress meets in joint session to count the electoral votes.
- Jan. 20, 2021: Inauguration Day
 - The president-elect becomes the president of the United States.