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Introduction

As midnight approached on November 8, 2016, and certainly as dawn broke on the East Coast, it had become apparent that Hillary Clinton would win the national popular vote but that Donald Trump would win the Electoral College vote to become the 45th President of the United States. But when dawn breaks on November 4, 2020, will we know who will be sworn in as president on January 20, 2021? And what impacts would any delay or ambiguity in the results of the election have on our economy and our democracy during a time of heightened partisan divisions and an ongoing global pandemic?

This essay endeavors to explore these weighty matters. Without an historic Electoral College landslide, both the mechanics of varying state election laws and the greatly increased use of mail-in voting make it quite likely there will be no clear winner on November 4, and perhaps for many days thereafter. Although our country has proven to be remarkably resilient during election controversies determining past transfers of power, our current polarized environment may well lead to more turbulence and potentially widespread civil unrest this year. For the sake of our democracy, and for the good of all, we need to work toward the conclusion of the election process as rapidly as possible. To that end, the Electoral College is one of the most understudied features of our democratic system. In this essay, we will explore the mechanics of the Electoral College, the steps that are possible to take to ensure a peaceful transfer of power, and the contemporary relevance of the electoral debate.

The Electoral College

As prescribed in Article II, Section 1 of the US Constitution, the Electoral College elects the president and the vice president. The Constitution gives each state the power to appoint its electors “in such Manner as the Legislature thereof may direct,” with all states and the District of Columbia currently using some form of popular election. Each state has as many “electors” as it has representatives and senators in the US Congress. With the District of Columbia having three electors, the Electoral College is comprised of 538 members. When voters go to the polls and fill in their mail-in ballots, they might be under the impression that they are casting votes for a particular person for president and for vice president, but in fact they are voting for the slate of electors who have vowed to cast their ballots in the Electoral College for the individuals who make up the Democratic, Republican and any third party “tickets” on the ballot. For that reason, you cannot vote for the president from one party and the vice president from another. They come as a pair. To prevail, a ticket needs to garner a minimum of 270 votes.

Most states require that all electoral votes go to the ticket that receives a plurality of the votes cast by whatever means. (Maine and Nebraska employ a “district system” in which two at-large electors vote for the state with the most votes statewide and one elector votes for each congressional district’s highest vote getter.) After state election officials certify the popular vote of each state, the winning slate of electors meets in each state capital and cast two ballots—one for president and one for vice president.

As we now have reached the eve of the election, let us roll the tape forward.
The election of the president goes to the House of Representatives and the election of the vice president is decided by the Senate. For an added touch of drama, the election would be decided in the House by the incoming members elected in November, with incoming or re-elected senators joining those completing their terms in the Senate. In the presidential election, each state delegation in the House casts one vote for one of the top three contenders to determine the winner. California, with its 53 members, will get just as many votes as Alaska. Since the first presidential election in 1788, the House has decided the outcome only twice— in 1800 and 1824. In the election of 1800, it took 36 ballots over seven days for Thomas Jefferson to defeat Aaron Burr. In 1824, John Quincy Adams defeated Andrew Jackson, who had received a greater share of the electoral vote. It is often said that “three is a charm,” but the 2020 election could demonstrate its inapplicability next year.

Before we speculate about how a contested presidential election might play out in the House, in the next segment we will discuss the peculiarities of state election laws that could make for election “night” to extend for weeks. In our final segment, we will lay out the most significant dates, and what they might mean as January 20 draws nearer. In the interim, please see the attached Appendix 3 that provides a timeline of things to come.

State Election Law Developments

There are many benefits to the US system of federalism, but the administration of a national election by hundreds of different governments at the state, county and local levels, each with its own election rules and procedures, means that what happens in one state might not be the same in neighboring states. Madisonian constitutions—to ensure adherence to a state’s “legislative scheme for appointing Presidential electors” under Article II, Section 1, Clause 2 of the US Constitution—do not require that a state’s laws be identical to those in neighboring states. Rather, the rules of one state might be more lenient than those in other states, leading to uncertainty about how and when votes are tabulated. The policies range from those states that count votes on Election Day, such as Florida, to those that do not begin counting until Election Day, such as Michigan.

In this contentious moment, such distinctions could be critical. Consider these potential outcomes on Election Day. If President Biden is declared the winner in Florida on election night, as well as in states that count votes early, such as North Carolina and Arizona, and those that use quick-to-tabulate electronic voting in person, such as Georgia, he will almost certainly be declared the winner. Conversely, if President Trump were to win Florida, Arizona, North Carolina or Georgia, an unexpected early call in a Midwestern state such as Michigan, Wisconsin or Pennsylvania, his second term would be virtually re-elected. In either scenario, the period of ambiguity would be relatively minimal.

On the other hand, a scenario unfold in which President Trump and Vice President Biden split Arizona and Florida, and a state like North Carolina is deemed too close to call, the likelihood for a long and messy period of ambiguity will increase significantly. This is because voting counting will only begin on Election Day in the critical battleground states of Michigan, Wisconsin and Pennsylvania. If the election does not turn in favor of one of the candidates, the possibility for unremitting tension in that period of ambiguity would be increased by the reality that the election, if not already decided, would be decided within hours or days from now. The electorate is going to be waiting for a definitive answer, with everything litigated from where polls are located to keeping polls open late due to machine irregularities. Our prediction has to pass.”

As with other recent court decisions, the court weighed whether COVID-19-related disruptions and health risks warranted additional time to both register to vote and mail absentee ballots. The Seventh Circuit, noting the Supreme Court’s negative view toward last-minute election changes, concluded that “it is not possible to describe COVID-19 as a last minute event.” The Seventh Circuit also invoked precedent from the number and location of ballot drop boxes, provided additional drop boxes for ballots or provided additional opportunities to correct ballot mistakes. Many such suits are active nationwide. This range from a recent win in Iowa state court for the Trump campaign, where an injunction was secured to invalidate possibly 400,000 ballots that were sent to 50,000 voters, to a federal suit in Nevada, where it is alleged that a recent decision to expand vote-by-mail and allow ballots to be received up to three days after Election Day violates federal law.

In one of the most recent decisions potentially affecting the outcome in a battleground state, the US Court of Appeals for the Seventh Circuit stayed a federal district court’s order extending the deadline for Wisconsin election officials to accept absentee ballots. As a result, ballots must be in the hands of election officials by the close of polls on Election Day. The lower court’s order would have required ballots to be accepted if received by November 9. The Seventh Circuit also stayed an order extending the deadline for online and mailed-in voter registration. The date will now be October 14, a week earlier than the original date ordered by the lower court.

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As we as a nation do not have a common set of rules and procedures for conducting federal elections. As a nation that prizes the Tenth Amendment and a philosophical penchant to look to states as “laboratories of experiment,” we have left it to them to decide how to conduct their elections. As a result, no established set of rules govern who may vote, how they may vote, or whether their votes will be counted when or all, if they are said and done, their vote will be counted – or even if it will matter when a joint session of Congress meets on January 6, 2021. Some states, such as Oregon, have long ago switched to voting by mail. Other states, driven by the COVID-19 pandemic, are only now looking at how to conduct elections that will ensure most participation. It is up to state legislatures and state courts to designate who counts as a “voter” and to set a deadline by which the votes must be counted (e.g., received or postmarked by November 3). As noted above, these varying rules will be particularly important this year. To take but three examples, in Michigan, Pennsylvania and Wisconsin – three states that are likely to be particularly significant in the Electoral College – officials will count mail-in ballots until Election Day, unless the rules are changed before then. There is no way under the sun that will rise on November 4 that they will have processed anything close to the majority of votes cast other than in person the day before. And once they have completed their work, perhaps even before, we are assuming that the candidate likely to lose the vote will be in court challenging the results.

Potential Electoral College Outcomes

As we look ahead, we set out some important dates to keep in mind and what events triggered by them might mean for the question that will be on the minds of citizens as they wake up on November 4 and perhaps many more days to follow.

December 8, 2020. A state can be assured that its electors to the Electoral College will be recognized if post-election disputes are resolved within 35 days. Moreover, state election officials can cite federal court decisions that have foreclosed relief. “But will voters be supposed to, but at least the Supreme Court’s recent decision supports states compelling electors to vote as directed. For what it is worth to those thinking back to 2000, the Florida legislature was prepared to send Republican electors to certify the election, but the Supreme Court halted certifying that process on day 36. Vice President Gore conceded on day 35. So far, so good – but keep reading.

December 12, 2020. This date is not on the electoral calendar, but it could be quite important for another reason. When the US Congress was unable to fund the government for the fiscal year that began on October 1, it agreed to fund the government at fiscal year 2020 levels through December 11. If the election were to produce an outcome that created a 50-50 Senate split, the Florida legislature has lowered the majority of Republican members and, thus, Donald Trump almost assuredly would be re-elected. But if no one is selected on the first ballot? As one observer recalled what unfolded in 1801, “[t]he scene was now ludicrous. Many had sent for home night caps and pillows, and wrapped in shawls and great-coats, lay about the floor of the committee rooms or sat sleeping in their seats. At one, two, and half-past two, the tellers roused the members from their slumbers, and took the same ballot as before. ‘Imagine the scene today via C-Span.

When the counting begins, members of Congress may object to individual electoral votes or to state returns as a whole. An objection must be declared in writing and signed by at least one representative and one senator. In the case of an objection, the Joint Session recesses and each chamber considers the objection separately in a session that may last for more than two hours, with each member speaking for no more than five minutes. After each house votes on whether or not to accept the objection, the Joint Session reconvenes and both chambers announce their decisions. If they agree to the objection, the Joint Session reconvenes and each chamber considers the objection separately in a session that may last for more than two hours, with each member speaking for no more than five minutes. After each house votes on whether or not to accept the objection, the Joint Session reconvenes and both chambers announce their decisions. If they agree to the objection, the Joint Session reconvenes and each chamber considers the objection separately in a session that may last for more than two hours, with each member speaking for no more than five minutes. After each house votes on whether or not to accept the objection, the Joint Session reconvenes and both chambers announce their decisions. If they agree to the objection, the Joint Session reconvenes and each chamber considers the objection separately in a session that may last for more than two hours, with each member speaking for no more than five minutes.”

What if neither party had a majority, such as 22-25 or 24-24 with two state delegations having equal numbers of Democrats and Republicans, and Vice President Pence were to declare that votes cast for Democrats that would shift the balance would not be counted owing to alleged electoral fraud that is still being litigated in the courts? Or what if one or more Republican legislatures, over the objections of a Democratic governor, have put forth a state of Republican electors if the results hadn’t been certified by December 14? Those potential scenarios would appear to give President Trump a win, but, in fact, the Democratic House would have the authority to avoid that possibility.

House Democrats, out of concern for this possibility or otherwise (such as ongoing litigation challenging the election results for one or more Republican House members), could refuse to seat one or more Republicans and, thus, deny their state delegations a majority on January 6. Under Article I, Section 5 of the Constitution, the House is authorized to “adjourn the contest until the time of the meeting of the Congress to which the complaints may be made.” But even if state delegations were to win their cases, they would be particularly important this year. To take but three examples, in Michigan, Pennsylvania and Wisconsin – three states that are likely to be particularly significant in the Electoral College – officials will count mail-in ballots until Election Day, unless the rules are changed before then. There is no way under the sun that will rise on November 4 that they will have processed anything close to the majority of votes cast other than in person the day before. And once they have completed their work, perhaps even before, we are assuming that the candidate likely to lose the vote will be in court challenging the results.

January 3, 2021. The 117th Congress will convene, with the swearing in of the House members and senators elected on November 3, to join those senators completing their unexpired terms. As a result of a special election in Georgia, we will not yet know who will fill one of the Georgia Senate seats (since the expected runoff will be held on January 5). If Democrat Mark Kelly wins the Arizona special election, he might have already been sworn in office in late November or early December.

January 6, 2021. As a result of the adoption of the Twentieth Amendment, the new Congress is rather than November 14, the Senate to ratify the Electoral College votes. As set forth in the US Constitution, “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.” Donald Trump will still be president and Mike Pence will still be the new vice president. Congress convenes at 1 p.m. Eastern Time on January 6, with Vice President Pence sitting in the chair.

Under the Constitution, the House must choose a president “immediately.” The founders intended the House to decide which candidate would win the presidency because that would be no time for deals to be struck. But what if no one is selected on the first ballot? As one observer recalled what unfolded in 1801, “[t]he scene was now ludicrous. Many had sent for home night caps and pillows, and wrapped in shawls and great-coats, lay about the floor of the committee rooms or sat sleeping in their seats. At one, two, and half-past two, the tellers roused the members from their slumbers, and took the same ballot as before.” Imagine the scene today via C-Span.

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Not to be forgotten, pursuant to the Twelfth Amendment, the Senate would choose the vice president if the Electoral College outcome has not been resolved by this time. (The Senate has only chosen the vice president once — in 1837.) When the Senate convenes (on a day not specified in the Twelfth Amendment but presumably well before January 20), that vote is to be tabulated by the Senate, not by state. A minimum of 67 senators must be present to establish a quorum. They are to choose between the two top vote getters in the Electoral College, with the winner being the one that gets a majority of the votes. But what if the November elections lead to an equally divided chamber, with 50 Republicans, 48 Democrats, and the two Independents who regularly caucus with the Democrats (Senators Bernie Sanders and Angus King)? At that point, Vice President Pence would still be serving as President of the Senate and, thus, would potentially need to break the tie, choosing either himself or Senator Kamala Harris. What if enough senators of either party refused to be present and, thus, denied the establishment of a quorum, denying either Senator Harris or Vice President Pence a win even if they enjoyed a majority of the votes actually cast by voters, whether in the popular vote or the Electoral College?

Would you want to own shares in the stock market on January 6 and the days to follow? Would you want to read headlines about the US becoming a “banana republic”? Would you be desperate for some sort of resolution the country could respect?

January 20, 2021. Pursuant to the Twentieth Amendment to the US Constitution, which came into effect in 1933, the beginning (and ending) of the terms of the president and vice president were moved from March 4 to January 20 every four years. The terms of members of Congress also were moved up, to begin on January 3, every two years. Since our elected representatives no longer needed to travel from the farthest flung areas of the country by horseback, it made sense to move up the convening of the Congress and the swearing in of a president and vice president to roughly three months after the election rather than in the spring. Until now, no one had even seriously considered the prospect of revelers on New Year’s Eve not having a sense of who would take the oath of office three weeks later. However, that possibility is now quite real. Owing to ongoing litigation and a deadlock in the House, a president and vice president still would be facing the prospect of neither major party candidate being sworn in at noon Eastern Time on the 20th.

So, here we potentially are, two weeks after the House and the Senate have failed in their most basic duties to choose a president and vice president in the absence of a determinative outcome in the Electoral College. How might this play out, with potentially significant implications for the stock market, let alone the fabric of our democracy?

As noted above, the term of the new president and vice president begin with their inauguration at noon Eastern Time on January 20. Not just implicit in that but explicit under the Twentieth Amendment is this: the term of the current president and vice president comes to an end at noon. And what if at the appointed hour of noon there is no answer to the most basic question: who is to be sworn in as president and vice president? That is when the Presidential Succession Act of 1947 (perhaps the Daily Double under US Civics for $80) would come into play. It provides in relevant part: “[i]f, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President.” Since she almost assuredly would have been elected Speaker of the House on January 3, Representative Nancy Pelosi would become acting president. She has accomplished much in life, but the thought of being the first female acting president cannot possibly be a title to which she would aspire on January 20, 2021.

We cannot predict with certainty what will occur in the next few months, let alone what impact it may have on US society, as well as US and world financial markets. But we are of the view that it is vital that stakeholders, institutions and enterprises contemplate the possibility that the US may be in for a period of enormous tension and widespread confusion in the weeks following the November elections, which could lead to civil unrest on a scale not felt in decades. The year 2020 has already been one that has shaken the foundations of what have long been global norms and traditional expectations. And the evidence is mounting that with the US elections approaching, the wild ride may not be over yet.

For our collective sakes, let us hope as a country find a way well before January 6 to determine with certainty who will stand before the nation on January 20 and swear to “preserve, protect and defend the Constitution of the United States.”

With notable research assistance from Perrin B. Brown, Public Policy Specialist.

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Our multidisciplinary team of public policy lawyers and strategic advisors excel at the intersection of business, law and public policy. The team collaborates with our colleagues across the globe to identify, assess and implement legal and policy solutions to help our clients achieve their objectives.

To learn more and to receive our regular Public Policy Briefing, US Executive Branch Update and expert assessments of government action, subscribe to our Capital Thinking blog. You can also follow us on Twitter and LinkedIn.
Election 2020: Election Outcome Scenarios – Appendix 1
Constitutional or Statutory Underpinning of Key Dates

**November 3**

- **General Election Day**
  By statute, the presidential election occurs on the Tuesday after the first Monday in November ever four years and thus can be changed only if Congress changes the date by legislation that is enacted into law. The president has no power to change the date on his own initiative. In the words of the statute, “[t]he electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President.” ([U.S. Code § 1](https://www.law.cornell.edu/uscode/text/3/1))

**December 8**

- **“Safe Harbor” Deadline**
  State electors to the Electoral College will be recognized if any disputes that occurred in connection with the November 3 election have been resolved within 35 days.

  “If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.” ([U.S. Code § 3](https://www.law.cornell.edu/uscode/text/3/3))

**December 11**

- **Government Spending Ceases Pursuant to Public Law No: 116-159**
  If Congress is unable to agree to another stop-gap spending bill, the government would shut down at midnight.

**December 14**

- **Electoral College Delegations Meet and Vote in their Respective States**
  Between December 8 and December 13, Governors or Secretaries of State (depending on state law) are expected to certify the results of the election. By law, “[t]he electors of President and Vice President of each State shall meet and give their votes on the first Monday after the second Wednesday in December next following their appointment at such place in each State each as the legislature of such State shall direct.” ([U.S. Code § 7](https://www.law.cornell.edu/uscode/text/3/7))

**January 3**

- **Convening of the 117th Congress**
  The Twentieth Amendment to the Constitution, which came into effect in 1933, moved the date for the start of a new Congress from March 4 to January 3. (The March date had been included in the Twelfth Amendment as the date by which the House had to commence a contingent presidential election if the matter had not been resolved by then because no candidate had received an absolute majority of votes in the Electoral College.) The Senators and Representatives elected on November 3 will join the Senators who were not up for re-election to commence the new Congress, which will be known at the 117th Congress.

  The Amendment provides in relevant part:
  “The terms of Senators and Representatives (shall end) 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.” ([U.S. Const. 20th Amendment Sec. I](https://www.law.cornell.edu/concepts/const/amendment/20th))

  “The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.” ([U.S. Const. 20th Amendment Sec. II](https://www.law.cornell.edu/concepts/const/amendment/20th))

**January 6**

- **Joint Session of Congress to Count Electoral Votes and Declare Official Election Results**
  As a result of the adoption of the Twentieth Amendment, the new Congress rather than the outgoing Congress will meet to count the Electoral College votes. No matter what happens on November 3, Donald J. Trump will still be president and Mike Pence will still be vice president when the newly elected Congress convenes in a joint session at 1 p.m. on January 6, with Vice President Pence sitting in the chair. The relevant provision says: “Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o’clock in the afternoon on that day, and the President of the Senate shall be their presiding officer.” ([U.S. Const. Article II Sec. 1](https://www.law.cornell.edu/concepts/const/article/2))

  Article II of the Constitution provides in relevant part:
  “The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. 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.” ([U.S. Const. Article II Sec. 1](https://www.law.cornell.edu/concepts/const/article/2))

  If no candidate reaches 270 electoral votes, the House of Representatives votes by state delegation, and the Senate by individual senator, to choose the President and Vice President, respectively. As provided for in Article II:

  “If no Person have a Majority, then from the five highest on the List the said House shall in like manner choose the President. But in choosing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.” ([U.S. Const. Article II Sec. 1](https://www.law.cornell.edu/concepts/const/article/2))

**January 20**

- **Inauguration of the President and Vice President**
  Even if the 117th Congress is still fighting over who should serve as president and vice president, the Twentieth Amendment makes clear that President Trump and Vice President Pence’s term will end at noon: “The terms of the President and Vice President shall end at noon on the 20th day of January.” ([U.S. Const. 20th Amendment Sec. b](https://www.law.cornell.edu/concepts/const/amendment/20th))

  If a President and Vice President have not been chosen, the Speaker of the House will become President in an acting capacity. In the words of the statute, the Speaker elected on January 3 would become acting president “[i]f, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President.” ([U.S. Code § 1](https://www.law.cornell.edu/uscode/text/3/1))
### Election 2020: Election Outcome Scenarios – Appendix 2

Official Times for Release of State-by-state Results (From Earliest to Last)

<table>
<thead>
<tr>
<th>Polls Close (EST)</th>
<th>State</th>
<th>Method for Counting In-person Votes (Electronic Machines or Paper Ballots)</th>
<th>Ballot Counting Info and Timeline of Results for Battleground States</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 p.m.</td>
<td>Georgia</td>
<td>Electronic</td>
<td>State begins processing ballots in advance but does not begin counting votes until Election Day. Results could be finalized on Election Night.</td>
</tr>
<tr>
<td></td>
<td>Indiana</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kentucky</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>South Carolina</td>
<td>Electronic</td>
<td>State expects results to be finalized on Election Night.</td>
</tr>
<tr>
<td></td>
<td>Vermont</td>
<td>Paper ballots</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Virginia</td>
<td>Paper ballots</td>
<td></td>
</tr>
<tr>
<td>7:30 p.m.</td>
<td>North Carolina</td>
<td>Paper and electronic</td>
<td>State begins counting ballots 14 days before Election Day. While a Federal Appeals Court recently affirmed that North Carolina could count ballots received within nine days of Election Day, the state expects results to be finalized on Election Night.</td>
</tr>
<tr>
<td></td>
<td>Ohio</td>
<td>Paper and electronic</td>
<td>Absentee ballots may be scanned prior to the election. The state has cautioned that results might not be finalized on Election Night.</td>
</tr>
<tr>
<td></td>
<td>West Virginia</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td>8 p.m.</td>
<td>Alabama</td>
<td>Paper ballots</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Connecticut</td>
<td>Paper ballots</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Delaware</td>
<td>Electronic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>District of Columbia</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Florida</td>
<td>Paper and electronic</td>
<td>State begins counting ballots 22 days before Election Day. Results could be expected on Election Night.</td>
</tr>
<tr>
<td></td>
<td>Illinois</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Maine</td>
<td>Paper ballots</td>
<td>Results could be expected on Election Night, but Maine’s use of ranked-choice voting could delay final results.</td>
</tr>
<tr>
<td></td>
<td>Maryland</td>
<td>Paper ballots</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mississippi</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Missouri</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>New Hampshire</td>
<td>Paper ballots</td>
<td></td>
</tr>
<tr>
<td></td>
<td>New Jersey</td>
<td>Electronic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Oklahoma</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pennsylvania</td>
<td>Paper and electronic</td>
<td>State begins counting ballots on Election Day. US Supreme Court recently affirmed Pennsylvania’s decision to count absentee ballots through November 6. The state expects results to be finalized by November 6.</td>
</tr>
<tr>
<td></td>
<td>Rhode Island</td>
<td>Paper ballots</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tennessee</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td>8:30 p.m.</td>
<td>Arkansas</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td>Time</td>
<td>State</td>
<td>Method for Counting In-person Votes (Electronic Machines or Paper Ballots)</td>
<td>Ballot Counting Info and Timeline of Results for Battleground States</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
<td>----------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------</td>
</tr>
<tr>
<td>9 p.m.</td>
<td>Arizona</td>
<td>Paper and electronic</td>
<td>State begins counting ballots 14 days before Election Day. Results could be finalized on Election Night.</td>
</tr>
<tr>
<td></td>
<td>Colorado</td>
<td>Mail-in only</td>
<td>State expects results to be finalized by the night of November 4.</td>
</tr>
<tr>
<td></td>
<td>Kansas</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Louisiana</td>
<td>Electronic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Michigan</td>
<td>Paper ballots</td>
<td>State begins counting ballots on Election Day. Results should not be expected on Election Night.</td>
</tr>
<tr>
<td></td>
<td>Minnesota</td>
<td>Paper ballots</td>
<td>State begins processing ballots in advance but does not begin counting votes until Election Day. State expects results to be finalized on Election Night.</td>
</tr>
<tr>
<td></td>
<td>Nebraska</td>
<td>Paper ballots</td>
<td></td>
</tr>
<tr>
<td></td>
<td>New Mexico</td>
<td>Paper ballots</td>
<td></td>
</tr>
<tr>
<td></td>
<td>New York</td>
<td>Paper ballots</td>
<td></td>
</tr>
<tr>
<td></td>
<td>North Dakota</td>
<td>Paper ballots</td>
<td></td>
</tr>
<tr>
<td></td>
<td>South Dakota</td>
<td>Paper ballots</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Texas</td>
<td>Paper and electronic</td>
<td>State begins counting ballots four days before Election Day. State has suggested results could be expected on Election Night.</td>
</tr>
<tr>
<td></td>
<td>Wisconsin</td>
<td>Paper and electronic</td>
<td>State begins counting ballots on Election Day. Results could be expected on Election Night.</td>
</tr>
<tr>
<td></td>
<td>Wyoming</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td>10 p.m.</td>
<td>Iowa</td>
<td>Paper ballots</td>
<td>State begins counting ballots on Election Day. Results could be expected on Election Night.</td>
</tr>
<tr>
<td></td>
<td>Montana</td>
<td>Paper ballots</td>
<td>Results should be expected on Election Night.</td>
</tr>
<tr>
<td></td>
<td>Nevada</td>
<td>Paper and electronic</td>
<td>State begins processing ballots in advance but does not begin counting votes until Election Day. Results could be expected on Election Night.</td>
</tr>
<tr>
<td></td>
<td>Utah</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td>11 p.m.</td>
<td>California</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hawaii</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Idaho</td>
<td>Paper and electronic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Oregon</td>
<td>Mail-in only</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Washington</td>
<td>Mail-in only</td>
<td></td>
</tr>
<tr>
<td>1 a.m. on November 4</td>
<td>Alaska</td>
<td>Paper and electronic</td>
<td></td>
</tr>
</tbody>
</table>
**Litigation Brought by the Democratic National Convention (DNC) and Democratic Organizations**

**Alabama (AL)**
- **Absentee ballots – Democratic victory:** US Supreme Court stayed a lower court ruling that would have allowed (though not required) Alabama counties to offer curbside voting.

**Arizona (AZ)**
- **Absentee ballots – Temporary Republican victory:** Ninth Circuit Court of Appeals issued a temporary stay on a lower court ruling, which would have given Arizona voters up to 10 days after the election to remedy ballot identification issues. The Ninth Circuit is considering the appeal.

**Florida (FL)**
- **Ex-felons voting – Republican victory:** Eleventh Circuit Court of Appeals, in a reversal of a lower court, reinstated a Florida law requiring ex-felons to pay court fines and fees before registering to vote.

**Georgia (GA)**
- **Absentee ballots – Democratic victory:** Georgia Secretary of State settles in federal court; agrees to contact voters whose absentee ballots were rejected within three business days. Voters must be contacted within one business day if the ballot is invalidated during the 11 days before Election Day.

- **Absentee ballots – Republican victory:** Eleventh Circuit Court of Appeals reversed lower court decision which gave the state three extra days to count ballots postmarked by Election Day. ([New Georgia Project v. Raffensperger](https://www.squirepattonboggs.com/)

**Yellow = Pending**

**Polling locations (pending):** Federal lawsuit asking state to provide sufficient number and equitable distribution of polling places.

**Election security – Republican victory:** Federal judge rejected lawsuit seeking preliminary injunction to order the state to use hand-marked paper ballots instead of touch screen voting machines. ([Curling et al. vs. Raffensperger](https://www.squirepattonboggs.com/)

**Michoacan (MI)**
- **Poll books – Republican victory:** Eleventh Circuit Court of Appeals stayed lower court’s order to provide paper backups for poll books. ([Curling et al. vs. Raffensperger](https://www.squirepattonboggs.com/)

**Ohio (OH)**
- **Absentee ballots – Republican victory:** Federal judge dismissed lawsuit from voting rights advocates arguing that Ohio’s provision of one absentee ballot drop box per county is unconstitutional. Plaintiffs and the state have expressed confusion over the judge’s order, which seemed to argue that the lawsuit is unnecessary given the Ohio Secretary of State’s plan to order more ballot drop boxes.

**Pennsylvania (PA)**
- **Absentee ballots – Democratic victory:** US Supreme Court, through a 4-4 deadlock, let stand a lower court ruling that requires Pennsylvania to count absentee ballots received within three days after Election Day, even if these ballots are not postmarked. ([Pennsylvania Democratic Party v. Boockvar](https://www.squirepattonboggs.com/)

- **Signature verification – Republican victory:** Federal judge rejected lawsuit from Trump Campaign arguing that Pennsylvania’s plan to count absentee ballots received within three days after Election Day was unconstitutional. The Eighth Circuit Court of Appeals ruled that absentee ballots must be received no later than Election Day, ruling against plaintiffs and the state.

- **Absentee ballots – Republican victory:** State Court of Appeals reversed lower court’s decision to allow ballots to be counted for two-weeks after Election Day.

- **Absentee ballots – Democratic victory:** US Supreme Court, through a 4-4 deadlock, let stand a lower court ruling that requires Pennsylvania to count absentee ballots received within three days after Election Day, even if these ballots are not postmarked. ([Pennsylvania Democratic Party v. Boockvar](https://www.squirepattonboggs.com/)

**South Carolina (SC)**
- **Absentee ballot witnesses – Republican victory:** US Supreme Court affirmed South Carolina’s law requiring voters to sign absentee ballot envelopes in the presence of a witness (a lower court had ruled the requirement was unconstitutional during COVID-19). However, the Supreme Court also ruled that ballots already cast must still be counted, as long as they are received within two days of the Court’s ruling.

**Texas (TX)**
- **Absentee voting – Republican victory:** Fifth Circuit Court of Appeals reversed a lower court decision invalidating Texas’ requirement that voters must provide an excuse to receive an absentee ballot. The case was remanded for further litigation.

- **Signature verification – Republican victory:** Fifth Circuit Court of Appeals overturned a lower court order, which would have required Texas to advise election officials that mail-in ballots with signature verification issues could be rejected without giving voters a chance to correct them.

**Wisconsin (WI)**
- **Absentee ballots – Republican victory:** US Supreme Court rejected lower court decisions that would have extended the duration of time the state could count ballots. Ballots are due on Election Day. ([Democratic National Committee vs. Bostelmann](https://www.squirepattonboggs.com/)

**Litigation Brought by the Republican National Committee (RNC) and Republican Organizations**

**Iowa (IA)**
- **Absentee ballots – Republican victory:** Trump Campaign won an injunction in state court invalidating pre-filled mail-in ballots that were sent to 50,000 voters in certain counties.

**Michigan (MI)**
- **Voter transportation – Republican victory:** Sixth Circuit Court of Appeals stayed a lower court decision which had blocked a law that would have made it illegal to pay for voter transportation.

**Minnesota (MN)**
- **Absentee ballots – Republican victory:** Eighth Circuit Court of Appeals ruled that absentee ballots must be received no later than Election Day, ruling against Minnesota’s plans to accept ballots for seven days after the election. The Court ruled that ballots received after Election Day should be "segregated" and not counted. As of October 29, over 400,000 Minnesota absentee ballots had not been received by election officials.

**Montana (MT)**
- **Absentee ballots – Democratic victory:** Federal judge rejected lawsuit from Trump Campaign arguing that Montana’s plan to grant counties right to run elections by mail is unconstitutional. The Ninth Circuit Court of Appeals affirmed the lower court’s decision.

**Nevada (NV)**
- **Absentee ballots – Democratic victory:** Federal judge rejected Trump Campaign lawsuit challenging state decision to send mail-in ballots to voters.

**New Jersey (NJ)**
- **Absentee ballots – Democratic victory:** Federal judge rejected Trump Campaign lawsuit challenging state decision to send mail-in ballots to voters.

- **Absentee ballots – Democratic victory:** Federal judge rejected Trump Campaign motion for preliminary injunction against new state rules allowing state to accept absentee ballots without postmarks for up to two days after Election Day.

**North Carolina (NC)**
- **Absentee ballots – Temporary Republican victory:** Federal judge issued a temporary stay blocking North Carolina’s Board of Elections’ decision to allow absentee voters the chance to correct certain ballot issues without filing out a new ballot. Judge’s final decision is pending.

**Pennsylvania (PA)**
- **Absentee ballots – Democratic victory:** Federal judge rejected Trump Campaign motion for preliminary injunction to disqualify Pennsylvania’s plan to have drop boxes for mail-in ballots.

- **Absentee ballots – Democratic victory:** US Supreme Court declined to review Pennsylvania’s plans to count absentee ballots three days after Election Day, even without a postmark.