

# Electing a U.S. President



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- How a U.S. President gets elected is both simpler and more complicated than most people think it is.
- What is this Electoral College and why does it exist?
- How can you participate in an election if you don't know how it works?

Every four years, the United States goes through the ritual of electing a President. I use the term ritual for two reasons. First, most Americans' understanding of the election process is based on custom or rites rather than the law. Second, most of the customs Americans follow directly contradict the actual process of electing a President of the United States.

Many years ago, I was in Raleigh, NC working on a project with an international team. Every day the whole team would go out for lunch. Since it was a presidential election year, and I was the only American on the team, I was asked about the apparently convoluted process of electing an American President. This was before I had begun studying the Constitution, so I explained the process as best I could based on the customs I had been taught. Today my answer would not only be more coherent, but would include references to the actual laws it was based on.

## **How it Begins**

The first, and probably most fundamental misunderstanding most Americans have about the presidential elections process, is

the belief that they vote for President. They do not.

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:

[U.S Constitution, Article II, Section 1, Clause 2](#)

Like primaries, before 1964 and the ratification of the Twenty-Fourth Amendment, the idea of the people voting for President did not exist in the Constitution.

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

[U.S. Constitution, Amendment XXIV, Section 1](#)

In fact, the Twenty-Fourth Amendment did not say that people voted for President, only that they could not be denied the right to vote in such an election for failing to pay taxes. It's yet another example of lack of understanding of the Constitution by Congress and the Several States. The reporting of a national popular vote for President is another lie, since there is no such thing. The people do not elect the President, the states do.

Based on Article II, Section 1, the states have established the manner of appointing electors to be based on a popular vote in the state for a political party. The details vary from state to state, but the general process is the same. Each political party puts together a slate of party faithful who pledge to vote for their party's candidate. When the state puts together their ballot, they list the party candidates. In the past most states noted that you were voting for electors

for that candidate, although recently that has changed. In the 2020 elections 37 of the 50 states (74%) lie on the ballots, claiming their citizens are voting for the actual President and Vice-President, even though they aren't. So even when the ballot tells you the vote is for electors for President, what you're actually voting for are pre-selected operatives for a specific party.

## **Presidential Electors**

After election day in November, each state determines which slate of electors to appoint. These electors meet in their state on the first Tuesday after the second Wednesday in December, ([3 USC §7](#)).

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves;

### [U.S. Constitution, Amendment XII](#)

This is the only federal or national election in the United State. While elections for the House and Senate are for federal offices, they are still state elections. Some states require their electors to vote based on the results of their states' election. However, in some states the penalty for not voting based on the state's popular vote may not be all that significant, which has led for some to call for the electors to be unfaithful to their pledge in an attempt to win the election.

Actually, the presidential electors cast two ballots, one for President and another for Vice President, as required by the Twelfth Amendment:

they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all

persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists 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;

### [U.S. Constitution, Amendment XII](#)

Since most state laws appoint their electors in a “winner take all” manner, all the electors vote unanimously for their party’s candidates. These electors are party apparatchiks, so they simply vote for their party’s ticket, which was established through a combination of [Primary Elections](#) and other internal political machinations. Once the electors have done their duty to their political party, the list of a single name for President and another for Vice-President is signed, certified, and sent to the sitting Vice-President in their role as President of the Senate.

### **Counting the Elector’s Votes**

Next comes the counting of the votes of the presidential electors. This has been codified into law by Section 15 of Title 3 of the United States Code. The process starts with the President of the Senate opening the certificates to be counted.

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. Constitution, Amendment XII](#)

Sounds simple enough. When does this counting happen?

(a) In General.-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.

### [3 USC §15](#)

According to the Twelfth Amendment, the only role the President of the Senate has during this session is to open the certificates and then have them counted. Congress confirmed this in section (b) of §15.

(b) Powers of the President of Senate.-

(1) Ministerial in nature.-Except as otherwise provided in this chapter, the role of the President of the Senate while presiding over the joint session shall be limited to performing solely ministerial duties.

(2) Powers explicitly denied.-The President of the Senate shall have no power to solely determine, accept, reject, or otherwise adjudicate or resolve disputes over the proper certificate of ascertainment of appointment of electors, the validity of electors, or the votes of electors.

### [3 USC §15](#)

Sadly, this is where Congress has begun interfering with the election process.

(c) Appointment of Tellers.-At the joint session of the Senate and House of Representatives described in subsection (a), there shall be present two tellers previously appointed on the part of the Senate and two tellers previously appointed on the part of the House of Representatives by the presiding officers of the respective chambers.

### [3 USC §15](#)

Yes, this is a minor point. The Constitution doesn't say how the votes are to be counted. After all, I guess they would assume a group of intelligent men could figure out how to

safely and accurately count the votes. Congress, on the other hands, wanted their input on the process.

If you read the Twelfth Amendment, you see Congress has no role in the presidential election unless none of those voted for an office receives a majority. Here we see Congress has decided for themselves that they will pick the tellers who will count the votes. That's not the only way Congress has decided to interfere with the election. It starts with a subtle point:

(d) Procedure at Joint Session Generally.-

(1) In general.-The President of the Senate shall-

(A) open the certificates and papers purporting to be certificates of the votes of electors appointed pursuant to a certificate of ascertainment of appointment of electors issued pursuant to section 5, in the alphabetical order of the States, beginning with the letter A; and

(B) upon opening any certificate, hand the certificate and any accompanying papers to the tellers, who shall read the same in the presence and hearing of the two Houses.

### [3 USC §15](#)

What are these purported certificates? The Constitution says nothing about purported certificates. The Twelfth Amendment says the President of the Senate will open the certificates he has received from the states and have them counted. What does the section 5 say?

(a) In General.-

(1) Certification.-Not later than the date that is 6 days before the time fixed for the meeting of the electors, the executive of each State shall issue a certificate of ascertainment of appointment of electors, under and in pursuance of the laws of such State providing for such

appointment and ascertainment enacted prior to election day.

### [3 USC §5](#)

Who the state electors are is none of the United States' business; it is solely a state matter. I suppose the reasoning behind sending the list of electors to the Archivist of the United States is to allow fake certificates to be identified and not counted. In fact, federal law claims to establish a rather complicated process for the sending of the certificates from the electors to the President of the Senate and others. The problem is, the Constitution does not delegate to Congress the authority to tell states they have to register their electors with the United States or to have their certificates be sent anywhere but to the President of the Senate. That's not all of Congress' interference in the election.

(2) Action on certificate.-

(A) In general.-Upon the reading of each certificate or paper, the President of the Senate shall call for objections, if any.

### [3 USC §15](#)

Again, the Constitution does not give Congress any say in counting of the presidential electoral votes; they are there only to observe. So what are the reasons Congress thinks it can object?

(ii) Grounds for objections.-The only grounds for objections shall be as follows:

(I) The electors of the State were not lawfully certified under a certificate of ascertainment of appointment of electors according to section 5(a)(1).

(II) The vote of one or more electors has not been regularly given.

### [3 USC §15](#)

Remember back to January 6th, 2020? There were several states that did not lawfully appoint electors. Not because of some law made up by Congress, but because the manner of appointing them was modified by state courts or the state's Secretary of State, not the legislature. Those objections though, should have been dealt with at the state level, not the Congress.

## **Majorities**

With the election process dominated, and in many cases controlled, by the two major parties, it seems fairly unlikely that that a candidate would not receive the votes of a majority of the electors, as required by the Twelfth Amendment.

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;

### [U.S. Constitution, Amendment XII](#)

However, as dissatisfaction with the two dominant parties grows, this becomes more and more a possibility. There are two things the American people need to be aware of should such a situation happen. First, the President or Vice-President needs to have the votes of a majority of the electors appointed. Should a state fail to legally appoint electors, as happened in 2020, not only should their votes not have been submitted to the President of the Senate, but should not be considered when determining a majority. Second, should no candidate receive a majority, then the decision of who will be President devolves to the House of Representatives and the Vice-President to the Senate.

and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, 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.

### [U.S. Constitution, Amendment XII](#)

In the case of the House choosing a President, the state delegations vote by ballot. That means each state gets a single vote. Since the Congress is seated before the votes for President are counted, and the partisanship that exists in both houses is so rampant, the choice would ultimately be decided by the majority in each state's delegation in the House.

As I've noted, the process is similar if no candidate for Vice-President receives a majority of votes.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

### [U.S. Constitution, Amendment XII](#)

#### **Inauguration**

Only after the decisions have been made as to who will be the new President and Vice-President, are they legally considered President-elect or Vice-President-elect. These positions have absolutely no power, but we recognize this as a time for them to work on their transition to office at the inauguration.

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 3d 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. Constitution, Amendment XX, Section 1](#)

Before their terms begin, the President and Vice-President must take an oath or affirmation of office. The President's oath is specified in Article II, Section 1, Clause 8 of the Constitution.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

[U.S. Constitution, Article II, Section 1, Clause 8](#)

Then, and only then, does the United States have a new President.

**Conclusion**

If I could go back in time and explain to those visiting teammates how our presidential elections work, I would focus on three points.

1. The political parties choose their candidates through a combination of primaries, caucuses, and internal negotiations.
2. The states elect the President based on the advice of their citizens.
3. The vast majority of the American people are unaware of points 1 and 2.

While many people say "Knowledge is Power", that is not actually true. Knowledge only has power if it's used for some

action. Now that you have the knowledge and a better understanding of how the United States elects a President, I hope you will use it to exercise your power as a United States citizen. Use this knowledge to push for your state to accurately portray who is being voted for on Election Day. Demand that they follow the Constitution in the appointment of their electors for President. Last, and probably most important, choose wisely who you vote for as presidential electors.

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