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# Election Day: Frequently Asked Questions

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## Election Day: Frequently Asked Questions

Election Day is the day legally established to select public officials in the United States. General elections for federal offices—President, Vice President, and U.S. Congress—are held on the Tuesday after the first Monday in November in even-numbered years. Citizens vote for President and Vice President every four years, Representatives every two years, and Senators every six years; this excludes special elections to fill unexpired terms. State and local elections are often but not always held on the same day as federal elections.

This report provides responses to frequently asked questions about the history and current legal status of Election Day. It discusses how the first federal elections were held, how a single Election Day for federal offices was established in the 19<sup>th</sup> century, why the Tuesday after the first Monday in November was selected as Election Day, and related issues.

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## What Is Election Day?

Election Day is the day legally established for the general election of federal public officials: President, Vice President, and U.S. Congress. Citizens vote for President and Vice President every four years, Representatives every two years, and Senators every six years; this excludes special elections to fill unexpired terms. State and local elections are often, but not always, held on the same day as federal elections.

## When Is Election Day?

Election Day for federal offices is held on the Tuesday after the first Monday in November in even-numbered years. Election Day falls between November 2 and November 8, depending on the calendar. Upcoming elections are scheduled for November 8, 2022 and November 5, 2024.

## What Does the Constitution Say About Election Day?

The Constitution and federal statutes provide a structure for elections and voting in the United States, but election administration is primarily a state responsibility. The Constitution does not designate a specific day for holding elections. It allows states to choose the “Times, Places and Manner of holding Elections for Senators and Representatives,” but it permits Congress to “make or alter” those state rules “except as to the Places of [choosing] Senators.”<sup>1</sup> The Constitution also empowers Congress to select the time for choosing presidential electors for the Electoral College and the day all states’ electors vote for President and Vice President.<sup>2</sup>

## When Were the First Federal Elections Held?

Popular elections for Representatives were held between November 24, 1788, and June 22, 1789.<sup>3</sup> Senators were selected by state legislatures, as established in the Constitution.<sup>4</sup> Different states chose presidential electors in different ways, some by popular vote and others by legislatures;<sup>5</sup> the electors cast their ballots on February 4, 1789, and the newly assembled Congress counted the votes on April 6, 1789.<sup>6</sup>

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<sup>1</sup> Article I, Section 4, clause 1.

<sup>2</sup> Article II, Section 1, clause 4.

<sup>3</sup> Kate Kelly, *Election Day: An American Holiday, An American History* (New York: Facts on File, 1991), p. 26.

<sup>4</sup> Article I, Section 3, clause 1.

<sup>5</sup> Marcus Cunliffe, “Elections of 1789 and 1792,” in *History of American Presidential Elections, 1789-1968*, eds. Arthur M. Schlesinger Jr., Fred L. Israel, and William P. Hansen, vol. 1 (New York: Chelsea House Publishers, 1971), pp. 3-32.

<sup>6</sup> D. Jason Berggren, “Presidential Election of 1789,” in *The Digital Encyclopedia of George Washington*, eds. Jim Ambuske and Jeanette Patrick, at <https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/about-the-encyclopedia>.

## When and How Was a Single Election Day Created?

In 1845, the 28<sup>th</sup> Congress set a single date for states to appoint presidential electors.

In 1792, the 2<sup>nd</sup> Congress decided presidential electors would vote on the first Wednesday in December, and electors must be chosen in the 34 days leading up to that date.<sup>7</sup> More than half of the states in the early 1800s held presidential elections in early November.<sup>8</sup>

As travel and communication methods became faster in the 19<sup>th</sup> century, potential manipulation and fraud concerns grew due to different election days in different states: “The 34-day period during which elections could be held prolonged excitement and provided time for more intrigue.”<sup>9</sup> Members of the House, when debating a bill in 1844 that would set a uniform presidential Election Day across the country, declared the goal was “to guard against frauds in the elections of President and Vice President.”<sup>10</sup>

In 1845, the 28<sup>th</sup> Congress set “the Tuesday next after the first Monday in the month of November” as the date for states to appoint presidential electors.<sup>11</sup> The first unified presidential Election Day was November 7, 1848.<sup>12</sup> Current law states that “the 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.”<sup>13</sup>

In 1872, the 42<sup>nd</sup> Congress aligned House elections with presidential elections by scheduling them for “the Tuesday next after the first Monday in November” starting in 1876 and “in every second year thereafter.”<sup>14</sup> Current law states that “the Tuesday next after the 1<sup>st</sup> Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter.”<sup>15</sup>

Before the Seventeenth Amendment was ratified in 1913, state legislatures elected Senators. In 1914, the 63<sup>rd</sup> Congress aligned popular election of Senators with the biennial House elections.<sup>16</sup> Under current law,

At the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the 3d day of January next thereafter.<sup>17</sup>

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<sup>7</sup> 1 Stat. 239.

<sup>8</sup> Jeffrey M. Stonecash, Jessica E. Boscarino, Rogan T. Kersh, “Congressional Intrusion to Specify State Voting Dates for National Offices,” *Publius*, vol. 38, no. 1 (Winter 2008), pp. 137-151.

<sup>9</sup> Kate Kelly, *Election Day: An American Holiday, An American History* (New York: Facts on File, 1991), p. 34.

<sup>10</sup> “Election Bill,” *Congressional Globe*, December 13, 1844, p. 29.

<sup>11</sup> 5 Stat. 721.

<sup>12</sup> James K. Polk, “President Polk Reacts to the Election of His Successor—Washington, D.C., 1848,” in *Election Day: A Documentary History*, by Robert J. Dinkin (Westport, CT: Greenwood Press, 2002), pp. 77-78.

<sup>13</sup> 3 U.S.C. §1.

<sup>14</sup> 17 Stat. 28.

<sup>15</sup> 2 U.S.C. §7.

<sup>16</sup> 38 Stat. 384.

<sup>17</sup> 2 U.S.C. §1.

## Why Was the First Tuesday After the First Monday in November Chosen as Election Day?

The timing of Election Day means citizens cast their ballots for President and Vice President roughly one month before the formal vote of the Electoral College.<sup>18</sup>

In a mostly agrarian society, holding elections late in the year avoided the harvest season and the onset of harsh weather. “Early November fell, Goldilocks-like, between the end of the autumnal harvest and the grip of winter.”<sup>19</sup>

Voting on Tuesday, rather than Monday, sidestepped religious complications. “Given that voters from remote areas had to travel overnight to poll, it did not seem appropriate to require them to travel on Sunday, the Sabbath for most Christians.”<sup>20</sup>

Lawmakers prevented Election Day from falling on November 1 by selecting the first Tuesday after the first Monday, which “took into consideration the fact that many merchants used the first day of the month to tally their books from the previous month.”<sup>21</sup>

## Are State and Local Elections Held at the Same Time as Federal Elections?

The federal government has no formal role in scheduling elections for nonfederal offices at the state and local level,<sup>22</sup> but many jurisdictions use the federal election date for convenience. A few states hold “off-year” elections in odd-numbered years.<sup>23</sup> Many cities and local school districts hold “off-cycle” elections, as well.<sup>24</sup>

## Can Election Day Be Rescheduled or Postponed?

The timing of Election Day is set by law, and changing the date would require enacting a new law, as “neither the Constitution nor Congress provides any ... power to the President or other federal officials to change this date outside of Congress’s regular legislative process.”<sup>25</sup>

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<sup>18</sup> CRS Report RL32611, *The Electoral College: How It Works in Contemporary Presidential Elections*, by Thomas H. Neale.

<sup>19</sup> Graeme Orr, *Ritual and Rhythm in Electoral Systems: A Comparative Legal Account* (London and New York: Routledge, 2016), p. 39 (hereafter Orr, 2016).

<sup>20</sup> Orr, 2016, p. 39.

<sup>21</sup> Mary Lynn F. Jones, “election day,” in *Encyclopedia of American Political Parties and Elections*, eds. Larry J. Sabato and Howard R. Ernst, 2<sup>nd</sup> ed. (New York: Facts on File, 2014), p. 120.

<sup>22</sup> CRS Report R45302, *Federal Role in U.S. Campaigns and Elections: An Overview*, by R. Sam Garrett.

<sup>23</sup> Paul Braun et al., “Why These 5 States Hold Odd-Year Elections, Bucking the Trend,” National Public Radio, November 4, 2019, at <https://www.npr.org/2019/11/04/767959274/why-these-5-states-hold-odd-year-elections-bucking-the-trend>.

<sup>24</sup> Sarah F. Anzia, “Election Timing and the Electoral Influence of Interest Groups,” *The Journal of Politics*, vol. 72, no. 3 (May 2011), pp. 412-427.

<sup>25</sup> CRS Legal Sidebar LSB10425, *Postponing Federal Elections and the COVID-19 Pandemic: Legal Considerations*, by Jacob D. Shelly, p. 2.

## Are Liquor Sales Prohibited on Election Day?

Not anymore. A long tradition in American politics offered strong drink as an incentive for voters to turn out and support certain candidates at the polls.<sup>26</sup> As of the early 1970s, alcohol sales were “prohibited almost uniformly on Election Day, at least during polling hours.”<sup>27</sup> States abandoned the policy over time, and South Carolina lifted the nation’s last statewide Election Day liquor ban in 2014.<sup>28</sup>

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<sup>26</sup> Lisa Bramen, “Swilling the Planters With Bumbo: When Booze Bought Elections,” *Smithsonian Magazine*, October 20, 2010, at <https://www.smithsonianmag.com/arts-culture/swilling-the-planters-with-bumbo-when-booze-bought-elections-102758236>.

<sup>27</sup> National Commission on Marihuana and Drug Abuse, *Marihuana: A Signal of Misunderstanding: Appendix: The Technical Papers of the First Report of the National Commission on Marihuana and Drug Abuse*, 1972, p. 512.

<sup>28</sup> Cassie Cope, “SC to Permit Sales of Liquor for First Time on Election Day,” *The State*, November 3, 2014, at <https://www.thestate.com/news/local/article13908065.html>.