

Joint Session of Congress for Counting Electoral Votes for President

December 10, 2024

Congressional Research Service

<https://crsreports.congress.gov>

R48309



R48309

December 10, 2024

Elizabeth Rybicki

Specialist on Congress and
the Legislative Process

L. Paige Whitaker

Legislative Attorney

R. Sam Garrett

Specialist in American
National Government

Joint Session of Congress for Counting Electoral Votes for President

Every four years, the House and Senate meet in a joint session to count the votes for President and Vice President that were submitted by electors from each state and the District of Columbia (DC). This is the final step of the electoral college process. The actions leading up to the joint session and the procedures for counting the electoral vote are governed by the Twelfth Amendment to the Constitution, federal law (3 U.S.C. §§3-21), and the rules and precedents of the House and Senate.

After Election Day in November, the states and DC appoint electors. Each state appoints the number of electors equal to the number of Representatives and Senators they have in Congress, and DC appoints three electors. No later than six days before the electors meet to vote, and in accordance with state laws enacted prior to Election Day, the executive of each state (typically the governor) and DC must issue a *certificate of ascertainment* that names the electors and records the popular vote. The certificates of ascertainment are sent to the Archivist of the United States immediately upon issuance, and are made public by the National Archives and Records Administration. The state executive also transmits six duplicate-originals of the certificates of ascertainment to the state's electors on or before the day of their meeting.

The electors meet to cast their votes for President and Vice President on the first Tuesday after the second Wednesday in December. The electors meet in their individual states, typically in the state capital. The electors prepare and sign six *certificates of vote*, which list those persons who received electoral votes and the number of electoral votes each received. The six certificates of vote are paired and sealed with the six certificates of ascertainment and immediately transmitted to Congress and various federal and state government officials.

Certificates of ascertainment issued at least six days prior to the meeting of electors and in accordance with state laws enacted prior to Election Day, or issued or revised pursuant to judicial relief granted prior to the day electors meet, are to be treated as conclusive by the joint session. Federal law establishes an expedited procedure for federal courts to hear certain claims brought by aggrieved presidential and vice presidential candidates. If a candidate brings suit under the U.S. Constitution or the federal law addressing either the issuance or transmission of certificates of ascertainment, the case is to be heard by a three-judge federal court and may be directly reviewed by the U.S. Supreme Court.

On January 6, or another date if established by federal law, the House and Senate meet in the hall of the House where the certificates are opened, the electors' votes are tallied, and the result of the election is formally announced. The President of the Senate, who is the Vice President of the United States, usually presides at the joint session, performing largely ministerial duties and exercising no unilateral authority over what certificates are presented. Certificates of vote meeting the requirements of federal law are handed to tellers appointed prior to the joint session (usually the chairs and ranking members of the Committee on House Administration and the Senate Rules and Administration Committee). The tellers verify the authenticity of the certificates and read the number of electoral votes each presidential and vice presidential candidate received. The tellers provide a tally of the vote to the President of the Senate, who announces the winners of the election.

Federal statute creates a process for the House and Senate to separately consider whether or not to count some or all of the electoral votes of a state. An objection can be raised on the grounds that the electors were not "lawfully certified" or the electoral votes were not "regularly given." To trigger this process in the joint session, a written objection signed by one-fifth of the House (usually 87 Representatives) and one-fifth of the Senate (usually 20 Senators) is submitted. The Senate then withdraws from the hall of the House so that each chamber can separately debate and vote on the objection. If a majority of the House and a majority of the Senate both agree to not count the electoral vote(s) objected to, then the vote(s) is not counted. Electoral votes have not been excluded from the count by a decision of the joint session since the late nineteenth century; objections were debated but rejected by both chambers in 1969, 2005, and 2021.

Normally, all states and DC appoint the full number of electors they are entitled to, leading to 538 electors, of which 270 is a majority. If a state or DC does not appoint the full number of electors to which they are entitled, or if an objection on the grounds that electors were not lawfully certified is sustained by both the House and Senate, then the total number of electoral votes of which a majority is needed is reduced. If no candidate wins a majority, the House would elect the President and the Senate would elect the Vice President.

Contents

Introduction	1
Actions Leading Up to the Joint Session of Congress.....	2
Voters Choose Electors on Election Day.....	3
Governors Issue Certificates of Ascertainment	4
NARA Receives and Reviews Certificates of Ascertainment	5
Electors Meet to Cast Votes.....	5
Electors Sign and Transmit Certificates of Vote.....	6
President of the Senate or Archivist Requests Missing Certificates, if Applicable.....	7
Expedited Judicial Review for Aggrieved Candidates	8
Counting Electoral Votes in the Joint Session of Congress.....	8
Venue and Date for Counting Electoral Votes	9
Congressional Actions Prior to the Joint Session of Congress.....	9
Approval of Concurrent Resolution.....	9
Appointment of Tellers	9
Procedures of the Joint Session.....	9
Opening of Votes.....	10
Verification and Reading of Votes by Tellers.....	10
Counting the Votes and Announcing the Results	11
Majority Required for Election.....	12
The Role of the Presiding Officer	12
Objecting to the Counting of Electoral Votes.....	14
Making an Objection.....	14
Procedures for Considering Objections	15
Past Instances of Objections.....	16
1969: Objection to Vote of One Elector from North Carolina	16
2005: Objection to Electoral Votes from Ohio.....	17
2021: Objections to Electoral Votes of Arizona and Pennsylvania.....	17
Attempts to Object in 2001 and 2017	18
Subsequent Actions If No Candidate Receives an Electoral Majority	18

Figures

Figure 1. Sample Certificate of Ascertainment and Certificate of Vote, 2020	2
---	---

Tables

Table 1. Selected Events from Election Day to Inauguration Day	3
--	---

Appendixes

Appendix A. 3 U.S.C. §5: Certificate of Ascertainment of Appointment of Electors	19
--	----

Contacts

Author Information.....	20
-------------------------	----

Introduction

Every four years, the House and Senate meet in a joint session where the electoral votes for President and Vice President are officially counted and announced. Most of the time, these joint sessions are brief and ceremonial: there is no debate permitted during the joint session, and there are usually no votes taken by Congress in connection with the count and the declaration of results. The President of the Senate presents certified electoral votes sent from each state and the District of Columbia.¹ Members of the House and Senate serving as tellers verify that the documentation sent from each state is authentic—based on requirements established in federal law—and then read the results from each state. Members might cast votes in relation to the electoral votes of a state if one-fifth of the Members from each chamber raise an objection. In that case, the joint session separates so that the House and Senate can each debate and vote in relation to the objection(s). Electoral vote(s) from a state are not counted if a majority in both chambers agree not to count them. After the tellers finish reading the results of each state, they prepare a tabulation and the President of the Senate announces who is elected President and Vice President of the United States.

The joint session is often referred to colloquially as “certifying” the presidential election. More precisely, the joint session is where the electoral votes from each state are verified and counted. Certification of the votes of the electors—meaning, authentication of the results of the presidential election administered separately by each state—happens at the state level, as required by the Twelfth Amendment.²

This report describes the final stages of the U.S. presidential election, from requirements on the states regarding transmissions to Congress through to the announcement of the final result by the President of the Senate at the end of the joint session. Authorities governing the process described in this report include the Constitution;³ the Electoral Count Act and related provisions, as amended by the Electoral Count Reform Act of 2022;⁴ (as codified in Title 3 of the United States Code);⁵ and precedents of the House and Senate.⁶

Other CRS Reports discuss elements of the presidential election process that are beyond the scope of this report.⁷

¹ Throughout this report, the term “state” is used to reference the 50 states and the District of Columbia (DC), which is granted three electors under the Twenty-Third Amendment to the Constitution. For more information, see CRS In Focus IF12682, *Electoral College Overview*.

² The Twelfth Amendment states the electors shall make a list of who they voted for, including the number of votes for each, which they shall “sign and certify,” and later refers to these documents as “certificates.” For further discussion of the Twelfth Amendment, see Congressional Research Service, *Twelfth Amendment: Election of President*, Constitution Annotated, <https://constitution.congress.gov/browse/amendment-12/> (last visited Nov. 28, 2024).

³ U.S. Const. art. II, §1; U.S. Const. Amend. XII.

⁴ P.L. 117-328, 136 Stat. 5240. See also 3 U.S.C. §22, providing a severability clause for provisions of the Electoral Count Reform Act (ECRA) whereby if any provision of the ECRA is held unconstitutional, the remaining provisions are not to be affected.

⁵ 3 U.S.C. §§3-21.

⁶ Throughout this report, the term “law” or “statute” is used to describe provisions in 3 U.S.C. §§3-21.

⁷ See, for example, CRS Report R46565, *Federal Election Results: Frequently Asked Questions* and CRS In Focus IF12682, *Electoral College Overview*.

Actions Leading Up to the Joint Session of Congress

Throughout the period between Election Day and the joint session, states finalize their electoral votes and transmit those decisions to Congress. The states communicate presidential election results using two related but different state-issued certificates. The joint session relies on this documentation as evidence of official state action. *Certificates of ascertainment* name electors and record the popular vote.⁸ *Certificates of vote* record the electors' votes during the meeting that constitutes the electoral college.⁹ Samples of these documents appear in **Figure 1** below.

Figure 1. Sample Certificate of Ascertainment and Certificate of Vote, 2020

State of Kansas
Certificate of Ascertainment
 Certificate of Election of Electors of President and Vice President
To All To Whom These Presents Shall Come, Greetings:
 THESE PRESENTS CERTIFY, That at the regular election held under the provisions of the General Election Laws in the State of Kansas, on the third day of November, A.D. 2020, the following persons received the greatest number of votes for electors of President and Vice President and are thereby the duly elected Electors of President and Vice President.

Republican Party
 Treatha Brown-Foster, Wichita, 771,406
 Mark Kahrs, Wichita, 771,406
 Helen Van Etten, Topeka, 771,406
 Shannon Golden, Lawrence, 771,406
 Michael Kuckelmann, Olathe, 771,406
 Emily Wellman, Alden, 771,406

That the total number of votes received by all others who were candidates for Electors of President and Vice President in said State at said election is as follows:

Democratic Party
 Greg Enrique Bradley-Lopez, Kansas City, 370,323
 Alyce Edwards, Kansas City, 370,323
 Anthony Hensley, Topeka, 370,323
 Yuki Hatt, Shawnee, 370,323
 Teresa Garcia-Kruse, Winfield, 370,323
 Ryan Rios, Lawrence, 370,323

Libertarian Party
 Sharon Dutton, Topeka, 30,574
 Loren John Homerek, Wichita, 30,574
 Nad Kufny, Fortland Park, 30,574
 Michael Kerner, Lenexa, 30,574
 David (Doc) Koehn, Cimarron, 30,574
 Lavonia Ragsdale, Winwood, 30,574

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Kansas, at the State Capitol, in the City of Topeka, this fourteenth day of December, A.D. 2020.

Laura Bell
 Governor of the State of Kansas
 ATTEST:
Joan Schuch
 Secretary of State of the State of Kansas

State of Kansas
2020 General Election
Presidential Electoral College
Certificate of Vote
 We, the undersigned, electors of President and Vice President of the United States of America for the respective terms beginning on the twentieth day of January, A.D. two thousand and twenty-one, being electors duly and legally appointed and qualified by and for the State of Kansas, as appears by the annexed certificate made and delivered to us by the Executive of the said State, having met and convened, agreeably to the provisions of law, at Topeka in said State of Kansas on the first Monday after the second Wednesday of December of the year two thousand twenty, being the fourteenth of said month,
 DO HEREBY CERTIFY, That being so assembled and duly organized, we proceeded to vote by ballot, and balloted first for President and then for Vice President by distinct ballots,
 AND WE FURTHER CERTIFY, That the following are two distinct lists, one of the votes for President and the other of the votes for Vice President, so cast as aforesaid:

LIST OF ALL PERSONS VOTED UPON FOR PRESIDENT

Names of Persons Voted for:	Number of Votes
DONALD J. TRUMP	Six

LIST OF ALL PERSONS VOTED UPON FOR VICE PRESIDENT

Names of Persons Voted for:	Number of Votes
MICHAEL R. PENCE	Six

IN TESTIMONY WHEREOF, We have hereunto set our hands, on the first Monday after the second Wednesday of December, A.D. two thousand twenty, being the fourteenth day of said month;

Treatha Brown-Foster
 Treatha Brown-Foster
Mark Kahrs
 Mark Kahrs
Helen Van Etten
 Helen Van Etten
Shannon Golden
 Shannon Golden
Michael Kuckelmann
 Michael Kuckelmann
Emily Wellman
 Emily Wellman

Source: CRS figure from 2020 Kansas submissions to the National Archives and Records Administration; see <https://www.archives.gov/files/electoral-college/2020/ascertainment-kansas.pdf> and <https://www.archives.gov/files/electoral-college/2020/vote-kansas.pdf>.

Compliance with provisions of federal law concerning these documents affects several steps in the joint session. For example, the presiding officer presents the votes of electors appointed under a certificate of ascertainment issued in accordance with the procedures outlined in federal law. Similarly, the tellers only count the votes of electors appointed under a certificate of ascertainment in compliance with the procedures in federal law. For this reason, and also to provide a description of the steps taken by state and federal officials after Election Day (previewed in **Table 1** below), this section of the report describes the statutory provisions in detail, and the statutory text concerning certificates of ascertainment is provided in **Appendix A**.

⁸ 3 U.S.C. §5. The results from the general election constitute the *popular vote*. For more information, see CRS In Focus IF12682, *Electoral College Overview*.

⁹ 3 U.S.C. §9.

The subsequent section of this report describes in detail the actions of the joint session, including the ways in which state compliance with the federal law affects those actions.

Table 1. Selected Events from Election Day to Inauguration Day

Event	Date	Authority
General election to appoint electors (popular vote on Election Day)	Next Tuesday after first Monday in November of quadrennial election year (11/05/2024)	3 U.S.C. §1; 3 U.S.C. §21
Governors issue certificates of ascertainment of appointment of electors	No later than six days before electors meeting (12/11/2024)	3 U.S.C. §5
Electors meet in the states and cast their votes for President and Vice President	First Tuesday after second Wednesday in December of election year (12/17/2024)	3 U.S.C. §7
President of the Senate or Archivist requests missing certificates (if applicable)	Fourth Wednesday in December of election year (12/25/2024)	3 U.S.C. §12
Congress meets to count electoral votes	January 6 following election year (01/06/2025)	3 U.S.C. §15
Inauguration Day	January 20 following election year (01/20/2025)	U.S. Const. Amend. XX, §1

Source: CRS analysis of cited authorities.

Note: As noted in the report text, “state” also refers to DC. The Mayor of the District of Columbia fulfills gubernatorial functions.

Voters Choose Electors on Election Day

Voters cast ballots for presidential and vice-presidential electors on Election Day or in a period of early voting prior to Election Day.¹⁰ States appoint electors based on the outcome of the popular vote.¹¹ The Constitution provides Congress with the power to determine when the states choose their electors and “the Day on which they shall give their Votes; which Day shall be the same throughout the United States.”¹² Accordingly, Congress established the same date, every four years, for the states to elect presidential and vice-presidential electors, known as Election Day.¹³ Under that federal law, the presidential and vice-presidential Election Day is the “Tuesday next after the first Monday in November” four years after the previous presidential election.¹⁴ In 2024, Election Day was November 5. In the event of “force majeure events that are extraordinary and catastrophic,” federal law permits states to modify the period that citizens can vote, but the

¹⁰ 3 U.S.C. §1. On early voting generally, see CRS In Focus IF11477, *Early Voting and Mail Voting: Overview & Issues for Congress*. See also CRS Legal Sidebar LSB11244, *Election 2024: Recent Court Rulings on Voting and Counting Ballots*.

¹¹ Maine and Nebraska appoint electors based on a combination of statewide and congressional-district results. All other states and the District of Columbia rely on winner-take-all methods to allocate electors. See CRS In Focus IF12682, *Electoral College Overview*.

¹² U.S. CONST. Art. II, §1, cl. 4.

¹³ 3 U.S.C. §1. See also *Foster v. Love* 522 U.S. 67, 72 n. 4 (1997) (explaining the Supreme Court’s holding that an election cannot be concluded as a matter of law or “consummated” prior to the federal Election Day).

¹⁴ 3 U.S.C. §21.

modification must be made in accordance with a state law that was enacted *prior* to Election Day.¹⁵

Governors Issue Certificates of Ascertainment

In accordance with state laws enacted prior to Election Day, Governors of the states must issue certificates of ascertainment (such as the sample in **Figure 1**) appointing presidential and vice-presidential electors no later than six days before the electors meet in the states.¹⁶ In 2024, the certificate-of-ascertainment deadline is December 11, six days before the electoral college meeting on December 17. Under the statute, certificates of ascertainment issued no later than six days before the electoral college meeting, and in accordance with state laws enacted prior to Election Day or under court order, “shall be treated as conclusive in Congress.”¹⁷

Certificates of ascertainment must contain:

- elector names and the canvas or other tally of votes the electors received;
- the state seal; and
- “at least one security feature, as determined by the State,” to verify authenticity.¹⁸

Governors must transmit the certificate of ascertainment to the Archivist of the United States “immediately” upon issuance, using “the most expeditious method available.”¹⁹ The National Archives and Records Administration (NARA) reviews the certificates of ascertainment and makes them public.²⁰

The Governor also transmits to the state’s electors, “on or before” the day of the electoral college meeting, “six duplicate-originals” of the certificates of ascertainment.²¹ These duplicate-originals are later affixed to certificates of vote for distribution to various officials specified in statute.²²

¹⁵ 3 U.S.C. §21.

¹⁶ 3 U.S.C. §5. The statute refers to the “executive” of each state issuing certificates of ascertainment. It defines “executive” to mean a state’s Governor or the Mayor of the District of Columbia, unless state law “in effect as of election day expressly require[s] a different State executive to perform the duties identified under this chapter.” See 3 U.S.C. §21. See also Derek T. Muller, *Election Subversion and the Writ of Mandamus*, 65 W. & MARY L. REV. 327, 365 (2023) (observing that the federal law “created a clear legal duty on the executive ... [that] can be readily enforceable in mandamus proceedings in state court”). Section 4 of Title 3 of the U.S. Code further provides, “Each State may, by law enacted prior to election day, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote.” For the purposes of this report, “governors” refers to the relevant state executive issuing certificates of ascertainment as defined in statute.

¹⁷ 3 U.S.C. §5(c).

¹⁸ 3 U.S.C. §5(a)(2).

¹⁹ 3 U.S.C. §5(b)(1).

²⁰ Occasionally, such as in the case of a recount, a state will issue a revised certificate of ascertainment. See, for example, State of Georgia “Certificate of Ascertainment (Amendment and Re-Certification),” dated December 7, 2020; and State of Georgia “Certificate of Ascertainment,” dated November 20, 2020, available on NARA’s website, <https://www.archives.gov/files/electoral-college/2020/ascertainment-georgia.pdf>.

²¹ See 3 U.S.C. §5(b)(2) and 3 U.S.C. §9.

²² 3 U.S.C. §11.

NARA Receives and Reviews Certificates of Ascertainment

In practice, the Office of the Federal Register (OFR) at NARA carries out many electoral college functions on behalf of the Archivist.²³ According to NARA, certificates of ascertainment “should begin arriving at NARA and OFR within a few weeks following Election Day.”²⁴ NARA describes its review process as follows:

OFR staff, on behalf of the Archivist, verify that the State Certificates have all elements required by statute (3 U.S.C. § 6) and that as long as a Certificate contains all required elements, the Archivist accepts the Certificate and makes it publicly available. If there are any problems with a Certificate of Ascertainment, OFR notifies the State’s point(s) of contact about the problem. After the Certificates of Ascertainment have been determined to be facially sufficient OFR posts them [on the NARA website].²⁵

The statute requires the Archivist to preserve certificates of ascertainment for one year and to make the certificates available for public inspection.²⁶

Electors Meet to Cast Votes

Presidential and vice-presidential electors meet in their states, thus constituting the electoral college, on “the first Tuesday after the second Wednesday” in December.²⁷ In 2024, that date is December 17. Electors cast their votes as specified in the U.S. Constitution.²⁸ In particular, under the Twelfth Amendment:

- Electors meet in their individual states. The electoral college does not meet as a single body.
- Electors cast “distinct ballots” for President and for Vice President, and make lists of all persons who received votes and the number of votes received.²⁹

Most states require presidential electors to pledge to support the nominee of their respective political party if that candidate wins the popular vote in the state (or district, in Maine and Nebraska) to avoid what is known as “faithless electors.”³⁰ In 2020, the Supreme Court held that Article II, Section 1 and the Twelfth Amendment of the Constitution provide states with the

²³ See National Archives and Records Administration, *Roles and Responsibilities in the Electoral College Process*, <https://www.archives.gov/electoral-college/roles>. Previous election results and copies of certificates of ascertainment are available on the National Archives and Records Administration (NARA) website, <https://www.archives.gov/electoral-college/results>.

²⁴ According to NARA, certificates can arrive in NARA’s mailroom or directly from states to OFR. See National Archives and Records Administration, *Roles and Responsibilities in the Electoral College Process*, <https://www.archives.gov/electoral-college/roles>.

²⁵ National Archives and Records Administration, *Roles and Responsibilities in the Electoral College Process*, <https://www.archives.gov/electoral-college/roles>.

²⁶ 3 U.S.C. §6. In practice, OFR carries out these duties on behalf of the Archivist. National Archives and Records Administration, *Roles and Responsibilities in the Electoral College Process*, <https://www.archives.gov/electoral-college/roles>. Previous election results and copies of certificates of ascertainment are available on the National Archives and Records Administration (NARA) website, <https://www.archives.gov/electoral-college/results>.

²⁷ 3 U.S.C. §7.

²⁸ U.S. Const. Amend. XII; 3 U.S.C. §8.

²⁹ U.S. Const. Amend. XII.

³⁰ See *Chiafalo v. Washington*, 591 U.S. 578, 585 (2020).

authority to penalize or replace presidential electors who do not cast their ballots for the presidential and vice-presidential candidates who won the state's popular vote.³¹

Electors Sign and Transmit Certificates of Vote

The Twelfth Amendment and federal law specify how electors certify and transmit their presidential and vice-presidential votes (such as the sample certificate of vote in **Figure 1**).

- The Twelfth Amendment requires electors to “sign and certify” their lists reflecting the presidential and vice-presidential votes, seal them, and send them to Washington, DC (the “seat of government”), directing them to the President of the Senate.³²
- Federal law specifies that electors sign six certificates containing separate lists of votes for President and for Vice President. These certificates are “sealed up” together with the certificates of ascertainment issued by the Governor.³³
- The statute requires electors to “immediately transmit” six copies of the sealed certificates containing their votes, along with the certificates of ascertainment, as noted in **Table 2** below. As noted previously, multiple copies of the certificates provide redundancy in case one or more copies do not arrive as specified.

Table 2. Recipients for Completed Certificates of Ascertainment and Certificates of Vote

Number of Copies	Recipient	Notes
1	President of the U.S. Senate	Transmitted to the “seat of government” in Washington, DC
2	Chief State Election Officer	Chief State Election Officer holds one copy “subject to the order” of the President of the U.S. Senate and retains one copy for one year, open to public inspection
2	Archivist of the United States	Transmitted to the “seat of government” in Washington, DC Archivist holds one copy “subject to the order” of the President of the U.S. Senate and retains one copy for one year, open to public inspection
1	“judge of the district” in which the electors met	U.S. District Court for the location in which the electors met

Source: CRS analysis of 3 U.S.C. §11.

³¹ Ibid. at 597 (holding that state authority to appoint electors under Article II, Section 1, clause 2 and the Twelfth Amendment of the Constitution includes not only the power to condition electors’ appointment upon a pledge to support the state’s popular vote winner, but also the authority to impose penalties on those electors who violate that pledge). At the time *Chiafalo* was decided, the Court identified laws in 32 states and the District of Columbia requiring electors to pledge to cast their ballots for their parties’ nominees for President and Vice President, with 15 of those states providing for sanctions on electors for noncompliance. See *ibid.* at 585.

³² U.S. Const., Amend. XII.

³³ 3 U.S.C. §§9, 10. See also, the “Governors Issue Certificates of Ascertainment” section.

Note: At the stage of the process described in the table, electors transmit their certificates of vote “together with the annexed certificates of ascertainment of appointment of electors” described in the report text above. See also 3 U.S.C. §10.

According to NARA, certificates of vote “begin arriving at NARA and OFR shortly after the meeting of the electors.”³⁴ NARA describes its review process, which is similar to the review process for certificates of ascertainment, as follows:

OFR staff, on behalf of the Archivist, verify that the State Certificates have all elements required by statute (3 U.S.C. § 11) and that as long as a Certificate contains all required elements, the Archivist accepts the Certificate and makes it publicly available. If there are any problems with a Certificate of Vote, OFR notifies the State’s point(s) of contact about the problem. After the Certificates of Vote have been determined to be facially sufficient, OFR posts them [on the NARA website].³⁵

President of the Senate or Archivist Requests Missing Certificates, if Applicable

The statute specifies procedures for the President of the U.S. Senate or the Archivist of the United States to request missing certificates of vote. If either official has not received certificates by the fourth Wednesday in December (which is December 25 in 2024), the President of the Senate “shall request, by the most expeditious method available,” that the Chief State Election Officer (typically the Secretary of State) send the missing certificates.³⁶ The statute also specifies that it is the “duty” of the Chief State Election Official to comply “immediately.”³⁷ The Archivist may request missing certificates if the President of the Senate is absent from the seat of government.³⁸ The President of the Senate or Archivist “shall” also “send a special messenger to the district judge” in the state to retrieve missing certificates.³⁹

NARA has explained its procedures for obtaining missing certificates as follows:

OFR holds one of the two original Certificate of Vote pairs subject to the call of the President of the Senate in case one or more of the Certificates of Vote fail to reach the Senate on time. If the Archivist does not receive a Certificate of Vote from a State by a week after the meeting of the electors, OFR calls that State’s point(s) of contact to make sure the Certificates of Vote were sent and asks the State to trace the package. If OFR does not receive any Certificates of Vote from a State by the deadline for receipt of electoral votes (the fourth Wednesday in December), OFR gets a duplicate original from the chief election officer of the State or the Federal District judge (3 U.S.C. §§ 12 and 13).⁴⁰

³⁴ According to NARA, certificates can arrive in NARA’s mailroom or directly from states to OFR. See National Archives and Records Administration, *Roles and Responsibilities in the Electoral College Process*, <https://www.archives.gov/electoral-college/roles>.

³⁵ National Archives and Records Administration, *Roles and Responsibilities in the Electoral College Process*, <https://www.archives.gov/electoral-college/roles>.

³⁶ 3 U.S.C. §12.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ 3 U.S.C. §13.

⁴⁰ National Archives and Records Administration, *Roles and Responsibilities in the Electoral College Process*, <https://www.archives.gov/electoral-college/roles>.

Expedited Judicial Review for Aggrieved Candidates

Federal law establishes venue and an expedited procedure for federal courts to hear certain claims brought by aggrieved presidential and vice-presidential candidates.⁴¹ Specifically, if an aggrieved candidate brings suit under the U.S. Constitution, or under the federal law addressing the issuance or transmission of certificates of ascertainment, the case is to be heard by a three-judge district court⁴² in the federal district court where the relevant state capitol is located.⁴³ The law provides that the three-judge court is to consist of two judges of the circuit court of appeals where the federal district court is located and one judge of the district court where the case is brought.⁴⁴ Further, the law requires the court “to expedite [the case] to the greatest possible extent ... consistent with all other relevant deadlines.”⁴⁵

If a party to the case wishes to appeal the district court’s ruling, the party may file a petition of writ of certiorari with the U.S. Supreme Court. The Court may directly review the district court’s final judgment “on an expedited basis” so that a final order by the district court following remand may occur before or on the date that the presidential electors meet to vote (which is December 17 for the 2024 election).⁴⁶ The law specifies that the requirements for venue and expedited judicial review procedures for the specified types of claims do not “preempt or displace” other types of claims in state and federal courts.⁴⁷ In other words, the law clarifies that while the venue and expedited review procedures for the specified types of claims are required, the law does not affect the availability of claims that candidates and others may bring under federal and state law.

For the joint session, federal law requires that any certificate of ascertainment that a state or federal court requires to be issued or revised “shall replace and supersede any other certificates submitted” so long as the court order is issued prior to day the electors meet.⁴⁸ Further, the law specifies that a federal court ruling regarding a certificate of ascertainment on issues arising under the U.S. Constitution or a federal law “shall be conclusive in Congress.”⁴⁹

Counting Electoral Votes in the Joint Session of Congress

The procedures for the joint session of Congress to count electoral votes are based partially on federal law and partially on long-standing precedents and practices. This is no different than how the House and Senate operate generally: broadly written rules, including rule-making provisions of law, are supplemented by decisions about specific proceedings that are recorded and followed

⁴¹ 3 U.S.C. §5(d).

⁴² The law provides that, except as specified, the three-judge court is to be convened pursuant to 28 U.S.C. §2284. 3 U.S.C. §5(d)(1)(B).

⁴³ 3 U.S.C. §5(d)(1)(A).

⁴⁴ 3 U.S.C. §5(d)(1)(B).

⁴⁵ 3 U.S.C. §5(d)(1)(C).

⁴⁶ 3 U.S.C. §5(d)(1)(D).

⁴⁷ 3 U.S.C. §5(d)(2)(B).

⁴⁸ 3 U.S.C. §5(c)(1)(B).

⁴⁹ 3 U.S.C. §5(c)(2). To date, the expedited judicial review process set forth in the federal law has not been invoked.

consistently over time.⁵⁰ This section of the report describes the relevant provisions of the Constitution and federal law, as well as the precedents and current practices of Congress, that apply to the counting of electoral votes.

Venue and Date for Counting Electoral Votes

The electoral votes are opened in a joint session of the House and Senate on the sixth day of January following a presidential election.⁵¹ This date is set by federal law, not the Constitution, and the date has been modified several times in previous Congresses (such as when January 6 fell on a Sunday).⁵² The federal law concerning the electoral count further provides that the joint session occur in the hall of the House and convene at 1 o'clock in the afternoon.⁵³

Congressional Actions Prior to the Joint Session of Congress

Approval of Concurrent Resolution

The House and Senate routinely agree to a concurrent resolution prior to the joint session that establishes many of the proceedings that are also provided for in the law.⁵⁴ These resolutions are privileged for consideration in the House; in practice, they are laid before the House by the Speaker when received from the Senate and approved without debate. In the Senate, such resolutions have routinely been called up and approved by unanimous consent.⁵⁵

Appointment of Tellers

Federal law provides that the presiding officers in each chamber appoint two Members to serve as tellers during the joint session.⁵⁶ The four tellers are usually the Members who are (or who are expected to be) the Chair and Ranking Member of the Committee on House Administration and the Senate Committee on Rules and Administration. These committees have jurisdiction over matters relating to the election of the President and Vice President.

Procedures of the Joint Session

On the date and time established by law and concurrent resolution, the Senate Sergeant-at-Arms arrives at the hall of the House to announce the arrival of the President of the Senate and

⁵⁰ The House and Senate have the constitutional authority to determine their own rules. For more information on the multiple authorities, including precedent, that govern House and Senate procedure, see CRS Report RL30787, *Parliamentary Reference Sources: House of Representatives*, pp. 1-3 and CRS Report RL30788, *Parliamentary Reference Sources: Senate*, pp. 1-5.

⁵¹ 3 U.S.C. §15(a).

⁵² The last three times the date was changed were in 2013 (to Friday, January 4; P.L. 112-238); 2009 (to Thursday, January 8; P.L. 110-430), and 1997 (to Thursday, January 9; P.L. 104-296). *Constitution, Jefferson's Manual, and Rules of the House of Representatives, One Hundred Eighteenth Congress, 117th Cong. 2nd sess.*, H.Doc. 117-161 (Washington, GPO, 2023), §220.

⁵³ 3 U.S.C. §15(a).

⁵⁴ See, for example, S.Con.Res. 1, 117th Congress, S.Con.Res. 2, 115th Congress, S.Con.Res. 1, 113th Congress, and S.Con.Res. 1, 111th Congress. The concurrent resolutions largely restated provisions of 3 U.S.C. §15 concerning the time and place of the meeting of the joint session, the appointment of tellers, how the certificates are opened, presented, and read in the alphabetical order of the states, and the announcement of the results.

⁵⁵ At least since 1981, all such concurrent resolutions have originated in the Senate.

⁵⁶ 3 U.S.C. §15(d)(1)(A).

Senators. The electoral vote certificates and their certificates of ascertainment (as sent to the President of the Senate by the states, see the sample in **Figure 1**) are carried by Senate pages in wooden boxes down the center aisle of the House and placed at the rostrum. There are two chairs at the top of the rostrum where the President of the Senate sits immediately to the right of the Speaker of the House. The tellers sit at the center tier of the House rostrum; Senators take seats in the hall to the right of the presiding officer, and Representatives take seats on the left.⁵⁷

The President of the Senate calls the joint session to order and announces that the chambers are meeting in joint session to verify the certificates and count the votes of the electors.⁵⁸

Opening of Votes

Federal statute directs that the President of the Senate “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 [of Title 3 of the U.S. Code].”⁵⁹ The powers of the presiding officer acting in this capacity are ministerial in nature: if the papers received from the states were certified and transmitted in accordance with the requirements of federal law, they must be opened. The National Archives and Records Administration (NARA) and the Officers of the House and Senate, including the Parliamentarians, have long assisted in preparing for the certificates received from the states to be presented to the joint session.⁶⁰ The President of the Senate does not have the authority under the Constitution or federal statute to exercise discretion over whether to present the certificates of vote of the electors.⁶¹

Verification and Reading of Votes by Tellers

With the assistance of staff from the Offices of the Parliamentarian from both chambers, the President of the Senate opens the certificates of the votes of electors in alphabetical order by state (beginning with Alabama) and hands the certificates and accompanying papers to the tellers. The law requires that the certificates and accompanying papers be read out loud by the tellers.⁶² In

⁵⁷ Seats for officers and Members of two Houses in joint session are established in 3 U.S.C. §16.

⁵⁸ The joint session is normally expected to continue until the count is completed and the results are announced. The statute provides that the joint session not recess unless an objection or other question arises in regard to the counting of any vote, in which case each chamber, acting separately, could recess but not beyond the next calendar day at 10 a.m. (Sunday excepted). If the count is not completed “before the fifth calendar day next after such first session of the two Houses, no further or other recess shall be taken by either House.” 3. U.S.C. §16.

⁵⁹ 3 U.S.C. §15(d). See **Appendix A** for text of Section 5.

⁶⁰ In 2020, individuals in some states prepared documents alleging to be certificates of vote of electors for President and Vice President, and sent the documents to the Senate and the National Archives. The documents did not carry a certificate of ascertainment issued by the state executive as required by federal law. Therefore, they were not presented to the joint session. The President of the Senate stated, as each certificate was presented, “This certificate from [state], the Parliamentarians have advised me, is the only certificate of vote from that State that purports to be a return from the State and that has annexed to it a certificate from an authority of the State purporting to appoint and ascertain electors.” The documents that were not accepted as evidence of official state action have been made available by the National Archives and Records Administration at <https://www.archives.gov/foia/2020-presidential-election-unofficial-certificates>, last visited October 12, 2024.

⁶¹ 3 U.S.C. §15(b)(2) states: “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.”

⁶² 3 U.S.C. §15(d)(1)(B).

practice, the joint session usually dispenses with the reading of the formal portions of the certificates.⁶³ Instead, the tellers examine the certificates and announce, for each state:

The certificate of the electoral vote of the State of _____ seems to be regular in form and authentic, and it appears therefrom that [presidential candidate] of the State of _____ received ____ votes for President and [vice presidential candidate] of the State of _____ received ____ votes for Vice President.

If, at this point, an objection is not raised to the counting of any electoral votes from that state, the President of the Senate hands the certificate of the votes of electors from the next state in alphabetical order to a teller.⁶⁴

Counting the Votes and Announcing the Results

After the results from each state are read, the tellers tabulate the results, listing the votes as they appear on the certificates. The tellers count only the votes of electors appointed under a certificate of ascertainment issued in accordance with the procedures outlined in federal law,⁶⁵ with one exception: if an objection to counting the vote of an elector is sustained by a majority vote in both houses.⁶⁶

The tally is then given to the President of the Senate, who announces the results of the vote, which “shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States.”⁶⁷ The results are recorded in the *House Journal* and *Senate Journal*, the constitutionally-mandated minutes of each chamber.

1961 Treatment of Two Certificates from the State of Hawaii

In 1961, the electors of Vice President Richard M. Nixon for Hawaii were first certified as having been appointed, and then, due to a subsequent recount ending in late December (which determined that Senator John F. Kennedy had won the Hawaii vote), the electors of Senator John F. Kennedy were certified. Both slates of electors had met on the prescribed day in December, cast their votes for President and Vice President, and transmitted them according to terms of the federal statute then in effect. The certificate of ascertainment for the Kennedy electors, however, was dated January 4. Both certificates of electoral votes were opened and examined by the tellers. The presiding officer, Vice President Nixon, suggested “without the intent of establishing a precedent” that the latter and more recent certification of Senator Kennedy be accepted so as “not to delay the further count of electoral votes.” This was agreed to by unanimous consent. See *Congressional Record*, vol. 107 (January 6, 1961) pp. 288-291, and *Deschler's Precedents of the House of Representatives*, ch. 10, §3.5.

⁶³ For example, in 2021, the Vice President stated, “Without objection, the tellers will dispense with the reading of the formal portions of the certificates.” *Congressional Record*, daily edition, vol. 167 (January 6, 2021), p.H76. No such unanimous consent agreement was reached in 2001.

⁶⁴ 3 U.S.C. §15(d)(2)(A) requires that the President of the Senate ask if there are any objections after the reading of the certificate of vote, but in practice this is not always asked. In the 2001 and 2021 count, the Vice President asked if there were any objections. In other recent joint sessions (including 2005, 2009, 2013 and 2017), the question was not asked. For more information on objections, see “Objecting to the Counting of Electoral Votes.”

⁶⁵ 3 U.S.C. §15(e)(1)((A) states “only the votes of electors who have been appointed under a certificate of ascertainment of appointment of electors issued pursuant to section 5, or who have legally been appointed to fill a vacancy of any such elector pursuant to section 4, may be counted.” For the text of section 5, see **Appendix A**. Section 5 includes the requirement that the State executive shall issue a certificate of ascertainment no later than six days before the day of the meeting of electors and that certificates issued pursuant to court orders issued prior to the date of the meeting of electors shall “replace or supersede any other certificates submitted pursuant to this section.”

⁶⁶ See “Objecting to the Counting of Electoral Votes.”

⁶⁷ 3 U.S.C. §15(e)(3).

Majority Required for Election

Under the Twelfth Amendment of the Constitution, the candidate receiving “a majority of the whole number of Electors appointed” shall be President.⁶⁸ Normally, all states and the District of Columbia appoint the full number of electors they are entitled to under the Constitution,⁶⁹ leading to a total of 538 electors, of which 270 is a majority.

The majority needed to win the election may be less than 270 in certain conditions. If a state does not lawfully appoint the number of electors to which they are entitled, the total number of electors of which a candidate needs a majority is reduced.⁷⁰ In addition, the number of electors needed would also be reduced in the event that an objection to counting the vote of an elector is sustained by both houses on the grounds that the electors were not “lawfully certified.”⁷¹ There has been no instance of a state failing to appoint the full number of electors, or of an objection being sustained, since the Civil War and Reconstruction era.⁷²

If an elector is appointed but does not vote, the total number of electors is not reduced. The situation is unusual, but in 2001, only two of the three electors appointed from the District of Columbia cast votes. The total number of electors of which a candidate needed a majority was not reduced, but remained at 538, even though the number of votes cast for President (271 for George W. Bush and 266 for Albert A. Gore, Jr.) was equal to 537.⁷³

The Role of the Presiding Officer

The Twelfth Amendment states that the President of the Senate, who is the Vice President of the United States, “shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted.”⁷⁴ Federal law provides that the President of the Senate shall be the presiding officer of the joint session.⁷⁵ The Vice President of the United States is sometimes a candidate in the presidential election, and therefore, in several instances, the Vice

⁶⁸ U.S. Const. Amend. XII.

⁶⁹ Article II, Section 1 of the Constitution allocates to each state the number of electors equal to the number of Representatives and Senators the state is entitled to. The Twenty-Third Amendment to the Constitution grants the District of Columbia the number of electors that would be granted if it were a state, except “in no event more than the least populous State.”

⁷⁰ 3 U.S.C. §15(e)(2). The determination of how many electors were appointed is based on the certificate of ascertainment issued in accordance with the statutory requirements of 3 U.S.C. §5 (see **Appendix A**).

⁷¹ Ibid. Federal law does not provide, however, that the total number of electors of which a majority be reduced if an objection is sustained on the grounds that the vote was not “regularly given.” See “Objecting to the Counting of Electoral Votes.”

⁷² CRS Report RL30769, *Electoral Vote Counts in Congress: Survey of Certain Congressional Practices* (out of print, but available from the authors of this report to congressional clients upon request).

⁷³ *Congressional Record*, daily edition, vol. 147 (January 6, 2001), p.H44.

⁷⁴ U.S. Const. Amend. XII.

⁷⁵ 3 U.S.C. §15(a).

President has presided over the electoral count in which he was a candidate.⁷⁶ If the Vice President does not preside, then the President Pro Tempore of the Senate presides.⁷⁷

As described above, the primary responsibilities of the presiding officer are to call the joint session to order, to hand certificates of election meeting the requirements specified in federal law to tellers (who verify they are authentic and read results aloud), and to announce the final result of the count. The Members of the House and Senate sitting in the Hall of the House observe these procedures and can raise an objection to an electoral vote.⁷⁸ Representatives and Senators do not take any actions collectively in this forum, which is best conceived of as two separate legislative bodies meeting in the same hall; as such, the role of the presiding officer is limited.⁷⁹

The statute directs the President of the Senate to open the certificates of the votes of electors and papers “purporting” to be certificates.⁸⁰ It goes on, however, to state that the certificates of vote to be opened are those of electors appointed pursuant to a certificate of ascertainment issued pursuant to federal law.⁸¹

Finally, federal law states:

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.⁸²

The statute also states:

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.⁸³

⁷⁶ Since the enactment of the Electoral Count Act in 1887, there have been four instances in which the Vice President of the United States was a candidate for President (not including the 2024 election). Most recently, in 2001, Vice President Albert A. Gore, Jr., a candidate for President, presided over the joint session to count the electoral votes and announced George W. Bush was the winner. In 1989, Vice President George H.W. Bush presided over the joint session to count the electoral votes and announced himself as the winner. In 1969, Vice President Hubert Humphrey, who was a candidate for President, declined to preside over the joint session to count electoral votes in which he would have announced Richard Nixon as the winner. In Humphrey’s absence, Senator Richard Russell, President pro tempore of the Senate, presided. In 1961, Vice President Richard Nixon, a candidate for President, presided over the joint session to count the electoral votes and announced John F. Kennedy was the winner. Prior to 1887, there are an additional five instances in which the Vice President was a candidate for President, and in three of those instances the Vice President presided and in the other two the President pro tempore of the Senate presided.

⁷⁷ For example, in 1949 and 1965, the office of the Vice President was vacant, and in 1969, the Vice President declined to preside. In these cases, the President pro tempore presided over the joint session. See also U.S. Congress, House, *Deschler’s Precedents of the United States House of Representatives*, prepared by Lewis Deschler, 94th Cong., 2nd sess., H.Doc. 94-661 (Washington: Government Printing Office, 1977), (hereinafter *Deschler’s Precedents of the House of Representatives*), vol. 3, ch. 10, Section 2.5.

⁷⁸ If a valid objection is raised, the Senate withdraws from the hall of the House, and each chamber debates and votes on the objection separately. (See section, “Objection to the Counting of Electoral Votes.”)

⁷⁹ Pursuant to 3 U.S.C. §18, the only question that can be put to either house by the presiding officer in the joint session—meaning, the only vote that can occur in the joint session—is on a motion that the Senate withdraw to consider an objection. This motion has not been made in modern practice; the Senate withdraws to consider an objection without a vote on a motion.

⁸⁰ 3 U.S.C. §15(d)(1)(A).

⁸¹ Ibid. For a description of these statutory requirements, see “Governors Issue Certificates of Ascertainment,” for statutory text see **Appendix A**.

⁸² 3 U.S.C. §15(b).

⁸³ 3 U.S.C. §15(b).

The statute assigns an additional role to the President of the Senate: “the President of the Senate shall have power to preserve order” during the joint session.⁸⁴ This includes, for example, not recognizing Members who seek to speak during the joint session, because debate is not allowed. In recent joint sessions, the Vice President has ruled that objections to electoral votes were not admissible because they lacked sufficient signatures, and that incidental parliamentary motions and a point of no quorum needed sufficient support from Members of both chambers to be made. The Vice President has also declined to entertain parliamentary inquiries and unanimous consent requests for debate.⁸⁵

Objecting to the Counting of Electoral Votes

Since the early nineteenth century, joint sessions to count electoral votes have had a process to determine what to count.⁸⁶ The House and Senate are separate legislative bodies; the Members of each never meet together as one body to vote. In the event that there are questions about the validity of an electoral vote submitted by a state, the House and Senate must separate to consider and decide the issue. The current method for doing so is described below, followed by a description of instances in which objections were raised.

Making an Objection

Federal statute requires that an objection be made in writing and that it be signed by one-fifth of Senators duly chosen and sworn (20 Senators if no more than four vacancies) and one-fifth of Representatives duly chosen and sworn (87 Representatives if no more than four vacancies).⁸⁷ The objection cannot contain argument; it may only state “clearly and concisely” the grounds for objection.

An objection can be made against some or all of a state’s electoral votes. The only grounds for objection are:

- The electors of the state were not lawfully certified under a certificate of ascertainment issued pursuant the section of the law requiring that the state executive issue a certificate of ascertainment of appointment of electors (1) no later than six days before the meeting of electors,⁸⁸ (2) pursuant to the laws of the state that (3) were enacted prior to Election Day.⁸⁹
- The vote of one or more electors was not “regularly given.”⁹⁰

⁸⁴ 3 U.S.C. §18.

⁸⁵ See *Congressional Record*, vol. 147 (January 6, 2001), pp. 101-115; *Congressional Record*, daily edition, vol. 163 (January 6, 2017), pp. H185-H190; and *Congressional Record*, daily edition, vol. 167 (January 6, 2021), pp. H76-H77; H94-H98; H113-H115.

⁸⁶ For a description of the electoral counts from 1789-1875, including an objection made in 1817 by a Member to the counting of electoral votes from Indiana cast prior to the admission of the state to the Union, see Asher C. Hinds, *Hinds' Precedents of the House of Representatives of the United States*, (Washington: Government Printing Office, 1907), vol. 3, chapter LIX.

⁸⁷ 3 U.S.C. §15(d)(2)(B)(i). Prior to the enactment of the Electoral Count Reform Act in 2022 (Division P, Title I of P.L. 117-328, 136 Stat. 5240), objections required just one signature from each chamber.

⁸⁸ In 2024, December 11 is six days before the meeting of electors on December 17.

⁸⁹ 3 U.S.C. §15(d)(2)(B)(ii) states the grounds for objection is that the electors “were not lawfully certified under a certificate of ascertainment of appointment of electors according to section 5(a)(1).” For the text of section 5(a)(1), see **Appendix A**.

⁹⁰ 3 U.S.C. §15(d)(2)(B)(ii).

A definition of “regularly given” is not provided in statute; see “Past Instances of Objections” for examples from 1969, 2005, and 2021 when objections were raised on these grounds, including a case of a “faithless elector” in 1969.⁹¹

Procedures for Considering Objections

According to statute, when an objection properly made in writing and endorsed by one-fifth of each chamber is received, each chamber is to meet and consider it separately.⁹² Before the Senate withdraws from the hall of the House, the presiding officer will ask if there are any further objections to allow all objections related to the electoral votes of one state to be considered at the same time. The chambers cannot consider multiple objections from different states at one time, however.⁹³ As soon as all proper objections related to one state are received, “the Senate shall thereupon withdraw.”⁹⁴

The federal statute establishes special procedures that limit debate time for each chamber to consider any objections.⁹⁵ Specifically, all objections and any related questions are debated for a total of two hours. Senators and Representatives can speak for a maximum of five minutes, and only once. The debate time is equally divided and controlled by the Majority and Minority Leaders, or their respective designees, which means that these leaders determine the order in which Members speak and for how long (presumably the Leaders can yield less, but not more, than 5 minutes to a Member).⁹⁶ At the end of two hours, the presiding officer in each chamber puts the objection(s) to a vote without further debate.⁹⁷ In the event of multiple objections, a vote on each is put separately to the chamber (even though they are debated together during the same two-hour period). A majority of those voting, a quorum being present, is necessary to sustain an objection.

⁹¹ Legal scholars have opined on the meaning of the term “regularly given.” See, for example, Derek T. Muller, *Electoral Votes Regularly Given*, 55 Ga. L. Rev. 1529, 1534-40 (2021) (arguing that the term “regularly given” is best understood as “cast pursuant to law,” and refers only to controversies occurring after the presidential electors have been appointed); Richard Pildes, *The Electoral Count Reform Act Prohibits Congress From Rejecting a State’s Electoral Votes Based on Congress’ “View” about a State’s Voting Process*, Election Law Blog (October 16, 2024), <https://electionlawblog.org/?p=146302> (maintaining that the term “regularly given” refers only to issues arising after a state has determined the winner of a presidential election and has appointed electors, such as an elector voting at the wrong location or casting a vote under duress).

⁹² 3 U.S.C. §15(d)(2)(C).

⁹³ 3 U.S.C. §15(d)(2)(D). In 1873, the joint session agreed without objection and for reasons of convenience, to entertain objections with regard to two or more states before the houses met separately on any of them. Asher C. Hinds, *Hinds’ Precedents of the House of Representatives of the United States*, (Washington: Government Printing Office, 1907), vol. 3, §1251. This has not been done since the enactment of the Electoral Count Act of 1887.

⁹⁴ 3 U.S.C. §15(d)(2)(C).

⁹⁵ 3 U.S.C. §17. The procedures established are for an objection or “other question arising in the matter.” Other questions would need the same number of signatures from Members of both chambers. Examples of other questions that have arisen, but were not considered due to lack of sufficient signatures, include an objection for lack of a quorum, and appeal from a ruling of the presiding officer, and a motion that either chamber withdraw. *Constitution, Jefferson’s Manual, and Rules of the House of Representatives, One Hundred Eighteenth Congress*, 117th Cong. 2nd sess., H.Doc. 117-161 (Washington, GPO, 2023), §220.

⁹⁶ An objection has not been debated under these statutory procedures because they were changed to provide for controlled time in 2022 with the enactment of Electoral Count Reform Act. Division P, Title I of P.L. 117-328, 136 Stat. 5240.

⁹⁷ 3 U.S.C. §17(4) states at the close of debate, “it shall be the duty of the presiding officer of each House to put each of the objections and questions to a vote without further debate.” Under a similar provision in the 1887 version of the law, which provided that after debate, “it shall be the duty of the presiding officer of each House to put the main question without further debate,” the presiding officer in each house held in 1969 that a motion to table the objection was not in order. *Deschler’s Precedents*, ch. 10, §3.7, pp. 18-20.

The statute requires that after the two houses have voted on the objection, they shall immediately meet again in joint session.⁹⁸ When the joint session resumes, the Secretary of the Senate announces the results from the Senate, and the Clerk of the House announces the results from the House. If both chambers agree to the objection, the electoral votes from that state are not counted.⁹⁹ If one or both chambers do not agree to the objection, then the President of the Senate announces that the certificate submitted by the state will be counted.

Past Instances of Objections

Since the objection procedures were codified in federal law in 1887, there have been three joint sessions in which properly signed objections were raised in relation to one or more electoral votes: 1969, 2005, and 2021. The below descriptions provide the names of the first signers from each chamber; the total number of signatures from each chamber; the results of the votes in each chamber; and a brief summary of some of the grounds for the objection as argued by the objectors during debate in the House and Senate.

1969: Objection to Vote of One Elector from North Carolina

In 1969, the objection related to an instance of what has been called a “faithless elector.” Representative James O’Hara of Michigan and Senator Edmund S. Muskie of Maine objected in writing to counting the vote of an elector from North Carolina who had been expected to cast his vote for Richard Nixon and Spiro Agnew, but who instead cast his vote for George Wallace and Curtis LeMay. At the time, only one signature from each chamber was required to make a valid objection, but 37 Representatives and 6 Senators signed the objection and their names were printed in the *Congressional Record*.¹⁰⁰ The written objection stated that the vote was not:

regularly given in that the plurality of votes of the people of North Carolina were cast for Richard M. Nixon for President and for Spiro T. Agnew for Vice President and the State thereby appointed thirteen electors to vote for Richard M. Nixon for President and for Spiro T. Agnew for Vice President and appointed no electors to vote for any other persons. Therefore, no electoral vote of North Carolina should be counted for George C. Wallace for President or for Curtis E. LeMay for Vice President.”¹⁰¹

In this instance, the elector whose vote was challenged was from a state that did not, by law, bind its electors to vote only for the candidates to whom they were pledged.¹⁰² Both chambers met and voted separately to reject the objection, so when the joint session resumed, the challenged electoral vote was counted as cast.¹⁰³

⁹⁸ 3 U.S.C. §15(d)(2)(D).

⁹⁹ 3 U.S.C. §15(e)(1)(B).

¹⁰⁰ *Congressional Record*, vol. 115, part 1 (January 6, 1969), p. 146.

¹⁰¹ *Ibid*.

¹⁰² For discussion of state laws prohibiting “faithless electors” and a related Supreme Court ruling, see “Electors Meet to Cast Votes.”

¹⁰³ When the two chambers reconvened in joint session, the Secretary of the Senate reported that the Senate had agreed to the following action: “Ordered, that the Senate by a vote of 33 ayes to 58 nays rejects the objection to the electoral votes cast in the State of North Carolina for George C. Wallace for President and Curtis E. LeMay for Vice President.” The Clerk of the House stated the results of the House action: “Ordered, that the House of Representatives rejects the objection to the electoral vote of the State of North Carolina submitted by the Representative from Michigan, Mr. O’Hara, and the Senator from Maine, Mr. Muskie.” *Congressional Record*, vol. 115 (January 6, 1969), p. 171. The House vote was 170-228. See also *Deschler’s Precedents*, vol. 3, chap. 10, §3.6. Both houses used roll call votes to decide the question.

2005: Objection to Electoral Votes from Ohio

In 2005, Representative Stephanie Tubbs Jones of Ohio and Senator Barbara Boxer of California objected in writing to the Ohio electoral votes. Under the procedures in place in 2005, only one signature from each chamber was required to make a valid objection. The written objection stated simply that the vote was not “regularly given.” The chambers withdrew from the joint session to consider the objection, and during debate in the House, Members referenced a number of reported issues with how the vote was conducted by the state, including but not limited to long lines at polling places potentially due to the misallocation of voting machines, the denial of provisional ballots, and flaws in voter registration procedures.¹⁰⁴ The House and Senate each rejected the objection, and when the House and Senate resumed the joint session, the electoral votes were counted as cast.¹⁰⁵

2021: Objections to Electoral Votes of Arizona and Pennsylvania

In 2021, objections were raised to the electoral votes of Arizona and Pennsylvania.

Representative Paul Gosar of Arizona and Senator Ted Cruz of Texas objected in writing to the counting of all the electoral votes of Arizona on the grounds that they were not “regularly given.” The signature of only one Representative and one Senator was enough to raise a valid objection in 2021, but an additional 58 Representatives and 7 Senators also signed the objection.¹⁰⁶ The chambers separated, and during debate, those objecting to counting the Arizona electoral votes explained they did so in part due to changes that were made to state election procedures without enacting a new state law; specifically, the voter registration deadline was extended by court order. Members in debate also referenced reports of various issues concerning the administration of the election, including issues with voter rolls and signature verification, as well as challenges to investigating those reports.¹⁰⁷ Both the House and Senate rejected the objection. The joint session reconvened, and the electoral votes from Arizona were counted.¹⁰⁸ The tellers in joint session continued to announce the results of each state, in alphabetical order.

No further objection was made until the tellers reached the state of Pennsylvania, when Representative Scott Perry of Pennsylvania and Senator Josh Hawley of Missouri objected in writing to the counting of all the electoral votes of the state on the grounds that they were not “regularly given.” An additional 77 House Members signed the objection. The Senate withdrew from the hall of the House, and each chamber debated the objection separately. Reasons stated for the objection during debate included the extension of a deadline for mail-in ballots by the

¹⁰⁴ *Congressional Record*, daily edition, vol. 151 (January 6, 2005), pp. H86-H127.

¹⁰⁵ When the two chambers reconvened in joint session, the Secretary of the Senate reported that the Senate had agreed to the following action: “Ordered, that the Senate by a vote of 1 aye to 74 nays rejects the objection to the electoral votes cast in the State of Ohio for George W. Bush for President and Richard Cheney for Vice President.” The Clerk of the House then stated the results of the House action: “Ordered, that the House of Representatives rejects the objection to the electoral vote of the State of Ohio.” *Congressional Record*, daily edition, vol. 151 (January 6, 2005), p. H128. The House vote was 31-267. Both houses used roll call votes to decide the question.

¹⁰⁶ *Congressional Record*, daily edition, vol. 167 (January 6, 2021), p. H77. The name of a 59th Representative as an “additional signer” was submitted for printing in the *Congressional Record* later in the day (p. H102).

¹⁰⁷ *Congressional Record*, daily edition, vol. 167 (January 6, 2021), pp. H77-H94 and S14-S31.

¹⁰⁸ When the two chambers reconvened in joint session, the Secretary of the Senate reported that the Senate had agreed to the following action: “Ordered, that the Senate by a vote of 6 ayes to 93 nays rejects the objection to the electoral votes cast in the State of Arizona for Joseph R. Biden, Jr. for President and Kamala D. Harris for Vice President.” The Clerk of the House then stated the results of the House action: “Ordered, that the House of Representatives rejects the objection to the electoral vote of the State of Arizona.” *Congressional Record*, daily edition, vol. 167 (January 6, 2021), p. H94. The House vote was 121-303. Both houses used roll call votes to decide the question.

Pennsylvania Supreme Court and implementation of state law by executive branch officials, relating, for example, to the use of drop boxes for ballots and to the authentication of signatures on mail-in ballots.¹⁰⁹ Both the House and the Senate rejected the objection and the electoral votes of Pennsylvania were counted in the joint session.¹¹⁰

Attempts to Object in 2001 and 2017

In the 2001 and 2017 joint sessions, Members of the House sought recognition from the presiding officer, sometimes announcing that they had an objection or wished to make a parliamentary inquiry. The presiding officer asked if the objection or other attempted action was in writing and properly signed. When the Representative responded that no Senator had signed the objection, the presiding officer did not recognize the Member for debate. Although in some cases Representatives claimed to have objections that other Representatives had signed, there is no record of these attempted objections and their signatories because they were not actually received as objections.¹¹¹

Subsequent Actions If No Candidate Receives an Electoral Majority

The Twelfth Amendment provides that if no candidate wins a majority of the votes of electors appointed, the U.S. House of Representatives elects the President.¹¹² If no candidate wins a majority for the vice presidency, the U.S. Senate elects the Vice President. Such scenarios are known as *contingent elections*. A contingent election in the House or Senate would follow the joint session described above if neither candidate won a majority. Additional discussion appears in another CRS product.¹¹³

¹⁰⁹ *Congressional Record*, daily edition, vol. 167 (January 6, 2021), pp. H99-H112 and S32-S38. In the Senate, discussion of the objection occurred pursuant to a unanimous consent agreement that Senators be permitted to speak up to five minutes as if in morning business (p. S32); when the actual objection was before the Senate, no Senator chose to debate it (p. S38).

¹¹⁰ When the two chambers reconvened in joint session, the Secretary of the Senate reported that the Senate had agreed to the following action: “Ordered, that the Senate by a vote of 7 ayes to 92 nays rejects the objection to the electoral votes cast in the Commonwealth of Pennsylvania for Joseph R. Biden, Jr. for President and Kamala D. Harris for Vice President.” The Clerk of the House then stated the results of the House action: “Ordered, that the House of Representatives rejects the objection to the electoral vote of the Commonwealth of Pennsylvania.” *Congressional Record*, daily edition, vol. 167 (January 6, 2021), p. H113. The House vote was 138-282. Both houses used roll call votes to decide the question.

¹¹¹ For proceedings of the joint sessions, including attempts of House Members to object without a signature of a Senator, see *Congressional Record*, daily edition, vol. 147 (January 6, 2001), pp. H31-H45 and *Congressional Record*, daily edition, vol. 163 (January 6, 2017), pp. H185-H190.

¹¹² U.S. Const. Amend. XII.

¹¹³ See CRS Report R40504, *Contingent Election of the President and Vice President by Congress: Perspectives and Contemporary Analysis*.

Appendix A. 3 U.S.C. §5: Certificate of Ascertainment of Appointment of Electors

(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.

(2) Form of certificate.-Each certificate of ascertainment of appointment of electors shall-

(A) set forth the names of the electors appointed and the canvass or other determination under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast;

(B) bear the seal of the State; and

(C) contain at least one security feature, as determined by the State, for purposes of verifying the authenticity of such certificate.

(b) Transmission.-It shall be the duty of the executive of each State-

(1) to transmit to the Archivist of the United States, immediately after the issuance of a certificate of ascertainment of appointment of electors and by the most expeditious method available, such certificate of ascertainment of appointment of electors; and

(2) to transmit to the electors of such State, on or before the day on which the electors are required to meet under section 7, six duplicate-originals of the same certificate.

(c) Treatment of Certificate as Conclusive.-For purposes of section 15:

(1) In general.-

(A) Certificate issued by executive.-Except as provided in subparagraph (B), a certificate of ascertainment of appointment of electors issued pursuant to subsection (a)(1) shall be treated as conclusive in Congress with respect to the determination of electors appointed by the State.

(B) Certificates issued pursuant to court orders.-Any certificate of ascertainment of appointment of electors required to be issued or revised by any State or Federal judicial relief granted prior to the date of the meeting of electors shall replace and supersede any other certificates submitted pursuant to this section.

(2) Determination of federal questions.-The determination of Federal courts on questions arising under the Constitution or laws of the United States with respect to a certificate of ascertainment of appointment of electors shall be conclusive in Congress.

(d) Venue and Expedited Procedure.-

(1) In general.-Any action brought by an aggrieved candidate for President or Vice President that arises under the Constitution or laws of the United States with respect to the issuance of the certification required under section (a)(1), or the transmission of such certification as required under subsection (b), shall be subject to the following rules:

(A) Venue.-The venue for such action shall be the Federal district court of the Federal district in which the State capital is located.

(B) 3-judge panel.-Such action shall be heard by a district court of three judges, convened pursuant to section 2284 of title 28, United States Code, except that-

(i) the court shall be comprised of two judges of the circuit court of appeals in which the district court lies and one judge of the district court in which the action is brought; and

(ii) section 2284(b)(2) of such title shall not apply.

(C) Expedited procedure.-It shall be the duty of the court to advance on the docket and to expedite to the greatest possible extent the disposition of the action, consistent with all other relevant deadlines established by this chapter and the laws of the United States.

(D) Appeals.-Notwithstanding section 1253 of title 28, United States Code, the final judgment of the panel convened under subparagraph (B) may be reviewed directly by the Supreme Court, by writ of certiorari granted upon petition of any party to the case, on an expedited basis, so that a final order of the court on remand of the Supreme Court may occur on or before the day before the time fixed for the meeting of electors.

(2) Rule of construction.-This subsection-

(A) shall be construed solely to establish venue and expedited procedures in any action brought by an aggrieved candidate for President or Vice President as specified in this subsection that arises under the Constitution or laws of the United States; and

(B) shall not be construed to preempt or displace any existing State or Federal cause of action.

Author Information

Elizabeth Rybicki
Specialist on Congress and the Legislative Process

R. Sam Garrett
Specialist in American National Government

L. Paige Whitaker
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.