

THE 2020 PRESIDENTIAL ELECTION PROVISIONS OF THE CONSTITUTION AND U.S. CODE



PREFACE

The National Archives and Records Administration (NARA) is proud to acknowledge its role in the Presidential election process. NARA's Office of the Federal Register (OFR) acts as the administrator of the Electoral College and carries out the duties of the Archivist. In this role, the OFR is charged with helping the States carry out their election responsibilities, ensuring the completeness and integrity of the Electoral College documents submitted to Congress, and informing the public about the Presidential election process.

The Electoral College system was established under Article II and Amendment 12 of the U.S. Constitution. In each State, the voters choose electors to select the President and Vice President of the United States, based on the results of the November general election.

Before the general election, the Archivist officially notifies each State's governor and the Mayor of the District of Columbia of their electoral responsibilities. OFR provides instructions and resources to help the States and District of Columbia carry out those responsibilities. As the results of the popular vote are finalized in each state, election officials create Certificates of Ascertainment, which establish the credentials of their electors, that are sent to OFR. In December, the electors hold meetings in their States to vote for President and Vice President. The electors seal Certificates of Vote and send them to the OFR and Congress. In January, Congress sits in joint session to certify the election of the President and Vice President. In the year after the election, electoral documents are held at the OFR for public viewing, and then transferred to the Archives of the United States for permanent retention and access.

In this Presidential election year, the cover of this pamphlet shows a representation of the Electoral College system in celebration of the spirit of the American democratic process.

For more information on the Electoral College, visit NARA's web site at:

<https://www.archives.gov/electoral-college/>

Our thanks are extended to the Creative Services Division of the U.S. Government Printing Office for its assistance in developing this cover.

This pamphlet has been compiled and published by the Office of the Federal Register, National Archives and Records Administration, for use by the Executives and Electors of the several States in the performance of their duties in connection with Presidential Elections.

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2020 PRESIDENTIAL ELECTION

Summary of Key Dates, Events and Information

General Authority:

The Archivist of the United States, as the head of the National Archives and Records Administration (NARA), is responsible for carrying out ministerial duties on behalf of the States and the Congress under 3 U.S.C. sections 6, 11, 12, and 13. NARA is primarily responsible for coordinating the various stages of the electoral process by helping the States prepare and submit certificates that establish the appointment of electors and validate the electoral votes of each State. The Archivist delegates operational duties to the Director of the Federal Register. Office of the Federal Register (OFR) staff ensures that electoral documents are transmitted to Congress, made available to the public, and preserved as part of our nation's history. OFR staff reviews the electoral certificates for the required signatures, seals, and other matters of form, as specified in Federal law. Only the Congress and the Courts have the authority to rule on substantive legal issues.

In this pamphlet, the word "State" also refers to the District of Columbia and the word "Governor" also refers to the Mayor of the District of Columbia.

1. June through October 2020

Preparation Stage:

OFR Legal staff prepare letters and instructional materials for the Archivist to send to the Governors of the 50 States and the Mayor of the District of Columbia.

The materials include this pamphlet and detailed instructions on how to prepare and submit the electors' credentials (Certificates of Ascertainment) and the electoral votes (Certificates of Vote).

- During the summer and fall, OFR Legal staff begin contacting Governors and Secretaries of State to establish contacts for the coming election.

2. November 3, 2020

General Election (first Tuesday after first Monday in November):

- The voters in each State choose slates of electors to serve in the Electoral College. Forty-eight of the fifty States and the District of Columbia are "winner-take all" (Maine and Nebraska are the exceptions).

3. Mid-November through December 14, 2020

Sending Certificates of Ascertainment to NARA:

The Certificates of Ascertainment list the names of the electors appointed and the number of votes cast for each person.

- The States prepares no less than **SEVEN** originals, which are authenticated by the Governor's signature and the State seal, and **TWO** certified copies. Alternatively, **NINE** originals may be prepared.

One original along with two certified copies (or three originals, if nine were prepared) must be sent to the Archivist, David S. Ferriero, c/o Office of the Federal Register (F).

The Governors must submit the Certificates of Ascertainment "as soon as practicable" after their States certify election results.

- The remaining SIX original Certificates of Ascertainment will be attached to the Certificates of Vote at the State meetings.

4. December 8, 2020

Date for Determination of Controversy as to Appointment of Electors:

- States must make final determinations of any controversies or contests as to the appointment of electors *at least six days before* the December 14 meetings of electors for their electoral votes to be presumptively valid when presented to Congress. Determinations by States' lawful tribunals are conclusive, if decided under laws enacted prior to election day.

5. December 14, 2020

Meeting of the Electors and Sending Certificates of Vote to NARA (first Monday after second Wednesday in December):

- The electors meet in their respective States to select the President and Vice President of the United States. No Constitutional provision or Federal law requires electors to vote in accordance with the popular vote in their States. The Supreme Court decided (in 2020) that States can enact requirements on how electors vote. The Electoral College web site lists the States that we are aware of that have laws to bind electors to candidates.

The electors record their votes on **SIX** "Certificates of Vote,"

which are then paired with the **SIX** remaining original Certificates of Ascertainment.

- After signing the Certificates of Vote, the electors seal and certify the electoral votes in packages containing a paired original Certificate of Ascertainment and original Certificate of Vote. They immediately distribute the paired certificates as follows:

- **One pair** of original certificates is sent to the President of the Senate (Michael R. Pence)

- **Two pairs** of original certificates are sent to the Archivist, David S. Ferriero, c/o Office of the Federal Register (F)

The Archivist holds one pair subject to the order of the President of the United States Senate in case the electoral votes fail to reach the Senate. The other pair is held by the Office of the Federal Register for public inspection for one year.

- **Two pairs** of certificates are sent by registered mail to the Secretary of State of each State, who holds one pair subject to the order of the President of the United States Senate in case the electoral votes fail to reach the Senate.

- **One pair** of original certificates is sent to the Chief Judge of the Federal District Court located where the electors meet. It is held subject to the order of the President of the United States Senate or the Archivist of the United States in case the electoral votes fail to reach the Senate or the Archivist.

6. December 23, 2020

Deadline for Receipt of Electoral Votes at NARA (no later than nine days after the meeting of the electors):

- The President of the Senate and the Archivist should have the electoral votes in hand by December 23, 2020. If votes are lost or delayed, the Archivist may take extraordinary measures to retrieve duplicate originals.

7. On or Before January 3, 2021

Transfer of Certificates to Congress:

- As the new Congress assembles, the Archivist transmits sets of Certificates to Congress, as requested. This generally happens when the Senate does not receive its set of Certificates on time. The transfer occurs in late December or early January when OFR's Legal staff meets with representatives of the Secretary of the Senate and the Clerk of the House.

8. January 6, 2021

Counting Electoral Votes in Congress:

- The Congress meets in joint session to count the electoral votes. The President of the Senate is the presiding officer. If a Senator and a House member jointly submit an objection, each House would retire to its chamber to consider it.

The President and Vice President must achieve a majority of electoral votes (270) to be elected. In the absence of a majority, the House selects the President, and the Senate selects the Vice President.

If a State submits conflicting electoral votes to Congress, the two Houses acting concurrently may accept or reject them. If they do not concur, the votes of the electors certified by the Governor of the State would be counted in Congress.

9. January 20, 2021 at Noon

Inauguration:

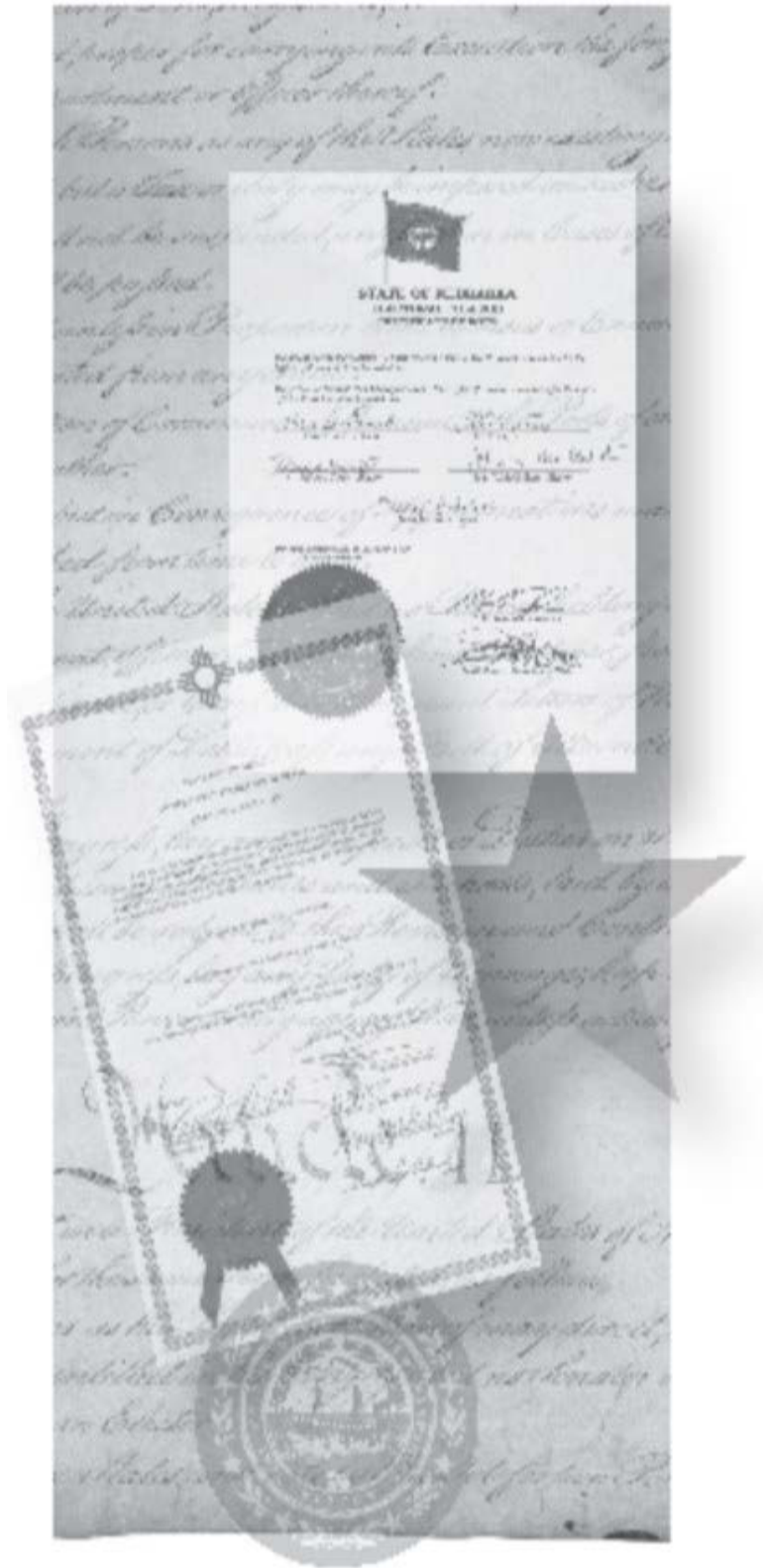
- The President-elect and Vice President-elect take the Oath of Office and become the President of the United States and Vice President of the United States, respectively.

2020 LIST OF STATES AND VOTES

*Allocation of Electoral Votes
(based on the 2010 census)*

Total: 538; Majority Needed to Elect: 270

Alabama – 9	Montana – 3
Alaska – 3	Nebraska – 5
Arizona – 11	Nevada – 6
Arkansas – 6	New Hampshire – 4
California – 55	New Jersey – 14
Colorado – 9	New Mexico – 5
Connecticut – 7	New York – 29
Delaware – 3	North Carolina – 15
District of Columbia – 3	North Dakota – 3
Florida – 29	Ohio – 18
Georgia – 16	Oklahoma – 7
Hawaii – 4	Oregon – 7
Idaho – 4	Pennsylvania – 20
Illinois – 20	Rhode Island – 4
Indiana – 11	South Carolina – 9
Iowa – 6	South Dakota – 3
Kansas – 6	Tennessee – 11
Kentucky – 8	Texas – 38
Louisiana – 8	Utah – 6
Maine – 4	Vermont – 3
Maryland – 10	Virginia – 13
Massachusetts – 11	Washington – 12
Michigan – 16	West Virginia – 5
Minnesota – 10	Wisconsin – 10
Mississippi – 6	Wyoming – 3
Missouri – 10	



ARTICLE II

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

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: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

* * * * *

The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

TWELFTH AMENDMENT

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; 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; 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;—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; 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. ... 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. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President to the United States.

FOURTEENTH AMENDMENT

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *

SECTION 3. No person shall be ... elector of President and Vice President ... who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

FIFTEENTH AMENDMENT

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

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NINETEENTH AMENDMENT

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

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TWENTIETH AMENDMENT

SECTION 1. The terms of the President and 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.

SECTION 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

SECTION 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SECTION 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

* * * * *

TWENTY-SECOND AMENDMENT

SECTION 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

* * * * *

TWENTY-THIRD AMENDMENT

SECTION 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

* * * * *

TWENTY-FOURTH AMENDMENT

SECTION 1. 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.

* * * * *

TWENTY-FIFTH AMENDMENT

SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

SECTION 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

SECTION 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

SECTION 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

TWENTY-SIXTH AMENDMENT

SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

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UNITED STATES CODE

The following provisions of law governing Presidential Elections are contained in Chapter 1 of Title 3, United States Code (62 Stat. 672, as amended):

Title 3 — The President

Chapter 1

Presidential Elections and Vacancies

Section

1. *Time of appointing electors.*
2. *Failure to make choice on prescribed day.*
3. *Number of electors.*
4. *Vacancies in electoral college.*
5. *Determination of controversy as to appointment of electors.*
6. *Credentials of electors; transmission to Archivist of the United States and to Congress; public inspection.*
7. *Meeting and vote of electors.*
8. *Manner of voting.*
9. *Certificates of votes for President and Vice President.*
10. *Sealing and endorsing certificates.*
11. *Disposition of certificates.*
12. *Failure of certificates of electors to reach President of the Senate or Archivist of the United States; demand on State for certificate.*
13. *Same; demand on district judge for certificate.*
14. *Forfeiture for messenger's neglect of duty.*
15. *Counting electoral votes in Congress.*
16. *Same; seats for officers and Members of two Houses in joint meeting.*
17. *Same; limit of debate in each House.*
18. *Same; parliamentary procedure at joint meeting.*
19. *Vacancy in offices of both President and Vice President; officers eligible to act.*
20. *Resignation or refusal of office.*
21. *Definitions.*

Time of Appointing Electors

§ 1. 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.

Failure to Make Choice on Prescribed Day

§ 2. Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.

Number of Electors

§ 3. The number of electors shall be equal to the number of Senators and Representatives to which the several States are by law entitled at the time when the President and Vice President to be chosen come into office; except, that where no apportionment of Representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives.

Vacancies in Electoral College

§ 4. Each State may, by law, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote.

Determination of Controversy as to Appointment of Electors

§ 5. If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provid-

ed in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

Credentials of Electors; Transmission to Archivist of The United States and to Congress; Public Inspection

§ 6. It shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of the electors in such State by the final ascertainment, under and in pursuance of the laws of such State providing for such ascertainment, to communicate by registered mail under the seal of the State to the Archivist of the United States a certificate of such ascertainment of the electors appointed, setting forth the names of such electors and the canvass or other ascertainment 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; and it shall also thereupon be the duty of the executive of each State to deliver to the electors of such State, on or before the day on which they are required by section 7 of this title to meet, six duplicate-originals of the same certificate under the seal of the State; and if there shall have been any final determination in a State in the manner provided for by law of a controversy or contest concerning the appointment of all or any of the electors of such State, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate under the seal of the State to the Archivist of the United States a certificate of such determination in form and manner as the same shall have been made; and the certificate or certificates so received by the Archivist of the United States shall be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection; and the Archivist of the United States at the first meeting of Congress thereafter shall transmit to the two Houses of Congress copies in full of each and every such certificate so received at the National Archives and Records Administration.

Meeting and Vote of Electors

§ 7. The electors of President and Vice President of each State shall meet and give their votes on the first Monday after the second Wednesday in December next following their appointment at such place in each State as the legislature of such State shall direct.

Manner of Voting

§ 8. The electors shall vote for President and Vice President, respectively, in the manner directed by the Constitution.

Certificates of Votes for President and Vice President

§ 9. The electors shall make and sign six certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for President and the other of the votes for Vice President, and shall annex to each of the certificates one of the lists of the electors which shall have been furnished to them by direction of the executive of the State.

Sealing and Endorsing Certificates

§ 10. The electors shall seal up the certificates so made by them, and certify upon each that the lists of all the votes of such State given for President, and of all the votes given for Vice President, are contained therein.

Disposition of Certificates

§ 11. The electors shall dispose of the certificates so made by them and the lists attached thereto in the following manner:

First. They shall forthwith forward by registered mail one of the same to the President of the Senate at the seat of government.

Second. Two of the same shall be delivered to the secretary of state of the State, one of which shall be held subject to the order of the President of the Senate, the other to be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection.

Third. On the day thereafter they shall forward by registered mail two of such certificates and lists to the Archivist of the United States at the seat of government, one of which shall be held subject to the order of the President of the Senate. The other shall be preserved by the Archivist of the United States for one year and shall be a part of the public records of his office and shall be open to public inspection.

Fourth. They shall forthwith cause the other of the certificates and lists to be delivered to the judge of the district in which the electors shall have assembled.

Failure of Certificates of Electors to Reach President of The Senate or Archivist of The United States; Demand on State for Certificate

§ 12. When no certificate of vote and list mentioned in sections 9 and 11 and of this title from any State shall have been received by the President of the Senate or by the Archivist of the United States by the fourth Wednesday in December, after the meeting of the electors shall have been held, the President of

the Senate or, if he be absent from the seat of government, the Archivist of the United States shall request, by the most expeditious method available, the secretary of state of the State to send up the certificate and list lodged with him by the electors of such State; and it shall be his duty upon receipt of such request immediately to transmit same by registered mail to the President of the Senate at the seat of government.

Same; Demand on District Judge for Certificate

§ 13. When no certificates of votes from any State shall have been received at the seat of government on the fourth Wednesday in December, after the meeting of the electors shall have been held, the President of the Senate or, if he be absent from the seat of government, the Archivist of the United States shall send a special messenger to the district judge in whose custody one certificate of votes from that State has been lodged, and such judge shall forthwith transmit that list by the hand of such messenger to the seat of government.

Forfeiture for Messenger's Neglect of Duty

§ 14. Every person who, having been appointed, pursuant to section 13 of this title, to deliver the certificates of the votes of the electors to the President of the Senate, and having accepted such appointment, shall neglect to perform the services required from him, shall forfeit the sum of \$1,000.

Counting Electoral Votes in Congress

§ 15. 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. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted according to the rules in this subchapter provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the

state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 5 of this title to have been appointed, if the determination in said section provided for shall have been made, or by such successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in section 5 of this title, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its law; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed

of.

Same; Seats for Officers And Members of Two Houses in Joint Meeting

§ 16. At such joint meeting of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators, in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this subchapter, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next calendar day, Sunday excepted, at the hour of 10 o'clock in the forenoon. But if the counting of the electoral votes and the declaration of the result shall not have been completed before the fifth calendar day next after such first meeting of the two Houses, no further or other recess shall be taken by either House.

Same; Limit of Debate in Each House

§ 17. When the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter, each Senator and Representative may speak to such objection or question five minutes, and not more than once; but after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate.

Same; Parliamentary Procedure at Joint Meeting

§ 18. While the two Houses shall be in meeting as provided in this chapter, the President of the Senate shall have power to preserve order; and no debate shall be allowed and no question shall be put by the presiding officer except to either House on a motion to withdraw.

Vacancy in Offices of Both President and Vice President; Officers Eligible to Act

§ 19. (a)(1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President.

(2) The same rule shall apply in the case of the death, resignation, removal from office, or inability of an individual acting as President under this subsection.

(b) If, at the time when under subsection (a) of this section a Speaker is to begin the discharge of the powers and duties of the office of President, there is no Speaker, or the Speaker fails to qualify as Acting President, then the President pro tempore of the Senate shall, upon his resignation as President pro tempore and as Senator, act as President.

(c) An individual acting as President under subsection (a) or subsection (b) of this section shall continue to act until the expiration of the then current Presidential term, except that —

(1) if his discharge of the powers and duties of the office is founded in whole or in part on the failure of both the President-elect and the Vice-President-elect to qualify, then he shall act only until a President or Vice President qualifies; and

(2) if his discharge of the powers and duties of the office is founded in whole or in part on the inability of the President or Vice President, then he shall act only until the removal of the disability of one of such individuals.

(d)(1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro tempore to act as President under subsection (b) of this section, then the officer of the United States who is highest on the following list, and who is not under disability to discharge the powers and duties of the office of President shall act as President: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Transportation, Secretary of Energy, Secretary of Education, Secretary of Veterans Affairs.

(2) An individual acting as President under this subsection shall continue so to do until the expiration of the then current Presidential term, but not after a qualified and prior-entitled individual is able to act, except that the removal of the disability of an individual higher on the list contained in paragraph (1) of this subsection or the ability to qualify on the part of an individual higher on such list shall not terminate his service.

(3) The taking of the oath of office by an individual specified in the list in paragraph (1) of this subsection shall be held to

constitute his resignation from the office by virtue of the holding of which he qualifies to act as President.

(e) Subsections (a), (b), and (d) of this section shall apply only to such officers as are eligible to the office of President under the Constitution. Subsection (d) of this section shall apply only to officers appointed, by and with the advice and consent of the Senate, prior to the time of the death, resignation, removal from office, inability, or failure to qualify, of the President pro tempore, and only to officers not under impeachment by the House of Representatives at the time the powers and duties of the office of President devolve upon them.

(f) During the period that any individual acts as President under this section, his compensation shall be at the rate then provided by law in the case of the President.

Resignation or Refusal of Office

§ 20. The only evidence of a refusal to accept, or of a resignation of the office of President or Vice President, shall be an instrument in writing, declaring the same, and subscribed by the person refusing to accept or resigning, as the case may be, and delivered into the office of the Secretary of State.

Definitions

§ 21. As used in this chapter the term —

(a) “State” includes the District of Columbia.

(b) “executives of each State” includes the Board of Commissioners* of the District of Columbia.

* The functions of the Board of Commissioners of the District of Columbia are now performed by the Mayor of the District of Columbia. (Reorganization Plan No. 3 of 1967, Section 401, 81 Stat. 948; Pub. L. 93-198, Sections 422 and 711, 87 Stat. 790, 818.)

MORE INFORMATION

For more information on the Electoral College and the election responsibilities of the States and the Archivist of the United States, visit www.archives.gov/electoral-college.

