

CONGRESS AND THE PRESIDENTIAL ELECTION

FAQ Regarding January 6 Joint Session

On November 3, 2020, voters elected Joe Biden and Kamala Harris as our nation’s next president and vice president by an electoral vote margin of 306 to 232 and a popular vote margin of more than 7.1 million votes. On December 14, presidential electors met in their respective states, cast their ballots, then signed and certified their votes and sent them under seal to Washington, DC, directed to the President of the Senate (*i.e.*, Vice President Pence), as required by the U.S. Constitution’s [12th Amendment](#). The next step in our presidential election process is for Congress to meet on January 6 to count the electoral votes and officially announce the Biden and Harris as the winners.

What’s the process by which Congress counts the electoral votes?

The [12th Amendment](#), together with the [Electoral Count Act of 1887 \(ECA\)](#), provide that on January 6, beginning at 1pm, both chambers of Congress meet in joint session in the House to count electoral votes. [Congress’ job](#) on January 6 is to make sure that the electoral votes received by Congress are the ones cast by electors appointed by the states—authenticating the returns to ensure they are not counterfeit papers—and then counting the votes.

Neither the Constitution nor the ECA grant Congress power to scrutinize the validity of ballots cast by voters on Election Day. Election disputes are to be resolved by courts. President Trump and his allies have lost at least 60 lawsuits challenging the November 3 election results, failing to produce evidence to support their allegations.

The President of the Senate (*i.e.*, Vice President Pence) serves as “presiding officer”—[a strictly ceremonial role](#)—and opens “all the certificates and papers purporting to be certificates of the electoral votes ... in the alphabetical order of the States.” For each state, the Vice President will call for objections, which must be made in writing, clearly stating the ground, and signed by at least one Senator and one Member of the House (see below). After the votes of each state have been read and counted, the presiding officer announces whether any candidates have received the required majority votes (270) and, if so, the candidates are declared elected president and vice president.

What happens if Members of Congress object to a state’s electoral return?

[Dozens of Republican House Members are expected to join with a dozen Senators in objecting](#) to the counting of electoral returns from six states in which President Trump has unsuccessfully challenged election results: Arizona, Georgia, Michigan, Nevada, Pennsylvania and Wisconsin.

When an objection is made to a specific state's electoral return, the Senate withdraws to its chamber and the House and Senate separately deliberate the objection, with debate on the objection capped at two hours. Following debate, the House and Senate vote in their respective chambers on the objection, they immediately reconvene in joint session and the presiding officer announces the decision on the objections. Congress may not move on to the consideration of the next state's votes until the previous objections have been finally disposed of.

A state's electors cannot be rejected unless both the House and Senate agree to do so by a simple majority vote. Given Democratic control of the House, objections from Republicans on January 6 will not change the outcome of the election.

Further, [federal law provides](#) that if a state had by December 8 resolved any "controversy or contest" regarding its November 3 election results, such determination of the state's election result "shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution." This is known as the ECA's "safe harbor" provision. Every state [except Wisconsin](#) reportedly met the December 8 "safe harbor" deadline. (Wisconsin had a legal challenge pending on December 8, but the litigation was resolved in time for electors to cast their ballots on December 14.)

The federal law "safe harbor" provision requires Congress to count electoral votes sufficient to confirm the Biden/Harris victory, even in the presence of objections by House and Senate Members. The electoral votes from states that met the "safe harbor" are presumed valid and must be accepted by the House and Senate.

What happens if Congress is still debating Republican objections to electoral votes on Inauguration Day?

This is exceedingly unlikely to happen. However, if it occurs, the [20th Amendment](#) provides that the "terms of the President and Vice President shall end at noon on the 20th day of January." If at noon on January 20th Congress is still debating electoral votes, then the [Presidential Succession Act](#) governs, with Speaker of the House Nancy Pelosi first in line to serve as acting President until the presidential election dispute is resolved.