

# **The Process of Conducting a US Presidential Election**

**(Or How to “Steal” a Presidential Election)**

## **I. The Five Ways to Win a Presidential Election Without Winning the Popular Vote (Apart from Voter Suppression)**

**A. Fraudulent Ballots (E.g. 1960 Election?)**

**B. State Legislative Overrides (Art. 2; e.g. 1876 Election)**

**C. Using the Courts to Short Circuit or Override Ballot Counting (E.g. 2000 Election)**

**D. Kicking the Election into the House of Representatives (E.g. 1800 & 1824 Elections)**

**E. Winning in the Electoral College with less than a Majority of the Popular Vote (E.g. 1876, 1888, 2000 & 2016 Elections)**

## **II. The Electoral College**

### **A. How It Works**

**1. The Constitutional Provisions (Art. 2 and Amendments 12, 20 and 23)**

**a. Number of Electors (538)**

**b. Majority Required (270)**

**c. Resolution by House (with One Vote per State) if No Majority**

**2. The Current State Decisions**

**a. Deferring to the Popular Vote**

**b. Winner Take All Rule (except Maine & Nebraska)**

### **B. A Little History**

**1. The Founders Intent v. Actual Practice**

- 2. The 1804 Amendment**
- 3. Variations in State Approaches to Selecting Presidential Electors**
  - a. Prior to 1840**
  - b. Since 1840**
- 4. The 1876 Election and Adoption of the Safe-Harbor Provision**
- 5. The 2000 Election**
- 6. Faithless Electors**

### **III. The Actual Mechanics of the Election**

**A. Election Actually Conducted by over 10,500 Local Election Authorities**

**B. Stage 1: The Lead-up to and Election Day (11/3/2020)**

**C. Stage 2: Initial Ballot Counting by Local Authorities (Three Weeks in III. To 11/24/2020)**

- 1. The Election Night and 48 Hour Results**
- 2. Counting of Provisional and Mail-in Ballots**
  - a. Cut-Off Dates**
  - b. Verifications of Mail-In Ballots**
- 3. Resolution of Disputes and Canvassing Results**
- 4. Proclamation and Reporting of Local Results**

**D. Stage 3: Compilation and Reporting of Statewide Results (10 days in III. To 12/04/2020)**

**E. Stage 4: Electoral Votes Cast in States**

**1. Safe Harbor Date for Determination of Elector Slates**

**(Dec. 8, 2020)**

**2. Casting of Illinois and Other States' Presidential and Vice Presidential Electors' Votes and Transmission of Results to U.S. Senate (et al.)**

**(Dec. 14, 2020)**

**F. Stage 5: Counting of Elector Ballots in U.S. Senate**

**(Jan. 6, 2021)**

**G. Stage 6: Inauguration of New President and Vice-President**

**(Jan. 20, 2021)**

**IV. Using Disputes and Objections to Interfere with the Election Results**

**A. Disputes Prior to and on Election Day**

**B. Disputes During the Local Counting Phases**

**C. Disputes During the State Certification Process**

**D. Disputes During the Congressional Counting Process**

**V. The Chances of a "Stolen" Presidential Election in 2020**

**A. Fraudulent Ballots**

**B. Legislative Changes to Electors**

**C. Using Courts to Short Circuit Counts**

**D. Kicking the Election to House of Representatives**

**E. Not Winning the Popular Vote**

#### **IV. Reform Proposals and their Limitations**

**A. Proposed Interstate Compact**

**B. Proposals to Extend Time for Resolution of Disputes at Local and State Level**

**C. Proposals to Change “Winner Take All” Rules**

**For Further Reading:**

<https://www.theatlantic.com/magazine/archive/2020/11/what-if-trump-refuses-concede>, “What if Trump Refuses to Concede”, Barton Gellman, *The Atlantic*, Oct. 2020 Issue

*Every Vote Equal*, (4<sup>th</sup> Ed.), Koza, et al., 2013

*Election Meltdown*, Richard Hasan, 2020

*Centennial Crisis*, William Rehnquist, 2004k

“The Electoral College”, U.S. Election Assistance Commission, 2011