



THE NEXT 76 DAYS – WHAT TO WATCH FOR

- We must move away from focusing on election *day* to focusing on election *season*.
- There is little doubt that we will see a wave of legal challenges. The Trump campaign for some time has been bringing legal challenges to voting processes, including most recently challenging the ability of overseas voters to vote, not because they think they can win, but to seed the ecosystem with claims that sow doubt and distrust.
- In stark contrast to 2020, election administrators, state secretaries of state, state attorneys general, governors and law enforcement are prepared and coordinated. Civil society groups have built rapid response networks among trusted voices, including business leaders.
- With an election on a knife’s edge, we have agency, but we cannot do this alone. In an election where each vote will count, we have the capacity to impact the outcome between now and Election Day, and following the casting of ballots, we must remain calm and patient.
- We must all refrain from politicizing our responses to any post-election chaos. There is no Democratic or Republican version of the rule of law, legal process or the Constitution.

Americans do not vote for the President/Vice President. Rather, we all vote for electors who will cast their votes in convenings of the Electoral College in each state capital, culminating in the count at a Joint Session of Congress on January 6. This may come as a surprise to many (after all, we all speak of voting for one ticket or the other, and one will emerge the winner), but understanding this feature of the Constitutional construct (the 12th Amendment, together what was the Electoral Count Act (ECA), as amended by the [Electoral Count Reform Act \(ECRA\)](#)) is critical as we approach Election Day (*see* [Protect Democracy - Understanding the ECRA](#)). That it is critical is best understood in the context of January 6, 2021: the assault on the Capitol was not an end in itself; the perceived vulnerabilities of the Constitutional construct underpinned Donald Trump’s efforts to overturn the results of the election and prevent the peaceful transfer of power.

I set out below the key milestones and processes necessary to track what is happening over the 76 days between Election Day and Inauguration Day. It is helpful to understand the process and to understand how complex it is – by one [estimate](#), there are “more than 10,000 jurisdictions that dictate election processes” – from the local level, to the county level, to the state level. Moreover, each of the 50 states and the District of Columbia have their separate legal requirements for presidential elections. And then Congress gets involved.

The Key Dates

Date	Legal Requirements	Threats to watch for*
Through Nov. 5	Registered voters cast ballots at polling stations, by mail or at drop-off locations. All in-person ballots must be cast by the time polls close in the relevant state. Mail-in ballots must either be	<ul style="list-style-type: none"> • Spikes in disinformation relating to in-person voting, including polling station locations and closures, voting equipment and voting



postmarked or received before polls close, depending on state law (*see* [Deadlines](#)).

Nov. 5 Polls generally close between 6:00 – 9:00 pm local time (varies by state – *see* [Closing Times](#)) – the ECRA provides a narrow exception for states to extend the period for casting votes in emergency situations (“as necessitated by force majeure events that are extraordinary and catastrophic”). Claims of misconduct or fraud, routine missteps in election administration or general dissatisfaction with election results are *not sufficient* to extend voting. Moreover, any modification of the period for casting votes must occur according to state law enacted before Election Day.

See [R Street - what to expect on Election Day in Battleground States](#).

Nov 5. – Dec 11 **Canvassing (tabulation) at the county level and then certification by county level officials. Once results are certified, the state executive issues its “certificate of ascertainment.”**

Ballots returned by mail or dropped off at a designated location are processed by an election worker before they can be counted. While this procedure varies by state, [processing generally involves](#) confirming the identity and authenticity of the voter, verifying the voter’s information to confirm he/she is registered and eligible to vote, and checking the signature on the ballot envelope against a signature on file. Once the information is verified, the ballot is removed from the envelope (and, if applicable, from the secrecy sleeve) and sorted to be tabulated.

Processing timelines [vary by state](#). Some (*e.g.*, AZ, GA, MI and NV) permit mail ballots to be processed upon receipt or on a designated date before Election Day. Other states (*e.g.*, PA and WI) do not allow processing *until* Election Day; these states generally are slower to release unofficial results than other states.

See [Brennan Center Roadmap](#).

See also [Protect Democracy - 2024 vote count: what to expect:](#)

- If margin is greater than 0.5%: likely to see faster results than in 2020:
 - MI: 1 full day after polls close
 - WI: 1 full day after polls close
 - PA: 4 days

requirements (*see* two prior briefing notes, available [here](#) and [here](#)).

- Confusion or administrative mistakes relating to voting machines or processes, triggering allegations of fraud (there has been massive turnover in election workers due to the unrelenting threats and harassment from election deniers, and new election workers do not have prior actual experience).
- Unlawful monitoring, threats or violence targeting polling locations; intimidation of voters, poll watchers or election workers.

- Some polling experts predict there will be a polling “miss,” meaning one candidate or the other will over-perform their polling and win – if Trump overperforms by 2-3 points, he wins; if Harris overperforms by 2-3 points, she wins.
- Impressions of a red wave until mail-in ballots are counted – claims of victory before sufficient ballots are counted to allow for the race to be called.
- Confusion or misinformation caused by premature or differing news outlet projections.
- Delays in ballot counting (including due to weather disruptions, or malfunctions affecting equipment or facilities), feeding misinformation/disinformation.
- Spikes in misinformation/ disinformation alleging ballot tampering, or destruction or replacement of ballots.
- Threats or violence directed at county or state election officials responsible for certification or other attempts to obstruct the certification process.
- Threats or violence targeting ballot-counting facilities.
- Refusal by state or county officials to certify election results (election officials going rogue), resulting in failure to meet ECRA deadline - *see* [States United Action - Landscape of Election Denial in America](#) and [American Oversight - 2024 Anti-Democratic Playbook](#).



- NV: 4 days
 - AZ: faster than 9 days
 - NC: faster than 10 days
 - GA: faster than 16 days
 - If margin is close (*i.e.*, less than 0.5%):
prolonged uncertainty – every ballot will likely need to be counted and recounted, including provisional ballots, late-arriving ballots that are still eligible under state law to be counted, and cured ballots:
 - Could be the case, especially in PA, NY and NC
 - News outlets will unlikely call if there is an automatic recount or a requested recount and margin is very close
 - Likely will see challenges over which ballots should count – note challenges to UOCAVA (overseas) ballots already rejected in PA, NC and MI
- Dec. 11 **Electoral College “safe harbor” day** – deadline for states to resolve disputes – each state’s “executive” must issue a “certificate of ascertainment” appointing that state’s electors [set under the ECRA as six days before the Electoral College meets]. Once the executive formally issues a certificate of ascertainment, they must transmit it to both the National Archivist and their state’s appointed electors.
- Dec. 16 **Deadline by which all litigation** to resolve disputes relating to the certificates of ascertainment must be resolved [as provided under the ECRA].
- Dec. 17 **Meeting and vote in each state capital of the electors** casting their electoral votes for the candidate that won the popular vote in the state or in the district (for ME and NE) [12th Amendment and the ECRA].
- Harassment or violence targeting electors, preventing attendance at state Electoral College convenings or faithfully casting votes in accordance with their state’s results.
 - Threats or acts of violence targeting state electors’ convenings that impede or prevent proceedings, presenting state law issues as law may mandate the exact time and location where electors must meet.
- Dec. 25 Deadline for National Archivist to receive the electors’ votes (fourth Wednesday in December) – National Archivist transfers the certificates of votes to Congress, if requested.
- Jan. 3 **119th Congress convenes** [20th Amendment].
- Jan. 6 **Joint session of Congress** receives and counts the electoral votes.
- Through January 6th, efforts to contest the January 6th certification process by Congress.
 - Threats or violence directed at members of Congress or the U.S. Capitol imperilling or disrupting the Congressional counting of



electoral votes, preventing the formal election of President or Vice President.

- Failure of Congress to confirm the President or the Vice President on January 6 triggers a contingent election process under the 12th Amendment.
- Threats or violence endangering the public swearing-in ceremony at the U.S. Capitol. Incitement or extremist mobilization targeting the ceremony may transpire in days leading up to Inauguration.

Jan. 20 Inauguration Day

* Based on Protect Democracy - [Highest-risk election dates](#)

The Electoral Court Reform Act

Following the 2021 attack on the Capitol, Congress clarified various ambiguities in the ECA that the insurrection was intended to exploit. This resulted in the passage of the ECRA. Among the key amendments, the ECRA:

- Replaced the ECA’s “failed election” provision, which was improperly interpreted to suggest that a state legislature could appoint electors itself, after voters had cast ballots, if the legislature declared an election to have “failed.” The ECRA provides that electors must be appointed pursuant to the rules in place before the relevant state on Election Day, with a limited exception for extending the period to cast votes in true emergencies.
- Set a deadline for each state to certify its appointment of electors and clarifies that the Governor of each state is the default official responsible for the certification (state law can provide for another official).
- Created an expedited process for candidates to bring legal challenges in federal court regarding a state’s certification of electors. Candidates challenging the refusal or failure of the state executive to issue a proper certificate of ascertainment may bring suit in federal court. Claim(s) are to be heard by a three-judge panel on an expedited basis, the decision of which may be appealed directly to the Supreme Court. The entire process must be concluded by December 16. This procedure applies only to resolving disputes related to the issuance and transmittal of the state’s certificate of ascertainment. The ECRA expressly does not “preempt or displace” other existing legal causes of action in state or federal courts, meaning that some types of state or federal post-election claims that are not within the purview of the ECRA’s judicial review mechanism may continue to be pursued separately.
- Confirmed that the Vice President’s role in overseeing the counting of electoral votes in the Joint Session on January 6 is “ministerial.” Overriding this in 2021 was the crux of the January 6th plan.
- Increased the threshold for congressional objections to electors or electoral votes (from one member in each chamber of Congress) to one-fifth of each chamber. The ECRA also provides only two grounds for objection during the Joint Session:



- objecting to the underlying appointment of a state’s electors, on the basis that one or more electors were “not lawfully certified” under the ECRA’s process for issuing a certificate of ascertainment (the ECRA requires Congress to treat a certificate of ascertainment issued by its deadline and under its rules as “conclusive”), or
- objecting to an electoral vote itself, on the basis that the “vote of one or more electors has not been regularly given” (this is believed to include instances where an elector cast a vote for a constitutionally ineligible candidate, an elector cast an electoral vote at the wrong time, in the wrong place or in the wrong manner, the electors did not report their votes to Congress according to law, or the electors’ vote is the product of duress, bribery, or corruption - *see* [Electoral Votes Regularly Given](#)).

All objections to a given state’s electors or electoral votes must be considered at the same time, and there is a two-hour time limit for each chamber’s debate (any member of Congress can speak only for five minutes).

Under the 12th Amendment, if no candidate emerges on January 6 with 270 or more electoral votes, the contingent election process is triggered (*see* my previous [briefing note](#)).

Vulnerability of the Certification Process

Trump’s actions to overturn the results of the election on January 6th were a last-ditch effort after prior efforts had failed. Those prior efforts included [64 cases](#) brought to challenge aspects of the electoral process, but also included efforts to undermine the process from within. One such tactic was to pressure the two Republican members of the four-member Board of Canvassers in Wayne County, MI (which covers Detroit) to decline to certify the results and, after they reluctantly did certify, to rescind their certification. Ultimately, they did certify. This tactic highlights the process described above that occurs after citizens vote – the votes must be counted and aggregated typically at the county level, and a winner declared, in a process known as “canvassing and certification.” Typically, county boards of elections send the results they have certified up to a state board of elections.

One concern for the 2024 election is that election officials, typically at the county level, will refuse to certify the election results in their counties on the ground that they are doing “their patriotic duty to protect the integrity of the election” they allege has been tainted by unsubstantiated claims of fraud. CREW [notes](#) that, since the 2020 election, 35 local officials across eight states (AZ, CO, GA, NV, NM, NC, PA and MI) have refused or threatened to refuse to certify election results. This has occurred, notwithstanding, as Protect Democracy set out in a March 2024 paper ([Election certification is not optional](#)), that, as a matter of state law, certification is a mandatory ministerial duty and refusal to certify (in the case of the 2024 election, by the ECRA deadline of December 11) is a violation of state law. State certification statutes typically use “shall” language in directing local and state officials to certify results by the statutory deadline (*see* “[Election Certification Processes and Guardrails](#)” issued by the Brennan Center).

Those who sought to upend the process in 2020 failed to appreciate the difference between canvassing and certification. Certification is the final step that ends the canvassing process –



canvassing being the counting and aggregation, and confirmation that every vote properly submitted is counted. Certification is not intended to ensure votes have been accurately counted or to identify irregularities or errors; rather, it is confirmation that county officials have *completed* the canvassing process mandated by state law.

State law provides a separate and robust set of processes, much like a financial audit, to address fraud and errors. State law sets out time lines and allocates responsibilities among local election officials. This can involve:

- establishing the chain of custody to log and track the movement of the ballots through the system, cross-checking ballots and log sheets,
- checking the tallies against voter lists for in-person and mail-in ballots,
- verifying ballots, *e.g.*, signature verification for mail-in ballots,
- reconciling vote totals, and
- throughout the process, flagging and assessing any potential irregularities, undertaking recounts, audits and evidentiary hearings before state election boards, and if appropriate referring concerns to law enforcement.

The [Brennan Center](#) has catalogued a series of authorities that can be invoked to prevent and respond to abuses of the duty of mandatory certification.

- These include opinions, guidance and directives issues by secretaries of state, state election agencies, state attorneys general or district attorneys.
- In some states, state officials have explicit authority to intervene and complete a certification process where a local official has refused to do so.
- State election officials and affected candidates can seek a [writ of mandamus](#) to compel a local official to perform a ministerial duty required by law. A party seeking a writ of mandamus can seek civil or criminal contempt sanctions under state law and, in many states, courts may order the act to be done by another person appointed by the court (similar to Federal Rule of Civil Procedure 70).
- Authorities can also impose penalties on rogue election officials, including, for example, removal from their positions (by a state board of elections) or criminal charges (by the state attorney general).

That said, the fixed dates present an appealing target for election deniers seeking to disrupt the certification process and to cause a state to fail to certify its election results by December 11. The expectation is that the ECRA processes will suffice to address any failure by a state to miss its federal certification deadline.

Concluding Thoughts

Last week, POLITICO set out a number of ways in which Trump could seek to engineer a comeback notwithstanding loss in the popular vote and the Electoral College (“[The Very Real Scenario Where Trump Loses and Takes Power Anyway](#)”). By way of a summary of the themes covered above, in answer to the question posed by Rep. Jamie Raskin, “what will he do this time,” the scenarios include:



- between November 5 – December 11, stoking deep, unfounded distrust in election results and mounting legal challenges to flip ballot outcomes in key states;
- pressuring rogue county and state officials to resist certifying election results, which will not succeed, but could put pressure on GOP lawmakers in statehouses and Congress who will play key roles in the next phase of the electoral process;
- between December 11 – December 17, convincing allies in GOP-controlled swing state legislatures to appoint “alternate” electors to send to Congress;
- on December 17, inciting violence to disrupt convenings of electors at the Electoral College;
- between December 18 – January 6, persuading GOP House members to endorse these alternate electors, or at least reject Democratic electors, when they convene to certify the outcome;
- on January 6, trying to ensure Kamala Harris is denied 270 votes in the Electoral College, triggering a [contingent election](#) in the House, where Republicans are certain to have the majority of delegations to choose Trump as the next president.

POLITICO warns that “to a person, election observers, elected leaders and some of Trump’s own allies agree on one operating premise: On election night, no matter what the results show, how many votes remain uncounted and how many advisers tell him otherwise, Donald Trump will declare himself the winner.”

With an election on a knife’s edge, each citizen eligible to vote has agency, but no one citizen can do this alone. We have the capacity to impact the outcome between now and Election Day (vote, urge others to vote, door knock, transport voters to the polls, phone-bank, serve on voter protection teams), and following the casting of ballots, we must remain calm and patient.

We should take comfort in knowing that election administrators, state secretaries of state, state attorneys general, governors and law enforcement are prepared and coordinated, and that civil society groups have built rapid response networks among trusted voices, including business leaders.

We should also take comfort in knowing that the Harris campaign, and before that the Biden campaign, have invested significant resources in voter protection efforts as well as rapid response to the expected flood of legal challenges by the Trump campaign. According to the Wall Street Journal (“[Democrats Ready Thousands of Lawyers for Final Days of Race](#)”), under the leadership of former Biden White House counsel Dana Remus, the campaign has assembled a team of over 400 lawyers that have drafter legal pleadings and memos to be deployed real time, and a network of close to 10,000 lawyers for voter protection and to respond to RNC legal challenges as well as to efforts to intimidate election workers on and after Election Day.

We must all refrain from politicizing our responses to likely post-election chaos. There is no separate Democratic or Republican version of the rule of law, legal process or the Constitution.



We must also play our part in protecting the security of the system by publicly supporting election officials and election workers.

Additional Useful Resources:

[Leadership Now Project](#)

[Bipartisan Policy Center, Protect Democracy and CLC](#)

[Brennan Center certification process](#)

[States United - Guide to Roles at the State Level](#)

[States United - How to Spot Fake Election Reports](#)

[States United and Issue One, Uplifting Women Election Officials](#)

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