

§ 10.91

Electoral College

The Constitution provided for *electors* in choosing the president and vice president; the states' electors by long practice are collectively called the *electoral college*. The Constitution in Article II, Section 1, Clause 2, states 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.

When a voter on election day casts a ballot for president and vice president, he or she is voting *indirectly* for a presidential and vice presidential ticket and *directly* for a slate of electors. Under authority granted in Article II, Section 1, Clause 3 of the Constitution to set the time of choosing electors, Congress set election day as the Tuesday after the first Monday in November.

There are currently 538 electors. In addition to each state's constitutional allocation based on two senators and its number of representatives—ranging for the 2004 and 2008 elections from a minimum of three electors to California's fifty-five—the District of Columbia also has three electors pursuant to the Twenty-third Amendment to the Constitution. To be elected president and vice president, the Twelfth Amendment requires candidates to obtain a majority in the electoral college, or, currently, 270 votes.

Electors for a presidential and vice presidential ticket in a state are chosen in accordance with law made by a state's legislature. While state laws vary on the selection of electors, slates of nominees for electors are partisan, usually reflecting choices of state party conventions or state party central committees; electors are expected to support their party's candidates for president and vice president. State law also governs contests involving presidential electors, and, pursuant to federal law, a state's resolution of contests is conclusive when it occurs at least six days before the electoral college meets. As soon as practicable after the election, or after the resolution of any contests, each state's governor sends a certificate of ascertainment of the electors appointed to the archivist of the United States and six duplicate-originals to the state's electors.

In locations designated by state law, electors representing each state's winning slate meet in their states on the first Monday after the second Wednesday in December (following the 2008 general election, it will be December 15), and cast separate ballots for their party's presidential and vice presidential candidates. All but two states (Maine and Nebraska) award electoral votes on a winner-take-all basis for the presidential and vice presidential ticket—technically, the ticket's slate of electors—that receives the greatest number of votes state-wide. Maine and Nebraska award two electoral votes on the basis of statewide results and the balance of their electoral votes (two for Maine and three for Nebraska) on the basis of congressional district results. A state constitutional amendment in Colorado to change the awarding of electors to a proportional allocation was defeated by voters in the 2004 general election, but other states are continuing to review changes to how they award electoral votes. Although electors can, and occasionally have, cast ballots for individuals other than the winning ticket's candidates, electors are expected to vote for their party's candidates. Some states have laws that attempt to enforce that expectation.

Records of each state's electors' balloting are transmitted to the vice president of the United States in his role as president of the Senate, to the archivist of the United States, to the state's secretary of state, and to the federal district court of the district in which the electors met.

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On January 6 following the election, unless Congress has changed the law to designate another day, the House and Senate assemble at 1:00 p.m. in the House chamber for the counting of the electoral votes. The vice president of the United States presides, although the Senate president pro tempore may preside if the vice president declines or the vice president's office is vacant. The certificates and ballots of each state's electors are opened, proceeding in the alphabetical order of the states. The vice president reads a state's certificate and ballot, and calls for objections. He then presents the ballot to the four tellers—two from each chamber—who were previously selected by their respective chambers. When all the certificates and ballots are opened, read, and counted, the tellers present the results to the vice president. If one of the candidates for each of the offices receives a majority of the electoral votes (currently 270 of 538), the vice president announces the election of the president and vice president. *(For subsequent procedure in the absence of this outcome, see the discussion of contingent election in § 10.90, Congress and the Executive: Presidential Election and Succession.)*

An objection to a state's electoral votes must be in writing and signed by one representative and one senator. If there is a valid objection, the joint session is recessed at that point, the Senate withdraws to its chamber, and the two houses consider the objection. In these sessions, members may speak just once and for no more than five minutes. At the end of two hours, the chambers vote and then reconvene their joint session. Unless both chambers vote to uphold the objection, it fails. If both houses agree to the objection, the vote or votes objected to are not counted. This procedure was followed in 2005 after an objection by Rep. Stephanie Tubbs Jones, D-OH, and Sen. Barbara Boxer, D-CA, to the Ohio ballot. Neither chamber upheld the objection. The principal reasons there might be an objection are that a vote was not "regularly given" by an elector, for example, a "faithless" elector voting for someone other than the winners in his or her state, or that an elector was not lawfully certified, or both. Federal law (3 U.S.C. § 1 et seq.) provides guidance on resolving instances when there might be more than one list of electors.

(For specific information on electoral college procedures and the reasons therefore, see the web site of the National Archives and Records Administration at <www.archives.gov/federal-register/electoral-college>. Electoral college procedures and the role of Congress are codified at 3 U.S.C. § 1 et seq.)

**Allocation of Electoral Votes for the 2004 and 2008
Presidential and Vice Presidential Elections**

Alabama - 9	Idaho - 4	Missouri - 11	Pennsylvania - 21
Alaska - 3	Illinois - 21	Montana - 3	Rhode Island - 4
Arizona - 10	Indiana - 11	Nebraska - 5	South Carolina - 8
Arkansas - 6	Iowa - 7	Nevada - 5	South Dakota - 3
California - 55	Kansas - 6	New Hampshire - 4	Tennessee - 11
Colorado - 9	Kentucky - 8	New Jersey - 15	Texas - 34
Connecticut - 7	Louisiana - 9	New Mexico - 5	Utah - 5
Delaware - 3	Maine - 4	New York - 31	Vermont - 3
District of Columbia - 3	Maryland - 10	North Carolina - 15	Virginia - 13
Florida - 27	Massachusetts - 12	North Dakota - 3	Washington - 11
Georgia - 15	Michigan - 17	Ohio - 20	West Virginia - 5
Hawaii - 4	Minnesota - 10	Oklahoma - 7	Wisconsin - 10
	Mississippi - 6	Oregon - 7	Wyoming - 3