

Legal Sidebar

How Can the Results of a Presidential Election Be Contested?

08/26/2016

In the midst of the presidential campaign season, the possibility of election [fraud](#) has been raised. This discussion briefly examines how the results of a presidential election may be contested.

Although it has national impact, the presidential election is in essence 50 state and District of Columbia elections for presidential electors, held on the [same day](#) throughout the country. Therefore—and consistent with the states’ traditional authority over the administration of elections within their jurisdictions—states have the initial responsibility for resolving challenges, recounts, and contests to the results of a presidential election.

Specifically, the Electoral Count Act of 1887, as amended, contemplates that contests and challenges to the vote for presidential electors are to be initially handled in the states. Codified in part at [3 U.S.C. § 5](#), the law provides that if a contest or challenge in a state to the election or appointment of presidential electors is resolved in that state before the sixth day prior to the meeting of the electors, such determination shall be “conclusive” and shall “govern” when Congress counts the electoral votes as directed by the [Twelfth Amendment](#). The Supreme Court [has referred](#) to this as the “safe harbor” provision. This year, the presidential electors are scheduled to meet on December 19. Six days prior is December 13, which therefore, will be the last day for the states to make a final determination in order for it to be conclusive when Congress counts the votes.

Under [Article II, § 1, cl. 2](#) of the U.S. Constitution, the states are delegated the initial and principal authority for the administration of elections within their jurisdictions, including the selection of presidential electors. Such election administration includes providing the mechanisms for recounts or contests to election results within the state, to be filed by the appropriate parties within a specific time-frame and procedure as established under [state law](#). *Recounts* of election results involve a re-canvassing or re-calculating of votes and/or vote tallies that were given and recorded in the state or in particular election districts. In contrast, an election *contest* is the process within a state to address allegations of fraud in voting, or mistake or irregularity in election administration that has arguably resulted in the wrong candidate being found to have received the most votes or has made the ascertainment of the winner “reasonably uncertain.”

In addition, when Congress meets to count the electoral votes in January 2017, objections may be made to the counting of electoral votes from a particular state. The [Twelfth Amendment](#) to the U.S. Constitution provides that Congress shall meet in joint session when it counts the electoral votes. [3 U.S.C. § 15](#) sets forth a detailed procedure for making and acting on objections to the counting of one or more of the electoral votes. When the certificate or equivalent paper from each state or the District of Columbia is read, “the President of the Senate shall call for objections, if any.” Any such objection must be presented in writing and must be signed by at least one Senator and Representative. Furthermore, the objection “shall state clearly and concisely, and without argument, the ground thereof.” When a properly made objection is received, each house is to meet and consider it separately. It appears, however, that the [burden of proof](#) to overcome the presumption of regularity of an officially certified election might be significant.

By way of example, during the [January 2005 joint session](#) an objection was made to the Ohio electoral votes based on reported voting irregularities. In accordance with federal law, the chambers withdrew from the joint session to consider the objection, and both the House and Senate rejected it. Therefore, when the House and Senate resumed in joint

session, Ohio's electoral votes were counted as cast.

For further discussion regarding the process of counting the electoral votes and how objections can be made, see [CRS Report RL32717](#). For discussion of the electoral college, see [CRS Report RL32611](#).

Posted at 08/26/2016 11:16 AM