
Election Night 2020: Champagne and Cheers or Anxiety and Jeers

In what many voters feel like has been a never-ending presidential campaign cycle, November 3 is finally close enough to touch. But will Election Day 2020 provide closure for a restless electorate?

As President Trump and Vice President Biden barnstorm a handful of battleground states the intricacies and mechanics of how a candidate becomes president are coming into light and all eyes are on the Electoral College. Consisting of 538 electors representing all fifty states and Washington D.C. and roughly allocated by population, the Electoral College, not the popular vote, ultimately decides U.S. presidential elections. To win, a candidate must secure an absolute majority - 270 or more electoral votes. Since most states - with the exceptions of Nebraska and Maine - assign electoral votes on a winner-take-all model based on state-wide vote totals, a small percentage of voters in key states can play a deciding role in the overall election outcome. Former Secretary Clinton learned this painful lesson when she captured the popular vote but fell short of the electoral vote four years ago.

In these final weeks of the campaign, candidates will continue to crisscross the country as they cobble together puzzle pieces of electoral math. With so few states actually in play (Florida, Michigan, Pennsylvania, Georgia, Ohio, Wisconsin, Arizona, Nevada, Minnesota, North Carolina, New Hampshire), political experts have started to take a deeper look at chaos theories and "what if" scenarios. What if results are contested? Could there be recounts, lawsuits or both? Will state legislatures have to get involved?

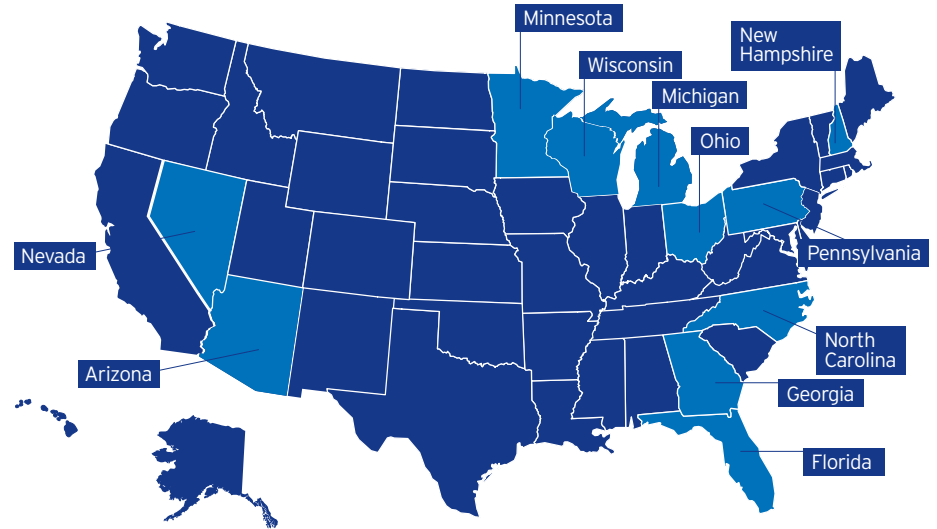
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Only 3 of the 57 previous presidential elections have been contested



Key States in Play

■ States with the most competitive presidential races



States in play

Political talking heads have focused on Bush v. Gore in 2000 as the precedent for presidential election chaos. That dispute, untimely decided by the Supreme Court, halted an ongoing recount and determined that President George W. Bush had won Florida by 537 votes. That victory meant that Bush won all 25 of Florida's electors giving him a total of 271 votes in the Electoral College and, with that narrow majority, the presidency. Some experts have forecasted that several states in 2020 could see similar recount and courtroom drama leading all the way to the Supreme Court in deciding whether Trump wins a second term or Biden claims victory. Their predictions are based on the craziness of 2020: the pandemic, a record number of mail-in ballots, the polarization of America and President Trump's characterization of the voting process.

However, famed Republican election lawyer Benjamin Ginsberg recently put the odds of the 2020 presidential election ending up in a legal battle that sprawls into January at just one percent citing more signs pointing to a smooth transition than a repeat of 2000. Keep in mind that only three of the 57 previous presidential elections have been contested.

But is history relevant in modern politics? Here are several variables to watch for to determine if this election will be decided within hours, weeks or months of the polls closing.

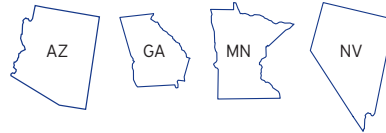
Vote Counting



Democrats have embraced vote-by-mail while President Trump has lambasted it as fraudulent despite casting his own ballot by mail. History will take a very close look at the encouragement - and discouragement - of mail-in and absentee voting on the results of the election both in terms of the presidential outcome but also the impact on down-ballot candidates.

Election Day and subsequent weeks could see voting result fluctuations as in-person votes are tabulated and mail-in and absentee ballots are counted. As of October 21, the US Elections Project counted 84.7 million absentee ballots that had been requested and 44 million people who had already voted. There will be confusion on election night as both political parties and news outlets grapple with reporting in-person votes versus absentee or mail-in as different states have different rules on when votes can be counted. Also, there are questions as to when mail-in or absentee votes are valid? Here are three different categories of how and when states can count early votes and they will be important to understand the differences as the results come in:

Upton Receipt:



22 state election authorities and the District of Columbia start counting when the ballot is received. Among this group, Arizona, Georgia, Minnesota and Nevada are considered the most pivotal for the presidential election and could foreshadow a good night for President Trump or Vice President Biden. If Biden were to flip the red state of Georgia to blue and secure 16 electoral votes, it could prove to be a tough road for Trump. Similarly, in 2016, Trump narrowly lost Minnesota – a state that has not voted for a Republican president since 1972. If the results look favorable for Trump there, it could not only put 16 critical electoral votes in his tally but foreshadow that the famous “Blue Wall” (Michigan, Wisconsin, and Minnesota) has crumbled. Arizona’s ability to count as the votes are received prior to November 3 could permit some early forecasting on whether Trump recaptures the Grand Canyon State’s 11 electoral votes or if Biden is well on his way to becoming the 46th President.

Before Election Day:



25 state election authorities can tabulate votes at a defined date by state law. Among this group, Florida, Iowa, Michigan, New Hampshire, North Carolina and Ohio are considered the most critical to election outcomes. But this group of states range in when counting is permitted. On one end there is Florida which started its tabulation on September 24 and on the other end is Michigan which starts counting 10 hours before Election Day. The early tabulation will allow states to report out November 3 numbers that could either spell doom and gloom or early moments of celebration for either party.

President Trump’s path to victory will be severely truncated if he cannot match his 2016 victories in Florida, Ohio, Michigan and North Carolina. Similarly, any victory by Biden in these same states will be a sign of optimism for Democrats. The ability for these states to count early should remove weeks of suspense as they will have a head start on tabulating votes while also counting in-person voting which is expected to lean Republican. Another important element to watch in Florida is that the state does not allow ballots to be counted if they are received after Election Day which should reduce election result delays.

On Election Day:



Four state election authorities can tabulate votes on the date of the election with Wisconsin and Pennsylvania by far the most important to determining election outcomes. President Trump shocked the political establishment in 2016 when he won both states and neither party is leaving anything on the table in 2020. Both Republicans and Democrats will be closely watching election night to see results in these battleground states. Wisconsin officials have said they expect to have their results completed the day after the election. The state has also permitted county clerks to verify signatures on the outside of the ballots early which should reduce day-of vote counting (and suspense) and reduce the number of questionable ballots.

No state legislature has ever appointed a slate of electors supporting a candidate who lost that state's popular vote



What does this all mean? The ability for critical bellwether states to either tabulate ballots as they come in or on a certain date before November 3rd does provide some certainty that election results will come sooner rather than later. It is estimated that 40 to 50 percent of the projected 150 million votes could be cast by mail. Experts largely agree that early voting will favor Democrats and Election Day in-person voting will favor Republicans. Depending on when states begin counting mail-in votes and therefore which votes - mail-in or in person - are reported first, there could be several "blue or red shifts." This could create the impression that one state is headed blue or red based on that state's ballot counting requirements. The "blue and red" shifts may frustrate the candidates and create the appearance of "fraud" or gamesmanship but they are simply part of the process that will allow the results of the election to be made public faster.

Electoral College



With only a handful of truly competitive states, the path to either candidate securing the 270 electoral votes needed for victory hinges on election returns in Florida, Michigan, Pennsylvania, Georgia, Ohio, Wisconsin, Arizona, Nevada, and Minnesota. Contested or uncertain results in any of these states, as occurred in Florida in 2000, could prevent either candidate from reaching the 270-vote threshold. President Trump and some experts have raised concerns that delays in finalizing election results could run into the December 8th safe harbor deadline. This deadline, set by federal law, is the last day when states can appoint electors without interference from Congress.

Electors are set to cast their votes on December 14th. If a state's results remain contested and without a clear winner past December 8th, there is no clear remedy. One option would be for the state's legislature to name its own slate of electors regardless of the results of the state-wide vote. In states where one party controls the legislature and a different party holds the governor's office, this could result in competing slates of electors being sent to Congress. In either case, a state government overriding the popular vote could lead to claims of a "stolen election" and push the losing party to not accept the results. Despite the possibility of these worse case scenarios, it is important to note that no state legislature has ever appointed a slate of electors supporting a candidate who lost that state's popular vote, and this remains unlikely in 2020.

State Election Rules and Law



If election results in one or several states are in question this November, the vast majority of states have basic election safeguards already in place to create an orderly process to determine the legal electoral outcome.

As of October 2020, twenty states have a statutory provision allowing for an automatic recount of votes if the margin between the top two candidates is within certain parameters. Forty-three states have a statutory provision allowing for a requested recount of votes. It is highly unlikely that statutory requirements for a mandatory or requested recount will be triggered since it is improbable that those states' results will be so narrow and are relevant to the Electoral College outcome that the country will see widespread vote recanvassing. The biggest hurdle for a contested election will be a few battleground states that have protracted election recounts that could see their results questioned.

The bottom line is that states have been preparing for a highly competitive presidential race and will be certain to ensure the results are accurate and timely. The rules of the road are clear in disputing election (allegations of fraud) results and requesting recounts and all eyes will be on those states if their results will determine the winner. While it could be a bumpy road over the next several weeks, it's unlikely Americans will have to go too long before they know who will serve as president for the next four years.



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Andy Blocker serves as Head of US Government Affairs for Invesco. In this role, he drives Invesco's legislative and regulatory advocacy initiatives with policymakers, engages with clients and opinion leaders on public policy developments, and seeks to maximize the company's political footprint. Previously, Andy served as executive vice president of public policy and advocacy for the Securities Industry & Financial Markets Association, where he led a team engaging lawmakers on international, federal and state issues impacting the financial services industry. Andy spent five years as managing director for the US Office of Public Policy for UBS. He also served as vice president of government relations for the New York Stock Exchange, as managing director of government and international affairs for American Airlines, and for the White House as special assistant to the president for legislative affairs.



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Jennifer Flitton is Vice President of Federal Government Affairs with the US Government Affairs team where she advocates on behalf of Invesco's policy initiatives with policymakers and regulators, and ensures the firm is an influential part of the Washington conversation. Jen joined Invesco from the Securities Industry and Financial Markets Association, where she led lobbying initiatives on behalf of the asset management and broker dealer industries. Jen spent 16 years on Capitol Hill, last serving as the Deputy Chief of Staff and Legislative Director for Congressman Patrick McHenry, and as Congressman McHenry's designee to the House Financial Services Committee's Oversight and Investigations Subcommittee.



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