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## ELECTION 2020

# AND THE WINNER IS?

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*The United States election process is designed to conclude on or very near Election Day. This year, however, doubt has arisen about the timely determination of which candidate will occupy the White House in 2021.*

On June 15, 1804, Congress solidified the presidential election process when it ratified the 12th Amendment to the U.S. Constitution, which provided for separate Electoral College votes for president and vice president. It is interesting that questions about the current election largely are answered due to the 12th Amendment that came into existence to correct a situation that threatened to jeopardize the fledgling nation's existence.

The original construction of the U.S. election process failed to differentiate between the office of president and vice president on Electoral College ballots. Thomas Jefferson seemingly defeated Federalist John Adams by a margin of 73 to 65 electoral votes in the presidential election of 1800. When presidential electors cast their votes, however, they failed to distinguish between the office of president and vice president on their ballots. Jefferson and his running mate, Aaron Burr, each received 73 votes. With the votes tied, the election moved to the House of Representatives, where each state voted as a unit. For six days starting on February 11, 1801, Jefferson and Burr essentially ran against each other in the House. Despite 30 separate tries, neither person achieved the necessary majority of nine states. Eventually, an opposition-party House member succumbed to intense pressure and broke the tie, which gave Jefferson the 10 votes needed to secure the presidency.

Today, the 12th Amendment assures the 1800 situation will not be repeated, but it does not eliminate all possible uncertainty.

The presidential election calendar is straightforward. Election Day 2020 is November 3. This year, however, numerous states have allowed for early voting by mail while in some cases also allowing for submitting ballots as late as November 3 that assures they will not be in the tally as of midnight Election Day. From there through December 12, states must certify their election results. All state recounts and court contests over presidential election results must be completed by December 14, and electors for each state must cast their ballots to determine who won the Electoral College vote by this date. It takes 270 of the possible 538 votes to win the election. On January 6, 2021, Congress must certify the results with the inaugural taking place on January 20.

Although this process is simple, it leaves open the chance for surprises.

It is important to remember that an individual voter is not voting for a candidate directly, but rather is electing Electoral College electors. In the majority of states, electors are required to submit their Electoral College votes to match the popular vote of the state. In 48 of the 50 states, this "winner-take-all" system applies. Only Maine and Nebraska allow for splitting votes based on district results.

The majority of states bind their electors to the outcome of the popular vote, but 20 states do not have such a requirement, which can create a problem when electors do not place their Electoral College vote in accordance with the popular vote. These so-called "faithless electors" can alter an election outcome. Until 2016, this, however, was an issue only in 1900 and 2012.

This changed in 2016 when 11 electors from various states voted for candidates other than the one who won their state's popular vote. In the end, President Donald Trump won the election with 304 Electoral College votes, which made him the fifth president to win the White House without winning the popular vote (the other four were John Quincy Adams in 1824, Rutherford B. Hayes in 1876, Benjamin Harrison in 1888, and George W. Bush in 2000).

Bush's 2000 win is particularly relevant now. In addition to this election being an exception to the popular vote preference, ballot validity in Florida temporarily cast doubt on the outcome, as the phrase "hanging chads" became a headline.

On election night, there was back-and-forth debate as to who won Florida's elector count, which because of the closeness of the vote nationally, suggested that who won Florida also won the White House. Bush appeared to have won Florida by a slim margin. However, confusing ballots marked for a third-party candidate suggested they might have been cast by voters who thought they had voted for the Democratic candidate Al Gore. Punch-card ballots complicated the outcome as some ballots only had detached a portion of the perforated paper (the infamous hanging chads), which was an insufficient indication of their possible vote.

Ultimately, this led to a court battle over a potential recount, but a 7-2 vote in the U.S. Supreme Court ended possible recounts. A separate decision ruled that no alternative method of recount could be established in a timely manner. On December 13, Gore conceded the election.



Questioning ballot validity is an issue today, which could extend the time it might take to determine who will reside at 1600 Pennsylvania Avenue next year. The stock market's hatred of uncertainty was evident in the 2000 when from Election Day November 7 that year through an interim low set December 21, the S&P 500 fell 12.41%.

Previous Investment Strategy Group election-related reports noted that when the S&P 500 has a gain from July 31 through October 31, the incumbent or his political party has retained the White House nearly 82% of the time. In all but one year, whenever the S&P 500 declined in price during these three months, the incumbent or his party's candidate lost the election.

The 7.01% S&P 500 gain in August seemed to put the current administration on firm footing toward retaining the White House. Weakness so far this month, however, has placed the S&P 500 below its July 31 close at 3271.12. Obviously, there is no assurance that this pre-election pattern will be repeated this year, but its high degree of accuracy suggests it would be worth monitoring as we approach November 3.

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