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Counting Electoral Votes: An Overview of Procedures at the Joint Session, Including Objections by Members of Congress

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Summary

The Constitution and federal law establish a detailed timetable following the presidential election during which time the members of the electoral college convene in the 50 state capitals and in the District of Columbia, cast their votes for President and Vice President, and submit their votes through state officials to both houses of Congress. The electoral votes are scheduled to be opened before a joint session of Congress on January 6, 2021. The Electoral Count Act specifies the procedures for this session and for challenges to the validity of an electoral vote. This report describes the steps in the process and precedents set in prior presidential elections governing the actions of the House and Senate in certifying the electoral vote and in responding to challenges of the validity of electoral votes.

This report has been revised and will be updated on a periodic basis to provide the dates for the relevant joint session of Congress and to reflect any new, relevant precedents or practices.

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The House and Senate are scheduled to convene in joint session on January 6, 2021, for the purpose of opening the 2020 presidential election electoral votes submitted by state government officials, certifying their validity, counting them, and declaring the official result of the election for President and Vice President.[1] This report describes the steps that precede the joint session, and the procedures set forth in the Constitution and federal statute by which the House and Senate jointly certify the results of the electoral vote. It also discusses the procedures set in law governing challenges to the validity of an electoral vote.

Much of what follows in this report is based on the United States Constitution (particularly Article II, Section 1, and Amendment 12) and on the Electoral Count Act of 1887, which was originally enacted in 1887 and, in 1948, was both amended and codified in Title 3 of the *United States Code*.[2] This report also references congressional precedent and practice. Early congressional precedents on the counting of electoral votes, which may be found in *Hinds'* and *Cannon's Precedents of the House of Representatives*, are sometimes inconsistent with each other and with more recent practice. This record, coupled with disputes over the electoral count in 1877, provided the impetus for codifying procedure in the 1887 law. Precedents that pre-date the 1887 act may be primarily of historical significance, particularly to the extent that they are inconsistent with express provisions of the 1887 act, as amended.

Due to the absence of specific and persuasive authority on some issues, and in the interest of brevity, this report attempts to at least identify and present some of the possible issues and questions that have been raised, even when not necessarily resolving them by reference to authoritative source material or decisions. The topics presented are arranged in the approximate order of their occurrence.

Actions Leading Up to the Joint Session

Appointment of Electors: Election Day

The Constitution provides that each state "shall appoint" electors for President and Vice President in the manner directed by its state legislature (Article II, Section 1, clause 2), on the day determined by Congress (Article II, Section 1, clause 3). Congress has determined in federal law that the "electors of President and Vice President shall be appointed, in each State" on Election Day, that is, the "Tuesday next after the first Monday in November" every fourth year (on November 3, 2020) (3 U.S.C. §1).

Final State Determination of Election Contests and Controversies: "Safe Harbor"

Congress has, since 1887, sought to place the responsibility for resolving presidential election contests and challenges on the states. Federal law, in what is known as the "safe harbor" provision, provides that if a state, under its established statutory procedure, has made a "final determination of any controversy or contest" relative to the presidential election in the state, and

[1] The permanent statutory date for the joint session of Congress to count the electoral votes is January 6 of the year immediately after the meeting of the electors (3 U.S.C. §15). This date can be changed by Congress by law. See, e.g., P.L. 112-228, H.J.Res. 122, 112th Congress (2011-2012).

[2] 3 U.S.C. §§3-21. See 24 Stat. 373, ch. 90, 49th Cong., February 3, 1887; 62 Stat. 671, P.L. 771, June 25, 1948, enacting Title 3, United States Code, into positive law.

if that determination is completed under this procedure at least six days before the electors are to meet to vote, such determination is to be considered "conclusive" as to which electors were appointed on election day (3 U.S.C. §5).[3] As explained below, the electors vote on December 14, 2020, so the last day for making a final determination was December 8, 2020.

Certification by the Governor

The governor of each state is required by federal law to send to the Archivist of the United States, by registered mail and under state seal, "a certificate of such ascertainment of the electors appointed," including the names and numbers of votes for each person for whose appointment as elector any votes were given (3 U.S.C. §6). Governors must send certificates "as soon as practicable" after the "final ascertainment" of the appointment of the electors, or "as soon as practicable" after the "final determination of any controversy or contest" concerning such election under its statutory procedure for election contests.

Duplicate Certificates to Electors

On or before December 14, 2020, the governor of each state is required to deliver to the electors of the state six duplicate-originals of the certificate sent to the Archivist of the United States under state seal (3 U.S.C. §6).

Meetings of Electors to Cast Votes

The electors of each state meet at the place designated by that state on the first Monday after the second Wednesday in December (December 14, 2020) to cast their votes for President and Vice President of the United States (U.S. Constitution, Amendment 12; 3 U.S.C. §§7-8).

Electors' Certifications of Votes

After the electors have voted in each state, they make and sign six certificates of their votes containing two distinct lists, one being the votes for President and the other the votes for Vice President. The law instructs the electors to attach to these lists a certificate furnished to them by the governor; to seal those certificates and to certify on them that these are all of the votes for President and Vice President; and then to send one certificate to the President of the Senate and two certificates to the secretary of state of their state (one to be held subject to the order of the President of the Senate). On the day after their meeting (December 15, 2020), the electors are to forward by registered mail two of the certificates to the Archivist of the United States (one to be held subject to the order of the President of the Senate), and one to the federal judge in the district where the electors have assembled (3 U.S.C. §§9-11).

Congressional Demand for Certificates

If no certificates of votes or lists have been received by the President of the Senate or the Archivist from electors by the fourth Wednesday in December (December 23, 2020), then the

[3] See, e.g., Bush v. Gore, 531 U.S. 98, 110 (2000) (per curiam) (observing that 3 U.S.C. §5 "requires that any controversy or contest that is designed to lead to a conclusive selection of electors be completed" six days prior to the electors meeting to vote). The concurrence further states that 3 U.S.C. §5 "contains a principle of federal law that would assure finality of the State's determination if made pursuant to a state law in effect before the election." *Id.* at 113 (Rehnquist, C.J., concurring) (quoting Bush v. Palm Beach Cnty. Canvassing Bd., 531 U.S. 70, 78 (2000)) (internal quotations omitted).

President of the Senate (or the Archivist if the President of the Senate is not available) is directed by law to request the state's secretary of state to immediately forward the certificates and lists held by the secretary of state, and to send a special messenger to the local federal district judge to transmit the lists that are to be held by that judge (3 U.S.C. §§12-13).

Archivist's Transmittal of Certificates to Congress

At the first meeting of Congress, set for January 3, 2021, the Archivist of the United States is required to transmit to the two houses every certificate received from the governors of the states (3 U.S.C. §6).

Date for Counting Electoral Votes

The date for counting the electoral votes is fixed by law as January 6 following each presidential election (3 U.S.C. §15), unless the date is changed by law. For example, when January 6, 2013, was to fall on a Sunday, the date for counting the electoral votes was changed to January 4, 2013, when the President signed H.J.Res. 122 on December 28, 2012.

Providing for the Joint Session

Venue for Counting Electoral Votes

The electoral votes are counted at a joint session of the Senate and the House of Representatives, meeting in the House chamber. (The *U.S. Code* refers to the event as a joint meeting; it also has been characterized in the *Congressional Record* as a joint convention.) The joint session convenes at 1:00 p.m. on that day. The President of the Senate is the presiding officer (3 U.S.C. §15). The President pro tempore of the Senate has presided in the absence of the President of the Senate.[4]

Opening of the Votes

Section 15 provides that the President of the Senate open and present the certificates of the electoral votes of the states and the District of Columbia in alphabetical order. (As discussed above, under 3 U.S.C. §§9-10, the electors in each state, having voted, are to sign, seal, and certify the certificates. Under §11 of the same title, they are to mail one such certificate to the President of the Senate and mail two others to the Archivist of the United States.)

Reading of the Votes by House and Senate Tellers

The certificate, or an equivalent document, from each state and the District of Columbia is to be read then by tellers previously appointed from among the membership of the House and Senate. Before the joint session convenes, each chamber appoints two of its Members to be the tellers. (The appointments are made by the presiding officers of the respective chambers, based on recommendations made to them by the leaders of the two major parties.) The appointed tellers are often members of the House Administration and Senate Rules and Administration Committees, the panels in each chamber having jurisdiction over matters relating to the election of the

[4] In January, 1969, Vice President Hubert Humphrey "declined to preside over the joint session to count the electoral votes." *Deschler's [and Deschler-Brown] Precedents of the United States House of Representatives,* 94th Cong., 2nd sess., H.Doc. 94-661 (Washington: GPO, 1977) (hereinafter *Deschler's Precedents*), ch. 10, §2.5, p. 10.

President and Vice President. In 2017, the House tellers were Members who had been elected chair and ranking member of the House Administration Committee that Congress. The Senate tellers were the chair and a Senator who would become the ranking member of the Senate Rules and Administration Committee.[5]

Counting the Votes and Announcing the Result

After the votes of each state and the District of Columbia have been read, the tellers record and count them. When this process has been completed, the presiding officer announces whether any candidates have received the required majority votes for President and Vice President. If so, that "announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States" (3 U.S.C. §15).

Expediting the Process of Opening and Reading Votes

The joint session may agree to expedite this process when no controversy is anticipated. In the 1997 joint meeting, for example, the Vice President announced: "Under well-established precedents, unless a motion shall be made in any case, the reading of the formal portions of the certificates will be dispensed with. After ascertainment has been had that the certificates are authentic and correct in form, the tellers will count and make a list of the votes cast by the electors of the several States."[6] The Vice President proceeded to open the certificates in alphabetical order and passed to the tellers the certificates showing the votes of the electors in each state and the District of Columbia. In each case, the tellers then read, counted, and announced the result for each state and the District of Columbia. According to the *Congressional Record*, the joint session consumed precisely 24 minutes. A similar process was followed in 2013, when, according to the *Congressional Record*, the joint session consumed 23 minutes,[7] and in 2017, when it consumed 41 minutes.[8]

The Majority Required for Election

The 12th Amendment requires the winning candidate to receive "a majority of the whole number of Electors appointed." That number normally becomes the same as a majority of the number of electoral votes counted by the tellers.

One exception that has been identified occurred in 1873 when the Vice President announced that President Ulysses S. Grant had received "a majority of the whole number of electoral votes," even though he also indicated that not all of those electoral votes had been counted. In that case, the two houses, under procedures similar to those described in the section below entitled "Objecting to the Counting of One or More Electoral Votes," had decided not to count the

[5] In 2009, the Senate tellers initially were the chair and ranking member of the Senate Rules and Administration Committee, but another Senator, who would become chair of the Rules and Administration Committee that Congress, was later appointed in lieu of the Senator who had served as chair in the previous Congress. On the first day of the 111th Congress, the Vice President appointed Senator Dianne Feinstein of California and Senator Robert Bennett of Utah to serve as tellers to count the electoral votes (*Congressional Record*, daily edition, vol. 155 [January 6, 2009], p. S7). On January 8, 2009, the Senate agreed by unanimous consent that Senator Charles Schumer of New York would serve as a teller in lieu of Senator Feinstein (*Congressional Record*, daily edition, vol. 155 [January 8, 2009], p. S186).

[6] *Congressional Record*, vol. 143 (January 9, 1997), p. 297.

[7] *Congressional Record*, vol. 159 (January 4, 2013), p. H49.

[8] *Congressional Record*, vol. 163 (January 6, 2017), p. H190.

electoral votes from Arkansas and Louisiana. Nonetheless, the number of electoral votes allocated to Arkansas and Louisiana evidently were included in "the whole number of electoral votes" for purposes of determining whether President Grant had received the majority required for election.[9] It should be noted that President Grant was victorious by whichever standard was used. He received 286 electoral votes out of the 352 electoral votes counted, or out of the potential 364 electoral votes if the contested votes from Arkansas and Louisiana were included in the whole number.

In 1865, by contrast, only two of the three Nevada electors cast their electoral votes. In the joint session, only two Nevada votes were counted and included in the "whole number of electoral votes."[10] There were similar instances of votes "not given" by electors that were not included in the "whole number" of electors reported—thus reducing the so-called denominator and the "majority" needed to elect—in 1809, 1813, and 1817.

CRS has not identified any instances in which this issue has become a source of contention or was determinative of which candidate was elected. If electoral votes from a state or the District of Columbia were not available to be counted during the joint session (and if the question were raised in a timely fashion), the joint session might be called upon to address the effect of this situation on what number of votes would constitute the "majority of the whole number of Electors appointed."

Procedures for Conducting the Joint Session

Title 3 of the *U.S. Code* includes provisions governing the conduct of the joint session. Section 16 of Title 3 is intended to ensure that the joint session conducts and completes its business expeditiously. As discussed below, §18 prohibits debate as well as the offering and consideration of almost all questions.[11] Section 16 provides that the joint session is to continue until the count is completed and the result announced, and limits recesses if the process of counting the votes and announcing the results becomes time-consuming. Section 16 also governs the seating of Senators, Representatives, and officials (the Clerk of the House, the Secretary of the Senate, the Members designated as tellers, and other administrative officers of the House and Senate).

Under §18, the President of the Senate is to preserve order. This authority may be interpreted as encompassing the authority to decide questions of order, but the statute is not explicit on this point. There are some instances of the presiding officer announcing decisions concerning the procedures of the joint session. Vice President Albert A. Gore, Jr., presiding over the joint session of January 6, 2001, ruled on the admissibility of objections to the receipt of electoral votes from the State of Florida, and also advised House and Senate Members that debate was not permitted and that a unanimous consent request for debate on the issue could not be entertained. He further stated that even incidental parliamentary motions, including those that only affect the actions of the House, needed the written endorsement of at least one Representative and one Senator in order to be valid. Vice President Gore also declined to entertain a point of order that no quorum

[9] *Congressional Globe*, vol. 46 (February 12, 1873), pp. 1305-1306.

[10] *Congressional Globe*, vol. 35 (February 8, 1865), pp. 668-669.

[11] The statute states that no question is to be "put by the presiding officer except to either House on a motion to withdraw." The statute provides for the Senate to withdraw automatically under circumstances discussed in the section of this report titled "Objecting to the Counting of One or More Electoral Votes." The statute, however, makes no other explicit reference to a motion to withdraw, and CRS has not identified an instance in which a vote occurred on such a motion.

was present because the point of order had not been endorsed by one Member from each chamber.[12]

Objecting to the Counting of One or More Electoral Votes

Section 15 establishes a procedure for making and acting on objections to the counting of one or more of the electoral votes from a state or the District of Columbia. 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 one Representative. The objection "shall state clearly and concisely, and without argument, the ground thereof." During the joint session of January 6, 2001, the presiding officer intervened on several occasions to halt attempts to make speeches under the guise of offering an objection.

When an objection, properly made in writing and endorsed by at least one Senator and one Representative, is received, each house is to meet and consider it separately. The statute states, "No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of." However, in 1873, before enactment of the law now in force, the joint session agreed, without objection and for reasons of convenience, to entertain objections with regard to two or more states before the houses met separately on any of them.

Disposing of Objections

The joint session does not act on any objections that are made. Instead, the joint session is suspended, the Senate withdraws from the House chamber, and each house meets separately to debate the objection and vote whether, based on the objection, to count the vote or votes in question. Both houses must vote separately to agree to the objection by simple majority. Otherwise, the objection fails and the vote or votes are counted. (3 U.S.C. §15 provides that "the two Houses concurrently may reject the vote or votes.")

These procedures have been invoked twice since enactment of the 1887 law. The first was an instance of what has been called the "faithless elector" problem. In 1969, a Representative (James O'Hara of Michigan) and a Senator (Edmund S. Muskie of Maine) objected in writing to counting the vote of an elector from North Carolina who had been expected to cast his vote for Richard Nixon and Spiro Agnew, but who instead cast his vote for George Wallace and Curtis LeMay. Both chambers met and voted separately to reject the objection, so when the joint session resumed, the challenged electoral vote was counted as cast.[13] In that instance, the elector whose

[12] For the full transcript of the joint session of January 6, 2001, see *Congressional Record*, vol. 147 (January 6, 2001), pp. 101-115.

[13] When the two chambers reconvened in joint session, the Secretary of the Senate reported that the Senate had agreed to the following action: "Ordered, that the Senate by a vote of 33 ayes to 58 nays rejects the objection to the electoral votes cast in the State of North Carolina for George C. Wallace for President and Curtis E. LeMay for Vice President." The Clerk of the House stated the results of the House action: "Ordered, that the House of Representatives rejects the objection to the electoral vote of the State of North Carolina submitted by the Representative from Michigan, Mr. O'Hara, and the Senator from Maine, Mr. Muskie." *Congressional Record*, vol. 115 (January 6, 1969), p. 171. The House vote was 170-228. See also *Deschler's Precedents*, vol. 3, chap. 10, §3.6. Both houses used roll call votes to decide the question.

vote was challenged was from a state that did not by law bind its electors to vote only for the candidates to whom they were pledged. In a 2020 decision, *Chiafalo v. Washington*,[14] the Supreme Court unanimously held that a state may penalize electors who do not cast their ballots for the presidential and vice presidential candidates who won the state's popular vote.[15] According to the Court, state authority to appoint electors under Article II of the Constitution includes not only the power to condition their appointment upon a pledge to support the state's popular vote winner; it also includes the ability to impose penalties on those electors who violate that pledge.[16] At the time of the ruling, the Court identified laws in 32 states and the District of Columbia requiring electors to pledge to cast their ballots for their parties' nominees for President and Vice President, with 15 of those states providing for sanctions on electors for noncompliance.[17]

The second instance related to reported voting irregularities in Ohio.[18] In 2005, a Representative (Stephanie Tubbs Jones of Ohio) and a Senator (Barbara Boxer of California) objected in writing to the Ohio electoral votes. The chambers withdrew from the joint session to consider the objection, and the House and Senate each rejected the objection. When the House and Senate resumed the joint session, the electoral votes were counted as cast.[19]

Procedures for Considering Objections

Section 17 lays out procedures for each house to follow when debating and voting on an objection. These procedures limit debate on the objection to not more than two hours, during which each Member may speak only once and for not more than five minutes. Then "it shall be the duty of the presiding officer of each House to put the main question without further debate." Under this provision, the presiding officer in each house held in 1969 that a motion to table the objection was not in order.[20]

In the House, the Speaker announced both in 1969 and 2005 that he would attempt to recognize supporters of the objection and opponents in an alternating fashion for the duration of the two-hour period. In one instance in 1969, the Speaker inquired whether a Member supported or opposed the challenge before he agreed to recognize him to speak. Members can yield to each other during debate as they can during five-minute debate in the Committee of the Whole, and many chose to do so in 2005. The Speaker also entertained unanimous consent requests to insert material in the *Congressional Record*.

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[14] 140 S. Ct. 2316 (2020).

[15] See *id.* at 2328.

[16] See *id.* at 2319-20. See also Ray v. Blair, 343 U.S. 214, 228 (1952) (holding that neither Article II nor the Twelfth Amendment to the Constitution prohibits the states from appointing only those electors who are committed to voting for a party's presidential nominee, but not addressing whether such state restrictions could constitutionally be enforced).

[17] See *id.* at 2321-22.

[18] *Congressional Record*, daily edition, vol. 151 (January 6, 2005), pp. H86-H127.

[19] When the two chambers reconvened in joint session, the Secretary of the Senate reported that the Senate had agreed to the following action: "Ordered, that the Senate by a vote of 1 aye to 74 nays rejects the objection to the electoral votes cast in the State of Ohio for George W. Bush for President and Richard Cheney for Vice President." The Clerk of the House then stated the results of the House action: "Ordered, that the House of Representatives rejects the objection to the electoral vote of the State of Ohio." *Congressional Record*, daily edition, vol. 151 (January 6, 2005), p. H128. The House vote was 31-267. Both houses used roll call votes to decide the question.

[20] *Deschler's Precedents*, ch. 10, §3.7, pp. 18-20.

In 1969 the Senate agreed, by unanimous consent, to a different way in which the time for debate was controlled and allocated, granting one hour each to the majority and minority leaders and authorizing them to yield not more than five minutes to any Senator seeking recognition to speak.[21] However, in 2005, the five-minute debate prescribed in the statute was followed and the presiding officer entertained requests to insert statements into the *Congressional Record*.

Basis for Objections

The general grounds for an objection to the counting of an electoral vote or votes would appear from the federal statute and from historical sources to be that such vote was not "regularly given" by an elector, and/or that the elector was not "lawfully certified" according to state statutory procedures. The statutory provision first provides in the negative that "no electoral vote ... regularly given by electors whose appointment has been lawfully certified ... from which but one return has been received shall be rejected" (3 U.S.C. §15). The provision then reiterates for clarity[22] that both houses concurrently may reject a vote when not "so regularly given" by electors "so certified" (3 U.S.C. §15). It should be noted that the word *lawfully* was expressly inserted by the House in the Senate legislation (S. 9, 49th Congress) before the word *certified*.[23] Such addition arguably provides an indication that Congress thought it might, as grounds for an objection, question and look into the lawfulness of the certification under state law.

The objection that votes were not "regularly given" may, in practice, subsume the objection that the elector was not "lawfully certified," because a vote given by one not "lawfully certified" may arguably be other than "regularly given." Nevertheless, the two objections are not necessarily the same. In the case of the "faithless elector" in 1969, described above, the elector was apparently "lawfully certified" by the state, but the objection raised was that the vote was not "regularly given" by such elector. In the above-described 2005 case, the objection was also based on the grounds that the electoral votes "were not, under all of the known circumstances, regularly given."

Receipt of Two Certificates from the Same State

Influenced by its historical experience prior to 1887, Congress was particularly concerned in the statute of 1887 with the case of two lists of electors and votes being presented to Congress from the same state. Three different contingencies appear to be provided for in the statute for two lists being presented. In the first instance, two lists would be proffered, but the assumption presented in the law is that only one list would be from electors who were determined to be appointed pursuant to the state election contest statute (as provided for in 3 U.S.C. §5), and that in such case, only those electors should be counted. In the second case, when two lists were proffered as being from two *different* state authorities who arguably made determinations provided for under 3 U.S.C. §5 (a state statutory election contest determined at least six days prior to December 14, the winner of the state presidential election), the question of which state authority is "the lawful tribunal of such State" to make the decision (and thus the acceptance of those electors' votes) shall be decided only upon the concurrent agreement of *both* houses "supported by the decision of such State so authorized by its law." In the third instance, if there is *no* determination by a state authority of the question of which slate was lawfully appointed, then the two chambers must

[21] *Deschler's Precedents*, ch. 10, §3.8, pp. 20-23.

[22] See Conference Report on 1887 legislation, *Congressional Record*, vol. 18 (January 14, 1887), p. 668.

[23] *Id.*

agree concurrently to accept the votes of one set of electors; but the two chambers may also concurrently agree not to accept the votes of electors from that state.

When the two houses disagree, then the statute states that the votes of the electors whose appointment was certified by the governor of the state shall be counted. It is not precisely clear whether this provision for resolving cases in which the House and Senate vote differently applies only to the last two situations (that is, when either *two* determinations have allegedly been made under state contest law and procedure, or *no* such determination has been made); or, instead, also when only one such determination is present. Although this section of the statute is not free from doubt, its structure and its relationship to §5 (and to give effect to §5) seem to indicate that when there is only *one* determination by the state made in a *timely* fashion under the state's election contest law and procedures (even when there are two or more lists or slates of electors presented before Congress), then Congress shall accept that state determination (3 U.S.C. §15) as "conclusive" (3 U.S.C. §5). By this interpretation, the language providing that if the House and Senate split, the question shall be decided in favor of the choice certified by the governor, may not have been intended to be applicable to cases covered by the first clause in the statute in which only one slate or group has been determined, in a timely fashion, to be the electors through the state's procedures for election contests and controversies. *Hinds' Precedents of the House of Representatives* suggests that when a state has settled the matter "in accordance with a law of that state six days before the time for the meeting of electors," then a controversy over the appointment of electors in that state "shall not be a cause of question in the counting of the electoral vote by Congress."[24] It should be noted that *Hinds'* cites no precedent or ruling, but merely paraphrases the statute, and it seems likely that this issue of the lawfulness of the determination and certification by a state could be raised and dealt with in the joint session.[25]

Precedent subsequent to the statute's original enactment in 1887 has been sparse. There appears only to have been one example, in 1961, when the governor of the state of Hawaii first certified the electors of Vice President Richard M. Nixon as having been appointed, and then, due to a subsequent recount which determined that Senator John F. Kennedy had won the Hawaii vote, certified Senator Kennedy as the winner. Both slates of electors had met on the prescribed day in December, cast their votes for President and Vice President, and transmitted them according to the federal statute. This was the case even though the recount was apparently not completed until a later date, that is, not until December 28.[26] The presiding officer, that is, the President of the Senate, Vice President Nixon, suggested "without the intent of establishing a precedent" that the latter and more recent certification of Senator Kennedy be accepted so as "not to delay the further count of electoral votes." This was agreed to by unanimous consent.[27]

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[24] Asher C. Hinds, *Hinds' Precedents of the House of Representatives of the United States* (Washington: GPO, 1907-1908), vol. 3, §1914, p. 202 (referring only to the 1887 statute).

[25] For further discussion of 3 U.S.C. §15, see Edward B. Foley, *Preparing for a Disputed Presidential Election: An Exercise in Election Risk Assessment and Management*, 51 LOY. U. CHI. L.J. 309 (2019); Stephen A. Siegel, *The Conscientious Congressman's Guide to the Electoral Count Act of 1887*, 56 FLA. L. REV. 541 (2004); L. Kinvin Wroth, *Election Contests and the Electoral Vote*, 65 DICK. L. REV. 321 (1961). See also Edward B. Foley, *Congress Must Fix This Election Law—Before It's Too Late*, WASH. POST, (Dec. 1, 2020), https://www.washingtonpost.com/opinions/2020/12/01/congress-must-fix-this-election-law-before-its-too-late/ (characterizing the language of 3 U.S.C. §15 as "impenetrable or, at the very least, indeterminate.").

[26] *Facts on File, Weekly World News Digest*, vol. XX, no. 1052, December 22-28, 1960, p. 469.

[27] See discussion in *Deschler's Precedents*, ch. 10, §3.5, pp. 12-13.

Electoral Vote Timetable and Subsequent Action

Congress established the timetable for certification, transmission, review, and approval of the electoral votes to avoid a repetition of the extraordinary delay incident to the electoral vote controversy surrounding the 1876 presidential election. In the event that no candidate has received a majority of the electoral votes for President, the election is ultimately to be decided by the House of Representatives in which the names of the three candidates receiving the most electoral votes for President are considered by the House, with each state having one vote. In the event that no candidate receives a majority of the electoral votes for Vice President, the names of the two candidates receiving the highest number of electoral votes for that post are submitted to the Senate, which elects the Vice President by majority vote of the Senators. The development and current practices for election of the President and Vice President by Congress specified in the Constitution and law are discussed in detail in CRS Report RL32695, *Election of the President and Vice President by Congress: Contingent Election*, by Thomas H. Neale.

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