

TITLE 3—THE PRESIDENT

Chapter 1—PRESIDENTIAL ELECTIONS AND VACANCIES

§ 5. Certificate of ascertainment of appointment of electors 318

(a) In General.—

(1) Certification.—Not later than the date that is 6 days before the time fixed for the meeting of the electors, the executive of each State shall issue a certificate of ascertainment of appointment of electors, under and in pursuance of the laws of such State providing for such appointment and ascertainment enacted prior to election day.

(2) Form of certificate.—Each certificate of ascertainment of appointment of electors shall—

(A) set forth the names of the electors appointed and the canvass or other determination under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast;

(B) bear the seal of the State; and

(C) contain at least one security feature, as determined by the State, for purposes of verifying the authenticity of such certificate.

(b) Transmission.—It shall be the duty of the executive of each State—

(1) to transmit to the Archivist of the United States, immediately after the issuance of a certificate of ascertainment of appointment of electors and by the most expeditious method available, such certificate of ascertainment of appointment of electors; and

(2) to transmit to the electors of such State, on or before the day on which the electors are required to meet under section 7, six duplicate-originals of the same certificate.

(c) Treatment of Certificate as Conclusive.—For purposes of section 15:

(1) In general.—

(A) Certificate issued by executive.—Except as provided in subparagraph (B), a certificate of ascertainment of appointment of electors issued pursuant to subsection (a)(1) shall be treated as conclusive in Congress with respect to the determination of electors appointed by the State.

(B) Certificates issued pursuant to court orders.—Any certificate of ascertainment of appointment of electors required to be issued or revised by any State or Federal judicial relief granted prior to the date of the meeting of electors shall replace and supersede any other certificates submitted pursuant to this section.

(2) Determination of federal questions.—The determination of Federal courts on questions arising under the Constitution or laws of the United States with respect to a certificate of ascertainment of appointment of electors shall be conclusive in Congress.

(d) Venue and Expedited Procedure.—

(1) In general.—Any action brought by an aggrieved candidate for President or Vice President that arises under the Constitution or laws of the United States with respect to the issuance of the certification required under section (a)(1), or the transmission of such certification as required under subsection (b), shall be subject to the following rules:

(A) Venue.—The venue for such action shall be the Federal district court of the Federal district in which the State capital is located.

(B) 3-judge panel.—Such action shall be heard by a district court of three judges, convened pursuant to section 2284 of title 28, United States Code, except that—

(i) the court shall be comprised of two judges of the circuit court of appeals in which the district court lies and one judge of the district court in which the action is brought; and

(ii) section 2284(b)(2) of such title shall not apply.

(C) Expedited procedure.—It shall be the duty of the court to advance on the docket and to expedite to the greatest possible extent the disposition of the action, consistent with all other relevant deadlines established by this chapter and the laws of the United States.

(D) Appeals.—Notwithstanding section 1253 of title 28, United States Code, the final judgment of the panel convened under subparagraph (B) may be reviewed directly by the Supreme Court, by writ of certiorari granted upon petition of any party to the case, on an expedited basis, so that a final order of the court on remand of the Supreme Court may occur on or before the day before the time fixed for the meeting of electors.

(2) Rule of construction.—This subsection—

(A) shall be construed solely to establish venue and expedited procedures in any action brought by an aggrieved candidate for President or Vice President as specified in this subsection that arises under the Constitution or laws of the United States; and

(B) shall not be construed to preempt or displace any existing State or Federal cause of action. (June 25, 1948, ch. 644, 62 Stat. 673; Pub. L. 117–328, div. P, title I, §104(a), Dec. 29, 2022, 136 Stat. 5234.)

319 § 6. Duties of Archivist

The certificates of ascertainment of appointment of electors received by the Archivist of the United States under section 5 shall—

(1) be preserved for one year;

(2) be a part of the public records of such office; and

(3) be open to public inspection. (June 25, 1948, ch. 644, 62 Stat. 673; Oct. 31, 1951, ch. 655, § 6, 65 Stat. 711; Pub. L. 98–497, title I, § 107(e)(1), (2)(A), Oct. 19, 1984, 98 Stat. 2291; Pub. L. 117–328, div. P, title I, § 105(a), Dec. 29, 2022, 136 Stat. 5236 .)

320 § 15. Counting electoral votes in Congress

(a) In General.—Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives

at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer.

(b) Powers of the President of Senate.—

(1) Ministerial in nature.—Except as otherwise provided in this chapter, the role of the President of the Senate while presiding over the joint session shall be limited to performing solely ministerial duties.

(2) Powers explicitly denied.—The President of the Senate shall have no power to solely determine, accept, reject, or otherwise adjudicate or resolve disputes over the proper certificate of ascertainment of appointment of electors, the validity of electors, or the votes of electors.

(c) Appointment of Tellers.—At the joint session of the Senate and House of Representatives described in subsection (a), there shall be present two tellers previously appointed on the part of the Senate and two tellers previously appointed on the part of the House of Representatives by the presiding officers of the respective chambers.

(d) Procedure at Joint Session Generally.—

(1) In general.—The President of the Senate shall—

(A) open the certificates and papers purporting to be certificates of the votes of electors appointed pursuant to a certificate of ascertainment of appointment of electors issued pursuant to section 5, in the alphabetical order of the States, beginning with the letter A; and

(B) upon opening any certificate, hand the certificate and any accompanying papers to the tellers, who shall read the same in the presence and hearing of the two Houses.

(2) Action on certificate.—

(A) In general.—Upon the reading of each certificate or paper, the President of the Senate shall call for objections, if any.

(B) Requirements for objections or questions.—

(i) Objections.—No objection or other question arising in the matter shall be in order unless the objection or question—

(I) is made in writing;

(II) is signed by at least one-fifth of the Senators duly chosen and sworn and one-fifth of the Members of the House of Representatives duly chosen and sworn; and

(III) in the case of an objection, states clearly and concisely, without argument, one of the grounds listed under clause (ii).

(ii) Grounds for objections.—The only grounds for objections shall be as follows:

(I) The electors of the State were not lawfully certified under a certificate of ascertainment of appointment of electors according to section 5(a)(1).

(II) The vote of one or more electors has not been regularly given.

(C) Consideration of objections and questions.—

(i) In general.—When all objections so made to any vote or paper from a State, or other question arising in the matter, shall have been received and read, the Senate shall thereupon withdraw, and such objections and questions

shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections and questions to the House of Representatives for its decision.

(ii) Determination.—No objection or any other question arising in the matter may be sustained unless such objection or question is sustained by separate concurring votes of each House.

(D) Reconvening.—When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No vote or paper from any other State shall be acted upon until the objections previously made to any vote or paper from any State, and other questions arising in the matter, shall have been finally disposed of.

(e) Rules for Tabulating Votes.—

(1) Counting of votes.—

(A) In general.—Except as provided in subparagraph (B)—

(i) only the votes of electors who have been appointed under a certificate of ascertainment of appointment of electors issued pursuant to section 5, or who have legally been appointed to fill a vacancy of any such elector pursuant to section 4, may be counted; and

(ii) no vote of an elector described in clause (i) which has been regularly given shall be rejected.

(B) Exception.—The vote of an elector who has been appointed under a certificate of ascertainment of appointment of electors issued pursuant to section 5 shall not be counted if—

(i) there is an objection which meets the requirements of subsection (d)(2)(B)(i); and

(ii) each House affirmatively sustains the objection as valid.

(2) Determination of majority.—If the number of electors lawfully appointed by any State pursuant to a certificate of ascertainment of appointment of electors that is issued under section 5 is fewer than the number of electors to which the State is entitled under section 3, or if an objection the grounds for which are described in subsection (d)(2)(B)(ii)(I) has been sustained, the total number of electors appointed for the purpose of determining a majority of the whole number of electors appointed as required by the Twelfth Amendment to the Constitution shall be reduced by the number of electors whom the State has failed to appoint or as to whom the objection was sustained.

(3) List of votes by tellers; declaration of winner.—The tellers shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted according to the rules in this subchapter provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two

Houses. (June 25, 1948, ch. 644, 62 Stat. 675; Pub. L. 117–328, div. P, title I, § 109(a), Dec. 29, 2022, 136 Stat. 5237.)

§ 16. Same; seats for officers and Members of two Houses in joint session 321

At such joint session of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators, in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint session shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this subchapter, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next calendar day, Sunday excepted, at the hour of 10 o'clock in the forenoon. But if the counting of the electoral votes and the declaration of the result shall not have been completed before the fifth calendar day next after such first session of the two Houses, no further or other recess shall be taken by either House. (June 25, 1948, ch. 644, 62 Stat. 676; Pub. L. 117–328, div. P, title I, § 110(c)(1), Dec. 29, 2022, 136 Stat. 5240.)

§ 17. Same; limit of debate in each House

322

When the two Houses separate to decide upon an objection pursuant to section 15(d)(2)(C)(i) that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter—

(1) all such objections and questions permitted with respect to such State shall be considered at such time;

(2) each Senator and Representative may speak to such objections or questions for up to five minutes, and not more than once;

(3) the total time for debate for all such objections and questions with respect to such State shall not exceed two hours in each House, equally divided and controlled by the Majority Leader and Minority Leader, or their respective designees; and

(4) at the close of such debate, it shall be the duty of the presiding officer of each House to put each of the objections and questions to a vote without further debate. (June 25, 1948, ch. 644, 62 Stat. 676; Pub. L. 117–328, div. P, title I, § 110(a), Dec. 29, 2022, 136 Stat. 5240.)

§ 18. Same; parliamentary procedure at joint session

323

While the two Houses shall be in session as provided in this chapter, the President of the Senate shall have power to preserve order; and no debate shall be allowed and no question shall be put by the presiding officer except to either House on a motion to withdraw under section 15(d)(2)(C)(i). (June 25, 1948, ch. 644, 62 Stat. 676; Sept. 3, 1954, ch. 1263, § 3, 68 Stat. 1227; Pub. L. 117–328, div. P, title I, § 110(b), (c)(2), Dec. 29, 2022, 136 Stat. 5240.)