

## **THE ELECTORAL PROCESS**

### **144. How are Presidents and Vice Presidents of the United States nominated?**

Candidates for President and Vice President are nominated either through individual declaration or by the action of a major or minor political party.

Presidential and Vice Presidential candidates nominated through the major parties are chosen at the national conventions of their respective parties. Delegates to these conventions are chosen on the State level by a variety of methods, including Presidential primaries, caucuses, conventions, or some combination of two or more of these elements. The process of delegate selection begins early in the Presidential election year, usually in late January or early February, and is completed well in advance of the national conventions, usually by June. National party conventions traditionally meet in July or August of Presidential election years, with the party "out of power" in the White House convening about one month prior to the other party.

The prenomination campaign may begin within the major parties as early as a candidate wishes to announce and begin organizing and fundraising. Only funds raised after January 1 of the year preceding the Presidential election year qualify for Federal matching funds, however.

### **145. How are Presidents and Vice Presidents elected?**

The President and Vice President of the United States are chosen every 4 years, in even-numbered years divisible by the number four, by a majority vote of Presidential electors who are elected by popular vote in each State.

Candidates for the Presidency, Vice Presidency, and the office of elector representing the major political parties are automatically accorded ballot access in all of the States, while minor party candidates must satisfy various State requirements, such as gaining a requisite degree of public support, through petition signatures, establishing a State-mandated organizational structure, or having polled a required number of votes in the most recent statewide election.

All States also provide for inclusion of independent candidates on the general election ballot. In almost every case, candidates must submit a requisite number of petitions signed by registered voters in order to gain ballot access. Some States also provide for write-in votes for candidates not included on the ballot.

Although the major political parties dominate Presidential election contests, there are usually a number of independent and

minor party candidates. In 1988, for example, 16 minor party candidates for President appeared on the ballot in at least one State. However, they received less than one percent of all popular votes cast and won no electoral votes.

The general election campaign for independent or minor party candidates may begin as early as the candidates wish. Major party Presidential campaigns traditionally begin on Labor Day and, therefore, last approximately 2 months.

**146. What is the “electoral college”? What is its role in the election of the President and Vice President of the United States?**

The President and Vice President of the United States are elected by electors, individuals who are chosen in the November general election in Presidential election years. The electors meet on the first Monday after the second Wednesday in December to vote, separately, for President and Vice President. Although the term does not appear in the Constitution, the electors are collectively known as the electoral college.

Each State is assigned a number of electors equal to the total of its Senators and Representatives in the U.S. Congress. The District of Columbia, under the 23d amendment, chooses a number equal to that assigned to the least populous State (three). The electoral college currently comprises 538 members when constituted. The Constitution requires that candidates for President and Vice President receive an absolute majority of electoral votes in order to be elected (270 of the current total of 538).

The Constitution, in Article II, Section 1, provides that, “No Senator or Representative, or person holding an office of trust or profit under the United States shall be appointed an elector.” Aside from this disqualification, any person is qualified to be an elector for President and Vice President.

While the Constitution (Article II, Section 1) empowers the States to appoint electors “in such manner as the legislature thereof may direct,” all 50 States and the District of Columbia currently provide that Presidential electors be elected by popular vote. Forty-eight States and the District of Columbia provide for winner-take-all, at-large elections, known as the general ticket system, which awards all electoral votes to the candidates which receive the most; i.e., a plurality of popular votes cast in the State. Maine, beginning in 1972, and Nebraska, beginning in 1992, comprise the only current exceptions to this arrangement, using the district system to award electoral votes. Under the district system, popular votes are tallied in each congressional district and on a statewide basis. The popular vote winner in each district is awarded one electoral vote, while the statewide popular vote winner is awarded two additional votes, reflecting the two “senatorial” electors assigned to each State regardless of population.

The modern electoral college almost always reflects the preelection pledges of its members and does not, as the Founding Fathers anticipated, make independent judgments concerning who should be elected President and Vice President. Between 1820 and 1988, only 16 electors cast their votes for candidates other than those to whom they were pledged. This is known as the phenomenon of the

“unfaithful” or “faithless” elector. While a number of States have enacted legislation which seeks to bind electors to the popular vote winners, the preponderance of opinion among constitutional scholars holds that electors remain free agents.

The electoral college never meets as one body, but in 51 State electoral colleges, usually in the State capital. Separate votes are cast for President and Vice President. Once the electors have voted and the results have been certified by the Governor of each State, the results are forwarded to the President of the U.S. Senate (the Vice President). The electoral vote certificates are opened and tallied at a joint session of Congress held on the sixth day of January succeeding every meeting of the electors, or, by custom, on the following day if the sixth falls on a Sunday, with the Vice President presiding. The winning candidates are then declared to have been elected.

If no candidate for President or Vice President has received a majority, the House of Representatives, voting by States, elects the President, and the Senate, voting as individuals, elects the Vice President.

**147. Did the electoral college ever vote unanimously for any President?**

The electors voted unanimously on only two occasions, both for George Washington, for the terms beginning in 1789 and 1793. In the Presidential election of 1820, all the electors except one voted to reelect James Monroe.

**148. How are Senators and Representatives nominated and elected?**

Senate and House candidates of major political parties are nominated by primary election in most States. Some States also provide for a party convention or committee recommendation in conjunction with a primary. In many States, no primary election is held for a particular office if the candidate is unopposed for nomination. Minor party candidates in most States are nominated according to individual party rules and procedures. Independent candidates are nominated by self-declaration.

Major party candidates are afforded automatic ballot access in all States, while minor party and independent candidates must meet various State requirements, such as submission of petition signatures of registered voters, in order to be placed on the general election ballot.

Senators are elected by plurality vote of eligible voters in their State. A plurality means that the candidate with the largest number of votes, usually, but not necessarily a majority, is the victor. Representatives are elected by plurality vote in the congressional district in which they are candidates. The only major exceptions to this rule in Federal general elections are found in the District of Columbia, for its Delegate to the House, and Georgia, which require that a candidate receive a majority of popular votes in order to be elected. A runoff election is scheduled in the event no candidate receives the requisite majority. In addition, Louisiana requires that all candidates, including those for the U.S. Senate and

House of Representatives, compete in an all-party primary election. A candidate winning a majority of votes under this arrangement is declared elected, and the general election is canceled for that office.

#### **149. What are the qualifications to vote in a national election?**

In practice, all U.S. citizens 18 years of age or older who meet certain additional qualifications established by the States are eligible to vote in national elections.

The Constitution originally provided for a limited degree of public participation in the electoral process, requiring that Members of the House of Representatives be chosen by electors having "the qualifications requisite for electors of the most numerous branch of the state legislature"; that Senators be elected by the State legislature; and that electors for President be chosen, as previously noted, "in such a manner as the legislature thereof may direct."

Prior to the Civil War, State action extended the franchise to a point where all white males, 21 years of age or older, and some black males, in certain nonslave States, were eligible to vote. Since the Civil War, Congress, and the States, have through a series of constitutional amendments and legislative enactments, progressively extended the franchise. The 15th amendment (1870) guaranteed the right to vote regardless of "race, color, or previous condition of servitude"; the 17th amendment (1913) provided for direct popular election to the Senate; the 19th (1920) and 26th (1971) amendments extended the vote, respectively, to women and citizens 18 years of age or older; the 23d amendment (1961) established the right to vote in Presidential elections for citizens of the District of Columbia; and, the 24th amendment (1964) prohibited the payment of any tax as a prerequisite for voting in Federal elections.

Since 1957, Congress has enacted laws designed to prevent racial discrimination in the election process, namely, the Civil Rights Acts of 1957, 1960, and 1964. In 1965, Congress also passed the Voting Rights Act which suspended for a stated period of time all tests and similar devices which had been used to discriminate against minority groups, particularly black citizens. This same legislation authorized Federal officers to register voters and to observe elections to insure that there was no discrimination. In 1970, Congress extended for an additional period of time the test suspension features of the 1965 Act and reduced the residence requirements imposed by States as a prerequisite for voting for Presidential electors. The Voting Rights Act Amendments of 1970 provided for the abolition of continual residency requirements for voting in Presidential elections and required the States to provide for absentee registration and voting in Presidential elections.

In 1975, Congress again extended the Voting Rights Act; placed a permanent nationwide ban on the use of literacy tests and devices, expanded the act to provide coverage for minority groups not literate in English, and required affected States and jurisdictions to offer certain kinds of bilingual assistance to voters. In 1982, Congress again extended and amended the Voting Rights Act to enable jurisdictions to seek release from coverage, but only if they could

meet conditions more extensive and difficult than the one condition required for release heretofore. Section 2 of the act was also amended to provide that the courts could judge an election law to be discriminatory without proof that it was intended to be so, so long as the law resulted in abridging or diluting minority voting power.

The Uniformed and Overseas Citizens Absentee Voting Act of 1987 guarantees the right of persons in military service or living abroad to vote by absentee ballot in Federal elections. The Voting Accessibility for the Elderly and Handicapped Act of 1984 mandates Federal standards of physical accessibility for polling places and registration sites and requires the availability of large type ballots and hearing devices for the handicapped.

Voters must also meet State requirements in order to vote, the most common of which is registration. Citizens in 46 States and the District of Columbia must register between 10 and 50 days in advance of election day, while the States of Maine, Minnesota, and Wisconsin provide for registration on election day. In addition, North Dakota does not require registration of voters, relying instead on presentation of personal identification at the polls. Thirty States and the District of Columbia require that voters be residents for a period of between 1 and 50 days prior to election day. In addition, most States bar registration and voting by convicted felons and those judged mentally incompetent.

#### **150. Who is responsible for the administration of elections in the United States?**

The administration of elections, including regulation of political parties, ballot access, and registration procedures, establishment of polling places, provision of election-day workers, counting and certification of the vote, and all costs associated with these activities, are the responsibility of the States. In performing these functions, the States are subject to the requirements of the Constitution and Federal law, as noted above.

#### **151. How was the choice of a national election day made?**

The Constitution (Article II, Section 1) provides that "Congress may determine the Time of choosing the Electors, and the Day on which they shall give their votes; which Day shall be the same throughout the United States." In 1792, Congress enacted legislation establishing the first Wednesday in December as the day on which Presidential electors were to assemble and vote, and further required the States to appoint electors within 34 days prior to the date set for the electors to vote. In 1845, Congress enacted legislation providing a uniform date for the choice of electors in all States, establishing "Tuesday next after the first Monday in the month of November of the year in which they are to be appointed."

In 1872, Congress extended the November election day to cover elections for Members and Delegates to the U.S. House of Representatives and in 1915, following ratification of the 17th amendment, which established direct popular election of the Senate, Tuesday after the first Monday in November was also designated as election day for Senators.

The decision to create a single day for the selection of Presidential electors was intended, in part, to prevent election abuses resulting from electors being selected on separate days in neighboring States. Several other reasons are also traditionally cited as being responsible for the selection of November as the time for Federal elections. In a largely rural and agrarian nation, harvesting of crops was completed by November, so farmers were able to take the time necessary to vote. Travel was also easier before the onset of winter weather throughout the northern States. Tuesday was chosen partly because it gave a full day's travel time between Sunday, which was widely observed by religious denominations as a strict day of rest, precluding most travel, and voting day. This interval was considered necessary when travel was either on foot or by horse in many areas, and the only polling place in most rural areas was at the county seat. The choice of Tuesday after the first Monday prevented elections from falling on the first day of the month, which was often reserved for court business at the county seat.

#### **152. Who pays for political campaigns?**

Most campaign funds of candidates for Federal office are raised from private contributions by individuals and groups. Individuals are limited to contributions of \$1,000 to any candidate per election, a primary and a general election count separately, and individuals can also give \$5,000 a year to a political action committee, which contributes the money to political campaigns. Interest groups—in the form of, multicandidate, political action committees (PACs)—may contribute up to \$5,000 per candidate per election. Political parties may also contribute to and spend money on behalf of their candidates, subject to various limits, and candidates, in general, may spend unlimited amounts of personal funds on their campaigns.

Since 1976, candidates for President have been given the option of accepting public funding for their campaigns, if they agree to abide by spending limitations and meet certain eligibility criteria. During the primary election season, funds from the U.S. Treasury are payable to candidates on a basis which matches small, privately raised contributions. Major political parties are eligible to receive a flat grant from the Government to finance their nominating conventions, and their nominees are eligible for a much larger stipend for their general election campaigns. Provisions exist in the law for third party or new party candidates to be eligible for public funding on a proportional, or retroactive, basis.

Public funding is not available to candidates for Congress.

#### **153. What Federal laws regulate political campaign financing?**

Until 1972, the Corrupt Practices Act regulated spending in Federal elections, but only for general and special elections. Since the passage of the Federal Election Campaign Act (FECA) of 1971 and its subsequent amendments in 1974, 1976, and 1979, there has been much greater regulation of the Federal electoral process, during primary, general, and special elections, caucuses, and conventions.

The FECA and its amendments established strict reporting requirements for all candidates for Federal office, their campaign committees and others spending money to influence Federal elections. Contributions are limited, but, in general, expenditures are not. Furthermore, full, though optional, public financing is provided for major party Presidential candidates in the general election and major party national nominating conventions, and matching public funding is available in Presidential primary elections. Minor party Presidential candidates may receive partial public funding in the general election. Expenditures by candidates accepting Federal funds must be limited, as must the level of personal funds a candidate may spend on his or her own campaign.

An independent Federal Election Commission is the principal enforcement agency, with primary civil jurisdiction and investigatory authority in criminal cases. It also has the power to prescribe regulations to implement and clarify campaign laws, to issue advisory opinions which offer guidance in complying with the law, and to disseminate information, such as on campaign receipts and expenditures, to candidates and to the public.

**154. What are "matching funds" and "public funds" in Presidential elections and who may qualify to receive them?**

The Federal election campaign laws provide for a system of public funds for Presidential elections, available on an optional basis to candidates who agree to abide by specified expenditure limits. Primary election campaigns are funded through the Presidential Primary Matching Payment Account, and general election campaigns are funded through the Presidential Election Campaign Fund. These accounts are funded by taxpayers who take the option of earmarking one dollar of their tax liability on their Federal income tax form for this purpose.

A primary election candidate may be eligible for matching funds after raising \$5,000, in donations from individuals of \$250 or less, in each of 20 States. Thereafter, the fund matches each contribution of \$250 or less until the total amount of public funds equals 50 percent of the candidate's primary expenditure limit. By linking the level of public funds received to that of private funds raised in the primaries, the law seeks to insure that only serious candidates; i.e., those able to attract a sizable number of private contributors, may receive public funds.

In the general election, the nominees for President and Vice President of the two major parties are automatically eligible for a flat stipend from the Presidential Election Campaign Fund. In 1992, the major party candidates, George Bush and Bill Clinton, each received \$55.2 million for use in the general election, but this figure is raised every 4 years according to a cost-of-living increase. No private contributions may be accepted by major party candidates who receive public funds in the general election, except for a specified amount from the national committees of their respective political parties. Third party candidates may receive public funds in an amount proportionate to the votes received by that party as compared with the major parties in the previous Presidential election, and new party candidates may be eligible for retroactive

public funds after the election, if they receive at least 5 percent of the popular votes cast.

Political parties are eligible to receive public funds for their national nominating conventions as well. The two major parties each received \$11.1 million in 1992 for their conventions, and this amount, too, is subject to cost-of-living increases. No minor parties to date have qualified for this subsidy.