



# Say Trump loses and refuses to concede. Then what?

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**Donald Trump in New York on Thursday.**

**By Matt Rocheleau**

GLOBE STAFF OCTOBER 21, 2016

Republican presidential candidate Donald Trump [said this week he may not accept the results of the](#)

[presidential election on Nov. 8 if he loses.](#)

That's raised some questions Americans are typically not confronted with:

- After the votes we cast are collected and counted, what process must happen before the results — and our next president and vice president — are finalized?
- Can a losing candidate actually challenge the results?



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Here's a walk-through of how things normally work and some ways results can be contested.

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## **‘dangerous’ for suggesting he won’t concede**

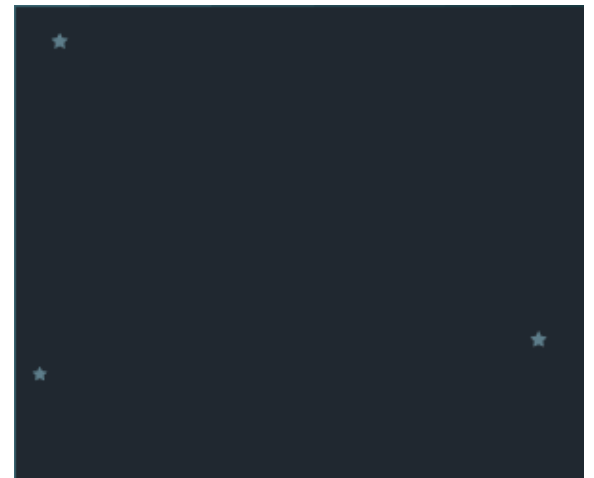
“He doesn’t even worry if what he says is true,” President Obama said of Donald Trump. “It’s just about him worried that he’s losing.”

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When voters cast their ballots for president, they aren’t actually voting directly for their preferred candidate.

Instead, they technically vote for a group of “electors,” people chosen ahead of time by the various political parties in each state who represent them in the [US Electoral College](#).

More than a month later, those electors hold a vote of their own, based on the results of Election Day voting in their states, that officially determines the presidency. The electors’ vote requires a formal sign-off by Congress in early January, and the next president isn’t official until he or she takes the oath on Inauguration Day, which falls on Jan. 20. (More on that process later.)



So, the results we all learn about on election night (or when we wake up the next morning) are literally unofficial projections.

### **What happens post-Election Day?**

After the election results are certified in each state, the governor sends a Certificate of Ascertainment that includes the names of the electors chosen by voters and the number of votes received to officials who administer the Electoral College process at the National Archives and Records Administration and its Office of the Federal Register.

Those certificates are supposed to be sent so they arrive in time for the Elector College to vote, which

**happens on the first Monday after the second Wednesday in December.**

**This year, that's Dec. 19 (but, technically, there's no penalty for missing the deadline).**

**The electors will meet on that date in their state and vote for president and vice president on separate ballots.**

**In about half of states, including Massachusetts, electors are bound by either state law or party pledge to vote for the candidate who won the popular vote in their state. Even electors in states with no binding rules almost always vote for the candidate who won among regular voters.**

**That's because electors often hold leadership positions in their party or have been loyal to it for years.**

**The electors' votes are signed, sealed, and certified on six certificates that go to different places so there are plenty of records and backups, if needed. One copy goes to the vice president; two go to the secretary of state in the state where the electors voted; two more go to the National Archives and Records Administration; and one to the presiding judge in the district where the electors met to vote.**

**Those certificates must be received within nine days (or by Dec. 28 this year) by the vice president and the archivist, or head of the National Archives and Records Administration, who both help carry out subsequent parts of the process. (Again, states face no legal penalty for failing to comply, but if votes are lost or delayed, the archivist may take extraordinary measures to retrieve duplicate originals.)**

**On Jan. 6, Congress will meet in a joint session to count the electoral votes. (Though Congress can pass a law to change this date.)**

**The vice president, in this case Joe Biden, presides over the count and announces the results.**

**It takes at least 270 electoral votes — a majority of the 538 total electors — for a president and vice president to win.**

**On Jan. 20, Inauguration Day, the president-elect would take the Oath of Office to officially become president.**

**If Trump loses, and disputes the election, can he challenge it?**

For starters, it doesn't matter if a losing candidate concedes, as far as the Electoral College process goes, according to Amy Bunk, director of legal affairs and policy at the Office of the Federal Register, among [other experts](#).

However, a losing candidate does have the ability to contest the results.

The two most likely scenarios for challenging them would be through the courts or in Congress, legal scholars said.

Candidates can contest state-level election results and demand recounts via a lawsuit.

"If they were interested in suing, they'd have to go to the particular state, and the state law would dictate if they have standing to sue," Bunk said. The laws vary from state to state.

Such legal challenges would likely be dismissed fairly quickly unless there was sufficient evidence to back up the claim — such as widespread reports of voter fraud — and if a review could change the overall outcome of the election for an entire state, experts said.

"You have to have some legal basis," said election law expert Derek T. Muller, an associate professor at Pepperdine University School of Law. "A generic claim that the system is rigged is not a sufficient cause of action."

Even trying to use a lawsuit to delay the process would be difficult.

Finalizing election results "is a time-sensitive process, and the courts are going to be reluctant to slow down the process unless there's a really good legal cause for doing so," Muller said.

"It's extremely hard to challenge unless you have some serious evidence," he added.

And for a presidential election, the need to potentially win multiple challenges in multiple states would make this approach to overturning results a difficult proposition.

Another potential roadblock to finalizing election results can come when Congress meets on Jan. 6 to count Electoral College votes.

It would take at least one member of the House and one from the Senate to submit in writing and sign an objection to the votes. Any objection would prompt the House and Senate to withdraw to their

respective chambers to debate the matter. After the debate, they rejoin and, for an electoral vote to be rejected, both the House and Senate must agree.


This is also rare, but has happened before. In Jan. 2005, Ohio's 20 electoral votes for President George W. Bush and Vice President Dick Cheney were challenged during the count in Congress. But after debate, the Senate and the House failed to agree to reject, and the votes were counted.

### What happens if the next president isn't finalized by Inauguration Day?

If that happens, the vice president-elect would serve until a president is finalized. If neither the next president nor the next vice president had been finalized, the speaker of the House would serve until a president takes office.

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