



Written by [Bob Adelman](#) on January 6, 2021

State Legislators Ask Pence to Delay Wednesday's Vote Count by 10 Days

A last-minute flurry of requests [from more than 115 Republican state legislators](#) in so-called swing states descended on Senate Majority Leader Mitch McConnell, House Minority Leader Kevin McCarthy and Vice President Mike Pence, asking to delay Wednesday's opening and counting of Electoral College votes for president.

Each expressed variations on the same theme: we need more time to investigate claims of election fraud and, if so, to invalidate the slate of electors each state has sent to Vice President Pence.



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One of those letters, signed by 88 state Republican lawmakers, said:

We write to ask you to comply with our reasonable request to afford our nation more time to properly review the 2020 election by postponing the January 6th opening and [the] counting of the electoral votes for at least 10 days, affording our respective bodies to meet, investigate, and as a body vote on certification or decertification of the election.

This action can be completed prior to the inauguration date, as required by the Constitution.

A portion of that letter was addressed directly to Vice President Pence:

On January 6, 2021, you are statutorily authorized and required under the Electoral Count Act of 1887 to preside over both houses of Congress to count and record the Presidential electoral vote count to elect the President and Vice President of the United States.

This congressionally set deadline, however, is not the supreme law of the land, and in fact must not supersede our state legislative authority under the Constitution. Moreover, the deadline is not necessitated by circumstances, especially when it truncates [shortens] the fulfillment of our constitutional duties and our responsibility to the American people.

Attached to that letter was an appendix listing various irregularities and illegalities that "provides evidence of a coordinated and structured multi-state effort to undermine state law protecting election integrity."

One of those signers, Wisconsin State Representative Joe Sanfelippo, said he joined with the other state lawmakers because, in his state, he found at least three major violations of election law:

We know laws were broken. That's indisputable. What we don't know is whether the breaking of those laws affected the outcome of the election....



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Now that we know the law wasn't followed ... it is up to us to determine if [those violations had] any effect on the outcome, to hold those people who didn't follow the law accountable, and to make sure in the future those laws are followed.

The letter was crafted by a group called Got Freedom, whose spokesman, Phill Kline, said, "These elected officials are not asking Mike Pence to overturn the election results, and they're certainly not trying to subvert our democracy. Rather, they're simply requesting that they be allowed to perform the role required of them by the Constitution."

The core issue facing Pence is how he will read and understand his role in the process. The 12th Amendment to the Constitution provides that "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted."

If he understands his role as merely an envelope opener and vote counter, then Biden will win the day. If he understands his role as accepting (or rejecting) and approving (or disapproving) those votes, then it's possible that enough fraudulently nominated slates will be rejected to cause Biden to fall short of the 270 votes he needs. From there the matter moves to the House.

But there are other forces at work. Senators and Representatives have also pledged to question those slates, which will delay the final count for hours, if not days. In a worst-case scenario the matter may not be decided by Inauguration Day, with the present speaker of the House automatically ascending to the office of the presidency until it is settled.



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