

## Key Questions

# Will the Presidential Election Be Delayed?

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**No. But the outcome may not be readily known, adding an element of uncertainty.**

It would not be an exaggeration to say that the United States was in a state of disarray following the Civil War. Economic booms and busts ensued all too frequently due, in large part, to a series of missteps to reunite the nation.

Known as Reconstruction, discussions to reconnect the South with the North began as early as 1863, two years before the war ended. Following President Lincoln's assassination, the execution of these plans fell to President Andrew Johnson, whose hands-off approach ultimately sowed the seeds of violence. Johnson sought but failed to receive the Democratic Party nomination [he had been a War Democrat during the Civil War] in the 1868 presidential election ultimately paving the way for Ulysses S. Grant, the Republican nominee, to win the presidency by a landslide.

Despite his military acumen, however, Grant's eight years in office were marred by economic calamities and corruption involving many members of his Republican administration. As a result, by 1876, Democrats felt confident that they could win the White House for the first time in 30 years, while Republicans campaigned on pledges to restore integrity to government.

Two conventional and "safe" candidates were nominated by their respective parties: Ohio Governor Rutherford Hayes (Republican) and Governor Samuel Tilden of New York

(Democrat). On November 8, 1876, the day immediately following the election, reports indicated that Tilden received nearly 4.3 million votes compared with 4.0 million votes cast for Hayes. Tilden had won 184 electoral votes while Hayes garnered 165, with 20 votes from four states unresolved.

At that time, 185 electoral votes were needed to win, thus rendering the remaining 20 electoral votes essential to the election's outcome. In the end, after four chaotic months of backroom deals (most notably the Compromise of 1877, which removed US federal troops from the South and ended Reconstruction, effectively giving rise to what became known as Jim Crow laws), irrefutable evidence of fraud, intimidation, and threats of violence, Hayes was ultimately declared the winner by one vote after being awarded all 20 electoral votes on March 2, 1877. To this day, the 1876 presidential election is still considered the most contentious and controversial election in American history.

In the aftermath of the 1876 election, the Electoral Count Act of 1887 and subsequently the 20th Amendment of the Constitution passed to address contested elections. But many of the processes specified therein have never been tested.

For instance, January 3 and January 20 are the dates on which Congress and the President officially begin their terms, respectively. And while it is clear that Congress is the ultimate adjudicator of a disputed presidential election, if certain congressional seats are still being contested, it is unclear as to which Congress would be deemed to be "in control" – the Congress whose term expired on January 2 or those whose term begins on January 3, but is not yet fully formed.

Under the 20th Amendment, if a president is not selected by January 20, the Speaker of the House would assume the presidency. This would truly be an unprecedented event.

Fast-forwarding to today, some political observers are drawing parallels to the 1876 contest. They believe that this year's presidential election might be equally contentious following President Trump's tweet last week in which he suggested that the election be delayed. Federal election officials, members of Congress from both parties, and numerous others were quick to respond that only Congress has the authority to alter the date of the election and that a delay is extremely unlikely.

But with Trump trailing in the polls, some think he may be gearing up for a legal challenge if he loses and the outcome is close. As one election lawyer stated recently: "Trump is laying the groundwork to say: 'The election was stolen, there was fraud, and we're going to go to court.'"

At the same time, former Vice President Joe Biden's team also appears to be preparing for a possible legal challenge. Quoting the campaign's director of voter protection: "...with the best lawyers in the country we are working to address every possible contingency and ensure November's elections go smoothly."

Making matters even more complicated this election cycle, is how the pandemic is forcing drastic changes in how elections are being conducted. To wit, as of the 2018 midterms, only four states had full-fledged vote-by-mail systems. Today, more than half do, though clearly they have not been subject to the level of scrutiny that accompanies a presidential election. This, combined with a highly politicized fight in battleground states, suggests that either party might portray the results as illegitimate.

As it relates to implications for investing, we have often stated that investors place unnecessarily outsized importance on elections as markets care little about who sits in the White House. Concerns, therefore, regarding a Biden victory or a Trump upset may be misplaced, a subject we will discuss in greater detail in a future Key Questions article.

And yet, while markets are largely indifferent when it comes to the occupant of 1600 Pennsylvania Avenue over time, they exhibit bouts of volatility until the uncertainty regarding the outcome of the election is resolved.

Looking ahead, we do not believe that investors should be altering their portfolios because of something that might (or might not) happen on election night. But they should be prepared for increased levels of volatility as a most unusual election season is about to officially begin.

For more information, [please contact your Key Private Bank Advisor.](#)

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