

Originally published in

# New York Law Journal

## Commentary

April 28, 2020

# 2020 Election Sidebar: Can the Election Be Postponed?

*This is the first in a series of Jerry Goldfeder's articles titled 2020 Election Sidebar, which explores salient legal issues of the 2020 election.*



By [Jerry H. Goldfeder](#)

**We have not cancelled or postponed any of our 58 presidential elections—not during wars, economic calamities or natural disasters.**

**F**ormer Vice President Joe Biden [says](#) he is worried that President Trump may delay the November election to stay in office. He needn't be. Trump has no authority to cancel or postpone the presidential election. The U.S. Constitution explicitly provides that a president's term is [four years](#), and the new or re-elected president is sworn in at [noon on January 20th](#). There is no provision or precedent for a sitting president to extend his term beyond then.

On the other hand, Congress can postpone it, but only for a short time. The [Constitution directs Congress](#) to set the dates for the election, and it has done so. Since 1845, the day presidential electors are chosen is the [Tuesday after the first Monday in November](#), Election Day (this year,

Nov. 3). Congress also sets the date when the Electoral College meets to actually vote for president, which is the [first Monday after the second Wednesday in December](#) (Dec. 14); and the date when it meets [to tally the votes \(Jan. 6th\)](#). So, if the pandemic is still raging in the fall, Congress alone has the authority to adjust this election timeline—provided there is sufficient time for either Biden or Trump to take the oath of office at noon on January 20th.

Luckily, Congress is divided, ensuring that any modification of the calendar, as extraordinarily unique in our history as it would be, would have to be a bipartisan effort.

Any delay must be of limited duration, however, so that the president can start his term on Inauguration Day. Congress would have to take into account the expected increase in mail-in ballots, as well as extensive court proceedings if the results are close and vigorously contested. That said, if there is no clear winner by January 20th, the Constitution provides a solution—the law of succession comes into play. In 1947, [Congress named the Speaker of the House of Representatives](#) as next in line. Given today's political realities, when the new House members take their seats, the new Speaker—and, under this hypothetical, the new president—would likely be Nancy Pelosi, at least until the election results are finalized.

This highly unlikely scenario can get even more bizarre if the Republicans win the House and its chosen Speaker ascends to the vacant presidency. In that there is [no requirement the Speaker is a duly elected representative](#), they can install Donald Trump as Speaker, and voila, he would then become president.

Gaming out this maze of constitutional law could be fun if it weren't so serious. We have not cancelled or postponed any of our 58 presidential elections—not during wars, economic calamities or natural disasters. Even after 9/11, the [House voted 419-2 “never” to postpone a presidential election because of terrorism](#). The same should be said with respect to the current health crisis. Congress, therefore, should not even entertain the idea. In any event, the chances of Democrats and Republicans jointly doing this is highly remote.

And that is good—because the continuity of our elections is too important to be tampered with.

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