

POLITICAL PULSE

## Oh Come All Ye Faithless

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Just when you thought there were no more black swans in this presidential election...

The presidential election is less than two weeks away. It has been an extraordinary process already, with a sitting president withdrawing from his party's ballot and his vice president replacing him, having won not a single primary vote – and with two assassination attempts against the other candidate, himself a former president. *We think it was the sheer weirdness of those events as they unfolded that triggered the almost 10% stock market correction that ended on August 5 with the third highest VIX volatility index reading in history* (see [“It’s a Recession! Well, Maybe It’s Just a Correction”](#) August 5, 2024).

- The weirdness may not be over, and there could be more market turbulence as a result. That’s because this election is likely to be razor close. *Nate Silver’s model predicts a winning margin for Donald J. Trump in the Electoral College of just one vote.*
- *Close elections are vulnerable to small procedural disturbances that can have enormous consequences.*
- Even the smallest incidence of ballot fraud could tip the election. *According to Gallup*, 47% of Americans are worried about “people using illegal or fraudulent means to cast votes” and 44% are worried about “votes cast by people who, by law, are not eligible to vote.”
- With that level of distrust, we can be certain there will be bitter accusations of real or imagined fraud *that will set the stage for what could turn into an historical electoral mess stretching all the way into mid-December, or even January, before a winner is known for certain.*

Earlier this year we’d been warning clients that a centrist third party presidential candidate could upend the presidential election process by denying either major-party candidate a majority in the Electoral College – triggering a “contingent election” to be decided by the House of Representatives for the first time since 1824 (see, among many, “How Biden and Trump Can Both Lose. Easily.” February 8, 2024). The sponsor of the third party effort, the bipartisan advocacy group [No Labels](#), had to stand down when they couldn’t recruit a sufficiently credible candidate (see “On March Jobs, and No Go for No Labels” April 5, 2024).

- *But in this election there is another possible curve-ball* that could

### Update to strategic view

#### US POLITICS, US STOCKS, US BONDS:

Very credible scenarios for battleground state outcomes point to winning Electoral College margins for either candidate of only two votes. Just two “faithless electors” who vote for a candidate other than the one to whom he is pledged could reverse the outcome. Just one could create a tie, driving a “contingent election” that would have to be settled by the House of Representatives. There have been many examples of faithless electors in American history, including ten as recently as 2016. We won’t know until December 17 when the electors cast their votes. If the result is a tie, we won’t know the winner till early January 2025 when the new House is seated. Markets don’t seem to care who is elected. But the political turbulence around Biden’s replacement nevertheless catalyzed a highly volatile correction that ended up driving a buying opportunity. It could happen again.

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still be thrown. In some entirely feasible scenarios, it could determine the outcome by artificially tipping the election to one candidate or the other, or it could create a tie between Trump and Kamala Harris that would drive a “contingent election” in the House even without a third party in the mix.

- *With the election likely to be razor-close, a single “faithless elector” could do it. It would be completely unprecedented in American history. It would feel like a hijacking of democracy and a “constitutional crisis.” Markets would get very upset.*
- It’s a classic black swan. That is, it *can* happen, and no one is even thinking about it.

Under [Article II, Section 1](#) of the US Constitution, the president is elected by slates of “electors” chosen in each state “...in such Manner as the Legislature thereof may direct...” It is practice in all fifty states for the electors to be chosen by popular vote for a particular presidential candidate – with the electors pledged to cast their votes in the Electoral College for the winning candidate. *A “faithless elector” is one who votes for somebody else.*

- Actually, a faithless elector can vote for the losing presidential candidate in that state instead of the winning one; he can vote for someone else entirely; he can abstain and vote for no one; or he can simply make a mistake and vote for someone other than the winner even though it was his avowed intention to vote for the winner.
- There are [examples of all of these](#) in American history across 27 incidences. 24 voted for another candidate – of which only one was the opposing candidate. There was one abstention, and two who voted for the vice presidential nominee (one of whom said it was an error).
- There is no case in which faithless electors changed the outcome for the presidency. However, in 1836 23 electors from Virginia failed to vote for Richard M. Johnson for *vice* president, depriving him of a majority of Electoral College votes and requiring a “contingent election” in the Senate. Johnson was ultimately elected.
- *2024 would be – could be – a first for the presidency.*
- There were no faithless electors in the 2020 election.
- But *there were a record-setting ten faithless electors in the 2016 election* between Hillary Clinton and Donald Trump. Eight Democratic electors voted for someone other than Clinton (mostly for Bernie Sanders, but one for [Faith Spotted Eagle](#)). Two Republican electors voted for someone other than Donald Trump (one for John Kasich, one for Ron Paul).
- 38 states, [including the District of Columbia](#), have enacted laws that require electors to be faithful. In some cases, there are financial penalties for faithlessness. In some cases, the state can reverse the faithless elector’s vote by replacing him with a faithful elector. Such remedies against faithless electors were affirmed in 2020 by the Supreme Court in [Chiafalo v. Washington](#).

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- *But that leaves 13 states in which electors can be faithless with no penalty or remedy.* These include red states such as Idaho and South Dakota, blue states such as New Jersey and Vermont, and battleground states such as Pennsylvania and Georgia.

It matters this year because, again, this looks like it will be a razor-close election, where the smallest difference can make a big difference.

- Suppose, all else equal, Donald Trump flips the three battleground states carried by Biden in 2020 in which, currently, he has [the strongest lead in the polls](#) – Georgia, Arizona and Nevada. That wouldn't quite be enough for Trump – it would leave Harris the winner 270 to 268.
- *But then consider what might happen on December 17, when votes are cast in the Electoral College.*
- Two faithless Democratic electors, say, Bernie Sanders-types who didn't like that Harris was nominated having won not a single primary vote, and Trump would win 270 to 268 – and that would happen seven weeks after everyone thought Harris was the winner.
- *But even a single Democratic elector voting for Trump would make it a tie, 269 to 269 – a “contingent election” that goes to the House.*
- Trump would surely win, since it is a virtual certainty that there will be a majority of Republican state delegations in the newly elected House, even if Democrats have a narrow majority of seats. *That would be a double Constitutional crisis – and one which wouldn't resolve until the first week of January, 2025, when the new Congress is seated. Mr. Market would not be pleased.*
- Or suppose the opposite. Suppose Trump flips just two battleground states won by Biden in 2020, Pennsylvania and Georgia (he's [leading in the polls](#) now in both). That would make Trump the winner 270 to 268. *But just one faithless never-Trump Republican elector who votes for Harris and it's a tie – 269 to 269 – a “contingent election” that goes to the House, where Trump would likely win – restoring the result to what it would have been had the electors been faithful. But two, and Harris wins 270 to 268.*
- There are many other variations, in which faithless electors don't vote for the opposing candidate, but vote for somebody else entirely, or abstain.

We think markets so far have not demonstrated any detectable preference for one presidential candidate or another (see [“Video: What you're not hearing about why the markets don't seem to care about the presidential election”](#) October 14, 2024). *So why should the kinds of disturbances we're talking about matter?*

- *For the same reason unprecedented political disturbances seem to have mattered in the volatile correction that ended on August 5.* We believe that when large numbers of people are exposed to unprecedented disturbances in institutions they had taken for granted, it opens up cognitive pathways that cause the questioning of everything else that had been taken for granted.

- For example... is Nvidia really worth that valuation? ...should we really be buying 10-year Treasuries at just 4.2% with record debts and deficits as far as the eye can see? ...and so on.
- But even in the worst-case scenario, the election turbulence will be resolved one way or the other – and the government that takes power next year remains 75% likely to be gridlocked, a guardrail against the worst economic policy risks.
- Those cognitive pathways that cause people to have to question everything cannot stay open for long. It's too painful. It was that principle that led us to call the bottom on August 5 almost to the minute (see ["It's a Recession! Well, Maybe It's Just a Correction"](#) August 5, 2024).
- So if our worst-case election scenario plays out, there will be volatility, and there will be a bottom. And we will try to call it.

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### Bottom line

Very credible scenarios for battleground state outcomes point to winning Electoral College margins for either candidate of only two votes. Just two “faithless electors” who vote for a candidate other than the one to whom he is pledged could reverse the outcome. Just one could create a tie, driving a “contingent election” that would have to be settled by the House of Representatives. There have been many examples of faithless electors in American history, including ten as recently as 2016. We won't know until December 17 when the electors cast their votes. If the result is a tie, we won't know the winner till early January 2025 when the new House is seated. Markets don't seem to care who is elected. But the political turbulence around Biden's replacement nevertheless catalyzed a highly volatile correction that ended up driving a buying opportunity. It could happen again. ▶