

## The No Labels Contingent Election Plan Explained (To the Extent That is Possible)



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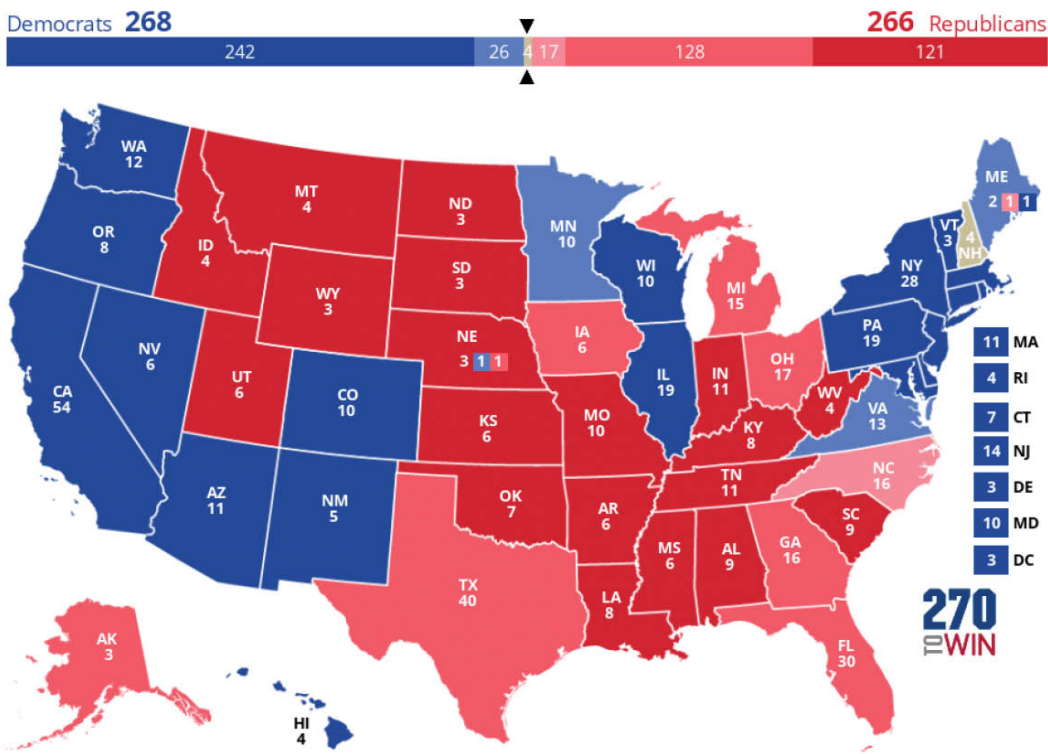
For more than a year, No Labels insisted they would only proceed with a third-party presidential bid if they saw a clear “path to victory.” Apparently, they have let go of that fantasy. As their CEO recently [told \*The Atlantic\*](#), “this organization is *not* in it to win it.”

What, then, would they be in it to do?

If they choose to go forward, it now appears their goal would be to win a state or two and trigger a contingent election. Now, we believe their candidate would have almost no chance of winning even a single state. But we shall suspend disbelief to explain the No Labels theory of how they could somehow win by losing. As you’ll see, it’s a wild ride.

### **1. They win a state, and it triggers a contingent election.**

Let’s say the No Labels ticket somehow manages to win somewhere, and their single state victory denies both Biden and Trump the 270 electoral votes they need to win. In a very tight election, that might require winning only a small state, like New Hampshire.



Source: 270toWin, <https://www.270towin.com/maps/BDdOk>.

They have now created a “contingent election.” Since no candidate has received a majority of the electoral votes, the 12th Amendment dictates that the president would be chosen by the House of Representatives and the Vice President by the Senate. More on that below. But No Labels has a different plan.

## 2. No Labels cuts a deal.

No Labels apparently believes they can skirt the 12th Amendment via an unprecedented attempt to wring concessions from the winner. Between Election Day (Nov. 5) and the day the electors meet at each state capitol to cast their votes (Dec. 17), No Labels would be wheeling and dealing. They would offer their precious, majority-making electoral votes to either Biden or Trump, *depending solely on who gives them more in a negotiation.*

So, what would they seek? As told to [NBC News](#), they view this as bargaining for a “coalition government.” No Labels co-founder Tom Davis told [NBC](#):

It could be Cabinet posts. It could be a policy concession... [T]he vice-presidential position could also be part of the discussions... It could be, for example: ‘We’re going to build a border wall [and] not run deficits.’ Any number of things.

Well, that’s clarifying! No Labels would view their own ticket as a stalking horse for this negotiation. They get crushed, but then they hold the country hostage to their demands.

## 3. No Labels instructs their electors to be “faithless.”

In most states, none of this “negotiating” would matter. The electors they chose would be bound by state law to cast their ballots for the No Labels candidate who won there. But seventeen states, including the battlegrounds of New Hampshire and Pennsylvania, do permit electors to cast their EC votes for someone other than the candidate who won their state. No Labels believes such “faithless electors” could be counted on to cast their EC ballot for Trump or Biden, depending on instructions from No Labels HQ, after No Labels has cut a deal for their votes.

That, to put it mildly, is *quite* a presumption. But let’s say they do it.

## 4. The governor certifies the slate of electors. Or, more likely, doesn’t.

Once the electors cast their votes, faithlessly, for either Trump or Biden, the slate goes to the governor for signature. In our scenarios, the New Hampshire governor is a Republican (and will be in office in December) and the Pennsylvania governor is (and will be) a Democrat. What would a governor do when faced with a slate of EC votes for someone other than the winner of the presidential election in their state?

Think of the political pressure. Even a normal major party candidate would be screaming bloody murder if their opponent tried to get to 270 EVs with faithless electors. Now, try to imagine that Donald Trump is the one facing a loss in this manner. The scale of political unrest, in that state and nationwide, would be

galactic. A governor of either party might not countenance this kind of manipulation of the vote in their state, especially with either the current or former president claiming, not without justification, that their signature would amount to electoral theft.

## 5. Everybody sues.

Whether or not the governor certifies the slate, lawsuits would fly. If there were 61 lawsuits filed between the election and inauguration in 2020, you can bet that number would be much higher this time. And it seems inconceivable that the US Supreme Court would not find a way to step in as they did, disastrously, in *Bush v. Gore*.

## 6. It's January 6. Again. But worse.

Despite the chaos in the streets and the courts, the constitution requires the EC votes be transmitted to Congress to be counted on January 6, 2025. After that, all hell breaks loose.

First, pundits agree there's a good chance that in the new Congress (sworn in on January 3), Democrats would control the House majority and Republicans the Senate. And that matters because the House majority would decide on how to proceed. But that majority would not decide the actual presidential vote.

Under the 12th Amendment, that vote is conducted by state delegation, with each state getting a single vote. (Yes, California gets one and Idaho gets one.) And it's almost certain that Republicans will control the majority of state delegations in the House. (Even if there's a "blue wave" in November, Democrats have almost no chance of winning a majority of delegations.) So, one side controls the process, the other the outcome.

Let's say No Labels has cut a deal with Biden. But Republicans are saying that those votes are illegitimate, especially if they arrive without gubernatorial certification. That means they should move to a vote by delegation. But with so much uncertainty over the legitimacy of the disputed EC votes, would the Democratic majority simply cede the point that the No Labels ballots for Biden are illegitimate—meaning neither candidate has 270—and meekly proceed to a 12th Amendment vote for just the second time in American history? Not bloody likely.

Neither side would concede that the way the president is chosen is legitimate. We would have a stalemate. Followed by a crisis. Followed by unimaginable political unrest. All courtesy of No Labels.

As Protect Democracy [has written](#):

If a contingent election occurs when one party controls a majority of overall House seats, but the other has an advantage in terms of state delegations, the party that controls the majority of seats may be incentivized to obstruct the conduct of the contingent election through delay, rules changes, or other means, leaving the presidency vacant and triggering the line of succession.

They go on to point out the many other ways that the rules could be manipulated or challenged. And the Senate could elect a political adversary of the House's presidential choice to serve as Vice President.

And that's just the chaos *inside* the Capitol. If Trump and his most loyal followers were willing to engage in an insurrection over the 2020 election, which was manifestly fair, it's not hard to imagine their response to an election outcome so blatantly manipulated by No Labels. In [another piece on this topic](#), the Protect Democracy team sums it up perfectly: "To the extent a third-party effort could pull off an upset victory in at least one state next year, we face the prospect of a constitutional crisis in January 2025."

## Conclusion

We have said many times that the No Labels bid is hopeless but could endanger our democracy. Originally, it seemed the only way they could do that is by serving as a spoiler that elects Trump. That would be catastrophic. But this scenario offers a second route to disaster, and this appears to be their *preferred* outcome. We urge any prospective candidate to decline their nomination to nowhere and their delegates to vote against proceeding with this enormously dangerous folly.

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