

Testimony of Senator Susan Collins
“The Electoral Count Reform Act: The Need for Reform”
Senate Rules Committee Hearing
August 3, 2022

Chairwoman Klobuchar, Ranking Member Blunt, and members of the Committee, thank you for inviting Senator Manchin and me to testify on the legislation that a bipartisan group of Senators has written to reform the 135-year old Electoral Count Act – the archaic and ambiguous law that governs how Congress tallies each state’s electoral votes for President and Vice President.

In four of the past six presidential elections, the Electoral Count Act’s process for counting electoral votes has been abused, with members of both parties raising frivolous objections. But it took the violent breach of the Capitol on January 6th of 2021 to really shine a spotlight on the urgent need for reform.

Over the past several months, a dedicated, bipartisan group of Senators have worked hard to craft the legislation before you, united in our determination to prevent the flaws in this 1887 law from being used to undermine future presidential elections. I’d like to acknowledge the contributions of our cosponsors, Senators Romney, Sinema, Portman, Shaheen, Murkowski, Tillis, Warner, Capito, Murphy, Young, Cardin, Sasse, Coons and Graham. I also want to thank Chairwoman Klobuchar and Ranking Member Blunt for their advice and counsel throughout this process.

The bill that we have introduced - the *Electoral Count Reform and Presidential Transition Improvement Act* – will help ensure that electoral votes totaled by Congress accurately reflect each state’s popular vote for President and Vice President.

It includes a number of important reforms, but I want to highlight just a few.

First, it reasserts that the constitutional role of the Vice President in counting electoral votes is strictly and solely ministerial. The idea that any Vice President would have the power to unilaterally accept, reject, change, or halt the counting of electoral votes is antithetical to our Constitutional structure and basic democratic principles.

Second, our bill raises the threshold to lodge an objection to electors to a minimum of one-fifth of the duly chosen and sworn members of both the House of Representatives and the Senate. This mirrors the threshold under Article I of the Constitution to call for the yeas and nays on a vote in Congress. Currently, only a single member in both Houses is required to object to an elector or a slate of electors.

Third, and perhaps most significant, our legislation ensures that Congress can identify a single, conclusive slate of electors submitted by each state. It does so by—

- Clearly identifying a single state official who is responsible for certifying a state’s electors;

- Ensuring that a state’s electors are certified and appointed pursuant to state law in effect prior to election day;
- Providing aggrieved presidential candidates with an expedited judicial review of federal claims related to a state’s certificate of electors. This does not create a new cause of action. Instead, it will ensure prompt and efficient adjudication of disputes; and
- Requiring Congress to defer to the slates of electors submitted by a state pursuant to the judgment of state or federal courts.

Finally, our bill strikes a provision of an outdated 1845 law that could be used by state legislatures to override their state’s popular vote by declaring a “failed election” – a term that is not defined in that law. The bill permits a state to modify the period of its election only in “extraordinary and catastrophic” circumstances, and also only as provided for under the state’s law enacted prior to election day.

Our legislation is supported by numerous election law experts and constitutional scholars with whom we consulted throughout our deliberations. I am grateful for their advice, and I ask unanimous consent that several of those statements be included in the record of this hearing.

We have before us an historic opportunity to modernize and strengthen our system of certifying and counting the electoral votes for President and Vice President. Nothing is more essential to the survival of a democracy than the orderly transfer of power. And there is nothing more essential to the orderly transfer of power than clear rules for effecting it.

I ask my colleagues in the Senate and the House to seize this opportunity to enact these sensible and much-needed reforms before the end of this Congress.