

Remarks of Senator Joe Manchin III Before the U.S. Senate Committee on Rules & Administration

August 3, 2022

Chairwoman Klobuchar, Ranking Member Blunt, and members of the Committee. Thank you for the opportunity to present some brief remarks on the importance of reforming the Electoral Count Act.

The Electoral Count Act was originally passed into law in 1887 and was a valiant—albeit clumsy—effort to ensure that another presidential election like that of the 1876 contest between Rutherford B. Hayes and Samuel J. Tilden never happened again.

As the members of this Committee know, the 1876 election was a disaster. Neither candidate received an electoral majority and multiple states presented serious controversies by submitting dueling slates of electors. Following an informal deal that was struck with Southern Democrats, that effectively ended Reconstruction, Hayes was eventually named President.

But the vulnerability of our democracy was revealed.

Following two other close elections in 1880 and 1884 and numerous failed attempts at reform, Congress finally passed the Electoral Count Act in 1887.

But, as we saw on January 6, 2021, a lot of the “fixes” established by the original Electoral Count Act are not merely outdated, but actually serve as the very mechanisms that bad actors have zeroed in on as a way to potentially invalidate presidential election results.

As I am sure you will hear from the panel of distinguished experts who will testify before you today - **the time to reform the ECA is long overdue. The time for Congress to act is now.**

To that end, I am proud of the bipartisan bill introduced by Senator Collins, myself, and my colleagues last month: **The Electoral Count Reform and Presidential Transition Improvement Act.**

I am particularly thankful to Senator Collins for her leadership throughout the process and for the valuable input from all of my colleagues in the working group on both sides of the aisle, including

Senators Portman,

Murphy,

Romney,

Shaheen,

Murkowski,

Warner,

Tillis,

Sinema,

Capito,

Cardin,

Young,

Coons,

Sasse and

Graham - all of whom co-sponsored this important bill.

While I will be among the first to acknowledge that the bill is not perfect, it represents many months of hard work and compromise and would serve as tremendous improvement over the current ECA.

As Senator Collins mentioned in her remarks, the bill addresses what the bipartisan group identified as the most concerning problems with ECA:

- (1) **It unambiguously clarifies that the Vice President is prohibited from interfering with the electoral votes;**

- (2) **It raises the objection threshold** from a single Representative and a single Senator to 20% of the members of both the House of Representatives and the Senate; and
- (3) **It sets a hard deadline for state governors to certify their respective states' electoral results** – and if they fail to do so or submit a slate that does not match with the electoral results from the state, it creates an expedited judicial process to resolve.

On this last point, the expedited judicial procedure, I'd briefly like to take a moment to discuss the reform proposed by our bill, and explain why we proposed revising the ECA as we did.

Our group decided to rewrite Section 5 regarding the certificate of ascertainment of electors, not to create any new causes of action, but to provide for expedited review of an action that a Presidential and Vice-Presidential candidate can already bring under existing law. It does so in a way that carefully limits the parties who can avail themselves of this expedited procedure and ensures that the slates of electors that Congress tallies are those certified and appointed pursuant to laws in effect prior to Election Day. While the group is open to some technical fixes to address timing concerns, for example striking the 5-day notice typically required under section 2284 of title 28, we stand by this provision as a way to quickly and efficiently determine a single lawful slate of electors.

In closing, I would, again, like to thank the Committee for holding this hearing and for amplifying the need to reform the Electoral Count Act—and for allowing me to speak about the **Electoral Count Reform and Presidential Transition Improvement Act**. I look forward to continuing to work with you to make these reforms a reality.