



**Senator Susan M. Collins  
Statement for the Record  
Electoral Count Reform Act  
December 21, 2022**

The Senate is on the verge of enacting legislation, included in the Consolidated Appropriations Act, that would remedy the deep structural problems with our system of certifying and counting the electoral votes for President and Vice President.

These unfortunate flaws are codified in the 1887 Electoral Count Act, which guides the implementation of part of the presidential election process included in our Constitution. This archaic law, vaguely written in the inaccessible language of a different era, was intended to restrain Congress, but in practice it has had the unintended effect of creating ambiguities that could potentially be used to expand the role of Congress and the Vice President in ways that are contrary to the Constitution.

Despite its defects, this law was not an issue for more than a century because of the restraint of the people who exercised the serious, but limited, constitutional responsibility of counting the electoral votes. Vice presidents and Congresses sustained the will of the people — even when they did not like the result.

It took the violent breach of the Capitol on January 6<sup>th</sup> of 2021, to really shine a spotlight on the urgent need for reforming this law.

Earlier this year, I, along with a dedicated bipartisan group of my colleagues, set out to craft legislation to reform and modernize the Electoral Count Act. Our bipartisan group worked night and day over the period of several months to reach a bipartisan consensus on a series of reforms that will prevent this outdated law from being used to undermine future presidential elections. I am pleased that our legislation, the *Electoral Count Reform and Presidential Transition Improvement Act*, is included in the bill before us.

This bill is the result of countless hours of deliberation by members of our working group. Cosponsored by 39 Senators, our bill enjoys broad, bipartisan support and was reported favorably by the Senate Rules Committee by a vote of 14-1 after an excellent hearing at which the committee members heard from a wide-range of constitutional experts.

I want to express my gratitude to my friend and partner in this effort, Senator Joe Manchin, and to all the members of our group for their work to craft this legislation. Specifically, Senators Romney, Shaheen, Portman, Sinema, Murkowski, Warner, Tillis, Murphy, Capito, Cardin, Young, Coons, and Sasse dedicated countless hours to this effort.

I also want to recognize Senators Klobuchar and Blunt. They are the leaders of the Senate Rules Committee. They provided their advice and counsel throughout this process and shepherded the bill through their committee.

Leaders McConnell and Schumer cosponsored our bill and trusted us to undertake this vital task.

I want to thank all of the cosponsors, as well as Representatives Gottheimer and Upton, who introduced a companion bill in the House of Representatives.

In developing our bill, we also consulted with several election experts and legal scholars, whose analysis helped to shape the bill.

Our bill would replace the ambiguous provisions of this 19<sup>th</sup> century law with clear procedures that maintain appropriate state and federal roles in selecting the President and Vice President as set forth in the Constitution. It will also ensure that the electoral votes tallied by Congress accurately reflect each state's public vote.

There are a number of important reforms included in our bill. Let me take just a moment to highlight a few of them.

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

Second, our bill raises the threshold to lodge an objection to electors to at least one-fifth of the duly chosen and sworn members of the House and the Senate. Currently, it takes only a single member in each body to object to an elector or a slate of electors.

I would note that in four of the past six presidential elections, this objection process has been abused, with members of both parties raising frivolous objections to electoral votes. By raising that threshold from one member of each body to 20 percent of each body, we can do away with the completely frivolous objections while ensuring that serious concerns are still heard.

Third, our legislation will ensure that Congress can identify a single, conclusive slate of electors by—

- Clearly identifying a single state official who is responsible for certifying a state's electors;
- Requiring Congress to defer to the slates of electors submitted by a state pursuant to the judgment of state or federal courts; and

- Providing presidential candidates with an expedited judicial review of federal claims related to a state's certificate of electors. Let me be clear that this does not create a new cause of action. Instead, what this provision will do is ensure a prompt adjudication of disputes.

To help promote the orderly transfer of power, our bill also includes clear guidelines for when eligible presidential candidates may receive federal resources to support their transition into office. I particularly want to thank Senators Portman, Coons, and Sasse for their hard work on this portion of the bill.

Nothing is more essential to the survival of a democracy than an orderly transfer of power. And there is nothing more essential to that orderly transfer of power than clear rules for effecting it. Our bill provides those clear rules.

I urge my colleagues to support this historic legislation, and I thank all who were involved to bringing us to this reality.