



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, members of this distinguished committee—with a special recognition of my Maine colleague, Senator King, and members of our bipartisan group, Senator Capito and Senator Warner—all the members of this committee, it is a great pleasure to join you this morning 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 out of the past six presidential elections, the Electoral Count Act's process for counting electoral votes has been abused, with frivolous objections being raised by members of both parties. But it took the violent breach of the Capitol on January 6 to really shine a spotlight on how urgent the need for reform was.

Over the past several months, a dedicated bipartisan group of senators has worked very 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 co-sponsors, two members of this committee, Senator Capito and Senator Warner. Senators Romney, Sinema, Portman, Shaheen, Murkowski, Tillis, Murphy, Young, Cardin, Sasse, Coons, and Graham all played a role. And I want to especially thank the Chairwoman and Ranking Member for their advice and insight throughout this process.

The bill that we've 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. Let me highlight just a few.

First, it reasserts that the constitutional role of the Vice President counting electoral votes is strictly and solely ministerial. The idea that any Vice President could 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 1/5 of the duly chosen and sworn members of both the House and the Senate. Now, this 20% threshold was not just plucked out of the air. It 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, as the Chairwoman indicated, 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 the following:

- Clearly identifies a single state official who is responsible for certifying a state's electors.
- It also ensures that a state's electors are certified and appointed pursuant to state law that was in effect prior to Election Day.
- Provides 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 it would require Congress to defer to the state of electors submitted by a state pursuant to the judgment of state or federal courts.

Finally, our bill strikes a provision of another outdated law, enacted in 1845, that could be used by state legislatures to override their popular vote by declaring a failed election. That is a term that is undefined in that 1845 law. Our bill permits the state to modify the period of its selection only in extraordinary and catastrophic circumstances, and also only as provided under that state's law enacted prior to Election Day.

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

Chairwoman Klobuchar, Ranking Member Blunt, members of this committee, 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 affecting it.

I urge my colleagues in the Senate and the House to seize this opportunity to enact the sensible and much-needed reforms before the end of this Congress. Thank you so much.