



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

July 28, 2022

The Honorable Chuck Schumer  
Majority Leader  
United States Senate  
322 Hart Senate Office Building  
Washington, D.C. 20510

Dear Leader Schumer,

Last week, a bipartisan group of Senators came to an agreement on a crucial way to protect our democracy: reforming the Electoral Count Act (ECA) of 1887. This agreement includes a bill to reform the ECA, and another to reform the Presidential Transition Improvement Act of 2019. These are critical changes that would help protect our electoral system from future attempts to subvert the will of the American people, and represent a vast improvement on the current system. Although we are writing today to urge you to bring these crucial reforms to the floor for consideration and a vote, we also urge you to consider a few changes to the proposal to help ensure that the intent of the legislation is fulfilled.

ECA reform is a critical component of a wider effort to ensure the peaceful transition of power and to prevent events like those of January 6, 2021 from repeating. The 135 year-old ECA governs the transfer of power. Its vague and antiquated text was written before women had the right to vote and when there were only 38 states in this country. As the January 6th Committee has made clear, these ambiguities played a significant role in attempts to overturn the results of the 2020 presidential election. Lack of clarity in the ECA enabled attempted reinterpretation of the role of the vice president during the ceremonial counting of the electoral college votes and weaponization of a loophole that could allow the majority party in Congress to overrule the voters and throw out a state's certified presidential election results.

The proposed bipartisan reforms would add needed clarity and close loopholes. First, it would explicitly define the vice president's role in certifying election results as "solely ministerial". Further, it would make it more difficult for lawmakers to formally object to electors, changing the rule from only requiring one House member and one Senator from a delegation to object to creating a 20% threshold for objections. The reforms would also amend the Presidential Transition Improvement Act to provide resources to both parties' candidates during the transition process, starting from 5 days after the election, in the event there is a dispute about who the winner is. Perhaps most importantly, the reforms would also include a prohibition on states changing how electors are chosen after election day, thereby preventing a governor from attempting to subvert the will of the people.



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These proposed reforms represent a crucial step forward in safeguarding our democracy and preventing future exploitation, and we applaud the work of this bipartisan coalition. At a time when many Americans believe the two parties cannot come together to enact meaningful reforms to benefit our democracy, it is heartening to see this example of compromise for the common good.

However, we also believe that this proposal could benefit from some revisions and clarifications, particularly around the proposed reforms that create an expedited court process that would hear election-related disputes. We agree that an expedited review process is necessary to resolve election-related disputes and to do so in a timeframe that serves the interests of the country and ensures an orderly transition of power. However, the time frame suggested for post-election litigation is too short and the lack of a judicial standard of review leaves unanswered questions that Congress would be wise to resolve.

- **Time frame for post-election litigation.** The compromise legislation provides a six-day window between when a governor submits his or her “certificate of ascertainment” identifying their state’s presidential electors and when the electoral college meets. The legislation anticipates that any dispute challenging the authenticity of a governor’s “certificate of ascertainment” be reviewed by a court during that time frame. As a practical matter, six days is not enough time and would effectively block most post-election litigation that requires a hearing to determine disputed facts. In some states, this limited time frame could effectively eliminate the possibility of even a well-founded recount. We encourage you to designate a post-election litigation time frame that gives enough time for litigation and wouldn’t eliminate an aggrieved party’s ability to request a recount when supported by the facts.
- **Judicial standards of review.** The legislative compromise doesn’t provide a legal standard for courts to apply when deciding whether or not to overturn a governor’s “certificate of ascertainment” during post-election litigation. While one would hope that the judiciary would not certify a presidential candidate who received fewer lawful votes, we encourage you to include a strong legal standard in the legislation to help prevent even that remote eventuality from occurring.

While we are supportive of this legislation and urge you to bring it to a vote, we would be remiss if we didn’t state the obvious: more work needs to be done to fix our electoral system. The right to vote is a fundamental right afforded to American citizens. These proposed reforms do not adequately address voting access issues and ongoing racial discrimination in the democratic process. With partisan extremists continuing to compromise the right to vote for citizens at the state level, Congress has a solemn obligation to combat voter disenfranchisement and pass the John Lewis Voting Rights Advancement Act and the Freedom to Vote Act, in addition to these ECA reforms.



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We therefore urge you not only to support the proposed legislation to reform the ECA with the revisions we suggest, but to also take further action to ensure that every eligible American voter has equitable access to the ballot, and that each vote receives equal and proper value.

Sincerely,

A handwritten signature in blue ink, appearing to read "Noah Bookbinder". The signature is fluid and cursive, with a prominent initial "N" and a long, sweeping underline.

Noah Bookbinder  
President