

ELECTORAL COUNT REFORM ACT OF 2022

ECRA would reform and modernize the outdated 1887 Electoral Count Act to ensure that electoral votes tallied by Congress accurately reflect each state's public vote for President. It would replace ambiguous provisions of the 19th-century law with clear procedures that maintain appropriate state and federal roles in selecting the President and Vice President of the United States as set forth in the U.S. Constitution.

KEY PROVISIONS INCLUDE:

- **Single, Conclusive Slate of Electors.** Includes a number of important reforms aimed at ensuring that Congress can identify a single, conclusive slate of electors from each state:
 - **Identifies Official to Submit Slate.** Identifies each state's Governor, unless otherwise specified in the laws or constitution of a state in effect on Election Day, as responsible for submitting the certificate of ascertainment identifying that state's electors. Congress could not accept a slate submitted by a different official. This reform would address the potential for multiple state officials to send Congress competing slates.
 - **Provides for Expedited Judicial Review.** Provides for expedited review, including a three-judge panel with a direct appeal to the Supreme Court, of certain claims related to a state's certificate identifying its electors. This accelerated process is available only for aggrieved presidential candidates and allows for challenges made under existing federal law and the U.S. Constitution to be resolved more quickly.
 - **Modernizes Rules for Counting Electoral Votes.** Requires Congress to defer to slates of electors submitted by a state's executive pursuant to the judgments of state or federal courts.
- **Role of the Vice President.** Affirmatively states that the constitutional role of the Vice President, as the presiding officer of the joint meeting of Congress, is solely ministerial and that he or she does not have any power to solely determine, accept, reject, or otherwise adjudicate disputes over electors.
- **Higher Objection Threshold.** Raises the threshold to lodge an objection to electors to at least one-fifth of the duly chosen and sworn members of both the House of Representatives and the Senate. This change would reduce the likelihood of frivolous objections by ensuring that objections are broadly supported. Currently, only a single member of both chambers is needed to object to an elector or slate of electors.
- **Protection of Each State's Popular Vote.** Strikes a provision of an archaic 1845 law that could be used by state legislatures to override the popular vote in their states by declaring a "failed election" – a term that is not defined in the law. Instead, this legislation specifies that a state could move its presidential election day, which otherwise would remain the Tuesday immediately following the first Monday in November every four years, only if necessitated by "extraordinary and catastrophic" events.

PRESIDENTIAL TRANSITION IMPROVEMENT ACT

The Presidential Transition Improvement Act would help to promote the orderly transfer of power by providing clear guidelines for when eligible candidates for President and Vice President may receive federal resources to support their transition into office. It would allow an eligible candidate, during the limited time period in which the outcome of a presidential election is reasonably in dispute, to receive transition resources, removing the need for the Administrator of the U.S. General Services Administration to ascertain the apparent winner during this time. The Administrator would still be able to limit transition resources to just the apparent winner if the outcome is clear.

KEY PROVISIONS INCLUDE:

- **Guidelines for When Presidential Candidates Can Receive Transition Resources in Contested Elections.** The bill would allow more than one candidate to receive transition resources during a period of time when the outcome of an election is reasonably in doubt. Only one candidate, however, shall be eligible once there is a clear winner of the election.
 - **Allowance for Multiple Candidates to Receive Transition Resources.** When neither candidate has conceded within five days of election day, both candidates may receive equal access to federal transition resources until it is substantially certain who will win the majority of electoral votes. Factors that the Administrator shall use when determining whether the outcome of an election is “substantially certain” include whether legal challenges that could alter the outcome have been resolved, the certified results of the election in each state, and the totality of the circumstances.
 - **Required Ascertainment of a Single Successful Candidate.** Notwithstanding the factors above, a candidate shall be the sole candidate eligible to continue receiving transition resources if that candidate—
 - Receives the majority of pledged electoral votes and there are no further legal or administrative actions pertaining to the results;
 - Receives the majority of electoral votes at the meeting of electors in December following the election; or
 - Is formally elected at the joint meeting of Congress on January 6.
- **New Reporting Requirements.** When neither candidate has conceded, the Administrator would be required to—
 - Report on the federal resources provided to each candidate;
 - Provide weekly reports to Congress on the transition, including the status of determination of the apparent election winner under the guideposts established in this Act; and
 - Issue a public written opinion when the law permits or requires that a single candidate be ascertained as the winner of the election that includes a description of the legal basis and reasons for doing so.