

**Testimony Of The Honorable John M. Gore**  
**Senate Committee On Rules And Administration**  
**“The Electoral Count Act: The Need For Reform”**  
**August 3, 2022**

Good morning, Chairwoman Klobuchar, Ranking Member Blunt, and distinguished members of the Committee. I commend the Committee for taking up this crucial topic and for its commitment to a commonsense and bipartisan approach to reforming the Electoral Count Act. Today’s witnesses are distinguished experts and thought leaders from across the political spectrum. I am honored to be included in this hearing and thank the Committee for inviting me to testify today.

The Electoral Count Act regulates a vital moment in our American democracy: the moment when states pass the baton of presidential elections to Congress. The Constitution itself prescribes the roles of states and Congress in presidential elections. The Constitution’s Electors Clause vests in the state legislature the authority to direct the manner in which a state’s presidential electors are chosen. The Constitution vests in Congress the duty to count each state’s electoral votes and to declare the winner of the Presidency and the Vice Presidency.

Since 1887, the Electoral Count Act has laid out the procedure for states to certify their electoral votes and directed Congress’s discharge of its duty to collect, count, and compile the Electoral College vote. For decades, the states and Congress have performed admirably under the Act. But the Act contains numerous gaps and ambiguities that could impede Congress’s ability to count electoral votes in a future presidential election. Reforming the Act is necessary and appropriate: Congress should take the opportunity to safeguard the integrity of our presidential elections now, before future disputes arise.

Several of the current Act’s shortcomings stem from its silence on judicial review. For example, the current version of the Act does not spell out a procedure for seeking judicial review if a governor fails to certify a slate of electors or certifies the wrong slate of electors. The current Act also does not address how Congress should handle certifications submitted by a governor under the judgment of a state or federal court.

The bipartisan Electoral Count Reform Act preserves the precedent and practice in presidential elections that have served the country and Congress for decades. At the same time, the Reform Act remedies defects in the current Act to the benefit of states, Congress, and the American people. Four of the Reform Act’s main features fill the statutory silence on judicial review and clarify the role of courts in adjudicating disputed presidential elections.

*First*, the Reform Act clarifies that the laws governing presidential elections are the state laws enacted by state legislatures prior to election day. This vital provision will help to preserve, promote, and protect free and fair elections for all Americans. The American people can have trust and confidence in our elections only when the rules are set before the election, are followed during the election, and are upheld after the election. The Reform Act is a major check on any efforts to change the rules after a presidential election has been held.

*Second*, the Reform Act leaves states—and their voters—in charge of choosing their presidential electors, as the Constitution directs. Accordingly, the Reform Act preserves existing state laws for challenging or contesting the result of an election. States have adopted a variety of judicial and administrative procedures to resolve election disputes—and the Reform Act keeps all of those procedures in place.

*Third*, the Reform Act fills a statutory gap by addressing federal judicial review in the scenario when a governor either fails to certify a slate of electors or certifies the wrong slate of electors. The Reform Act wisely avoids creating any new causes of action. Such novel causes of action are unnecessary—and they might even be harmful. At a minimum, new causes of action would interject new uncertainty into election disputes, could lead to an increase in litigation, and could upend decades of precedent and practice in this area.

Instead, a new provision of the Reform Act guarantees expedited federal judicial review in cases challenging a governor’s failure to certify the correct slate of electors. Under that provision, federal constitutional or legal claims brought by a presidential or vice-presidential candidate will be heard by a three-judge federal district court on an expedited basis. Any appeals will go directly to the U.S. Supreme Court for expedited review.

*Finally*, the Reform Act fills another statutory gap by addressing the scenario of a governor issuing a revised certificate under an order from a state or federal court. The Reform Act makes clear that Congress will accept such a certificate. This statutory update modernizes federal law and the rules for counting electoral votes.

I thank the Committee for its time and welcome the Committee’s questions.