



INFORMATION SHEET

The Electoral Count Act (ECA) of 1887 outlines the process of casting and counting electoral votes after a presidential election. Unfortunately, the text of the ECA is ambiguous and outdated, which means the counting of electoral votes remains vulnerable to manipulation or abuse by partisan actors. The ECA should be updated to provide clarity and security to this most vital democratic process.

Why is the Electoral Count Act important today?

- » The nonpartisan National Task Force on Election Crises has [recommended](#) that Congress update the ECA in order to preserve our tradition of peaceful transfers of power.
- » The events of January 6, 2021, were an organized [attempt to take advantage of ambiguity](#) in the law and override the counting of electoral votes using the supposed authority of the vice president.
- » Updating the ECA would help prevent such events in the future and promote democratic security.

What is the history of the Electoral Count Act of 1887?

Though the Constitution governed the counting of electoral votes, it became evident after the [1876 presidential election](#) that these provisions were insufficient. This was one of the most controversial elections in our history to date, with disagreement in four states regarding who the official slate of electors included. The election was close, and the resolution of these conflicts would determine who was elected the next president. Ultimately, this crisis was overcome with a troublesome compromise.

After the next two presidential elections were also quite close, Congress decided additional legislation was needed to protect against conflicts of interest and abuse of power. The Electoral Count Act of 1887 was designed to clarify the process by which a state should resolve disagreements about election results before sending electoral votes to Congress for counting. Unfortunately, even a contemporary political scientist observed that the bill's language was [“very confused, almost unintelligible.”](#) Today, it is important to update that language in order to increase the protections the ECA was meant to provide.

What updates are necessary?

- » Clarification that the vice president serves a ministerial role in the electoral counting process and does not have the power to resolve election disputes
- » Establishment of clear timing for states to choose their electors and clarification about what qualifies as an emergency situation where a state could choose electors after Election Day
- » Better protection of a state's right to resolve its own election disputes and certify its election results
- » Establishment of a more appropriate threshold for objections to counting electoral votes, in contrast to the current low threshold of only one member from each chamber of Congress
- » Clarification of acceptable grounds on which an objection can be raised by a member of Congress
- » Inclusion of comprehensive dispute resolution guidelines for many potential forms of a presidential election dispute

Why should this be a priority?

- » **Democratic stability:** It is best if our democratic institutions are protected from abuse of power by clearly established law. Updating the ECA would increase the public's trust in our electoral processes.
- » **National security:** The U.S. is most at risk to foreign threats during times of transition. Unresolved election disputes that disrupt a peaceful transfer of power increase our national exposure to risk and threat.
- » **Economic stability:** The chaos and uncertainty that would result from disputed election results and a precarious transition period would likely cause economic instability.
- » **States' rights:** Updating the ECA would strengthen a state's right to certify its own election results without fear of congressional manipulation.
- » **Protection of elected officials:** An updated ECA would protect our elected officials from significant partisan pressure and related risks by making it explicitly clear what an individual can or cannot do in their current role.

Why should this be a bipartisan reform?

- » Updating the Electoral Count Act provides no partisan benefit. The winner of this legislation would only be American democracy itself.
- » Either party could potentially exploit the ECA's vulnerability in the future.
- » Support for updating the ECA has been expressed from across the ideological spectrum. For instance, see some articles [here](#), [here](#), [here](#), and [here](#).
- » [Polling](#) shows that the majority of Americans support updating the ECA.

How can I help?

- » Use our [Call to Action](#) tool to encourage your members of Congress to support this important legislation and then share it with friends and family.
- » Continue to call, write, and tag your members of Congress on social media to raise awareness about this.
- » Help write an op-ed or a letter to the editor about updating the ECA.
- » Dig a little deeper and help those around you understand the need for this.
- » Follow MWEГ for information about future events to learn more about this effort.