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Before the

COMMITTEE ON
RULES AND ADMINISTRATION

UNITED STATES SENATE

THE ELECTORAL COUNT ACT:
THE NEED FOR REFORM

Wednesday, August 3, 2022

Washington, D.C.

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Wednesday, August 3, 2022

U.S. Senate

Committee on Rules and Administration

Washington, D.C.

The committee met, pursuant to notice, at 10:34 a.m.,
in Room 301, Russell Senate Office building, Hon. Amy
Klobuchar, chairman of the committee, presiding.

Present: Senators Klobuchar [presiding], Warner,
King, Padilla, Ossoff, Blunt, Cruz, Capito, and Fischer.

Also present: Senators Collins, and Manchin

1 OPENING STATEMENT OF SENATOR KLOBUCHAR

2 The Chairman. All right. Well, thank you so much,
3 everyone. I wanted to wait for Senator Blunt and not much
4 waiting at all, but I did that just because we have chaired
5 this committee together. We are good friends. And
6 certainly as we approach this important bill, the Electoral
7 Count Act, it is really important that this spirit of
8 bipartisanship gets us through and gets this thing passed.

9 I want to thank Roy Blunt and our colleagues who will
10 be here shortly. I want to mention Senator King, who we
11 are going to hear from this morning, who has been a major
12 leader in this area, worked with me and Senator Durbin on
13 our bill that we presented to the group that came together
14 to work on this.

15 I want to thank Senator Capito, who was part of the
16 bipartisan group and is a valued member of our committee.
17 And I know Senator Warner was also part of the group, who
18 is a member of our committee. We thank him. And we are
19 joined by the former Secretary of State, Senator Padilla, a
20 very valued member of our committee, as well as Senator
21 Fischer, who we may be seeing up here at some point in the
22 coming Congress.

23 So I thank all of you. And I want to welcome Senator
24 Collins and Senator Manchin to this beautiful hearing room.
25 Welcome. You can look at the ships. I know you like to

1 sail, Senator Manchin, and will remind you of Maine Senator
2 Collins, while you hear Senator Blunt and I give our
3 opening remarks.

4 So the Electoral Count Act was passed in 1887, as I
5 noted, in response to the disputed election between
6 Rutherford Hayes and Samuel Tilden. Just something that
7 just comes off the lips of everyone at this hearing today.
8 I point this out because it was a whole lot of time ago,
9 and that bill was put in place to govern how Congress at
10 that time counts electoral votes for President.

11 While it hasn't gotten much attention in the next 130
12 years, it became the cornerstone, sadly, of a plan hatched
13 by President Trump and his allies that led to an attempt
14 and this insurrection at the Capitol, where there was a
15 possibility, Senator Blunt and I remember that day well,
16 where the will of the American people could have been
17 overturn. It culminated in a violent mob desecrating our
18 Nation's capital.

19 On that dark day, enemies of our democracy sought to
20 exploit the provisions of this antiquated law to subvert
21 the results of a free and fair election. I remember this
22 day well because Senator Blunt and I were the ones at 3:30
23 a.m. in the morning with Vice President Pence that were
24 walking through the broken glass.

25 We had done that walk 13 hours before. It was

1 celebratory. It was amazing. It was a big ceremony. We
2 had a big procession. At the end of the day, it was just
3 us, closed doors, broken windows, glass all over the place,
4 spray painted columns. But yet our democracy rose again,
5 the inauguration, and we went forward. And part of that is
6 working together to make sure that laws can't be used by
7 anyone of any party, any political persuasion in a way that
8 undercuts the will of the people.

9 Number one, the claim was made that the Electoral
10 Count Act as it exists would allow the Vice President to
11 refuse to accept electoral votes that were lawfully cast.
12 We watched in horror as a mob stormed the Capitol, chanting
13 hang Mike Pence, and got within 40 feet of the Vice
14 President of the United States. We know these claims about
15 the Vice President's authority were false. But in the
16 proposals that we have put forward, Senator King and the
17 group, the bipartisan group, make it absolutely clear that
18 the Vice President does not have this power.

19 In the days and weeks before the insurrection, they
20 claimed that they will allow the State Legislatures to
21 appoint their own electors if they declared a failed
22 election. And State representatives in Wisconsin and
23 Michigan were pressured to do just that. They claimed the
24 law allowed so-called rogue electors to substitute their
25 own views for the will of the voters. They recruited

1 people in multiple States to send in fraudulent votes and
2 slates.

3 My proposal here and the bipartisan work that you have
4 done would guard against efforts like those by ensuring
5 that candidates can go to Federal court to stop rogue
6 Governors from sending invalid electoral votes. They also
7 planned to force debate and votes on objections to six
8 States electoral votes.

9 And that is when I think everyone learned just one
10 Senator and one Congressman, if joined together, can
11 actually gum up the proceeding. I remember Senator Blunt
12 and I realized he was going to take at least 24 hours
13 before we even knew the insurrection was coming our way.
14 And as Senator Collins just pointed out to me, and as
15 history has shown us, there have been other objections over
16 the years, regardless of party.

17 People can make objections. No one is suggesting we
18 stop them from speaking out. It is just that there has got
19 to be a minimum that makes sense before Congress would step
20 in and delay the counting of the electoral vote. I will
21 never forget, as I said, what happened that day. I don't
22 think any of us will.

23 And it is time to make sure that we reform this bill.
24 As I noted, Senator King, Durbin, and I released draft
25 legislation. This great bipartisan group was put together

1 led by Senator Collins and Senator Manchin. Senator Blunt
2 and I have met with the bipartisan group. We have engaged
3 with them multiple times, including with our staffs,
4 assistants, and they worked for months to get consensus.
5 They did.

6 As these discussions have progressed, consensus has
7 emerged that any reforms to the Electoral Count Act must
8 address at least four key issues, which I have already
9 mentioned, the Vice President issue, the number of people
10 objecting, and the threshold the way the slates could be
11 picked at the last minute after an election is done, and
12 then finally the process of making sure you can head into
13 court if necessary.

14 I want to make clear that since the 2020 election,
15 when more Americans voted than ever before during a global
16 pandemic, we have seen a tidal wave of voter suppression
17 laws. I appreciate the work Senator Manchin and a group of
18 us did together trying to fix that. I still hope we can
19 get some of those reforms done in the future.

20 And with that, I want to turn it over to my friend and
21 colleague, Senator Blunt, and again, thank him for his
22 bipartisan work on this. It is our job to ensure this
23 never happens again, no matter who is in charge or what
24 happens. Our -- we are focused on the future.

25

1 STATEMENT OF SENATOR BLUNT

2 Senator Blunt. Well, thank you, Chairwoman Klobuchar.
3 And we have worked together on these issues for a long
4 time, and hopefully is an example of the importance of
5 coming together and making things happen. I am glad to get
6 a chance to talk about Senator Manchin and Senator Collins,
7 both good friends of mine who are here, and talk about some
8 of the reasons for the hearing today.

9 As you pointed out, the Electoral Count Act of 1887
10 just turned out to be more troublesome potentially than
11 anybody had thought. What happened in 1876 was that
12 tightly contested race you talked about between Tilden and
13 Hayes, and four States Florida, Louisiana, South Carolina,
14 and Oregon all had two different groups meet on December
15 the 6th of 1876, and each of those groups sent in a
16 competing set of electoral count.

17 And there was no way really to deal with that issue at
18 that point in our history. The Congress passed the
19 Electoral Commission Act, which really didn't work very
20 well either and was -- and ended with a compromise that put
21 Hayes in the White House and largely ended reconstruction
22 in the South at the same time. After really a decade of
23 barely great progress, was eliminated as part of the result
24 of that compromise.

25 One of the darker decisions, I think, in the history

1 of the country. In the next decade, there were two more
2 really close elections and Congress contemplated that whole
3 time, okay, how would we deal with this if it ever happened
4 again? And while it took a decade, they did come up with
5 the idea of the bill that became the Electoral Count Act.

6 And by the way, during that same period of time, they
7 also eliminated the legislative leaders from the line of
8 succession to the presidency. That is another topic that,
9 frankly, I think we ought to think about a little more
10 closely than we have, though probably not today. And those
11 legislative leaders from the 1880s until the Truman
12 presidency were not included in the line of succession to
13 the presidency. They were put back in under President
14 Truman and reversed.

15 Under the early days of the country, it was the
16 President pro temp first and then the speaker, and partly
17 because of President Truman's great respect for the Speaker
18 Rayburn, they put the speaker first and then the President
19 pro temp. But there is a long period of time when
20 legislative leaders, because of how many these really close
21 elections were taken out of the line of succession, the
22 Electoral Count Act of 1887 seemed to do the job.

23 And while it wasn't perfect, as we will no doubt here
24 today. It governed our counting process since then.
25 Written in a different age. The language of 1887 is really

1 outdated and vague in so many ways, and so both sides of
2 the aisle want to update this Act. Recent polling
3 indicates that almost everybody that has thought about this
4 wants to update this Act. Questions like, what is the
5 proper role of Congress?

6 What is the proper role of the Vice President? How
7 should elections -- objections to electors and electoral
8 votes be levied? What are -- what is the appropriate
9 threshold for that process to start? What is the role of
10 the Federal Government in this process? Should the
11 timelines be altered? And more.

12 And we are going to hear about that at the hearing
13 today. It provides us an opportunity, it is Senator
14 Klobuchar's decision to have this hearing, and provides us
15 with an opportunity to further explore all of those
16 questions, hopefully come to the right conclusions, and get
17 this bill passed and get it done this year.

18 I want to thank Senator Collins and Senator Manchin
19 for being here today. I applaud their efforts, along with
20 Senator Capito and Senator Warner, who worked on that
21 bipartisan effort to come up with a reform bill. Also, I
22 want to thank Chair Klobuchar and Senator King for putting
23 together, along with Senator Durbin, a proposal that I
24 understand the bipartisan group looked into and considered
25 while they were drafting their legislation.

1 The cooperation we have seen here, hopefully, will be
2 the spirit of cooperation that we move forward, come up
3 with a process that everyone is more comfortable with, and
4 will stand the test of time. I want to thank all of you
5 for being here today, and I look forward to hearing from
6 our witnesses and moving this process forward.

7 The Chairman. Okay, very good. We have been joined
8 by Senator Warner, a member of the bipartisan group. We
9 have mentioned to you several times. Thank you. And let's
10 start out with Senator Collins, Senator Manchin, and we are
11 going to hear from Senator King, and then we will call up
12 our witnesses. Thank you.

1 STATEMENT OF SENATOR COLLINS

2 Senator Collins. Thank you very much. Chairwoman
3 Klobuchar, Ranking Member Blunt, members of this
4 distinguished committee, with a special recognition of my
5 main colleagues, Senator King and members of our bipartisan
6 group, Senator Capito and Senator Warner, all the members
7 of this committee, it is a great pleasure to join you this
8 morning to testify on the legislation that a bipartisan
9 group of Senators has written to reform the 135 year old
10 Electoral Count Act, the archaic and ambiguous law that
11 governs how Congress tallies each State's electoral votes
12 for President and Vice President.

13 In four out of the past six Presidential elections,
14 the electoral count process for counting electoral votes
15 has been abused, with frivolous objections being raised by
16 members of both parties. But it took the violent breach of
17 the Capitol on January 6 to really shine a spotlight on how
18 urgent the need for reform was.

19 Over the past several months, a dedicated, bipartisan
20 group of Senators has worked very hard to craft the
21 legislation before you united in our determination to
22 prevent the flaws in this 1887 law from being used to
23 undermine future Presidential elections. I would like to
24 acknowledge the contributions of our co-sponsors, two
25 members of this committee, Senators Capito and Senator

1 Warner, Senators Romney, Sinema, Portman, Shaheen,
2 Murkowski, Tillis, Murphy, Young, Cardin, Sasse, Coons, and
3 Graham all played a role.

4 And I want to especially thank the chairwoman and
5 ranking member for their advice and insight throughout this
6 process. The bill that we have introduced, the Electoral
7 Count Reform and Presidential Transition Improvement Act,
8 will help ensure that electoral votes told by Congress
9 accurately reflect each State's popular vote for President
10 and Vice President. It includes a number of important
11 reforms.

12 Let me highlight just a few. First, it reasserts that
13 the Constitutional role of the Vice President counting
14 electoral votes is strictly and solely ministerial. The
15 idea that any Vice President could have the power to
16 unilaterally accept or reject change or halt the counting
17 of electoral votes is antithetical to our Constitutional
18 structure and basic democratic principles. Second, our
19 bill raises the threshold to lodge an exemption to electors
20 to a minimum of one-fifth of the duly chosen and sworn
21 members of both the House and the Senate.

22 Now, this 20 percent threshold was not just plucked
23 out of the air. It mirrors the threshold under Article 1
24 of the Constitution to call for the yeas and nays on a vote
25 in Congress. Currently, only a single member in both

1 houses, as the chairwoman indicated, is required to object
2 to an elector or a slate of electors.

3 Third, and perhaps most significant, our legislation
4 ensures that Congress can identify a single conclusive
5 slate of electors submitted by each State. It does so by
6 the following. It clearly identifies a single State
7 official who is responsible for certifying a State's
8 electors. It also ensures that States electors are
9 certified and appointed pursuant to State law that was in
10 effect prior to election day.

11 Fourth, it provides aggrieved Presidential candidates
12 with an expedited judicial review of Federal claims related
13 to a State certification of electors. This does not create
14 a new course of action. Instead, it will ensure prompt and
15 efficient adjudication of disputes. And fourth, it would
16 require Congress to defer to the State of electors
17 submitted by the State pursuant to the judgment of State or
18 Federal courts. Finally, our bill strikes provisions of
19 another outdated law enacted in 1845 that could be used by
20 State Legislatures to override their popular vote by
21 declaring a failed election. That is a term that is
22 undefined in that 1845 law.

23 Our bill permits the State to modify the period of its
24 election only in extraordinary and catastrophic
25 circumstances, and also only as provided under that State's

1 law enacted prior to Election Day. Our legislation is
2 supported by numerous election law experts and
3 Constitutional scholars with whom we have consulted
4 throughout our deliberations.

5 I am so grateful for their advice, and I ask unanimous
6 consent that several of those statements of endorsement be
7 included in the record of this hearing.

8 The Chairman. It will be included.

9 [The information referred to follows:]

10 [COMMITTEE INSERT]
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1 Senator Collins. Chairwoman Klobuchar, Ranking Member
2 Blunt, members of this committee, we have before us an
3 historic opportunity to modernize and strengthen our system
4 of certifying and counting the electoral votes for
5 President and Vice President.

6 Nothing is more essential to the survival of a
7 democracy than the orderly transfer of power. And there is
8 nothing more essential to the orderly transfer of power
9 than clear rules for effecting it. I urge my colleagues in
10 the Senate and the House to seize this opportunity to enact
11 these sensible and much needed reforms before the end of
12 this Congress. Thank you so much.

13 The Chairman. Thank you very much, Senator Collins.
14 I also know we have been joined by Senator Ossoff, who
15 hosted a field hearing in Georgia. Thank you. And Senator
16 Wicker. Next up, Senator Manchin. Thank you.

1 STATEMENT OF SENATOR MANCHIN

2 Senator Manchin. Chairman Klobuchar, Ranking Member
3 Blunt, my colleague from West Virginia, Senator Capito, and
4 all the members, thank you so much for giving me the
5 opportunity to present some brief remarks which have been
6 stated so eloquently before for the Electoral Count Act,
7 which I think is one of the most important things we have
8 before us in Congress today with so many other.

9 As has been said, the Electoral Count Act was
10 originally passed into law in 1887 and was a valiant but
11 clumsy effort, very clumsy effort to ensure that another
12 Presidential election, like the 1876 contest between
13 Rutherford B. Hayes and Samuel J. Tilden, never happened
14 again.

15 As a member of this committee know, the 1876 election
16 was a disaster. It was absolutely disastrous. Neither
17 candidate received an electoral majority and multiple
18 States presented serious controversies by submitting
19 dueling slate of electors.

20 To even add to the confusion, following an informal
21 deal that was struck with Southern Democrats, the Southern
22 Democrats that effectively ended reconstruction, Hayes was
23 eventually named President.

24 But the vulnerability of our democracy was truly
25 revealed. Following two other close elections in 1880 and

1 1884, and numerous failed attempts at reform, Congress
2 finally passed the Electoral Count Act of 1887. But as we
3 saw on January 6, 2021, a lot of the fixes established by
4 the original Electoral Count Act are not merely outdated,
5 but actually serve as the very mechanisms that bad actors
6 have zeroed in on as a way to potentially invalidate
7 Presidential election results.

8 As I am sure that you will hear from the panel of
9 distinguished experts who will testify before you today,
10 the time to reform the ECA is way past due, way past due.
11 The time for Congress to act is now, as Senator Collins
12 just said, before this Congress adjourns. Today, I am
13 proud of the bipartisan bill produced by Senator Collins,
14 myself, and my colleagues last month, the Electoral Count
15 Reform and Presidential Transition Improvement Act of 2022.

16 I am particularly thankful for Senator Collins and her
17 leadership throughout the process and for the valuable
18 input from all my colleagues in the working group on both
19 sides of the aisle.

20 And I think it is worth mentioning all of them because
21 they have worked so hard, Senator Portman, Senator Murphy,
22 Senator Romney, Senator Shaheen, Senator Murkowski, Senator
23 Warner, Senator Tillis, Senator Sinema, Senator Capito,
24 Senator Cardin, Senator Young, Senator Coons, Senator
25 Sasse, Senator Graham, Senator King, and all of those are

1 co-sponsors. That is tremendous.

2 While I will be among the first to acknowledge that
3 the bill is not perfect, it represents many months of hard
4 work and compromise, and would serve as a tremendous
5 improvement over the current ECA. As Senator Collins just
6 mentioned in her remarks, the bill addresses what the
7 bipartisan group identified as the most concerning problems
8 of the ECA.

9 It unambiguously clarifies that the Vice President is
10 prohibited, and I repeat, it clarifies that the Vice
11 President, whoever he or she may be, is prohibited from
12 interfering with electoral votes. It raises the objection
13 threshold by 20 percent that would make a shift from a
14 single representative under the current ECA to 87 House
15 members. 87 from 1.

16 It also improves on basically only one member of the
17 Senate to 20 must ratify, 20. It sets a hard deadline for
18 State Governors to certify their respective States
19 electoral results. They just can't wait until after the
20 election and before they send their electoral people to
21 make changes.

22 That can't be done. And if they fail to do so or
23 submit a slate that does not match with the electoral
24 results from the State, it creates an expedited judicial
25 process to resolve. On that last point, the expedited

1 judicial procedure, I would like to take a moment to
2 discuss the reform proposed by our bill and explain why we
3 propose revising the ECA as we did.

4 Our group decided to rewrite Section 5 regarding the
5 certificate of ascertainment of electors, not to create any
6 new causes of action, but to provide for expedited review
7 of an action that a Presidential and Vice Presidential
8 candidate can already bring.

9 Under existing law, it does so in a way that carefully
10 limits the parties who can avail themselves of this
11 expedited procedure and ensures that the slate of electors
12 in Congress tallies are those certified and appointed
13 pursuant to laws in effect prior, and I remind you, prior
14 to Election Day.

15 While the group is open to some technical fixes to
16 address timing concerns, for example, striking the five day
17 notice typically required under Section 2284 of Title 28,
18 we stand by this provision as a way to quickly and
19 efficiently determine a single lawful slate of electors.
20 In closing, I would like to remind you we were all there on
21 January 6th. That happened. That was for real.

22 It was not a visit by friends from back home. And we
23 have a duly responsibility to make sure it never happens
24 again. So the Electoral Count Reform and Presidential
25 Transition Act Improvement Act of 2022 is something that

1 our country desperately needs, and a correction needs to
2 happen now.

3 I just want to thank you for the attention, taking
4 this up right now, and working in such an expeditious way.
5 And you are going to have some great, great presenters
6 behind us here and have all the knowledge that we really
7 used for the sources that we did to make this -- make this
8 piece of legislation happen. And I want to thank Senator
9 Collins and all those of the members that worked on it so
10 diligently. Thank you.

11 The Chairman. Thank you. Senator King.

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STATEMENT OF SENATOR KING

Senator King. Thank you, Madam Chair. The first thing I want to do is thank our two Senators and the group that worked so hard on this bill. It is an example of how this place can and should work.

It involves, I know, compromise and a great deal of discussion, a great deal of research. And I really want to compliment you on that work. And it gives us a really good piece of legislation that we can then work forward in this committee, and hopefully, as Senator Collins suggests, act on this within this Congress. I think that is very important. A couple of points. This is not a partisan issue.

This is a mechanical issue. This is a rules issue that involves how our Government should work no matter who is in charge. This coming January 6 of 2025, a Democratic Vice President will be in that chair. And I just think that what we have to emphasize, that we shouldn't try to game this out on a partisan basis and think that this favors one side or the other.

I don't think it does, because there is no telling what the circumstances will be in particular States or here in the Congress in future years. The very first class I took in Government in college, the very first class, and I don't know why I remember this, because it was a hell of a

1 long time ago, the professor said the thing that America
2 has achieved that has been rarely achieved in world history
3 is the peaceful transfer of power that is unusual in world
4 history.

5 And the way we have achieved that is by having a
6 written Constitution and a set of rules that have guided
7 us. And as Senator Collins said, if you have ambiguity and
8 confusion, that opens the way to conflict and ultimately
9 violence as we saw on January 6. So the core concept is
10 the peaceful transfer of power.

11 And underlying that is a clear set of rules and
12 principles that people can all understand and accept in
13 advance, and then it is a mechanical process of counting
14 the votes, determining who gets the electoral votes in a
15 particular State, and then having Congress meet and count
16 those votes, as has been done in the past, more or less
17 routinely. So again, I just want to thank you all
18 particularly for your leadership on this issue.

19 My colleague from Maine played an indispensable role,
20 I know, and you have really given us a solid basis upon
21 which to proceed. So I don't think there is a more
22 important matter before us in this Congress.

23 And it is one that I hope that we can resolve quickly.
24 And again, it should be on an entirely bipartisan basis.
25 And it is a fundamental issue that goes to the heart of our

1 democratic system. Thank you, Madam Chair.

2 The Chairman. Thank you very much. Thank you,
3 Senator King. And I want to thank our two Senators. There
4 is just a few other things going on that you may be
5 involved in. So I am going to call up our -- and thank you
6 for your good work. I am going to call up our witnesses,
7 and Senator Blunt and I will introduce them, and then we
8 will swear you in.

9 A few of them are remote. Before I introduce our
10 panel, come on up, I would like to ask for unanimous
11 consent to enter a few statements and letters into the
12 record from democracy reform groups, including elected
13 officials and others, Minnesota Secretary of State Steve
14 Simon, the Campaign Legal Center, Protect Democracy, the
15 New York City Bar Association, the Project on Government
16 Oversight, Democracy 21, and Citizens United, and the Cato
17 Institute. Without objections, the documents will be
18 entered into the record.

19 [The information referred to follows:]

20 [COMMITTEE INSERT]

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1 The Chairman. I will now introduce our witnesses.

2 First, Bob Bauer, who I understand is with us remotely. He
3 is a Professor of Practice and Distinguished Scholar in
4 Residence at New York University School of Law, where he
5 also co-directs the Legislative and Regulatory Process
6 Clinic.

7 Previously, Mr. Bauer served as President Obama's
8 White House Counsel from 2009 to 2011, and in 2013,
9 President Obama appointed him as co-chair of the
10 President's Commission on Election Administration. He
11 holds an undergraduate degree from Harvard and a law degree
12 from University of Virginia, Senator Warner.

13 And next up, Ambassador Norman Eisen, who is with us
14 today, a Senior Fellow in Governance Studies at the
15 Brookings Institution. Ambassador Eisen has studied and
16 written extensively on election law, ethics, and anti-
17 corruption.

18 He served as Special Counsel to the House Judiciary
19 committee, as U.S. Ambassador to the Czech Republic, and as
20 President Obama's Special Counsel for Ethics and Government
21 Reform. He got an undergraduate degree from Brown and a
22 law degree from Harvard.

23 Next up, Ms. Janai Nelson, who was -- who served, and
24 she is going to be remote, as President and Director
25 Counsel of the NAACP Legal Defense and Educational Fund

1 since March of 2022. She previously served as Associate
2 Director Counsel at LDF for eight years.

3 Earlier in her career, she was an Associate Dean and
4 Associate Director of the Ronald H. Brown Center for Civil
5 Rights and Economic Development at Saint John School of
6 Law. She holds a bachelor's degree from NYU, law degree
7 from the University of California, Los Angeles. Senator
8 Blunt.

9 Senator Blunt. Thank you, Senator Klobuchar. I want
10 to thank all of our witnesses for being here today. I have
11 two witnesses that I am able to introduce. First is John
12 Gore. Mr. Gore is currently a partner in the Government
13 relations practice at Jones Day in Washington, where his
14 practice focuses on voting, elections, regulatory
15 litigation.

16 His broad experience includes litigating numerous
17 voting and election cases in 16 different States and at all
18 levels of the State and Federal judiciary, including the
19 United States Supreme Court. Mr. Gore previously served as
20 the Acting Assistant Attorney General and Principal Deputy
21 Assistant Attorney General for the Civil Rights Division of
22 the United States Department of Justice from 2017 to 2019.

23 In that role, he led the Department's enforcement of
24 the Federal civil rights laws nationwide. Next, we have
25 Professor Derek Muller, a Tenured Professor of Law at the

1 University of Iowa College of Law. He is nationally
2 recognized as a scholar in the field of election law.

3 His research has focused on the roles of States and
4 the administration of Federal elections, the Constitutional
5 contours of voting and election administration, the limits
6 of judicial power in the domain of elections, and the
7 Electoral College.

8 As the bipartisan working group worked on their bill,
9 he provided them with expert guidance and advice. And I
10 want to thank all five of our witnesses for joining us
11 today and look forward to your testimony.

12 The Chairman. Very good. If you would all stand,
13 including our witnesses at home, raise your right hand. Do
14 you swear that the testimony you will give before the
15 committee shall be the truth, the whole truth, and nothing
16 but the truth, so help you God?

17 Mr. Bauer. I do.

18 Mr. Gore. I do.

19 Mr. Eisen. I do.

20 Mr. Muller. I do.

21 Ms. Nelson. I do.

22 The Chairman. Very good. You can all be seated. And
23 Mr. Bauer, you are now recognized for your testimony for
24 five minutes.

1 TESTIMONY OF BOB BAUER, PROFESSOR OF PRACTICE AND
2 DISTINGUISHED SCHOLAR IN RESIDENCE AT NEW YORK UNIVERSITY
3 SCHOOL OF LAW, NEW YORK, NEW YORK

4 Mr. Bauer. Thank you very much. Thank you very much,
5 Chair Klobuchar, Ranking Member Blunt, and members of the
6 committee for this invitation to testify. I have
7 submitted, of course, a full written statement for the
8 record. I come to this testimony as a member and co-chair
9 with Professor Jack Goldsmith of the bipartisan group
10 convened by the American Law Institute to consider reform
11 of the Electoral Count Act.

12 Unanimously produced a statement of principles that
13 has shaped my views, but I want to emphasize that I am here
14 today in my individual capacity. Unlike so many areas of
15 contested political reform, there is widespread agreement
16 across the political and ideological divide that the ECA
17 requires revision.

18 Legal scholars have long been calling for reform for
19 most of its 135 year old history. The statutes' obvious
20 weaknesses and dangers have not erupted into controversy
21 over the outcome of a Presidential election.

22 But those dangers now face us all, and reform is now
23 clearly and urgently needed. The business of reforming
24 this statute poses complexities and tradeoffs, and yet the
25 proposals before this committee navigate these difficulties

1 with considerable effectiveness. They set us on a path to
2 reform that represents an extraordinary bipartisan
3 achievement.

4 The core aim of Electoral Count Act reform is to
5 ensure that the popular judgment rendered on Election Day
6 under the election law rules then in place in the State, is
7 respected and then protected from being cast aside by State
8 executive officials or by political majorities that happen
9 to be in control of the Congress or of State Legislatures.

10 Under the Constitution, State legislators, of course,
11 determine the manner of appointing electors. And for those
12 States that choose popular elections, as all now do,
13 Congress fixes the date that an election takes place as a
14 matter of due process.

15 The rules, in effect on the date of the election are
16 the ones that must determine the outcome. This is basic
17 stuff. In our democracy, we do not change the rules of
18 competition after the game is played and the results are
19 known. ECA reform is a matter of fundamental design
20 vindicates the central tenet of our democratic life.

21 It respects State law, a process for setting the rules
22 of an election, from the casting of ballots through
23 canvassing, recount and contest processes. But it requires
24 that States honor those results when transmitting to
25 Congress the ascertainment of electors whose votes should

1 be included in the January 6 tally.

2 It also clarifies Congress's role, which is to receive
3 the lawful certificates so that it can count the correct
4 electors votes, not to second guess the State's lawful
5 popular vote count. As tested in State post-election
6 recount and contests, and in Federal and State litigation,
7 the Electoral Count Act and the Electoral Count Reform Act
8 shows that this can be done without creating any new legal
9 claims or causes of action, merely assuring that when
10 Presidential and Vice Presidential candidates challenge the
11 lawfulness of certificates at a State Legislature or State
12 executive official might send Congress ways.

13 Those claims, as brought under existing law, are
14 expedited. The tight timetable for the resolution of those
15 issues before January 6 requires expeditious resolution.
16 ECA reform proposals before this committee can also clarify
17 Congress's role in the conduct of the Joint Session
18 proceedings.

19 And here there are large areas of consensus, strict
20 limitations on the role of the presiding officer, raising
21 the threshold, and charting the nature of permissible
22 objections, and other mechanisms and rules for the conduct
23 of this Constitutional process in which the public can have
24 confidence. I will close by saying that the proposals
25 before the committee represent a vast improvement over

1 existing law.

2 There can be no question about that, none whatsoever.

3 As I have noted in my written statement and as will emerge,

4 I hope in the time for questions and answers, there have

5 been calls for clarification and tightening. In one

6 respect or another, all merit consideration. Some might

7 well address concerns about ambiguities and misreadings.

8 But, and I emphasize this fortunately, none of those

9 calls for clarification or technical correction go to the

10 basic and very effectively designed reform that we have in

11 front of us today. So thank you very much, Chair

12 Klobuchar, and Ranking Member Blunt, and members of this

13 committee.

14 [The prepared statement of Mr. Bauer follows:]

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1 The Chairman. Thank you very much. Next up, Mr.
2 Gore.

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TESTIMONY OF JOHN GORE, PARTNER, JONES DAY, WASHINGTON,
D.C.

Mr. Gore. Good morning, Chairwoman Klobuchar, Ranking Member Blunt, and distinguished members of the committee. I first want to 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 today's hearing, and I thank the committee for inviting me to testify today. The Electoral Count Act governs 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 our Presidential elections. The Constitution's Electors Clause vests in State Legislatures the authority to direct the manner in which each State's electors are chosen. The Constitution vests in Congress the responsibility to count each State's electoral votes, and to certify and ascertain the winner of the presidency and the vice presidency.

Since 1887, the Electoral Count Act has laid out a procedure for States to certify their electors, and it has directed Congress's discharge of its duty to collect,

1 count, and compile electoral votes.

2 The States in Congress have performed admirably well
3 under the Act, but the Act contains numerous gaps and
4 ambiguities that could impede Congress's ability to count
5 electors accurately in a future Presidential election.

6 Reforming the Act is necessary and appropriate.
7 Congress should take the opportunity to safeguard the
8 integrity of our Presidential elections now before future
9 disputes arise. Several of the current Act's shortcomings
10 reflected silence on judicial review. For example, the
11 current Act does not address Federal judicial review in
12 this scenario.

13 When a Governor fails to certify a slate of electors
14 or certifies the wrong slate of electors, the current Act
15 also does not address how Congress should handle a revised
16 certificate issued by a Governor under the order of a State
17 or Federal court.

18 The Bipartisan Electoral Count Reform Act preserves
19 the precedent and practices in our Presidential elections
20 that have served States, Congress, and the American people
21 for decades. At the same time, the Reform Act offers
22 several key improvements for the benefit of States,
23 Congress, and the American people.

24 Four of the main provisions of the Reform Act address
25 judicial review and clarify the role of courts in

1 adjudicating Presidential election disputes. First, the
2 Reform Act reiterates that the laws that govern
3 Presidential elections are the State laws adopted by State
4 Legislatures prior to the election.

5 This provision will help preserve, protect, and
6 promote free and fair elections on behalf of all Americans.
7 The American people can have faith and confidence in the
8 integrity of our elections only when the rules are set
9 before the election are followed, during the election, and
10 upheld after the election.

11 The Reform Act is a key bulwark against efforts to
12 change the rules of the game after a Presidential election
13 has been held. Second, the Reform Act leaves States and
14 their voters in charge of choosing Presidential electors as
15 the Constitution directs.

16 Accordingly, the Reform Act preserves existing State
17 laws for contesting or challenging the results of an
18 election. States have adopted a variety of judicial and
19 administrative procedures for adjudicating election
20 disputes, and the Reform Act keeps all of those procedures
21 in place.

22 Third, the Reform Act addresses and fills a statutory
23 gap by addressing judicial review in a scenario when a
24 Governor fails to certify the correct slate of electors. A
25 provision in the Reform Act guarantees that expedited

1 Federal judicial review is available in such cases. Under
2 that provision, Federal, Constitutional, or legal
3 challenges brought by a Presidential or Vice Presidential
4 candidate will be heard by a three judge Federal district
5 court on an expedited basis.

6 Any appeals would go directly to the United States
7 Supreme Court on expedited review. And finally, the Reform
8 Act fills another statutory gap by addressing how Congress
9 should handle revised certificates issued by a Governor
10 under the order of a State or Federal court.

11 The Reform Act made it clear that Congress will accept
12 such a certificate. This provision modernizes Federal law
13 and Congress's process for counting electoral votes. I
14 thank the committee once again for its time and attention
15 on this matter and look forward to the committee's
16 questions.

17 [The prepared statement of Mr. Gore follows:]
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1 The Chairman. Very good. Thank you so much, Mr.

2 Gore. Next up, Ambassador Eisen.

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1 TESTIMONY OF AMBASSADOR [RETIRED] NORMAN EISEN, SENIOR
2 FELLOW, GOVERNANCE STUDIES, THE BROOKINGS INSTITUTION,
3 WASHINGTON, D.C.

4 Mr. Eisen. Thank you, Chairwoman Klobuchar, Ranking
5 Member Blunt, and the very distinguished members of this
6 committee for inviting me and all of my colleagues to
7 testify today on the Electoral Count Act and on the need
8 for reform, and for your bipartisan attention to these
9 critically important questions.

10 The need for reform is profound. The flaws in the ECA
11 were on stark display during the attempted overthrow of the
12 2020 election results, an effort which U.S. District Court
13 Judge David Carter described as a coup in search of a legal
14 theory.

15 As we now know, including from the work of the House
16 January 6 committee, when former President Trump and his
17 allies crafted that flawed legal theory that resulted in
18 the insurrection, they exploited the flaws and ambiguities
19 in the ECA. January 6 has passed, but the danger has not,
20 as this committee well recognizes.

21 Many of those who supported the 2020 coup attempt
22 remain active in the election denial movement. Donald
23 Trump has inspired over 100 election denying candidates
24 from coast to coast running for key positions, overseeing
25 elections. Indeed, several more won primaries just last

1 night.

2 As the Vice Chair of the House January 6 committee,
3 Liz Cheney, has warned, this is an ongoing threat.
4 Reforming the ECA is therefore essential to protect our
5 democracy against future attacks.

6 The ECRA is a significant step forward towards
7 addressing that threat. In fact, it represents multiple,
8 significant steps forward. But the improvements the ECRA
9 makes are not the sole matters that this committee should
10 focus upon.

11 We must ask, does the initial form of the ECRA
12 effectively respond to all the critical weaknesses in the
13 ECA that the campaign to overthrow the 2020 election
14 revealed? If not, then it may actually invite unwelcomed
15 manipulation. In my view, the committee should focus its
16 attention on improving four key provisions.

17 First, the "extraordinary and catastrophic events"
18 that would allow for the extension of Election Day should
19 be better defined. Leaving these terms entirely up to
20 State law without guardrails presents an opportunity for
21 mischief by election denying officials who are at risk of
22 proliferating.

23 Second, the Federal litigation provisions should be
24 further developed as written. The scant six day window for
25 Federal litigation in the ECRA is insufficient,

1 particularly in the event that Governors or others wrongly
2 certify or refuse to certify electors, or otherwise abuse
3 the process. It just doesn't work.

4 The elector meeting date should be back to expand the
5 period for judicial review, and the five day notice
6 requirement for convening three judge panels should be
7 waived altogether.

8 And if I may say on this point, it is critically
9 important that the Governors and other stakeholders in the
10 States that this committee and the Senate so deeply respect
11 be consulted on how the process will work, and the complex
12 interactions of State and Federal law litigation and
13 processes.

14 Third, to strengthen safeguards surrounding the
15 process once it reaches Congress, the committee should
16 consider clarifying the grounds for objection by replacing
17 lawfully certified and regularly given with more precise
18 definitions.

19 Those terms have been a source of abuse in the past.
20 They need to be addressed. And fourth, and finally, we
21 must provide clear procedural rules for the Congressional
22 counts so that gaps and ambiguities are not used to foment
23 chaos. Thank you very much for having me today.

24 [The prepared statement of Mr. Eisen follows:]
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[Technical problems.]

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1 TESTIMONY OF DEREK MULLER, PROFESSOR OF LAW, UNIVERSITY OF,
2 IOWA COLLEGE OF LAW, IOWA CITY, IOWA

3 Mr. Muller. Chairwoman Klobuchar, Ranking Member
4 Blunt, members of the committee, thank you for the kind
5 invitation to testify today. It is a particular honor to
6 speak to two of the tellers, Senator Klobuchar, Senator
7 Blunt, who in the Joint Session on January 6th, served
8 admirably in the face of great scrutiny and danger.

9 Thank you. My name is Derek Muller. I am a Professor
10 at the University of Iowa College of Law. I teach election
11 law and Federal courts. These views are my own and do not
12 reflect those of the university or any other organization.

13 My written testimony makes five principal points.
14 Broad bipartisan consensus is essential to reform the
15 Electoral Count Act to ensure that future Congresses have
16 the confidence to abide by the rules. The Electoral Count
17 Reform Act of 2022 fits comfortably within Congress's
18 Constitutional authority.

19 This bill has seven important components which are
20 useful and practical ways of handling future disputes. The
21 updates to the Presidential Transition Act of 1963 are
22 laudable. And finally, there are some small technical
23 corrections that could further improve clarity. In the
24 interest of time, I will focus on a few of these points,
25 then rely on my written testimony and respond any

1 questions.

2 In amending statutes like the Electoral Count Act of
3 1887, Congress must develop neutral, sensible rules well
4 before any dispute arises in a contested election. That
5 Act was enacted with bipartisan consensus. It took too
6 long.

7 A series of significant problems in the election of
8 1872 left unanswered questions, and they remained
9 unanswered ahead of the contested election of 1876, which
10 threw the United States into a catastrophic election
11 crisis. Even after that, Congress could not find consensus
12 until 1887, with Democrats and Republicans joining together
13 to develop a bill that they could agree would govern future
14 counting.

15 Despite its problems, it served well for over 100
16 years. The Electoral Count Reform Act of 2022 does seven
17 important things. First, it clarifies the scope of
18 Election Day. Second, it abolishes the failed to make a
19 choice provision and substitutes a simpler rule for
20 election emergencies.

21 Third, it ensures that Congress receives timely,
22 accurate electoral appointments from the States. Fourth,
23 it raises the objection threshold in Congress. Fifth,
24 clarifies the narrow role of the President of the Senate
25 when Congress counts votes. Six, it enacts new counting

1 rules to define Congress's role of the count.

2 And seventh, it clarifies the denominator in
3 determining whether a candidate has reached a majority.
4 These objectives are hardly random. They have their legacy
5 in the same kinds of reforms proposed by members of this
6 committee and others in Congress. These goals are all
7 advanced in discussion draft of the Electoral Count
8 Modernization Act, which was released in February.

9 These seven are also all goals which were advanced in
10 the committee on House Administration Majority Staff report
11 released in January. The mechanisms may differ from
12 proposal to proposal, but all serve in the same ends, often
13 quite similarly.

14 I am confident that the bipartisan working group that
15 fashioned the Electoral Count Reform Act of 2022 owes a
16 great debt of gratitude for the work in Congress, the work
17 of members of this esteemed committee, improving the work
18 that has been done so far. The bill works within the scope
19 of Congress's power under the Constitution to fix the times
20 of elections and of concluding them to expedite resolution
21 of disputes and to constrain discretion in the Joint
22 Session when it comes to counting votes.

23 It does not inhibit the States from resolving disputes
24 in State courts, but it does require Congress to treat
25 conclusive the results that come out of States of the

1 courts upon the resolution of any election dispute.

2 There is wisdom in the specific approach of the bill
3 and the things that it does not do, just as important as
4 the things it does in the event of an election dispute.
5 The very last thing anyone wants is uncertainty. Novel
6 mechanisms may face scrutiny and judicial skepticism at the
7 very moment they are most needed, at a time when they must
8 serve as reliable guardrails.

9 The bill does not invite new avenues of litigation
10 that could create tension with existing stable litigation.
11 It does not offer novel mechanisms for counting in Congress
12 that may face future challenges. Importantly, in some
13 places, the bill retains useful, long standing language
14 from the Electoral Count Act to reduce uncertainty that new
15 or different language may provide at every turn.

16 The bill offers more clarity, more precision, and more
17 stability. The specific text of this bill has significant
18 and broad bipartisan consensus. It is neither a partisan
19 effort nor a token bipartisan effort. While many speak
20 generically about reform, specific language and mechanics
21 matter and securing consensus on these topics is not easy.

22 The risks of failing to enact the Electoral Reform Act
23 of 2022 are significant. Some have attempted to exploit
24 ambiguities over the years, most significantly in 2020. To
25 leave those in place ahead of the 2024 election is to

1 invite serious mischief.

2 No law can prevent all mischief, but the bill
3 significantly strengthens several important things. I have
4 been pleased to see such bipartisan consensus on it and
5 there has been very little opposition to the heart of the
6 bill. Rare concerns are mostly misunderstandings or
7 technical problems. I thank and look forward to answering
8 any questions you have and thank you for participating
9 today.

10 [The prepared statement of Mr. Muller follows:]

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1 The Chairman. Very good. Thank you very much. Ms.
2 Nelson. Last but not least, remote. Thank you.

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TESTIMONY OF JANAI NELSON, PRESIDENT AND DIRECTOR-COUNSEL,
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC, NEW YORK,
NEW YORK

Ms. Nelson. Thank you. And good morning, Chairwoman Klobuchar, Ranking Member Blunt, and members of the committee. My name is Janai Nelson, and I am President and Director Counsel of the NAACP Legal Defense and Educational Fund, or LDF.

I join my colleagues in commending the work of this committee and celebrating the unanimity of support on the need for reform of the ECA on this panel.

And I thank you for the opportunity to testify on the perils facing our democracy, and on the urgent need to enact responsive and expansive Federal legislation that prevents the sabotage of our elections, sabotage that can happen through discriminatory barriers to the ballot and the manipulation of election results in ways that disproportionately target communities of color.

Historians will study the period between 2020 and 2025 for decades to come as they seek to explain the next century of American life. They will ask the question, did we act when we had the chance, or did we squander our last, best hope to protect the freedom to vote and save our democracy?

The answer to that question lies in part in the

1 actions of this committee. And so I come before you today
2 to sound a piercing alarm. Longstanding voting
3 discrimination is intensifying at the same time that
4 efforts at election sabotage manipulation have again come
5 to the fore, accompanied by the normalization of political
6 violence.

7 Voters of color face the greatest assault on our
8 voting rights since Jim Crow. U.S. democracy is in crisis
9 because of a deep seated, irrational, and discriminatory
10 fear of the truly inclusive, multiracial, multi-ethnic
11 democracy that our Nation has never been, but our
12 increasingly diverse electorate holds the promise to
13 deliver.

14 Those who reject and fear that vision of democracy
15 have proven that they are willing to sabotage our
16 elections, to avoid its fruition, and to destroy our
17 democracy in the process. To prevent another January 6,
18 and to bring our democracy back from the brink, Congress
19 must act swiftly and expansively to address the full range
20 of these challenges, including rampant voting
21 discrimination that has for centuries impeded the equal
22 voice and power of voters of color. We also need urgent
23 action to resolve ambiguities and curb opportunities for
24 abuse in the electoral process.

25 As the other panelists have explained, in other words,

1 strengthening the Electoral Count Act must be the start of
2 this committee's and this Congress's work, but not the end.
3 We are encouraged by and commend the bipartisan working
4 group's thoughtful progress on the ECA for all the reasons
5 I noted. Shoring up the ECA is both a democracy issue and
6 a racial justice issue. We also believe the ECA can be
7 strengthened further, and I offer the following principles
8 as a guide.

9 First, any reform should eliminate both ambiguities in
10 the law and opportunities for manipulation, while
11 preserving voters' ability to enforce their rights under
12 existing law. Next, any judicial process to determine the
13 official slate of Presidential electors for Congress to
14 count should be conducted according to established and
15 clear guidelines, and be fair and unbiased, both in fact
16 and in appearance.

17 That process must yield a single, definitive, and
18 final result that is not subject to competing outcomes
19 prior to the meeting of the Electoral College. In
20 addition, this process must not intrude on voters'
21 prerogative to seek relief against discrimination, undue
22 burdens, or due process violations in State or Federal
23 court.

24 Finally, we recommend clarifying the ECRA's language
25 so there is no ambiguity, that Congress is conclusively

1 bound by an ascertainment as affirmed or revised by a State
2 court, a Federal court for statutory or Constitutional
3 reasons, or the particular Federal judicial review process
4 described in the ECRA.

5 My written testimony contains more detailed
6 suggestions for this committee's consideration, including
7 ways to improve the bipartisan working group's companion
8 legislation so that it fulfills its potential as a
9 complement to the ECRA.

10 At bottom, however, is this most important point,
11 protections against voting discrimination and voter
12 suppression, and protections against election manipulation
13 and subversion are distinct, yet mutually reinforcing ways
14 to prevent election sabotage.

15 And both are necessary to ensure that the votes and
16 voices in our increasingly diverse electorate are equally
17 heard, counted, and honored. Congress must act now to root
18 out voting discrimination and prevent election subversion.
19 That all important work begins with this committee, and I
20 look forward to your questions.

21 [The prepared statement of Ms. Nelson follows:]
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1 The Chairman. Thank you very much, Ms. Nelson.
2 Appreciate your testimony, in the spirit of your
3 suggestions, which I think I feel the vibes from all of our
4 witnesses that we want to move on. And so I thought I
5 would start with this bipartisan panel of witnesses, just
6 with yes or no questions.

7 Quick, we know this is a complex area of law and we
8 all want to get it right. Do you agree that it is
9 important for Congress to update the Electoral Count Act to
10 ensure the will of the voters prevails in Presidential
11 elections, whatever that will may be? Mr. Bauer, just yes,
12 no.

13 Mr. Bauer. Absolutely.

14 The Chairman. Okay. Mr. Gore.

15 Mr. Gore. Yes.

16 The Chairman. Mr. Eisen.

17 Mr. Eisen. Yes.

18 Mr. Muller. Mr. Mueller.

19 Mr. Muller. Yes.

20 The Chairman. Thank you. And then last up is Nelson.

21 Ms. Nelson. Yes.

22 The Chairman. Okay. Do you agree that under existing
23 law, the Vice President has no authority to decide which
24 electoral votes to count? And do you support efforts to
25 update the law to make it crystal clear that the Vice

1 President has no authority to accept or reject electoral
2 votes? Mr. Bauer.

3 Mr. Bauer. Yes.

4 The Chairman. Gore.

5 Mr. Gore. Yes.

6 The Chairman. Eisen.

7 Mr. Eisen. I agree.

8 The Chairman. Muller.

9 Mr. Muller. Yes.

10 The Chairman. And Ms. Nelson.

11 Ms. Nelson. Yes.

12 The Chairman. Okay, last. Under existing law, it
13 only takes one representative and one Senator to force each
14 chamber to debate and vote on an objection to a State's
15 electoral votes. Do you support raising the threshold for
16 these objections to require, suggested in this bill, the
17 one-fifth of each chamber to sign an objection before it
18 can be debated, as suggested in the bipartisan bill? .

19 Mr. Bauer. Yes.

20 The Chairman. Gore.

21 Mr. Gore. Yes.

22 The Chairman. Muller.

23 Mr. Muller. Yes.

24 The Chairman. And Ms. Nelson.

25 Ms. Nelson. Yes.

1 The Chairman. Okay. That is the first. All right,
2 good. So I just thought it was really important as we look
3 at even some of our questions will be about and details
4 that we agree that on the main parts of this bill, there is
5 agreement, and we can always make improvements. And I am
6 sure there will be discussions about that.

7 One area that has received a lot of attention is the
8 role of the Federal courts in ensuring State officials
9 comply with their Federal duty to certify electors who
10 reflect the outcome of the election.

11 Mr. Eisen, briefly. You have expressed some concern
12 on the judicial review procedures and the timing of them,
13 that there should be enough timing to resolve the disputes
14 before the Electoral College meet. Can you talk about that
15 very briefly, and what you think would be helpful?

16 Mr. Eisen. In the six day window, you have got to get
17 through briefing, argument, decision, appeal, first with
18 the three court panel, then with the Supreme Court. All of
19 this is happening in the context of possible State ongoing
20 proceedings, and it will put a burden on the Governors, the
21 AGs, and the Secretaries of State who are engaged. It
22 simply is not workable to do it in six days.

23 I recognize that on the one hand, the States are going
24 to be pushing for more time. And on the other hand, the
25 parliamentarians and all of you and those in the House who

1 must handle this are going to want -- pushing in the
2 opposite direction for enough time to get ready. But I
3 think getting it right --

4 The Chairman. Getting that time right. That seems
5 like something. Okay. Mr. Bauer, you want to respond to
6 that?

7 Mr. Bauer. Yes. I don't share the acuteness of
8 Norm's expressed concern on this point. I think, first of
9 all, it is very likely that lawsuits to challenge, if you
10 will, questionable certifications are likely to arise well
11 before that six day period. I don't think is going to
12 occur right at the beginning of the six day period.

13 Also, I think it has been clear over time that courts
14 have the mechanism and recognize the duty to expedite as
15 necessary the resolution of these claims. And thirdly, I
16 do want to stress again that under the Electoral Count
17 Reform Act, we are talking about claims that are very
18 narrowly drawn, brought by Presidential and Vice
19 Presidential candidates to address the apparent submission
20 or refusal to provide a certificate in accordance with
21 State laws.

22 And I think that, again, that will focus the court's
23 attention and enable these matters to be addressed
24 expeditiously, even within a six day period. If, in fact,
25 it would help the passage of the bill to add a few days,

1 and it was possible to accommodate those additional times
2 without pressure on the other end as Congress prepares for
3 the Joint Session, of course, you know, that certainly can
4 be considered.

5 The Chairman. Okay. Widespread concern about a
6 provision in the current law, the current law, that would
7 allow State Legislatures to declare a failed election,
8 appoint their own electors. Mr. Bauer, can you -- which
9 would be appointing their own electors but ignoring the
10 votes in their States. Mr. Bauer, quickly explain how the
11 bipartisan bill solved this problem.

12 Mr. Bauer. It solves this problem, in my view, very
13 effectively by providing that States may, pursuant to laws
14 in effect before Election Day, determine that extraordinary
15 and catastrophic events have occurred that necessitate a
16 modification in the period of voting. And that is key.

17 The remedy here is a modification in the period of
18 voting. It does not allow the States to use the excuse,
19 and that is what was most of the concern, about the failed
20 election provision under the current ECA to redo the
21 election, to throw the old one out, and conduct another
22 one.

23 So I think that it very effectively addresses the
24 concerns that we have over legitimate problems that may
25 arise with cyberattacks, power outages, natural disasters,

1 while at the same time preserving this fundamental
2 principle that laws are that due process requires us to
3 honor the results of elections that reflect the popular
4 vote under the rules in effect, on Election Day.

5 The Chairman. Okay. Ambassador, you have expressed
6 some concern that the language in the bipartisan bill
7 allowing States should extend Election Day, during
8 extraordinary and catastrophic emergency, is vague. I
9 mean, I am glad that they had an exception, and something
10 we had in our bill, Senator King, and presented for these
11 catastrophes. You can have weather catastrophes, right.
12 So do you have anything you can suggest then that you think
13 could make this more defined?

14 Mr. Eisen. Chairman, if this committee were in
15 charge, solely in charge of administering extraordinary and
16 catastrophic, the anxiety that many of us feel in looking
17 at the election denier landscape and the brazenness and the
18 willing to go to the very -- the willingness to go to the
19 very limits, that alarm would not occur.

20 But I think given that Congress has defined this term,
21 extraordinary and catastrophic, you can put some guardrails
22 around that to prevent the bizarre idea which can be done
23 before Election Day by an election denying Governor,
24 particularly if there is a trifecta, if they have both
25 houses.

1 The Chairman. Okay. Just but, if you could just be
2 -- any specific language and you can give it to the
3 committee later. Okay, I have one last question, Ms.
4 Nelson. You testified that reforming the Electoral Count
5 Act is only one step in protecting our democracy. I know
6 you would like to see some changes. We can go over those
7 later. But could you speak to why additional legislation
8 like the Freedom to Vote Act and John Lewis Bill would
9 complement the work that we have done here. Ms. Nelson.

10 Ms. Nelson. Yes, because election sabotage happens
11 not just after ballots are cast and votes are tabulated.
12 It can happen in the way that the electorate is shaped
13 through voter suppression laws and through laws that erect
14 barriers to the ballot.

15 And so the John Lewis Voting Rights Advancement Act is
16 critical to restoring and strengthening core protections
17 against voting discrimination that we lost in the Voting
18 Rights Act of 1965 when the Supreme Court struck down the
19 provision and disabled it.

20 We also need the Freedom to Vote Act to set minimum
21 standards for access to the polls so that voters in Florida
22 and Georgia and Texas can benefit from same day voter
23 registration, for example, or robust vote by mail in ballot
24 return procedures, just like voters in California and
25 Colorado and other States. The uniformity of those voting

1 measures will restore and bring greater confidence to our
2 electoral system and will complement the work of the ECRA.

3 The Chairman. Thank you very much. Mr. Blunt.

4 Senator Blunt. Thank you, Chair. Mr. Gore, Professor
5 Muller, and Professor Bauer, you all in each of your
6 testimonies, you highlighted the importance of -- that bill
7 had it in clarifying that States must use laws enacted
8 before Election Day. Let me put two or three thoughts out
9 there and you can all three respond to this.

10 What potential problems would that provision solve?
11 How does that provision help maintain the integrity of the
12 elections? And does the provision still uphold the rights
13 of States to actually craft their own laws regarding
14 elections? And let's just start with Mr. Gore here, right
15 in front of me. We will go, Mr. Gore, Mr. Muller, and Mr.
16 Bauer.

17 Mr. Gore. Thank you, Senator Blunt. That is a key
18 provision of the Reform Act, because it leaves the people
19 and the people's representatives in the State Legislature
20 in charge of prescribing the rules for Presidential
21 elections as the Constitution directs.

22 It would prevent efforts to change the rules of the
23 election after the game has been played. It is a
24 fundamental premise of our elections that they are held in
25 a free and fair manner under rules that are set in advance,

1 followed during the election, and are not changed after the
2 election.

3 And so the Reform Act is a key provision that would
4 prevent efforts to change the rules after votes have been
5 cast, counted, and compiled. It would leave State
6 Legislatures in charge of setting those rules as the
7 Constitution directs and would ultimately empower State
8 Legislatures to set those rules in the manner that they
9 deemed best in each individual State.

10 Senator Blunt. Okay. Mr. Muller.

11 Mr. Muller. Thank you. So that provision works well
12 in tandem with abolishing the failed to make a choice
13 provision. And the goal is that there is one Election Day,
14 the first Tuesday after the first Monday in November. All
15 the rules are going to be in place then and we are going to
16 follow those rules and adhere to them.

17 And there were some concerns that arose in 2020 that
18 Legislatures could show up in December or January and
19 appoint a slate of electors under rules that didn't exist
20 at the time. There was a lot of conversation about this in
21 Florida in 2000, Louisiana in 1960. This was a problem in
22 1876 as well.

23 So making sure that we have stable rules upfront, that
24 we know we are having a popular election, and all of those
25 rules are going to control and govern the recount and other

1 processes that happen after Election Day is crucial to
2 ensure that the votes and the voices of the people will be
3 represented when that certificate gets to Congress.

4 Senator Blunt. And Mr. Bauer.

5 Mr. Bauer. I completely associate with the comments
6 just made by Mr. Gore and Professor Muller. I think that
7 this is a crucial part of Electoral Count Act reform and
8 well reflected in the Electoral Count Reform Act. The
9 Congress fixes the date under the Constitution of the
10 election.

11 Due process requires that those -- that Congressional
12 authority be respected, and that State Legislatures do not
13 attempt after the fact, once the results are known, to
14 change the rules that were in place and on which the voters
15 relied. And so it is essential for that reason within our
16 Constitutional framework and for the additional points that
17 were made by Mr. Gore and Professor Muller.

18 Senator Blunt. Thank you. Ambassador Eisen, does
19 anything in the bipartisan proposal displace any of the
20 existing Federal or State claims that are available? Now,
21 it does seem like there are plenty of places to go to
22 court, and as others have pointed out, to challenge
23 problems that are perceived or real immediately after the
24 Election Day itself. Is there anything that prevents all
25 of those options from continuing to be available?

1 Mr. Eisen. Options do remain available. I will note,
2 and I am going to the place in the bill, that at the end of
3 the six day period, for recon -- in order that the, here we
4 are, in order that the certificate have binding effect here
5 in Congress, that the subsequent State or Federal judicial
6 relief, this is in 5(c)(1), has the effect of -- in order
7 for that to have effect, it will cut off the State review.

8 So we are establishing a cut off here. And I know
9 there is some concern by those who actually have to
10 administer this that -- with the length of that period. So
11 that is why we would like to have more time in order that
12 State and Federal procedures can run their course.

13 Senator Blunt. Mr. Gore, do you think more time is
14 helpful thing where you have all of these current remedies
15 in law?

16 Mr. Gore. I do not believe that more time is
17 necessary to allow the courts to adjudicate any disputes in
18 Presidential elections in the future for several reasons.
19 First, the Reform Act preserves all of the existing State
20 procedures for adjudicating those disputes. So the Federal
21 claim or the Federal suit would be filed in most cases, if
22 not all cases, after a State process already has played
23 out.

24 Second, it is going to be a very unlikely case that
25 would be resolved within only six days. Most States

1 certify the results of their elections well before that six
2 day period would begin. So, for example, in 2020, Delaware
3 certified its election results on November 18th, nearly a
4 full month before the Electoral College convened. Third,
5 the issues presented in any kind of Federal suit would be
6 very narrow.

7 The issue would only be whether the Governor had
8 failed to certify the correct slate of electors as required
9 by State law in existence prior to Election Day. And
10 fourth, as I think Mr. Bauer may have mentioned before, the
11 States have proven in there and the courts have proven very
12 adept at adjudicating these disputes in a very quick
13 manner.

14 And that includes not just State courts that deal with
15 election contests and challenges, but also Federal courts,
16 including the U.S. Supreme Court, which in many cases has
17 resolved election disputes very, very quickly.

18 Senator Blunt. Thank you. Thank you, Chairman. I
19 may have other questions later or for the record, but we
20 have got a number of members here so we can move on.

21 The Chairman. Yes, we can do some later. Senator
22 Warner.

23 Senator Warner. Thank you, Chair Klobuchar. Let me
24 thank you and Senator Blunt for giving the bipartisan group
25 the time and space to try to put this together. And I

1 would point out, I know this is not the popular perception
2 that Americans have, we have had a pretty good run of
3 bipartisan activity in the Senate, the infrastructure bill.
4 There was a group that came together, the chips bill.

5 There was a group that came together on the guns
6 legislation, the budget, the veterans bill that was passed
7 yesterday, and now the ECA. So I know this is again not
8 popularly held by the public, but there are a group of
9 reasonable Senators in both parties that actually try to
10 get to yes.

11 I also want to quickly point out that while we are on
12 the Electoral Count Act today, there was a lot of good work
13 done by this group as well on issues around postal reform,
14 in terms of elections, making sure that absentee ballots
15 would be swept and counted in an appropriate way, that
16 there wouldn't be changes before an election
17 inappropriately by any kind of postmaster general that
18 might be political. And I would urge the committee take a
19 look at those.

20 We also, I think, did some good work on efforts around
21 voting machines. For example, we already have in the law
22 making sure that voting machines do accurate counts. We
23 also have appropriate in the law that voting machines can
24 withstand environmental challenges if they get rained on,
25 flooded, wet.

1 One of the things we have not done and that I think is
2 very appropriate for this committee to take up, would be
3 making sure that we have de minimis security standards and
4 cybersecurity standards in voting machines.

5 Senator Blunt and I, Senator King are on the
6 Intelligence committee, and we have seen efforts in the
7 past to use cyberattacks on our voting systems and putting
8 in a voluntary de minimis cyber standards for our voting
9 machines, I think, just makes enormous amount of sense. I
10 also want to compliment Professor Muller.

11 You have a series of technical amendments to the
12 legislation that we put together. I am going to tell you,
13 from my standpoint, I think all four of your technical
14 amendments dramatically improve the bill and clarify some
15 of the misreadings. And while I am not going to get in my
16 2 minutes and 50 seconds a chance to go through all of
17 them, I hope, and --

18 The Chairman. We will give you an extra minute,
19 Senator Warner.

20 Senator Warner. Or a more adept committee member may
21 point to those, but I also think Professor Muller, Senator
22 Blunt, as you know, has a Republican background. And I
23 just want to say his improvements would get my support.
24 And I don't want to speak for Senator Collins and Senator
25 Manchin, but I have run it by them as well. And I think

1 you do some very good work.

2 I do want to get to a question, though, and that is
3 that Mr. Bauer, I want to thank you and your colleague,
4 Jack Goldsmith, as well as all the other law professors,
5 for your help in drafting the ECRA. And as probably
6 Senator Capito will indicate, one of the things that we
7 wrestled with the most was determining the role that the
8 Federal courts might have in resolving a disputed election.

9 And I think some of the commentary out there, frankly,
10 is off base. And one of the reasons why I think
11 professional matters, corrections may help. So let's, Bob,
12 if we could go through a lightning round in my last minute
13 and 50 seconds, does the ECRA create a new cause of action?

14 Mr. Bauer. No, it does not.

15 Senator Warner. Does the ECRA expand the jurisdiction
16 of the Federal courts?

17 Mr. Bauer. No. It only provides for expedited
18 reviews of cases that would be brought under existing law.

19 Senator Warner. Does the ECRA in any way diminish the
20 power of State courts?

21 Mr. Bauer. No, it does not.

22 Senator Warner. Now, you have said that the ECRA
23 simply clarifies the role of Federal courts under existing
24 law. Now, we spent a lot of time going back and forth on
25 this and had lots and lots of good work. Can you go ahead

1 and describe that role of the Federal courts in this
2 process?

3 Mr. Bauer. The point that I was making was that the
4 sort of claim that we are talking about here that might be
5 brought by a Presidential and Vice Presidential candidate
6 challenging the lawfulness of a certificate that either a
7 State executive official might put forward or a State
8 Legislature might put forward, is an action that could be
9 brought today under existing law, under extant law by the
10 Presidential and Vice Presidential candidates.

11 And what the Electoral Count Reform Act does, and I
12 think quite effectively, is simply provide on this very
13 unforgiving timetable we face in any event, for expedited
14 review. It establishes venues and procedures for expedited
15 review, review by a three judge court, and then review by
16 the United States Supreme Court.

17 But it does not alter existing law, it does not, as
18 your question earlier suggested or asked me to respond to,
19 it does not create any new courses of action. It is a
20 procedural provision to allow this narrow kind of claim
21 brought by these particular plaintiffs to receive expedited
22 treatment.

23 Senator Warner. And that is the position not only of
24 you, but Mr. Goldsmith and the series of law professors who
25 worked with the group?

1 Mr. Bauer. To my knowledge, speaking, of course, for
2 myself and I know this to be also the position of Professor
3 Goldsmith, the answer is yes. And I know of nobody who has
4 argued to the contrary that I have discussed this with the
5 law professors' community.

6 Senator Warner. There was probably no issue that we
7 spent more time on, and maybe Senator Capito will want to
8 comment on this. And I think some of the critiques maybe
9 have been misguided. And I have got a whole bunch of folks
10 in my office where I go through those great corrections
11 that Professor Muller has to the legislation.

12 But I think if there was any ambiguity, some of his
13 technical fixes make some sense. So I, again, thank the
14 chair and the ranking member for giving this gang a chance
15 to do some work, and would welcome other gang members in
16 future endeavors. Thank you, Madam Chair.

17 The Chairman. Senator Capito.

18 Senator Warner. The tats that we brought in the ECRA
19 gang tats, don't -- we shouldn't show those off?

20 Senator Capito. I am not getting into this one.
21 Thank you, Madam Chair, Chair Klobuchar, and also Ranking
22 Member Blunt for having this hearing today. And to my
23 colleagues, Senator Manchin and Senator Collins, for
24 testifying,

25 I want to thank Senator Warner, as well as a members

1 of the groups/gang, whatever we are calling ourselves, and
2 everybody else in this committee. We have had several
3 hearings on this issue. I am going to make a statement in
4 what time I have left. I hope I have time to ask one
5 question, but I want to thank the witnesses today, not just
6 for what you are doing here today, but what your lending of
7 support and expertise throughout this entire process.

8 We did labor back and forth on the best way and I am
9 really encouraged by what I hear. I would also like to
10 submit for the record a letter of support from the R Street
11 Institute, who is in support of the ECA reform efforts.
12 Without objection, I will put that in there.

13 [The information referred to follows:]

14 [COMMITTEE INSERT]

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1 Senator Capito. One of the most important duties of
2 members of Congress is to certify the winner of
3 Presidential elections. It is not our job to adjudicate
4 lawfully cast ballots or overturn the will of the American
5 voters. I remain a strong supporter of our electoral
6 system, which provides power to the States to tailor their
7 election laws to the specific needs of their citizens.

8 As Federally elected officials, we must respect the
9 Constitutional role reserved for the States and not abuse
10 our oversight powers, which I think this bill lines out. I
11 am proud to have joined 15 of my colleagues from both sides
12 of the aisle in introducing the Electoral Count Reform and
13 Presidential Transfer Transition Improvement Act.

14 This legislation is the only bipartisan bill that
15 would amend the Electoral Count Act of 1887. January 6 was
16 a dark day here in our Capitol and for our democracy. But
17 the politicization of the counting of electoral votes has
18 been a problem for decades, predating the most recent
19 Presidential certification.

20 Members of Congress have objected to certified
21 electoral results as a means of changing political outcomes
22 of electoral results that they don't like. Despite then
23 George Bush's -- President George Bush's clear win over
24 then Senator John Kerry, the concurrence with several House
25 members or a single Senator forced a vote in both chambers

1 over whether to overturn Ohio's electoral results because
2 of the rules set by the Electoral Count Act with just a
3 single member.

4 And I am glad to see that we have on record that we
5 all believe that that is a flawed proposition. Senator
6 Barbara Boxer's objection forced Congress to deliberate on
7 whether to discredit the popular vote in the State of Ohio.
8 This resulted in a vote of 1 to 74 in the Senate, and 31 to
9 267 in the House of Representatives.

10 In 2017, House Democrats tried to object to results in
11 nine States, to contest President Trump's electoral
12 victory. Had a single Senator had the bad sense to sign
13 these objections, we would have been required by law to
14 vote on these frivolous change. These precedents, along
15 with efforts to pressure Vice President Pence to discredit
16 the lawfully cast ballots of certain voters, demonstrates a
17 clear need for reform in this certification.

18 Over the course of seven months, we have worked on
19 this, and I am proud that we have put together a package
20 that I think can use improvements and tweaks, as we have
21 talked about, but also hits at the core issues.

22 The legislation solely solves efforts to subvert
23 lawfully given electoral results in our Presidential
24 elections, and provide clear guidelines, I think clarity is
25 sort of the word of the day -- clarity is what we have been

1 missing for over those hundred years. It is not a partisan
2 power grab to Federalize our elections or use Congressional
3 levels of powers to dictate what outcomes a single party
4 might prefer.

5 These efforts, these legislative reforms, offer common
6 sense solution to a recurring problem. So in consultation
7 with many of you, I am hoping that this bill can gain
8 enough support to pass both chambers and be signed into law
9 by the President. I would like to ask in my remaining
10 short period of time, I feel quite honestly, and I don't
11 know what the chair feels about this, that we have a sense
12 of urgency here.

13 Let's be real. We are in it. We are several months
14 away from a midterm election, but as soon as we turn the
15 corner into January or into another lengthy two year
16 Presidential election, my personal feeling is we need to
17 button this up before the end of the year because that will
18 then set the clarity to move forward for the next election.

19 So I know I might get the answer that none of you
20 think that you can tell Congress when they should and how
21 they should pass things, but since you are all here in your
22 personal capacities, I would like to know if you have an
23 opinion on the urgency to get this wrapped up by the end of
24 the year. Mr. Gore, I will start with you.

25 Mr. Gore. Thank you, Senator. I wouldn't presume to

1 tell Congress --

2 Senator Capito. I knew you would say that --

3 Mr. Gore. -- but I certainly agree that now is the
4 time to act. The Reform Act is a beneficial piece of
5 legislation and makes a number of improvements. It is
6 pending before the Congress now, and the moment is here for
7 Congress to act and adopt these important reforms.

8 Senator Capito. Thank you. Ambassador Eisen. I
9 would like to say on a point of personal privilege, I
10 enjoyed visiting you when you were the ambassador. Thank
11 you for your hospitality. It is nice to see you again.

12 Mr. Eisen. I was thinking back to the nice and
13 bipartisan time that we had. I think it is urgent. We
14 must seize the moment. But we must seize it correctly,
15 taking account, and I know no one feels more strongly than
16 you do, Senator Moore Capito, taking account of the needs
17 of those State officials who actually are going to have to
18 deal with all of this. They need more time.

19 Senator Capito. Right. Mr. Muller.

20 Mr. Muller. I want to echo the point on the States,
21 because the more lead time you give them saying these are
22 the rules, these are the deadlines, this is what your
23 courts have to resolve in a speedy time, this is when the
24 certifications have to take place. And if there is so much
25 that has to happen behind the scenes in the 50 States. The

1 more lead time we give our hardworking election officials
2 in the States, the better.

3 Senator Capito. Thank you. Mr. Bauer.

4 Mr. Bauer. I share the expression of humility about
5 weighing in on when Congress should act, but I could not
6 agree more that is urgent, and I would certainly be, I will
7 put it this way, delighted to see and I think it would be
8 good to see Congress act before the Presidential election
9 cycle begins.

10 Senator Capito. Thank you. And Ms. Nelson.

11 Ms. Nelson. Yes, I concur with my colleagues. This
12 is urgent reform that is needed. And by Congress advancing
13 this as soon as possible, it frees Congress up to do more
14 to protect our elections and to enact other legislation
15 that will complement and enhance the ECRA.

16 Senator Capito. Thank you. Thank you, Madam Chair.

17 The Chairman. Well, thank you very much, Senator
18 Capitol, and thanks for your work. And I strongly agree
19 with you on the timing issue. Next up, Senator King and
20 then Senator Padilla, I believe. I don't think we have
21 anyone else. And everybody has been patiently waiting.
22 Senator King.

23 Senator King. I want to raise an issue that hasn't
24 been discussed. All of you very comfortably asserted that
25 this was Constitutional, that the ECRA was Constitutional.

1 Mr. Muller, I think you used the term well within
2 Constitutional bounds. I am worried about the implications
3 of the so-called independent Legislature theory. And the
4 theory basically holds that there is a difference,
5 there is a subtle difference between the election clause as
6 a clause in Article 1 and the election clause in Article 2.

7 Which Article 1 says, Legislatures and the States
8 shall set election rules, but then semicolon, Congress may
9 amend or override those rules. In the election clause for
10 the President, it talks about the States shall select
11 electors in a manner the Legislature shall direct. There
12 is no provision for Congressional, express provision as
13 there is in Article 1.

14 And there are those who assert, and apparently we now
15 have three justices, Thomas, Alito and Gorsuch, who appear
16 to accept this independent Legislature theory that nothing
17 can override, and they can do anything they want whenever
18 they want.

19 Mr. Bauer, let me start with you. Since you are a
20 graduate of the same law school that I am, I will give you
21 that, I will give you the privilege of beginning. What do
22 you think of this theory, and is this a concern in the
23 context of what we are discussing here today?

24 Mr. Bauer. No, I don't believe it is. There has been
25 a lot of different meanings assigned to the term

1 independence, State legislative doctrine, but I think one
2 thing is very clear, which is whatever State Legislatures
3 may do in the manner of appointing electors, they cannot
4 violate other Constitutional provisions.

5 They are still faced with the requirement that their
6 actions be consistent with the due process and equal
7 protection clause with the right to vote under the First
8 Amendment. So there are constraints, and I don't think in
9 the most extreme form that somebody might suggest that one
10 might understand dependent State Legislature doctrine.

11 I don't think that would be an accurate statement of
12 what is available to State Legislatures under our
13 Constitution.

14 Senator King. Mr. Muller, your thoughts.

15 Mr. Muller. Congress has the power to choose or to
16 define the time of choosing electors. And so one of the
17 really important things this bill does is by eliminating
18 the failed to make a choice provision and saying all of the
19 rules have to be in place as of Election Day, then it puts
20 in place that if you are going to hold a popular election,
21 we are going to follow those rules.

22 And there is no opportunity to show up later and do
23 something else. And so while there might be in the most
24 aggrandized theory of the independent State Legislature to
25 say the Legislature can do whatever it wants, perhaps that

1 is true, but it has to do it on the first Tuesday after the
2 first Monday in November, and it has to have laws in place
3 well before that election.

4 Senator King. So the power in the Congress to set the
5 date is a constraint on the Legislature acting retroactive.

6 Mr. Muller. Correct.

7 Senator King. That is reassuring. Mr. Gore, do you
8 agree?

9 Mr. Gore. I do agree that the independent State
10 Legislature doctrine is not implicated by the Reform Act,
11 and I agree with Professor Muller's reasons for that. And
12 I will just add that this provision that clarifies that the
13 governing law for Presidential elections is State law
14 enacted by State Legislatures prior to Election Day,
15 further allays any concern that there might be under that
16 doctrine.

17 Senator King. Do you feel that the Electoral Reform
18 Act adequately deals with the rogue Governor problem of a
19 Governor who basically refuses to certify? Because we have
20 got people running for Governor who are saying, I wouldn't
21 have certified in 2020. Is that addressed in these bills?
22 That was something we tried to address in our draft bill.
23 Mr. Gore.

24 Mr. Gore. Existing law already contains mechanisms to
25 address the scenario of a Governor failing to certify a

1 slate of electors or certifying the incorrect slate of
2 electors. As I mentioned before, State laws have robust
3 procedures for adjudicating election disputes, including
4 that kind of dispute. The Reform Act does not displace any
5 of that. It preserves all of those processes and
6 procedures. And to do that --

7 Senator King. Do you think the current procedures are
8 adequate and the Reform Act doesn't need to address this
9 subject?

10 Mr. Gore. I think the Reform Act does not need to
11 address this subject because there are legal remedies in
12 place at the State level, and to the extent there are also
13 Federal, Constitutional, or statutory challenges that could
14 be brought, the Reform Act also leaves those mechanisms in
15 place.

16 Senator King. Mr. Bauer, do you agree with that
17 conclusion? The rogue Governor issue is adequately dealt
18 with in existing law. It doesn't need to be addressed in
19 the Reform Act?

20 Mr. Bauer. Well, certainly it is addressed under
21 existing law. I think there are remedies available under
22 existing law. But I would also point out, again, that it
23 is very effectively addressed as a procedural matter
24 through the expedited judicial review provisions that apply
25 to the laws.

1 As we discussed previously that Presidential and Vice
2 Presidential candidates can bring to the challenge a
3 certificate that a State executive or State Legislature
4 wrongfully puts forward, is the correct one. So it does
5 touch on that, certainly by expediting relief available
6 under existing law.

7 Senator King. Mr. Muller, one final question. We
8 have got the voting period potentially modified by,
9 "extraordinary and catastrophic events." Is that an
10 adequate definition? Do you feel that it provides
11 reasonable guidance that can be litigated? Or does it
12 create an opening and an ambiguity?

13 Mr. Muller. So in my judgment, first we have to think
14 about the status quo, which right now is that if there is
15 -- failed to make an election, the Legislature can do
16 whatever it wants, essentially. So by abolishing that and
17 replacing it with this provision is a dramatic improvement.
18 And the only remedy that can happen is a modification of
19 the voting period, not suspending or delaying the election.

20 Senator King. But what if a Legislature says, we had
21 widespread fraud in the city of Philadelphia. That is an
22 extraordinary event, and we have to throw out the results.

23 Mr. Muller. Right. So, extraordinary and
24 catastrophic, I think are understood not to include
25 allegations of voter fraud. And as an independent

1 constraint of Federal law, I think it would prohibit States
2 from enacting laws like that.

3 States already have emergency election laws on the
4 books. To my knowledge, none of them define voter fraud as
5 a basis for an emergency invocation of executive authority.
6 So it offers an independent Federal constraint while
7 relying on the stable existing State mechanisms for
8 handling catastrophes and emergencies in elections. Mr.
9 Gore, are you satisfied with extraordinary and
10 catastrophic?

11 Mr. Gore. I think that that is another issue that is
12 best left to the States to decide again before Election Day
13 for the reasons that Professor Muller has laid out.

14 Senator King. Thank you. Thank you, Madam Chair.

15 The Chairman. Thank you. Senator Padilla. Senator
16 Cruz is willing to have you go next, even though he is
17 next, and appreciate that. Thank you. Senator Padilla.

18 Senator Padilla. Thank you very much. He shares my
19 pain, going back and forth to Judiciary committee. Same
20 day, same time. Thank you for the indulgence. Now, thank
21 the three for your in-person testimony and our two
22 witnesses that are participating virtually. I agree that
23 it is critical that we modernize and clarify the Electoral
24 County Act.

25 And I am grateful for that bipartisan group of

1 Senators that have come together to work on this issue.
2 But I do have some questions for our witnesses, and not
3 just how we can best fix this law, but for a moment, I
4 think it is also important for this committee and for this
5 hearing to focus on two other related points about the
6 Electoral Count Act reform.

7 First, while the ambiguous text of the current
8 Electoral Count Act left room for exploitation on January
9 6, the text didn't exploit itself, people did. The former
10 President did. Senators, members of Congress did. And an
11 army of lawyers all had to give up on our democracy, enough
12 to give in to the big lie and use it to fuel a baseless
13 challenge to the 2020 election.

14 So while fixing the ECA is important, I think it is
15 also important to remember why we need to do so in the
16 first place. Because bad faith actors stand waiting in the
17 wings to try again to exploit the text again for their own
18 cynical ends. Second, fixing the ECA won't do anything to
19 remedy the significant barriers to ballot access that far
20 too many voters across the country continue to face.

21 Fixing the ECA might make it harder to cheat in our
22 elections. We hear that a lot from our colleagues, and we
23 should absolutely do that. But I hope that we can soon
24 find our way back to make it easier to vote as well. My
25 first question is for Ms. Nelson.

1 I know she is participating virtually but let me ask
2 Ms. Nelson to elaborate on the second point I just raised.
3 Can you please expand on your testimony regarding the
4 barriers to access that voters across the country will
5 continue to face, regardless of whether or not we reform
6 the Electoral Count Act?

7 Ms. Nelson. Thank you, Senator Padilla, for that
8 question. As I said, both orally and in written testimony,
9 election sabotage does not occur only once a ballot is
10 cast. It is also determined by who gets to cast a ballot
11 in the first place and under what conditions. We know that
12 voter discrimination and voter suppression is still rampant
13 in our electoral system.

14 We know that there have been hundreds of bills
15 proposed and passed in States across the country that limit
16 access to the ballot and that particularly have a
17 disproportionate impact or were directly targeted at black
18 and brown and other marginalized voters.

19 What the Electoral Reform Act will do is to resolve
20 many of the ambiguities concerning how votes are counted
21 and what certifies an election and ascertainment, and to
22 shore up so many ways that the exploitation of election
23 results might occur. But it doesn't deal with the process
24 of inputs of who gets to vote and under what conditions.

25 And that is why it must be complemented by legislation

1 that protects the right to vote and restores the Voting
2 Rights Act to its full capacity and creates uniform
3 standards across the country for voters that cannot be
4 manipulated or in any way discriminated against based on
5 race or another protected characteristic.

6 Senator Padilla. Thank you so very much. My second
7 question is more of a speed round for all the witnesses, is
8 as follows. Now, the bipartisan group of Senators that
9 engaged in a serious effort to address some of the major
10 vulnerabilities of the current ECA text, I appreciate their
11 work. Now, the bill takes serious steps towards reducing,
12 excuse me, the likelihood that the law can be exploited
13 again as it was on January 6. But the committee --

14 The Chairman. You can take a second. We are fine.
15 We will give some extra time. We are all in a good mood
16 here today.

17 Senator Padilla. -- but the committee has
18 jurisdiction on elections. So I would like to hear just
19 briefly from each of you. We know what is in the bill. Is
20 there anything else that you would suggest to this
21 committee that be added to the bill to make it even better?
22 Let's start with Mr. Gore and work our way down the table,
23 then to the witnesses participating virtually.

24 Mr. Gore. Thank you, Senator. I do believe that some
25 of the technical corrections that have been suggested to

1 the bill by Professor Muller and others are appropriate.
2 We had a back and forth earlier about the time period for
3 bringing challenges under the Reform Act and this question
4 of whether six days is sufficient.

5 I do believe that the five day notice provision in 28
6 U.S.C. 2284 for actions brought before a three judge court
7 involving a State officer or a State official should be
8 waived for these kinds of cases just to ensure that there
9 is as much time as possible to resolve any Federal,
10 Constitutional, or statutory claims.

11 Senator Padilla. Ambassador.

12 Mr. Eisen. Thank you, Senator. I think extraordinary
13 and catastrophic should be defined. I think the timing
14 should be extended. We still had State led litigation
15 going in 2020 during these -- after the so-called State
16 harbor and after the Electoral College met. I think that
17 lawfully certified and regularly given needs to be defined
18 better to prevent mischief here in Congress.

19 And there -- in my testimony, I have laid out some
20 procedural specifications that I think is important to put
21 in. If you call those clarifications and technical
22 corrections, I am all for them. And I do appreciate the
23 huge bipartisan effort.

24 Senator Padilla. Mr. Muller.

25 Mr. Muller. With Senator Warner's endorsement, I

1 think I will rest on the four recommendations I put in my
2 written testimony.

3 Senator Padilla. Thank you very much. Mr. Bauer.

4 Mr. Bauer. I do not think there is a gaping hole in
5 the statute. I do think that there are technical
6 corrections of the kind that I understand Professor Muller
7 has advanced clarifications that could well be in order and
8 could help to secure answer questions and secure bipartisan
9 passage. I would contrast that with any glaring weakness
10 in the design. I don't think there is any glaring weakness
11 in the design, but those technical corrections and
12 clarifications, it seems to me, are appropriately
13 considered.

14 Senator Padilla. Thank you. Ms. Nelson.

15 Ms. Nelson. Yes. I shared some principles that we
16 hope will guide this committee's consideration of any
17 tweaks to the ECRA. But I will see some more specific -- I
18 will State some more specific recommendations. We think
19 that with respect to the timing, while we are not promoting
20 a particular time period or expansion, that the six days
21 for litigation is there rather tight as we consider what
22 needs to happen within that time period. So we urge the
23 committee to think about some expansion of time for
24 litigation and to ensure that there aren't any unintended
25 consequences.

1 We have also raised some issues concerning the
2 assignment of judges for the judicial process to ensure
3 that there is no actual, and more importantly, no
4 appearance of bias that may undermine public confidence in
5 the process.

6 We also believe that the right to a mandatory appeal
7 to the Supreme Court is something that this panel should
8 consider and think about ensuring the Supreme Court's
9 review of these all important issues when they arise
10 through the Federal judicial process outlined in the ECRA.

11 And then also to make it very clear that the process
12 in the ECRA does not supplant or supersede any State or
13 Federal court avenues. And I think that we have
14 articulated that several times in this discussion today,
15 but we do want to reiterate that point, because it is very
16 important that voters still have an opportunity to
17 vindicate their rights under State and Federal law outside
18 of that process.

19 Senator Padilla. Thank you. Thank you all. Thank
20 you, Madam Chair.

21 The Chairman. Okay. Thank you. Good question,
22 Senator Padilla. Senator Cruz.

23 Senator Cruz. Thank you, Madam Chair. Welcome to
24 each of the witnesses. Professor Muller, Article 2,
25 Section 1, Clause 3 of the Constitution provides that the

1 President of the Senate shall, in the presence of the
2 Senate and House of Representatives, open all the
3 certificates, and the votes shall then be counted.

4 The 12th Amendment likewise provides the very same
5 text, the President of the Senate shall, in the presence of
6 the Senate and House of Representatives, open all the
7 certificates and the votes shall then be counted. Why, in
8 your judgment, do you believe the framers gave that
9 responsibility to the President of the Senate and to the
10 House and Senate?

11 Mr. Muller. Thank you, Senator. So I think in terms
12 of considering the separation of powers, there was
13 understandably the goal of not to have Congress choose the
14 President. But there also had to be some resolution of who
15 was the President and some determination of the counting.

16 And I think as far as I recall from Madison's debates
17 of the convention, the notion was that this would largely
18 be a ministerial task. And to the extent that any disputes
19 arose, it was not something that was on the minds of those
20 at the convention. But undoubtedly very early on, it was
21 recognized that there was going to have to be these actors
22 that were involved.

23 And by the time the 12th Amendment was enacted, it
24 fell to the presiding officer of this Joint Session, which
25 was the President of the Senate, to sort of handle the

1 ministerial tasks. And by 1804 it was recognized, Congress
2 counted the votes. And it wasn't until the mid-19th
3 century that we started to have real problems about
4 resolving those disputes.

5 But at the very least, to the extent that Congress was
6 this body, this Federal body that would typically handle
7 political questions for its own members, it seems like an
8 appropriate analog that to the extent there were disputes
9 about the elections, that the President would handle them
10 in that Joint Session together, to the extent that any
11 disputes arose.

12 Senator Cruz. So do you believe that there was any
13 judgment or discretion expected of either Congress or the
14 Vice President in that process?

15 Mr. Muller. There was -- in my judgment, there was no
16 discretion for the Vice President, the President of the
17 Senate. There was suggestions in a debate that happened in
18 Congress in 1800 that there might have to be some questions
19 about what happened during the counting of electoral votes
20 and some discretion that Congress might have.

21 And that has been a pretty narrowly defined role, and
22 especially over the years as we trust the State courts in
23 the States to resolve the process, very rarely has Congress
24 been involved in relitigating those questions, and so it
25 has had a role and recognized the role in the past, but a

1 narrow one when it comes to resolving those controversies
2 that come to Congress.

3 Senator Cruz. So as everyone here knows, the election
4 of 2020 was extraordinary in many respects. And as I
5 analyzed what the best approach for Congress should be to
6 that situation, I look to history, and I look to precedent.

7 And to my mind, the most applicable precedent is the
8 election of 1876. As you know, in the election of 1876,
9 that was the race between Rutherford B. Hayes and Samuel
10 Tilden, and that, much like 2020, was a hotly contested
11 race.

12 There were serious disagreements, and in particular,
13 there were serious allegations of voter fraud from three
14 different States, from Florida, from Louisiana, and South
15 Carolina. A total of four States, Florida, Louisiana,
16 South Carolina, and Oregon submitted two slates of
17 electors.

18 And so Congress, exercising what you just described as
19 the judgment and discretion given it by the framers, had to
20 resolve what to do in that instance. In 1876, Congress
21 didn't throw its hands in the air and say, well, there are
22 serious allegations of voter fraud, but we are helpless, we
23 are simply ministerial clerks, so we can't assess this.

24 Instead, Congress did something very different.
25 Congress, as you know, appointed what it called an Election

1 Commission. This Election Commission was a unique creature
2 in Constitutional law and in our Nation's electoral
3 history, in that it consisted of five Senators, five House
4 members, and five Supreme Court justices.

5 And that Election Commission, in turn, was empowered
6 to assess the evidence of voter fraud, to make conclusive
7 determinations that in turn would go forward and determine
8 who would be the next President. Do you believe Congress
9 made the right decision in 1876 establishing the Election
10 Commission to assess the claims of voter fraud?

11 Mr. Muller. It is a very hard question. I think, in
12 that era, there was no Electoral Count Act, and Congress
13 didn't know how to resolve a dispute between the chambers
14 which was going to arise. And so this was their
15 tiebreaking mechanism, to create this Commission.

16 And at the end of the day, the Commission actually
17 said and actually concluded by an eight, seven vote that it
18 was not in its purview to go behind the returns, as the
19 framing was, to investigate the alleged fraud that happened
20 in places like Florida.

21 The goal was to say, what is the true result that
22 comes out of the State. And after that, Congress enacted
23 the Electoral Count Act and has abided by it every four
24 years. And on January 3rd, with the unanimous consent, a
25 concurring resolution from Congress said, we are going to

1 abide by these procedures.

2 And in my judgment, that is the much more sensible
3 approach since 1876 was not the best approach, and it was
4 the approach that should have guided what Congress was
5 doing on January 6th, 2021.

6 Senator Cruz. Well, and I agree that the 1876
7 election was the predicate and in many ways the impetus for
8 the Electoral Count Act in attempting to codify a process
9 for dealing with disputed elections. I continue to believe
10 it would have been a better approach for Congress in the
11 2020 election to have followed the precedent from 1876 and
12 to have appointed an Election Commission.

13 There are a large percentage of Americans who still
14 have deep doubts about the veracity of the election, and I
15 think it would behoove both parties to have a serious,
16 substantive examination on the merits of the facts of those
17 claims.

18 Congress didn't go down that role, and one of the
19 consequences of that now is we continue to have deep
20 divisions in this country.

21 The Chairman. Okay. Thank you, Senator Cruz. And
22 thank you for allowing Senator Padilla to go first. I am
23 not a big fan of the 1876 election. I wouldn't have been
24 able to vote for one thing, and I think --

25 Senator Cruz. I am going to be pretty sure you

1 weren't alive then.

2 The Chairman. That is true, but I am just trying to
3 put it in, you know, some, a bit of perspective. So I am
4 going to fast forward to the present and just ask Senator
5 King his final questions. This has been an incredibly
6 productive hearing and thoughtful hearing, and good
7 questions on everyone's part.

8 Mr. Gore, some experts have argued that because a
9 bipartisan bill describes the Governors' certification of
10 electoral votes as conclusive, a court could not review
11 evidence that the Governor's certification was incorrect in
12 order a revision.

13 Do you agree that State and Federal courts should have
14 authority to review the Governor's certification and that
15 any court orders amending the certification should be
16 conclusive when Congress counts electoral votes?

17 Mr. Gore. Yes.

18 The Chairman. Okay. You want to say anything more?

19 Mr. Gore. I am happy to elaborate on that, Senator.
20 Those mechanisms already do exist, as I have mentioned
21 before, for State courts and Federal courts to conduct
22 judicial review of a Governor's action or inaction with
23 respect to a certificate. The Reform Act modernizes that
24 practice by creating the expedited Federal judicial review
25 provision and also clarifying that Congress will accept a

1 revised certificate issued under the order of a State or
2 Federal court.

3 The Chairman. Okay. Thank you. Mr. Bauer, do you
4 agree with that?

5 Mr. Bauer. Yes, I do.

6 The Chairman. Okay. Ambassador, you have expressed
7 concerns that mandatory appeal of election related claims
8 from a three judge panel directly to the Supreme Court
9 could force the court to decide cases that it would just
10 otherwise not take up. Can you elaborate on why you think
11 that mandatory Supreme Court review could be problematic?

12 Mr. Eisen. Reasonable minds can disagree on --

13 The Chairman. As you have seen on this committee.

14 Mr. Eisen. I wish every American could see both what
15 goes on this committee and the bipartisan start that we
16 have here. Now it is up to the committee in a bipartisan
17 way to move it forward. I think reasonable minds can
18 disagree on the mandatory requirement for appeal. I know
19 some feel very strongly about this.

20 The case for mandatory appeal includes having the
21 closure of the Supreme Court resolving things, not letting
22 it linger on the docket. Those who feel otherwise believe
23 that there is an adequate judicial review mechanism here.
24 And as is typically the case with the Supreme Court, it is
25 for them to decide whether to grant cert or not.

1 So I think this is one, as we work through all of the
2 necessary and kind of boil down to what we have to have to
3 feel really good about the bipartisan compromise, this is
4 one where folks see it both ways, Senator.

5 The Chairman. Okay. Mr. Muller, you have said in
6 most cases related to Presidential elections, whether or
7 not the Supreme Court has discretion to hear a case would
8 not impact whether it ultimately rules in cases that have
9 merit. Can you elaborate on why you think that?

10 Mr. Muller. Sure. The sort of mandatory appeals is a
11 little confusing, right. First off, that the party has to
12 appeal, the aggrieved party has to appeal to the Supreme
13 Court.

14 And then from a three judge panel, which already
15 happens in some campaign finance cases and redistricting
16 cases, the Supreme Court can't refuse to adjudicate the
17 case on the merits if it has jurisdiction, but it can
18 summarily affirm, which it does, doesn't have to give
19 reasons, just summarily affirms what happens below.

20 And that functions very much like the court refusing
21 to grant certiorari, just denying certiorari. Or if it
22 says that if there is something wrong, they are going to
23 grant certiorari just as what they would grant and hear the
24 appeal that comes from a three judge panel.

25 So I think at the end of the day, as a practical

1 matter, there is very little difference in how the Supreme
2 Court is going to handle these matters regardless of the
3 mechanism.

4 The Chairman. Ms. Nelson, we have heard some concern
5 that the process for assigning judges to three judge
6 panels, you have mentioned this, which is usually done by a
7 Chief Judge for the Circuit Court, where the courts sits
8 might lead to partisan bias. Do you agree that random
9 assignment of judges to three judge panels in cases
10 involving Presidential elections would reduce the risk, or
11 at least the perception of partisan decision making?

12 Ms. Nelson. Yes. The emphasis is really on the
13 perception and the fact that these controversies are highly
14 fraught, and to ensure that there is public confidence in
15 the outcome of the results. A random selection would
16 eliminate any sense that there has been a finger placed on
17 the scale in favor of one party or the other.

18 And this is not to suggest that Federal judges are in
19 any way automatically biased by the party or the President
20 who nominated them, but rather to just remove any doubt
21 from the process when we are dealing with such a
22 consequential electoral dispute.

23 The Chairman. Okay. Thanks. Mr. Gore, you want to
24 respond at all?

25 Mr. Gore. I would just note that with respect to the

1 appointment of three judge courts for redistricting cases,
2 that is already handled by the Chief Judge of the Circuit
3 Court, and there has been no implication that that is done
4 in a way that is unfair or biased. I think the existing
5 mechanism is sufficient for these cases as well.

6 The Chairman. Okay. Anyone else want to chime in?
7 Mr. Eisen.

8 Mr. Eisen. [Technical problems] -- given the
9 extraordinary stakes, perhaps not everyone on the panel has
10 an equally happy reaction to recent redistricting
11 jurisprudence.

12 The Chairman. Okay. All right.

13 Mr. Muller. I want to add briefly, there can be some
14 flexibility that might be beneficial if a judge from Alaska
15 is randomly assigned the case happening in Phoenix in a
16 very short span. If it is not a hearing on Zoom, there can
17 be some logistical problems that the Chief Judge could have
18 the flexibility to resolve in such cases. But again,
19 technical issue to think about.

20 The Chairman. Okay. Well, I think that is a good way
21 to end because it is a -- people are being very practical,
22 which I appreciate. And we have had witnesses that come
23 from different political perspectives, just like this
24 committee has come together on a number of issues and just
25 like the bipartisan group has.

1 So I want to, first of all, thank my friend, Senator
2 Blunt and the members of the committee for an incredibly
3 productive hearing. I also want to thank Senator Collins
4 and Manchin for their work in bringing a group together. I
5 want to thank Senator King, who has been out front on this
6 issue from the very beginning, and the two of us worked
7 together on it, and his expertise on this.

8 I don't think we would be where we are without him. I
9 want to thank Senators Warner and Capitol as part of the
10 group as well. And we have heard today about the ambiguous
11 provisions in that old 1877 law that were actually
12 exploited. I mean, you can use more dramatic words, but
13 exploited in the last election and underscore the need to
14 update the antiquated law.

15 And I also think it is just a recipe for future
16 problems as people have now contemplated how they could
17 mess around with it in various ways, including just kind of
18 practically delays, objecting to multiple States. I don't
19 think I am telling anyone a secret. They could go on and
20 on, and Senator Blunt and I before the insurrection
21 contemplated in the range of 24 hours but it could even go
22 longer.

23 And to see if any of those Senators just kind of, you
24 know, gets sick or something, can't be there. You start
25 having all kinds of issues come up. And that is why I

1 think that practically looking at it, no matter where you
2 come from politically, there needs to be changes. We heard
3 bipartisan agreement that we need to reform the Electoral
4 Count Act to secure the peaceful transfer of power.

5 We have talked today about the role of the Vice
6 President, which cannot be used to overturn the will of the
7 people. We have talked about how you can certify a slate
8 and make sure it is the actual electors and not something
9 that is added fraudulently at the end.

10 And we have talked about this appeals process and how
11 we can get that set so that makes sense. And I appreciate,
12 again, this work on this bill to provide much needed
13 clarity to the Electoral Count Act.

14 And I would just add with Ms. Nelson there in the
15 distance on the screen, just that there are a number of us
16 that are still devoted to putting some sensible Federal
17 rules into place to make it easier for people to vote,
18 because that is what we should be doing in a democracy.
19 That is what the Freedom to Vote Act is about.

20 The hearing -- I am going to let -- Senator Blunt, do
21 you want to say a few words here at the end?

22 Senator Blunt. Well, thank you, Chair. And I do
23 think we need to move forward with the clarifications that
24 are so obviously needed, and I think uniformly accepted
25 here. Certainly the suggestions today about technical

1 corrections and other suggestions are going to be helpful
2 in that.

3 But this is clearly something that we shouldn't let
4 carry over into another election cycle and get this done
5 this year. And look forward to working with you and the
6 rest of the committee to markup a bill and get it to the
7 floor and get it passed.

8 The Chairman. Okay, Senator King? No. Very good.
9 All right. That is it. The hearing record will remain
10 open for one week because we are speedy, and we are
11 adjourned. And it couldn't have gone better. Thank you,
12 everyone.

13 [Whereupon, at 12:34 p.m., the hearing was adjourned.]

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