



August 1, 2022

The Honorable Susan M. Collins
United States Senator
413 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Joe Manchin
United States Senator
306 Hart Senate Office Building
Washington, DC 20510

Dear Senators Collins and Manchin:

As the Executive Director of the Project On Government Oversight (POGO), I write to endorse your bipartisan legislation, the Electoral Count Reform and Presidential Transition Improvement Act of 2022 (S. 4573). This important piece of legislation would close several of the most important loopholes in the 19th century law that governs the official counting and certification of electoral votes and reduce the risk of politicians overturning a fair and democratic election.

POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles. Your bill is such a reform.

POGO applauds the work you and your colleagues have done for the past several months to reach this consensus. We are encouraged that your bill would replace ambiguous provisions of the Electoral Count Act of 1887 with clear procedures that maintain appropriate state and federal roles in selecting the president and vice president of the United States as set forth in the U.S. Constitution. Before the bill's language was released, we wrote that "in order to be meaningful, Electoral Count Act reform must protect voters against attempts by state officials as well as federal officials to overturn the results of a presidential election."¹ We believe your bill makes crucial progress towards that goal.

In addition, your bill would also help to promote the orderly transfer of power by providing clear guidelines for when eligible candidates for president or vice president may receive federal resources to support their transition into office. As POGO highlighted following the 2020 election, the General Services Administration (GSA) dragged its feet when tasked with allowing the presidential transition process to begin, significantly delaying the start of the transition.² Your bill will help to ensure that this doesn't happen again and that candidates have the timely access they need to begin the long transition process.

¹ Letter from Danielle Brian and Sarah Turberville to Senator Susan Collins and Senator Joe Manchin about Electoral Count Act reform, June 14, 2022. <https://www.pogo.org/letter/2022/06/electoral-count-act-must-prevent-state-and-federal-officials-from-overturning-will-of-voters>.

² Tim Stretton, "General Services Administration Must Recognize Biden as President-Elect," Project On Government Oversight, November 10, 2020. <https://www.pogo.org/analysis/2020/11/general-services-administration-must-recognize-biden-as-president-elect>.

We support its passage. But we believe the bill could be made stronger by adopting technical amendments to the text that could remove ambiguities and prevent misreading:

- Section 102(a) should specify that electors shall be appointed “in accordance with the laws and constitution of the State enacted prior to election day.”
- Section 104 should clarify that:
 - State courts retain the authority to order the governor to follow state law (including the state constitution) in issuing and transmitting the certificate of ascertainment of appointment of electors.
 - Federal and state courts retain existing authority to hear election-related cases or controversies arising before the deadline for governors to transmit the certificates of ascertainment.
 - The five-day notice requirement for suits heard by a three-judge panel where a state official is a party under 28 U.S.C. § 2284 does not apply to suits brought under the expedited procedures created in this section.

While the Electoral Count Reform and Presidential Transition Improvement Act would reduce the risk of a stolen presidential election, it does not eliminate that risk because it fails to explicitly protect the right to vote and have one’s vote fairly counted. We continue to believe that Congress has the clear constitutional authority — and the moral duty — to legislate on these fronts to protect our democracy.

Again, thank you for your leadership on this critical issue. By working together, you’ve demonstrated the Senate can still work in a bipartisan way to tackle some of the most pressing issues facing our democracy and the American people. I urge your colleagues to support this bill.

Sincerely,



Danielle Brian
Executive Director

cc:

Senator Rob Portman
Senator Kyrsten Sinema
Senator Mitt Romney
Senator Jeanne Shaheen
Senator Lisa Murkowski
Senator Mark Warner
Senator Thom Tillis
Senator Chris Murphy
Senator Shelley Moore Capito
Senator Ben Cardin
Senator Todd Young
Senator Chris Coons
Senator Ben Sasse
Senator Lindsey Graham