

# Discussion Draft: The Electoral Count Modernization Act

## (Senators King, Klobuchar, Durbin)

The 2020 election demonstrated that the *Electoral Count Act of 1887* – the law governing the way states certify their presidential elections and appoint electors, and the way Congress counts electoral votes and declares a winner – is antiquated. Vague and outdated rules helped fuel false claims that the Vice President or Congress could reject the will of the voters – or that state legislatures could override the popular vote by appointing their own electors after Election Day. It is time to update the rules for the 21st Century to ensure that the will of the voters prevails.

The **Electoral Count Modernization Act (ECMA)** would update the law by:

- Updating the rules to ensure that states appoint their electors under laws enacted before Election Day, and providing remedies through the courts to ensure the state is only able to appoint electors that reflect the outcome of the state’s presidential election, as governed by state law.
- Moving back the deadline for making a final determination on the appointment of electors to December 20, giving states more time to conduct recounts and resolve post-election disputes before electors are submitted to Congress.
- Clarifying that the state’s governor – and not some other official – must certify the names of the electors chosen in the state’s presidential election, and providing a fallback if the governor refuses to act.
- Requiring the President pro tempore of the Senate – or if the President pro tempore is a candidate for President or Vice President, the next most senior Senator in the majority who is not a candidate – to preside over the joint session of Congress to receive and count the electoral votes.
- Clarifying that the Vice President has no role in the counting of electoral votes, except to open electoral vote ballots as required by the Constitution.
- Providing narrow grounds for Congress to object to electors or electoral votes submitted by the states, specifically if:
  - A state’s list of electors is not validly submitted under the rules in the Act;
  - An individual elector or electors is not constitutionally eligible to serve;
  - An elector has voted for a candidate for President and Vice President who both reside in their own state, in violation of the Twelfth Amendment;
  - An elector cast a vote other than on the day prescribed for the meeting of electors;
  - A candidate for whom an elector has voted is constitutionally ineligible to serve as President or Vice President.
- Raising the threshold for Congress to debate and vote on an objection from one member of each Chamber to one-third of the members of each Chamber.
- Raising the threshold to sustain an objection to a state’s electors or electoral votes to three-fifths of members chosen and sworn.