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City Bar Supports Lofgren-Cheney Presidential Election Reform Act, Critical Electoral Count Act Reform

New York, September 21, 2022 – The New York City Bar Association applauds Rep. Lofgren and Rep. Cheney for introducing the Presidential Election Reform Act ([H.R. 8873](#)) and urges the House to swiftly pass the Act's critical reforms to the Electoral Count Act (ECA). The City Bar believes the Presidential Election Reform Act provides a strong counterpart to the Senate's bipartisan Electoral Count Reform and Presidential Transition Improvement Act (ECRA) and that the bills should be reconciled and passed without delay.

The Presidential Election Reform Act addresses provisions of the outdated 1887 Electoral Count Act by clarifying the role of the Vice President, as presiding officer of Congress during the ratification of the Electoral College votes cast by the fifty states and Washington DC. The Act makes clear, correctly, that the Vice President's role during this process is ministerial. Most of these critical reforms are also found in the Senate's ECRA. The City Bar provided testimony to the Senate Committee on Rules and Administration offering general support for the ECRA, with a few recommendations provided to help clarify key provisions of the bill. A copy of the City Bar's testimony can be found [here](#) and a previous press release outlining the recommendations is [available here](#).

While the House Presidential Election Reform Act (the House bill) and the Senate ECRA (the Senate bill) broadly take a similar approach, there are some key differences worth highlighting. The City Bar urges Congress to align the bills with the House version during reconciliation with respect to the following provisions:

- The House bill expands the number of members of each Congressional chamber needed to raise an objection to a state's electors from one member to one-third of each chamber. This is an increase over the Senate bill, which would require one-fifth of each chamber's members. The requirement of a substantial number of objecting members of both houses of Congress would reduce the possibility of baseless objections delaying or obstructing the count and increase the likelihood that the choice of the voters will be respected and

ratified.

- The House bill clearly defines the term "catastrophic event," which would trigger an extension in voting time for a presidential election. The Senate bill relies on the catch-all phrase "extraordinary and catastrophic events," and the City Bar has [recommended](#) that the phrase be clarified so that only highly specific circumstances can provide a basis for extended voting and "that any such extension be tailored closely to the time and place of the voting precincts affected by those conditions and recognize the importance of having all states certify their electoral college votes by the same date." The House bill goes on to limit such extension of time to vote to the area of the state where the catastrophic event prevented "a substantial portion of the state's electorate" from voting, and the outcome was sufficient to potentially affect the ability of a candidate to win the election of at least one elector.
- Importantly, the House bill clarifies the role of Congress in establishing the legitimacy of a state's electoral delegation during the January 6 joint proceedings, and strictly limits the grounds upon which members of Congress may offer challenges to specified exceptional circumstances. The City Bar again urges the inclusion of a possible challenge based upon an elector having voted fraudulently or corruptly, for the reasons offered by the House Committee on Administration in its "[Report on The Electoral Count Act of 1987: Proposals for Reform](#)" (Jan. 2022, at 27 & nn 175 & 176).

The City Bar urges Congress not to forgo this opportunity to adopt critical ECA reforms needed in order to avoid subversion of future presidential elections and ensure that the composition of each state's electoral delegation accurately reflects the results of a free and fair election in that state. It is critical that Congress adopt ECA reform before the end of the year.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world. www.nycbar.org