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City Bar Submits Senate Testimony in Support of Bipartisan Electoral Count Act Reform

*Offers Recommendations for Clarifying Key Provisions of the Act and Urges Congress
to Enact Essential Reforms to Safeguard Presidential Elections*

New York, August 3, 2022 - The New York City Bar Association has submitted [testimony](#) to the United States Senate Committee on Rules and Administration in support of essential reforms to the Electoral Count Act (ECA).

In the testimony drafted by its Task Force on the Rule of Law and Election Law Committee, the City Bar supports the recently introduced bipartisan Electoral Count Reform and Presidential Transition Improvement Act (ECRA), which, among other things, “clarifies 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...[and] makes clear, correctly, that the vice-president’s role during this process is ministerial.”

The testimony offers several recommendations for clarifying key provisions “that should be included in any final ECA reform legislation”:

- Increasing the requirement for the number of House members and Senators needed to object to a state’s electoral slate from the proposed one-fifth of each house (although noted as an improvement over current law, which requires only one member from each house in order for Congress to take up the objection) to one-third since “[s]ound public policy considerations suggest that objections to a state’s electoral slate not be considered in the absence of substantial support in both houses.” Similarly, a supermajority – such as two-thirds – of both houses of Congress should be required to vote to sustain any objection.
- The City Bar suggests the ECRA should go beyond its criteria that an objection is proper if an elector was not lawfully certified or his or her vote was not “regularly given” because “the requirement that a vote be ‘regularly given’ offers, in our view, excessive opportunities for interpretation,” and recommends five specific instances in which an objection should be permitted.

- The proposed legislation should clarify the catch-all phrase “extraordinary and catastrophic events” to clarify that only highly specific circumstances, as determined by a court based on state law or election regulations in effect on election day, 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 City Bar believes that state and federal courts have the experience and expertise to handle critical election matters efficiently and expeditiously, and have routinely done so in the normal course of their regular judicial processes. Questioning the need for a three-judge court, the testimony states, “We need look no further for proof of that than the scores of cases which federal and state courts promptly and fairly adjudicated after the 2020 presidential election, and would prefer to continue our tradition of reliance on their doing so.”

The City Bar commends the drafters of the ECRA in emphasizing the importance of and respect for the voters of each state: “We agree that once ballots have been cast and election day is passed, no new laws or regulations can be enacted to disturb the choice of the voters.... That principle, clearly expressed in the pending legislation, is critical to the rule of law and to a free and fair procedure for electing the president and vice-president.”

Read the testimony here: <https://bit.ly/3Q7oaWS>

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