

Stealing Presidential Elections From the States



By Paul Engel

February 14, 2022

- Do you know how we elect a President?
- Do you know who is in charge of Presidential elections?
- What do you think would happen if Congress set the rules for Presidential elections?

Does Congress have the legal power to regulate Presidential elections? The answer is no. Yet Senators Angus King, Amy Klobuchar, and Dick Durbin have released a discussion draft of their legislation to place Congress in control of the Presidential election process, in direct violation of the Constitution of the United States. Let's look at this blatant act of theft in the light of what the Constitution actually says. Then we can decide how to deal with these oath-breakers.

Following months of research and consultation with outside experts and scholars, Senators share proposal to address ambiguities in 1887 law

[King, Klobuchar, Durbin Share Discussion Draft to Modernize Electoral Count Act](#)

The first question anyone should ask when considering a piece of legislation is: "Is it constitutional?" Meaning, is it enacting a power delegated to that government or is it prohibited by the Constitution? So let's look at the power this legislation claims to exercise and see if it's

constitutional or not.

To amend title 3, United States Code, to revise the rules for Presidential elections and counting electoral votes, and for other purposes.

[Discussion Draft of the Electoral Count Modernization Act](#)

This legislation claims the power to revise the rules for two things: Presidential elections and counting electoral votes. The first question we must ask is does the Constitution delegate to Congress the power to regulate Presidential elections?

Presidential Electors

SEC. 2. REVISION OF RULES RELATING TO PRESIDENTIAL ELECTIONS.

(a) IN GENERAL.—Chapter 1 of title 3, United States Code, is amended—

(1) by striking sections 1 and 2 and inserting the following:

“§ 1. Time of choosing electors

“(a) IN GENERAL.—The time of choosing electors of President and Vice President shall be, in each State, election day.

“(b) PROHIBITION ON USING ALTERNATIVE DATES.—No State may establish any day other than election day as the time for choosing electors of President and Vice President.

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The first change this legislation would make is to the time of choosing electors. This is a power delegated to Congress.

The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[U.S. Constitution, Article II, Section 1, Clause 4](#)

From there on, the legislation attempts to regulate the manner in which presidential electors are chosen.

“(c) POPULAR ELECTIONS.—

“(1) IN GENERAL.—In the case of a State that chooses electors by popular election, the last day on which popular ballots may be cast in such election shall be election day.

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That power, however, is specifically given to the state legislatures.

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress:

[U.S. Constitution, Article II, Section 1, Clause 2](#)

The proposed legislation goes on to “allow” states to establish by law how to treat ballots, allow for mail-in ballots, deal with those waiting to cast ballots when the polls close, etc. The law even “allows” the states to set rules for resolving whether a ballot was filled out and submitted on time, as long as it complies with federal law. This legislation would establish a procedure for extending the time for voting under certain conditions, such as a catastrophic event, major disaster, or act of terrorism. The legislation would even establish a criminal penalty for anyone causing a catastrophic event to extend the time for voting.

This legislation would also “allow” states to provide alternative electors, as long as they did so by election day. These electors would be the only ones allowed to fill any vacancies that may happen before the electors vote. This legislation would establish a standard for making the final

determination of the appointment of electors, such determination to be final and conclusive. This final determination is to be certified by the state official responsible for the duty or by the judgment of a federal court. If a state does not reach a final decision by the deadline required by this legislation, any of the candidates for President or Vice President can bring a civil action seeking a declaratory judgment in federal court. This legislation even claims the power to bind a state's governor.

FINAL DETERMINATION BINDING ON GOVERNOR.—For purposes of the duties of the Governor set out in section 6, a final determination of the appointment of electors by a State under this section shall be conclusive and the only names of electors contained in the certificates of identification of electors that are transmitted under that section. If any State official purports to discharge the duties set out in section 6 in a manner inconsistent with this subsection, such actions shall be void and without legal effect; and no State official or purported elector may certify or transmit to any official listed in sections 6 or 11 any purported certificate of identification of electors contrary to the final determination, and any action by a State official or purported elector certifying or transmitting such certificate contrary to the final determination shall be void and without legal effect.

[Discussion Draft of the Electoral Count Modernization Act](#)

How nice of Congress. There's just one problem, because none of this is authorized by the Constitution of the United States. Since establishing rules for choosing presidential electors is not a power delegated to the United States by the Constitution, that power remains with the states.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. Constitution, Amendment X

This legislation then goes on to create a whole new set of rules for the issuance and transmission of the certificates of those chosen to be electors.

“(a) DUTIES OF THE GOVERNOR.—

“(1) ISSUANCE OF CERTIFICATES OF IDENTIFICATION OF ELECTORS.—The governor of each State shall—

“(A) issue 14 duplicate original certificates of identification of electors as described in paragraph (2),

“(B) transmit such duplicate original certificates of identification of electors as provided in paragraph (3), and

“(C) make publicly available on a website maintained by the governor, a copy of one such duplicate original of the certificate of identification of electors.

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There is no requirement in the Constitution for the states to tell Congress who was been chosen as electors; it's none of their business. To make matters worse, should a governor fulfill their oath to support the Constitutions of their state and the United States and ignore these illegal rules, Congress proposes to take the power to determine the slate of electors out of the hands of the duly elected officials of the state and place it in the hands of the federal courts.

“(A) IN GENERAL.—If the governor of a State fails to execute the duties under this subsection by the date applicable under paragraph (3)(B), the chief State election official of the State shall execute such duties within one day for the governor's failure.

“(B) FAILURE BY CHIEF STATE ELECTION OFFICIAL.—If the governor fails to execute the duties under this subsection by the date applicable under paragraph (3)(B) and the chief State

election official fails to execute the duties under subparagraph (A), then any candidate for President or Vice President on the ballot in that State may bring an action in the Federal district court of the district in which the State capital of the State whose determination is at issue is located or the Federal district court for the District of Columbia seeking declaratory, injunctive, or other appropriate equitable relief to ensure the identity of the electors listed on the certificate of identification reflects the final determination under section 5. Any judgment in such action, if neither stayed nor modified on appeal, shall be treated for purposes of this chapter in the same manner as a certificate of identification of electors issued under this section, and the court shall direct the preparation and transmission of, or itself prepare and transmit, any document required to effectuate the judgment.

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Nowhere in the Constitution is Congress delegated the authority to determine the handling of the election certificates before they are delivered. Yet this legislation creates an extended set of rules for the electors to deliver their votes. It would require seven (7) duplicate original certificates with the lists of votes for President and Vice President, adding an outer envelope with a copy of the certificate, and continuing the illegal practice of sending copies of the certificates not only to the President of the Senate, but to the Speaker of the House, the Secretary of State, and the Chief Justice of the Supreme Court. All in direct violation of the process required by the Twelfth Amendment:

and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;

[U.S. Constitution, Amendment XII](#)

Counting Elector's Votes

Not only would this legislation unlawfully regulate the appointment of presidential electors, it ignores the Constitution regarding the counting of their votes.

“(2) PRESIDING OFFICER.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the President pro tempore of the Senate shall be the presiding officer at the joint meeting of the Senate and House of Representatives referred to in paragraph (1).

“(1) PRESENTATION OF ELECTORAL CERTIFICATES.—In the alphabetical order of the States, the Secretary of the Senate shall open in the presence of the tellers the outer envelope containing for a State the certificate of identification of electors and the sealed certificate of votes provided to the President of the Senate under section 11, and shall make a preliminary determination that the State has submitted its list of electors which list shall have been previously made available to the members of the Senate and the House of Representatives.

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That's incorrect, because the Twelfth Amendment clearly states the role of opening the certificates and having them counted belongs to the President of the Senate, who is the sitting Vice President.

the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;

[U.S. Constitution, Amendment XII](#)

Furthermore, there is nothing in the Constitution about making these certificates available to the members of Congress before

they are opened in a joint session or for a “preliminary determination” by the Secretary of the Senate. This legislation changes the process for objections to be heard, something that is part of current federal law and not in the Constitution.

“(2) CALL FOR OBJECTIONS.—After the Secretary of the Senate has made the preliminary determination under paragraph (1) with respect to a State, the presiding officer shall call for objections to the validity of the certificate of identification of electors of such State.

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As a final finger into the eye of the Constitution, and in fact representative government, this legislation claims the power to determine what to do should no decision be made in time for the inauguration:

“(3) If the Administrator has not made the announcement under paragraph (1) by the third Tuesday after election day (as defined in section 21 of title 3, United States Code), the Administrator shall, for purposes of this Act—

“(A) treat as President-elect the 2 candidates for President with the most pledged votes of electors of President, based on certifications by States of their final canvass; and

“(B) treat as Vice-President-elect the 2 candidates for Vice President with the most pledged votes of electors of Vice President, based on certifications by States of their final canvass.

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Compare that to what the Constitution actually says:

... If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified;

and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

U.S. Constitution, Amendment XX, Section 3

Congress doesn't get to decide who acts as President unless both the President elect and Vice President elect have yet to be decided by inauguration day. In that case, the law is to determine who is to act as President, not establish a committee for the Presidency or Vice Presidency.

Conclusion

My guess is few of you have heard about this proposed legislation. It is yet another example of the corruption, lawlessness, and unfaithfulness to their oath that so many in Congress display. If those in Congress are so ignorant, reckless, and corrupt, why do we keep hiring them to serve us? As President James A. Garfield said:

[N]ow more than ever before, the people are responsible for the character of their Congress. If that body be ignorant, reckless and corrupt, it is because the people tolerate ignorance, recklessness and corruption. If it be intelligent, brave and pure, it is because the people demand these high qualities to represent them in the national legislature ...

James A. Garfield

It appears most of the American people are willing to tolerate ignorance, recklessness, and corruption. That means this abuse of the Constitution, the experiment in self government, and the consent of the governed is ultimately our fault. The question is, will the American people do anything to stop it before it becomes "law"?

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