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The crumbling GOP opposition to electoral count reform bill

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The effort to reform the way the United States certifies its presidential election results — an implicit rebuke of Donald Trump’s attempt to overturn the 2020 election that attempts to avoid a repeat — appears well on its way to passage, after what existed of the opposition crumbled Tuesday.

Senate Minority Leader Mitch McConnell (R-Ky.) came out in favor of the Electoral Count Reform and Presidential Transition Improvement Act, sending a strong signal about its prospects. And shortly thereafter, he joined with nearly all Republican members of the Senate Rules Committee to advance the bill to the full Senate.

The 14-to-1 committee vote suggests the final vote could also be lopsided. Even Sen. Cindy Hyde-Smith (R-Miss.), one of eight senators who voted against certifying Arizona’s and/or Pennsylvania’s results after the 2020 election, voted for it.

But there was one vote against advancing the bill, from a perhaps-not-surprising source: Sen. Ted Cruz (R-Tex.). In voting no, he offered a case against the bill that has been largely absent — and conspicuously so.

Indeed, whatever opposition existed, it has generally only reared its head when votes were forced. To the extent anyone wanted to defeat the bill, they didn’t lodge their case too loudly.

In comments to the committee Tuesday, Cruz indicated his case against the bill largely revolved around a few things: that it would diminish Congress’s authority to root out voter fraud, that it would “intrude” on the constitutional authority of states to cast their electors as they see fit, and that it would be a step toward “the federalization of elections.”

“I don’t believe senators from this side of the aisle should be supporting a bill that enhances the federalization of elections and reduces the ability of Congress to respond to the very serious problem of voter fraud,” Cruz said.

The first claim — on voter fraud — references the bill raising the threshold for Congress to challenge a given state’s election results. Currently, only one senator and one House member are required to officially object. The Senate bill requires one-fifth of members of both the House and Senate, while a version that passed in the House would increase it to one-third. (If the electoral

count reform bill passes in the Senate, the two versions will have to be negotiated between chambers.)

In Cruz's telling, this "reduces the ability of Congress to respond to the very serious problem of voter fraud." Of course, there is no evidence that fraud was actually a serious problem in the 2020 election, nor is there evidence of widespread fraud being a problem in any recent American election. What there is evidence of is members of Congress latching on to false claims of fraud as a pretext, and attempting to use such a process to overturn an election.

Beyond that, there are other methods for rooting out fraud, including through the courts. And the one-fifth threshold would notably allow even a minority of members from one party to band together to object. (Indeed, the Senate's threshold wouldn't even have stopped the 2020 challenges, though the House's would; 24 percent objected to Arizona's results, while 27 percent objected to Pennsylvania's.)

As for the claim that this intrudes on the Constitution or needlessly federalizes elections? Article Two of the Constitution states that, "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors ..." This places the authority for selecting electors in the hands of the states.

Under this legislation, those states would still be free to select those electors by the popular vote or any other method, including by vote of the state legislature or other, far less democratic means. It just requires them to be selected "on election day, in accordance with the laws of the State enacted prior to election day." The idea is to prevent the rules from being changed after the fact, if certain leaders don't like what result their process produced.

This argument is tied to the alleged "federalization of elections," which has been raised by some who have warned about these reform efforts. But notably, in a statement last week, one such group warned against not what was actually in the Senate bill, but what Democrats could do if the bill clears a filibuster and can be amended.

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The Election Transparency Initiative, which is run by former Virginia attorney general and Trump administration official Ken Cuccinelli, suggested Democrats might force votes on items from their more expansive, failed election reform efforts.

"... Republicans should take every precaution to ensure that the failed measures contained in H.R. 1 and H.R. 4 cannot hitch a ride between now and the end of the year," Cuccinelli said.

As the libertarian Cato Institute's Andy Craig has noted, though, the constitutional restrictions on Congress's role in presidential elections — as opposed to congressional elections — make it much more difficult to go far in federalizing elections, even if Democrats could somehow get the votes and decided to jeopardize this bill by trying to jam through other changes.

Craig also argued that Republican complaints about the federalization of the process were pretty rich, given that the efforts to overturn the 2020 election relied upon federal process, while

seeking to override the wills of the states. The most far-fetched effort, he noted, involved the state of Texas trying to get the Supreme Court to throw out the results of other states.

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“If there has been anybody advocating an unconstitutional federal takeover of the electoral college process, it was those urging federal courts and Congress to throw out the duly cast electoral votes certified by the states in 2020,” Craig argued.

The man leading both of those efforts? Ted Cruz, who offered to argue for the Texas lawsuit in front of the Supreme Court and later rallied support for objecting to the election results on Jan. 6.