



Donald Trump Just Showed Why Reforming the Electoral Count Act Is Essential

Capitolhilltim
January 31, 2022

Former President Donald Trump issued a statement on Sunday confirming that his efforts to overturn the legitimate results of the 2020 presidential election were...an attempt to overturn the legitimate results of the 2020 presidential election.

Trump responded to the ongoing efforts to modify key provisions in the Electoral Count Act (the law that regulates how Congress certifies results from the Electoral College), by claiming that reform is an indicator of just how close Republicans were to winning the election in January 2021.

“If Mike Pence, Vice President, had ‘absolutely not right’ to alter the Presidential Election results in Senate, despite fraud, and other irregularities why are the Democrats and RINO Republicans trying desperately to pass legislation to prevent the Vice-President from changing the election results?” Trump wrote. They are stating that Mike Pence had the power to alter the outcome. And they want that right now. His power was not exercised, but he could have rewritten the Election!

It is truly one the greatest moments of “saying it loud and quiet” ever. There is however a very valuable nugget in this.

According to the Electoral Count Act the President of Senate (which, according the Constitution, is the Vice President) opens the envelopes containing information about the Electoral College. While it was assumed that the role played by the vice-president in this process has always been ceremonial and not stated explicitly, it is still assumed. You can find more information at www.as.gov. *Reason*’s Joe Lancaster explained last week, Trump and his acolytes “seized upon this vagueness when they tried to pressure then–Vice President Mike Pence to either decline to

certify the results, or else simply pick a different slate of electors in enough swing states to tip the election to Trump.”

John Eastman, Trump’s attorney, drafted what is known as the “Eastman memo” and clearly outlined the steps necessary to exploit the Electoral Count Act’s major weakness. If the same party held the vice presidency and a majority of the state-by-state congressional delegations in the House—as Republicans did on January 6, 2020—then the Eastman memo is an effective road map for doing exactly what Trump now admits he was trying to do: get a sitting vice president to overturn the legitimate results of an election.

Pence, fortunately, didn’t use that power. But it would be foolish to believe that partisan hacks—on either side—would not at least try to put this option on the table if the same circumstances are repeated in a future presidential election. It is therefore essential to fix the Electoral Count Act.

According to reports, a bipartisan group composed of senators is working with Sens. Susan Collins (R–Maine) and Mitt Romney (R–Utah) to make changes to clarify the vote-counting procedures.

Trump’s declaration clarified that the vice-president does not have power to reverse an election. This is the most significant change. But other aspects of the law could be tightened as well, with an eye towards preventing the sorts of shenanigans that Republicans tried to pull in 2020—like prohibiting state legislatures from certifying competing slates of electors in defiance of the certified results. The Electoral Count Act was initially created to solve problems that arose in 1876’s controversial presidential election. Therefore, amending the law to correct new issues is within the spirit of its original purpose.

Andy Craig from the Cato Institute says that fixing the Electoral Count Act will be crucial to avoid any future constitutional crises. Any form of reform that Congress proposes would likely be better than the confusing status-quo. The constitutional separation of power should guide a redrawn ECA. It will enable Congress to make decisions when needed, while also preventing partisan malfeasance.

Trump only succeeds in making an argument for reform by showing how close he got to exploiting weaknesses of the law.

Trump is trying to prove otherwise. The former president was actually arguing. *For* reform—and blaming Pence for refusing to go along with the plot to “change the Presidential Election results in the Senate.” Coming just days after Trump dangled the prospect of pardons for the rioters who stormed the U.S. Capitol on January 6, 2021, it’s not a stretch to suspect that Trump wants to make his personal grievances over the 2020 election a centerpiece of his potential 2024 presidential bid—a bid that might bring him into competition with Pence, who is rumored to be considering running as well.

This is going to make for a messy mess. However, there are few things you can do.

What *can* It is important to fix the Electoral Count Act's ambiguity. Congress should not wait to find out if Pence's next vice president will be as courageous