

# AlterNet

## 'Bad legal analysis': Cato libertarian dismantles Ted Cruz's opposition to averting a 2024 'election crisis'

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In the hope of making the post-presidential-election period less stressful and chaotic in 2024 than it was in 2020, Republican Sen. Susan Collins of Maine and Democratic Sen. Joe Manchin of West Virginia have co-sponsored a bipartisan bill to strengthen and reform the Electoral Count Act of 1887. And Senate Minority Leader Mitch McConnell has announced his support of the bill.

But one far-right GOP senator who vehemently opposes the bill is Sen. Ted Cruz of Texas. Libertarian Andy Craig, known for his work with the Cato Institute, calls Cruz out in an op-ed published by the Daily Beast on September 30 and tears his arguments apart.

“The Senate Rules Committee took an important step Tuesday to avoid a repeat of the 2020 election crisis,” Craig explains. “The Committee, after making a few technical amendments, voted to send the Electoral Count Reform Act to the full Senate with strong bipartisan support. The bill was produced by a group of senators from both parties — led by Susan Collins and Joe Manchin — to overhaul the vague, crisis-prone Electoral Count Act of 1887. That’s the law that governs the process of casting and counting Electoral College votes.”

Craig continues, “It was this arcane statute, with its confusing lack of clarity and bad procedural mechanics, that was at the center of the attempt to overturn the election on January 6. Another bipartisan ECA reform bill — sponsored by Reps. Zoe Lofgren and Liz Cheney — was passed by the House last week. While differing on some details, the two bills are broadly similar, though the House version has attracted less Republican support.”

Craig notes that the Senate bill “has 11 Republican co-sponsors,” which is “enough to defeat a filibuster.” When Cruz came out against the bill, according to Craig, he “offered a confused and contradictory litany of justifications” that was “full of bad history, bad legal analysis, and a total repudiation of his own professed conservative principles.”

“Cruz blasted the Collins-Manchin bill as a ‘federal takeover’ of presidential elections, supposedly displacing the constitutional role of the states,” Craig writes. “He especially aimed his ire at fellow Republicans for supporting the bill. But confusingly, he also complained that the bill would prevent Congress from nullifying decisions made by state legislatures, state executive officials, state courts, and each state’s members of the Electoral College. In Cruz’s telling, Congress is supposed to have carte blanche to reject electoral votes for effectively any reason it

sees fit. This is the exact opposite of the Constitution's text and the intent of the Framers, whose primary goal in creating the Electoral College was to make sure Congress didn't get to elect the president."

Craig continues, "The joint session of Congress, presided over by the vice president as president of the Senate, is assigned only the narrow task of opening and counting the votes. Before that, Congress only has a very limited power to set the time of choosing electors and when they must cast their votes — in other words, defining when Election Day occurs in early November and when the Electoral College meets in December.... If anything amounts to a 'federal takeover,' it would be Congress deciding it gets to second-guess the states when it comes to their own election results."