



Updating the Electoral Count Act is a reform true conservatives can get behind

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Republicans of conscience in Congress have an unusual opportunity to demonstrate that they still take democracy seriously. And they can do it while touting the most conservative of principles. They can do it by joining Democrats in updating the Electoral Count Act, the archaic law that allowed then-President Donald Trump to attempt his end-run around the voters before and on Jan. 6, 2021.

Some Republicans in Congress and conservative voices like the Cato Institute favor such a reform. They warn, correctly, that the law as written is inherently dangerous in its ambiguity about how electoral votes are to be counted.

When states send their electoral slates to Congress, the 1887 law as currently written opens the process of challenging those slates if just one member each from the House and Senate is to object to them. That was the trigger that Missouri Sen. Josh Hawley pulled in the leadup to Jan. 6, when he became the first (and, initially, only) senator to announce he would lodge such an objection, despite the lack of any legitimate doubts about the validity of the election. The nation remembers too well what happened next. Updating the law to set a higher threshold for challenging electors would help thwart any future Hawleys who might decide they like the spotlight more than democracy.

The same law appoints the vice president to preside over the electoral counting, but it does so in language so ambiguous that the Trumpers used it to claim that Vice President Mike Pence had the power to unilaterally throw out the electoral slates from states that voted against Trump. It was a legally ridiculous claim, but had Pence attempted it, it would have facilitated a constitutional crisis. Specifying the purely ceremonial nature of the vice president's role would be the easiest of fixes.

The current law also gives state legislatures and governors wide latitude — too wide — regarding whether to accept the electoral slates chosen by the voters or discard them on some pretext and substitute different slates. That's exactly what some Trump supporters in battleground states attempted last time, and what some state legislatures are attempting to make easier to do in future elections. Updating the law to block such schemes shouldn't be a heavy lift.

Ultimately, all these ideas are aimed at making the law consistent with the founders' intent regarding elections as expressed in the Constitution. That's the most conservative principle imaginable.

To get the necessary Republican buy-in, Democrats must narrowly stick to clarifying this particular law, and resist the urge to address voter access — a worthy fight but one that Democrats have, for the moment, lost. Republicans, meanwhile, must put their allegiance to democracy ahead of their aversion to Trump's inevitable attacks. Which of them chooses to do that should be a useful barometer to voters regarding who deserves to be in Congress, and who doesn't.