



February 17, 2023

Members of the Maryland House of Delegates Ways and Means Committee

Re: Support HB0594 to Align Maryland Law with the ECRA

Dear Chair Atterbeary, Vice Chair Wilkins, and members of the House Ways and Means Committee:

Campaign Legal Center (CLC) respectfully submits this testimony to the Committee in support of House Bill 0594, to align Maryland law with the newly passed, bipartisan Electoral Reform Act of 2022 (“ECRA”).¹ The ECRA updated the Electoral Count Act of 1887 (“ECA”), which provides the primary legal framework for casting and counting Electoral College votes in presidential elections. Maryland should take swift action on HB0594 to ensure that its presidential election processes are in compliance with the new federal law before the 2024 presidential election.

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Our work promotes every American’s right to participate in the democratic process. As such, CLC was heavily involved with the bipartisan effort to pass the ECRA and is working with states across the country to help them comply with the new federal law.

The ECA has set the timeline for states to select presidential electors and transmit their votes to Congress for more than a century. The ECA also establishes procedures for how Congress counts the electoral votes and outlines the role of the vice president, who presides over this process under the 12th Amendment as the president of the Senate. However, until the ECRA became law in January 2023, the original text of the ECA had not been updated since its enactment more than 130 years ago. The outdated statute was therefore rife with imprecise language, gaps, and ambiguities that left the presidential election process open to potential manipulation.

The bipartisan ECRA addresses the most urgent vulnerabilities in the old law by:

- Providing procedures to resolve disputes about electors and election certifications in the courts before those disputes reach Congress;

¹ Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, Div. P tit. I (2022).

- Strictly limiting opportunities for members of Congress to second-guess states' certified election results;
- Clarifying the vice president's ministerial role in the counting of electoral votes and reinforcing that the vice president does not decide election results.

Taken together, these updates to the ECA significantly reduce the risk of election manipulation in future elections. As a result, the ECRA received strong bipartisan support in Congress and from outside groups and individuals from across the ideological spectrum.²

While most of the changes enacted by the ECRA affect the process by which Congress must count each state's electoral votes, the ECRA also makes one update that we strongly encourage Maryland to implement to be in full compliance with the federal law. The ECRA specifies that the state executive who must certify the state's appointment of electors is the governor, unless state law enacted prior to the election designates a different executive to perform the duty.

HB0594 codifies this change in Maryland law by clarifying that the governor is responsible for "issu[ing] and transmit[ing] certificate of ascertainment" of the state's appointment of electors, "consistent with the returns of the election" in the state.

Currently, Maryland law charges the governor with "ascertaining and enumerating the number of votes for [presidential and vice presidential] candidates" and "issu[ing] a proclamation declaring the name of each candidate who is elected," which is different from the certificate of ascertainment required by the ECRA.³ Further, the current statute does not specify that the governor must act consistent with the results of the election.

HB0594 eliminates any ambiguity about the state's compliance with the ECRA by defining the governor's duties exactly as they appear in the updated federal law and ensuring that Maryland's slate of electors reflects the will of its voters.

The bipartisan ECRA provides a clearer framework for the casting and counting of electoral college votes. CLC respectfully urges the Committee to support HB0594 to ensure that Maryland's presidential election procedures provide similar clarity and are fully compliant with the updated federal law. Thank you for the opportunity to

²See *S.4573 - Electoral Count Reform and Presidential Transition Improvement Act of 2022*, Congress.Gov, <https://www.congress.gov/bill/117th-congress/senate-bill/4573/cosponsors> (listing both Sens. McConnell and Schumer as among the bill's 38 bipartisan Senate cosponsors). See also Thomas A. Berry & Andy Craig, *Statement for the Record, Hearing on 'The Electoral Count Act: The Need for Reform,'* Cato Inst. (Aug. 3, 2022), <https://www.cato.org/testimony/statement-record-hearing-electoral-count-act-need-reform>; Alex Tausanovitch, *Electoral Count Act Reform Is Now Within Reach*, Ctr. for Am. Progress (Sept. 27, 2022), <https://www.americanprogress.org/article/electoral-count-act-reform-is-now-within-reach>; J. Michael Luttig, Opinion, *The Conservative Case for Avoiding a Repeat of Jan. 6*, N.Y. Times (Feb. 14, 2022), <https://www.nytimes.com/2022/02/14/opinion/electoral-count-act.html>.

³ Md. Code Ann. Elec. Law § 11-601.

submit this statement in support of this important legislation. If you have further questions, please do not hesitate to contact us.

Respectfully submitted,

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