

Bipartisan Group Issues Principles to Guide Electoral Count Act Reform

April 4, 2022

WASHINGTON, D.C.: At the invitation of the leadership of The American Law Institute, a group whose members span a range of legal and political views came together to consider possible Electoral Count Act (ECA) reforms. This group today announces its agreement on a set of shared principles to guide these reforms.

Enacted 135 years ago in the years following the disputed 1876 presidential election, the ECA governs Congress's constitutional role in counting each state's electoral votes for President and Vice President. The statute has been widely criticized as poorly written, open to conflicting interpretations, and on uncertain constitutional footing. The events of January 2021 generated calls for reform and the development and discussion of various approaches to urgently needed revision of this statute.

The principles announced today reflect the group's consensus around one such approach: constitutionally sound and clear and workable in design.

The members of the group, selected for their deep and varied experience in law and government, are

- Bob Bauer (NYU School of Law and former White House Counsel) (Co-Chair)
- Elise C. Boddie (Rutgers Law School, and former litigation director of the NAACP Legal Defense and Educational Fund)
- Mariano-Florentino Cuéllar (President of the Carnegie Endowment for International Peace, and formerly a Justice of the California Supreme Court)
- Courtney Simmons Elwood (former General Counsel of the Central Intelligence Agency)
- Jack Goldsmith (Harvard Law School and former Assistant Attorney General, Office of Legal Counsel) (Co-Chair)
- Larry Kramer (President of the William and Flora Hewlett Foundation, and former Dean of Stanford Law School)
- Don McGahn (Boyden Gray Center for the Study of the Administrative State, Antonin Scalia Law School at George Mason University, and former White House Counsel)
- Michael B. Mukasey (former United States District Court Judge and former United States Attorney General)
- Saikrishna Prakash (University of Virginia Law School)
- David Strauss (University of Chicago Law School)

More detailed biographies are attached to the Statement of Principles for ECA Reform, available at the link below and [posted to the ALI website here](#).

Despite holding diverse legal, political, and ideological commitments, the group is united by the belief that Congress should reform the ECA before the 2024 presidential election. The group has

agreed on several general principles—including that ECA reform should not itself introduce new constitutional uncertainties into the presidential selection process—and specific proposals as to what ECA reform should seek to accomplish. [*Read the group’s complete set of principles.*](#)

“The American Law Institute is proud to have convened this group and to have facilitated its important work,” said ALI President David F. Levi and ALI Director Richard L. Revesz in a joint statement. “Because of the need for quick action, this project has not gone through the typical ALI bicameral process, which requires approval by both our Council and membership, and therefore cannot be considered the official work of the Institute. Our support for this project nonetheless contributes to the rule of law, which is a core priority for the ALI. We would like to extend our deepest gratitude to this group for their critical and urgent work. We also would like to thank ALI Legal Fellow Harry Larson and Professor Goldsmith’s excellent team of research assistants for providing valuable support to this project.”

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About The American Law Institute

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By participating in the Institute’s work, its distinguished members have the opportunity to influence the development of the law in both existing and emerging areas, to work with other eminent lawyers, judges, and academics, to give back to a profession to which they are deeply dedicated, and to contribute to the public good.

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