

A STATEMENT BY DEMOCRACY AND ELECTIONS EXPERTS ON PREVENTING AN ELECTION CRISIS

Dear Senator / Representative,

We are a group of democracy scholars and experts in election law and administration who are deeply concerned that, due to the unique circumstances of the Covid-19 pandemic, the November election may confront formidable challenges in ensuring that a full, accurate, and reliable count is completed within the current statutory timelines, which were set for more normal times. Because the unprecedented increase in mail-in ballots could require longer times to process and count a much higher volume of these ballots; because the presidential election contest could be quite close in some states; and because it could take some considerable time to resolve a state-level dispute over the election count, the current federal safe harbor deadline of December 8 for states to determine their electors might not provide enough time for every state to resolve fairly and accurately multiple and overlapping litigation that may arise.

To avert a crisis that could strain our democracy, we urge you to support the bill introduced by Senator Marco Rubio that would extend the federal safe harbor period from December 8, 2020 to January 1, 2021, and that would extend the Electoral College vote from December 14 to January 2.

To begin with, the existing deadlines do not serve any significant policy interest. Indeed, they originate in 1887, when issues of communication and transformation were completely different. There is no reason that the Electoral College vote needs to take place on December 14th, when that vote then just sits there until the new Congress convenes. For similar reasons, the safe harbor date can be pushed back a few weeks, in case states need that time, without harming the electoral-vote counting process in any way.

The extension of these deadlines would not favor or prejudice either political party. And hopefully it would prove unnecessary. Should the 2020 presidential

election produce a clear winner or should any disputes at the state level be resolved expeditiously, the federal safe harbor deadline would remain a ceremonial moment on the pathway to the formal election of the next president.

However, it is also possible that not all issues will be resolved by December 8. Even in what seemed like normal circumstances in Florida in 2000, a close vote in a major swing state was at great risk of failing to meet this date (and indeed, the constitutional recount process that the Supreme Court endorsed could not be completed within that time, which is why a majority of the Court concluded that the recount had to be terminated).

Congress should not wait for a crisis to emerge but should preempt the crisis by legislating in advance. **In the event of one or more protracted disputes at the state level, the addition of 24 days to the deadline for determining electors could spare the country a debilitating national political crisis.** Otherwise, it may fall to the new Congress (on January 6) to determine the winner of the electoral votes of one or more states, under the troublingly ambiguous provisions of the Electoral Count Act of 1887. This could produce a grave national controversy just two weeks before the inauguration.

In our polarized culture, one side immediately sees sinister motives in almost any suggestion the other side makes. But as experts who study the election process, the resolution of disputed elections, and similar matters, we believe Senator Rubio's bill is good insurance for the integrity of the election and ought to be adopted. The country will not benefit, if the election is contested, from having state counting processes being rushed or even forced to shut down arbitrarily, based on deadlines set decades ago that are not needed today. If even a few states need more time this year than normally to fairly and accurately count all valid ballots and only valid ballots, they should have that time, when it will not compromise Congress receiving the Electoral Votes on January 6th. Time for a calm, unrushed resolution of any issues will help produce as broadly legitimate a national outcome as possible.

At this time of ever-more intense polarization of our politics, Senator Rubio's bill would provide a welcome element of relief and protection. We urge you to support it, and even to co-sponsor it.

Sincerely,

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