



September 20, 2022

Dear Representative,

Democracy 21 strongly urges you to vote for H.R. 8873, the Presidential Election Reform Act (PERA), introduced by Representatives Zoe Lofgren (D-CA) and Liz Cheney (R-WY), that is expected to come to the House floor on Wednesday.

This legislation provides for essential reforms to two antiquated 19th-century laws that govern the presidential election process, the Presidential Election Day Act of 1845 (1845 Act) and the Electoral Count Act of 1887 (ECA), into which the 1845 Act was incorporated.

Similar reform legislation, sponsored by Senators Susan Collins (R-ME) and Joe Manchin (D-WV), is expected to be marked up next week by the Senate Rules Committee.

The dangerous flaws in the 1845 Act and the ECA were brought into sharp focus by former President Donald Trump's attempted coup to overturn the 2020 presidential election, which Joe Biden had clearly won. To this day, no one has provided a shred of evidence to support Trump's claim that he won the election.

For more than 200 years, the peaceful transfer of power has been the unwritten rule of our constitutional system of representative democracy. When Richard Nixon in 1960 and Al Gore in 2000 each lost an extremely close election, they honored this fundamental principle of our democracy.

But, former President Trump shattered that fundamental principle that has served our nation for centuries and has been admired by democracies around the world. After decisively losing the election, Trump pursued every avenue he and his collaborators could think up to try to overturn the Biden victory.

Trump's effort to steal the presidency teaches a vital lesson for the country about what could happen in future presidential elections if the 1845 Act and the ECA are not effectively repaired.

With his attempted coup and his Orwellian campaign about the election being stolen, Trump opened the door for a future autocratic, losing candidate to again attempt to steal the presidency. This stark reality makes it essential to pass the PERA to close loopholes in the existing laws that can be exploited to overturn the will of the voters in a future election.

Importantly, the PERA effectively solves the most serious problem with the 1845 Act – the potential for a rogue state legislature to override the choice of their state's voters on Election Day by declaring a "failed" election.

The 1845 Act provides that state legislators can themselves name the presidential electors if they determine that the voters in their state have "failed to make a choice" on Election Day. This undefined language could allow a state legislature to declare – for whatever reason it chooses, including a spurious

claim of widespread fraud – that the state’s voters have “failed to make a choice” and then appoint its own slate of presidential electors.

The hearings held by the House January 6th Committee revealed that former President Trump and his hand-picked minion at the Justice Department, Jeffrey Clark, tried to use the Department to set the stage for precisely such an effort.

During the January 6th Committee’s hearing on June 23, former acting Attorney General Jeffrey Rosen and former acting Deputy Attorney General Richard Donoghue testified about a letter that Clark, then acting head of the Justice Department’s Civil Division, pressed them to sign that would be sent to state legislative leaders in Georgia. The letter cited the “failed election” provision in the 1845 Act as the basis for the Georgia legislature to override voters and choose its own presidential electors following the 2020 election.

The plot included sending similar letters to other targeted Trump-friendly legislative leaders in states that Biden had won. Rosen and Donoghue testified that they refused to sign the letter, thus ending the effort promoted by Clark and averting a constitutional crisis.

But until the 1845 Act is amended, the danger of a similar effort in the future remains.

The PERA addresses this dangerous problem by eliminating the “failed choice” option for state legislatures, thereby removing the ability of rogue state legislatures to override the choice of voters in their states and name their own presidential electors.

Instead, the PERA ensures that a state’s presidential election can be extended only if a federal court agrees that the state has experienced a genuine catastrophic event affecting enough ballots to swing the outcome of the state’s election. And, the bill limits the time for extending the election to five days.

The PERA contains other important reforms such as the codification of the long-held understanding that under the Constitution and the ECA, the Vice President has only a ministerial role in presiding over the congressional process of counting the electoral votes. It also increases the threshold for objecting to a state’s electoral votes to one-third of each house of Congress (up from a single Member of each house). Further, it lists the explicit Constitutional grounds upon which Members may object to a state’s electoral votes.

The Presidential Election Reform Act is essential legislation to address the serious problems in two antiquated 19th-century laws that govern our presidential elections, including the dangerous “failed election” provision in the 1845 Act.

Democracy 21 urges you to vote for, and the House to pass, the Presidential Election Reform Act to help ensure any Trump-like effort to steal a future presidential election cannot be successful.

Sincerely,



Fred Wertheimer
President