

## **DESCRIBE THE PROBLEM**

Federal law prescribes general processes that states must follow to designate members of the Electoral College, who select a president and vice president every four years. Within those general processes, states have the power to design their own processes for selecting electors.

It is now well known that after the 2020 election but before the final count of electors, there was a concerted effort at the national level to exploit gray areas in federal laws to advance unelected slates of electors and overturn the will of voters. In 2022, the federal government passed the Electoral Count Reform Act (ECRA) in an effort to clarify the processes for counting electoral votes and to close exploitable loopholes. The ECRA was a bi-partisan effort co-sponsored by Senators Collins, Manchin, Portman, Sinema, Romney, Shaheen, Murkowski, Warner, Tillis, Murphy, Capito, Cardin, Young, Coons, Sasse, and Graham. Changes in Oregon law are necessary to align with federal law and ensure that existing Oregon electoral college practices are enshrined in law rather than tradition.

## **PROPOSED SOLUTION**

The following is a summary of the attached chart, which describes the proposal in detail, together with related federal and state statutory sections.

This proposal resulted from two processes. First, our office compared post-ECRA federal law with existing Oregon electoral college statutes. Three changes are necessary to align Oregon law with federal law.

- ECRA requires the “executive” of a state to sign the certificates of ascertainment that designate electors. But Oregon has three statewide elected officials in its constitutionally designated executive branch: the Governor, the Secretary of State, and the Treasurer. This proposal would follow existing practice by requiring the Governor and the Secretary of State to sign certificates of ascertainment.
- ECRA requires states to create a “security feature” to ensure the genuineness of certificates of ascertainment. This proposal would allow the Secretary of State to administer the creation and management of the required security feature by rule.
- Federal law states that electors shall gather to vote “on the first Tuesday after the second Wednesday in December.” Oregon law presently states that electors shall gather to vote “on the Monday after the second Wednesday in December.” Oregon law should be revised to be consistent with federal law on this point.

Second, our office reviewed the practices that have been used for electors in Oregon and compared them to existing statutes. Many of the existing practices do not appear in either rule or statute. The attached chart describes the changes necessary to ensure that existing practice is dictated by law rather than tradition. Broadly, this would recognize that the Secretary serves as the administrator of the electoral college process, convening and facilitating the meeting, keeping a faithful record of the votes, and transmitting them accurately to the required federal

authorities. It would also recognize that electors receive a certificate of election and take an oath of office in addition to the statutorily prescribed pledge.

Federal Law	Oregon Law	What Change is required?
<p><b>3 U.S.C. §3</b> The number of electors shall be equal to the number of Senators and Representatives to which the several States are by law entitled at the time when the President and Vice President to be chosen come into office.</p>	<p><b>ORS 248.360</b> (1) At the general election in a year when a President and Vice President of the United States are to be elected, the electors of this state shall elect as many electors of President and Vice President as this state is entitled to elect Senators and Representatives in Congress.</p>	<p>Require elector who fills vacancy to take oath and sign pledge.</p>
<p><b>3 U.S.C. § 4</b> Each State may, by law enacted prior to election day, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote.</p> <p><b>3 U.S.C. § 5</b> (a) In general.-- (1) Certification.--Not later than the date that is 6 days before the time fixed for the meeting of the electors, the executive of each State shall issue a certificate of ascertainment of appointment of electors, under and in pursuance of the laws of such State providing for such appointment and ascertainment enacted prior to election day. (2) Form of certificate.--Each certificate of ascertainment of appointment of electors shall-- (A) set forth the names of the electors appointed and the canvass or other determination</p>	<p><b>ORS 248.370</b> If there is any vacancy in the office of an elector caused by death, refusal to act, neglect to attend or otherwise, the electors present immediately shall fill it by plurality of voice votes. When all the electors have appeared or the vacancies have been filled, the electors shall perform the duties required of them by the Constitution and laws of the United States. n/a</p>	<p>Specify the time and place of the voice vote [day of meeting of electors?] and require signed documentation [by whom?] of the new appointment.</p> <p>Specify who in Oregon is the “executive” who shall issue the certificate of ascertainment. The governor and secretary of state have traditionally signed certificates of ascertainment and we propose that a statute codify that practice.</p> <p>Authorize administration of oath of office to electors.</p>

<p>under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast;</p> <p>(B) bear the seal of the State; and</p> <p>(C) contain at least one security feature, as determined by the State, for purposes of verifying the authenticity of such certificate.</p> <p>(b) Transmission.--It shall be the duty of the executive of each State--</p> <p>(1) to transmit to the Archivist of the United States, immediately after the issuance of a certificate of ascertainment of appointment of electors and by the most expeditious method available, such certificate of ascertainment of appointment of electors; and</p> <p>(2) to transmit to the electors of such State, on or before the day on which the electors are required to meet under section 7, six duplicate-originals of the same certificate.</p>		
<p><b>3 U.S.C. § 5</b></p> <p>(a) In general.--</p> <p>(1) Certification.--Not later than the date that is 6 days before the time fixed for the meeting of the electors, the executive of each State shall issue a certificate of ascertainment of</p>	<p><b>ORS 248.370</b></p> <p>The electors of President and Vice President shall convene at the State Capitol on the Monday after the second Wednesday in December following their election.</p>	<p>Consider what “security feature” should be used for the certificate of ascertainment. Because security needs change over time, we propose that the Secretary administer the security feature by rule.</p>

<p>appointment of electors, under and in pursuance of the laws of such State providing for such appointment and ascertainment enacted prior to election day.</p> <p>(2) Form of certificate.--Each certificate of ascertainment of appointment of electors shall--</p> <p>(A) set forth the names of the electors appointed and the canvass or other determination under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast;</p> <p>(B) bear the seal of the State; and</p> <p>(C) contain at least one security feature, as determined by the State, for purposes of verifying the authenticity of such certificate.</p> <p>(b) Transmission.--It shall be the duty of the executive of each State--</p> <p>(1) to transmit to the Archivist of the United States, immediately after the issuance of a certificate of ascertainment of appointment of electors and by the most expeditious method available, such certificate of ascertainment of appointment of electors; and</p> <p>(2) to transmit to the electors of such State, on or before the day on which the electors are required to meet under section 7, six duplicate-originals of the same certificate.</p>		<p>Authorize Secretary to set the time to convene meeting of electors and preside over the meeting, as has been the traditional practice.</p> <p>The ORS date does not match USC date. ORS should be amended to state that the meeting shall occur on the first <b>Tuesday</b> after the second Wednesday in December.</p> <p>Designate Secretary of State as official authorized to perform these duties as an administrator on behalf of the electors, as has been Oregon’s traditional practice.</p>
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<p><b>3 U.S.C. § 7</b></p> <p>The electors of President and Vice President of each State shall meet and give their votes on the first Tuesday after the second Wednesday in December next following their appointment at such place in each State in accordance with the laws of the State enacted prior to election day.</p> <p><b>12<sup>th</sup> Amendment to the United States Constitution</b></p> <p>The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;</p> <p>***</p> <p><b>3 U.S.C. § 8</b></p> <p>The electors shall vote for President and Vice President, respectively, in the manner directed by the Constitution.</p>		
<p><b>3 U.S.C. § 7</b></p> <p>The electors of President and Vice President of each State</p>		See above

<p>shall meet and give their votes on the first Tuesday after the second Wednesday in December next following their appointment at such place in each State in accordance with the laws of the State enacted prior to election day.</p>		
<p><b>3 U.S.C. § 9</b> The electors shall make and sign six certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for President and the other of the votes for Vice President, and shall annex to each of the certificates of votes one of the certificates of ascertainment of appointment of electors which shall have been furnished to them by direction of the executive of the State.</p> <p><b>3 U.S.C. § 10</b> The electors shall seal up the certificates of votes so made by them, together with the annexed certificates of ascertainment of appointment of electors, and certify upon each that the lists of all the votes of such State given for President, and of all the votes given for Vice President, are contained therein.</p>		<p>See above</p> <p>See above</p>
<p><b>3 U.S.C. § 11</b> The electors shall immediately transmit at the same time and by the most expeditious method available the certificates of votes so made by them, together with the annexed certificates of ascertainment of appointment of electors, as follows:</p>		<p>See above</p>



<p><b>(1)</b> One set shall be sent to the President of the Senate at the seat of government.</p> <p><b>(2)</b> Two sets shall be sent to the chief election officer of the State, one of which shall be held subject to the order of the President of the Senate, the other to be preserved by such official for one year and shall be a part of the public records of such office and shall be open to public inspection.</p> <p><b>(3)</b> Two sets shall be sent to the Archivist of the United States at the seat of government, one of which shall be held subject to the order of the President of the Senate and the other of which shall be preserved by the Archivist of the United States for one year and shall be a part of the public records of such office and shall be open to public inspection.</p> <p><b>(4)</b> One set shall be sent to the judge of the district in which the electors shall have assembled.</p>		
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