

117TH CONGRESS
1ST SESSION

S. 2155

To amend title 18, United States Code, and the Help America Vote Act of 2002 to provide increased protections for election workers and voters in elections for Federal office, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 21, 2021

Mr. WARNOCK (for himself, Ms. KLOBUCHAR, Mr. MERKLEY, Mr. WARNER, and Mr. OSSOFF) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To amend title 18, United States Code, and the Help America Vote Act of 2002 to provide increased protections for election workers and voters in elections for Federal office, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preventing Election
5 Subversion Act of 2021”.

1 **SEC. 2. HARASSMENT OF ELECTION OFFICIALS PROHIB-**
 2 **ITED.**

3 (a) IN GENERAL.—Chapter 29 of title 18, United 6
 4 States Code, is amended by adding at the end the fol-
 5 lowing new section:

6 **“§ 612. Harassment of election-related officials**

7 “(a) HARASSMENT OF ELECTION WORKERS.—It
 8 shall be unlawful for any person, whether acting under
 9 color of law or otherwise, to intimidate, threaten, coerce,
 10 harass, or attempt to intimidate, threaten, coerce or har-
 11 ass an election worker described in subsection (b) with in-
 12 tent to impede, intimidate, or interfere with such official
 13 while engaged in the performance of official duties, or with
 14 intent to retaliate against such official on account of the
 15 performance of official duties.

16 “(b) ELECTION WORKER DESCRIBED.—An election
 17 worker as described in this section is any individual who
 18 is an election official, poll worker, or an election volunteer
 19 in connection with an election for a Federal office.

20 “(c) PENALTY.—Any person who violates subsection
 21 (a) shall be fined not more than \$100,000, imprisoned for
 22 not more than 5 years, or both.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
 24 for chapter 29 of title 18, United States Code, is amended
 25 by adding at the end the following new item:

“612. Harassment of election-related officials.”.

1 **SEC. 3. PROTECTION OF ELECTION WORKERS.**

2 Paragraph (2) of section 119(b) of title 18, United
3 States Code, is amended—

4 (1) by striking “or” at the end of subparagraph
5 (C);

6 (2) by adding “or” at the end of subparagraph
7 (D); and

8 (3) by adding at the end the following new sub-
9 paragraph:

10 “(E) any individual who is an election offi-
11 cial, a poll worker, or an election volunteer in
12 connection with an election for a Federal of-
13 fice;”.

14 **SEC. 4. RESTRICTIONS ON REMOVAL OF LOCAL ELECTION**
15 **ADMINISTRATORS IN ADMINISTRATION OF**
16 **ELECTIONS FOR FEDERAL OFFICE.**

17 (a) FINDINGS.—Congress makes the following find-
18 ings:

19 (1) Congress has explicit and broad authority to
20 regulate the time, place, and manner of Federal elec-
21 tions under the Elections Clause under article I, sec-
22 tion 4, clause 1 of the Constitution, including by es-
23 tablishing standards for the fair, impartial, and uni-
24 form administration of Federal elections by State
25 and local officials.

1 (2) The Elections Clause was understood from
2 the framing of the Constitution to contain “words of
3 great latitude,” granting Congress broad power over
4 Federal elections and a plenary right to preempt
5 State regulation in this area. As made clear at the
6 Constitutional Convention and the State ratification
7 debates that followed, this grant of congressional au-
8 thority was meant to “insure free and fair elec-
9 tions,” promote the uniform administration of Fed-
10 eral elections, and “preserve and restore to the peo-
11 ple their equal and sacred rights of election.”.

12 (3) In the founding debates on the Elections
13 Clause, many delegates also argued that a broad
14 grant of authority to Congress over Federal elections
15 was necessary to check any “abuses that might be
16 made of the discretionary power” to regulate the
17 time, place, and manner of elections granted the
18 States, including attempts at partisan entrenchment,
19 malapportionment, and the exclusion of political mi-
20 norities. As the Supreme Court has recognized, the
21 Elections Clause empowers Congress to “protect the
22 elections on which its existence depends,” *Ex parte*
23 *Yarbrough*, 110 U.S. 651, 658 (1884), and “protect
24 the citizen in the exercise of rights conferred by the
25 Constitution of the United States essential to the

1 healthy organization of the government itself,” *id.* at
2 666.

3 (4) The Elections Clause grants Congress “ple-
4 nary and paramount jurisdiction over the whole sub-
5 ject” of Federal elections, *Ex parte Siebold*, 100
6 U.S. 371, 388 (1879), allowing Congress to imple-
7 ment “a complete code for congressional elections.”
8 *Smiley v. Holm*, 285 U.S. 355, 366 (1932). The
9 Elections Clause, unlike, for example, the Commerce
10 Clause, has been found to grant Congress the au-
11 thority to compel States to alter their regulations as
12 to Federal elections, *id.* at *id.* at 366–67, even if
13 these alterations would impose additional costs on
14 the States to execute or enforce. *Association of Com-
15 munity Organizations for Reform Now v. Miller*, 129
16 F.3d 833 (6th Cir. 1997).

17 (5) The phrase “manner of holding elections”
18 in the Elections Clause has been interpreted by the
19 Supreme Court to authorize Congress to regulate all
20 aspects of the Federal election process, including
21 “notices, registration, supervision of voting, protec-
22 tion of voters, prevention of fraud and corrupt prac-
23 tices, counting of votes, duties of inspectors and can-
24 vassers, and the making and publication of election

1 returns.” *Smiley v. Holm*, 285 U.S. 355, 366
2 (1932).

3 (6) The Supreme Court has recognized the
4 broad “substantive scope” of the Elections Clause
5 and upheld Federal laws promulgated thereunder
6 regulating redistricting, voter registration, campaign
7 finance, primary elections, recounts, party affiliation
8 rules, and balloting.

9 (7) The authority of Congress under the Elec-
10 tions Clause also entails the power to ensure en-
11 forcement of its laws regulating Federal elections.
12 “[I]f Congress has the power to make regulations, it
13 must have the power to enforce them.” *Ex parte*
14 *Siebold*, 100 U.S. 371, 387 (1879). The Supreme
15 Court has noted that there can be no question that
16 Congress may impose additional penalties for of-
17 fenses committed by State officers in connection
18 with Federal elections even if they differ from the
19 penalties prescribed by State law for the same acts.
20 *Id.* at 387–88.

21 (8) The fair and impartial administration of
22 Federal elections by State and local officials is cen-
23 tral to “the successful working of this government,”
24 *Ex parte Yarbrough*, 110 U.S. 651, 666 (1884), and

1 to “protect the act of voting . . . and the election
2 itself from corruption or fraud,” *id.* at 661–62.

3 (9) The Elections Clause thus grants Congress
4 the authority to ensure that the administration of
5 Federal elections is free of political bias or discrimi-
6 nation and that election officials are insulated from
7 political influence or other forms of coercion in dis-
8 charging their duties in connection with Federal
9 elections.

10 (10) In some States, oversight of local election
11 administrators has been allocated to State Election
12 Boards, or special commissions formed by those
13 boards, that are appointed by the prevailing political
14 party in a State, as opposed to nonpartisan or elect-
15 ed office holders.

16 (11) In certain newly enacted State policies,
17 these appointed statewide election administrators
18 have been granted wide latitude to suspend or re-
19 move local election administrators in cases where the
20 statewide election administrators identify whatever
21 the State deems to be a violation. There is no re-
22 quirement that there be a finding of intent by the
23 local election administrator to commit the violation.

24 (12) Local election administrators across the
25 country can be suspended or removed according to

different standards, potentially exposing them to different political pressures or biases that could result in uneven administration of Federal elections.

(13) The Elections Clause grants Congress the ultimate authority to ensure that oversight of State and local election administrators is fair and impartial in order to ensure equitable and uniform administration of Federal elections.

(b) RESTRICTION.—

(1) STANDARD FOR REMOVAL OF A LOCAL ELECTION ADMINISTRATOR.—A statewide election administrator may only suspend, remove, or relieve the duties of a local election administrator in the State with respect to the administration of an election for Federal office for inefficiency, neglect of duty, or malfeasance in office.

(2) PRIVATE RIGHT OF ACTION.—

(A) IN GENERAL.—Any local election administrator suspended, removed, or otherwise relieved of duties in violation of paragraph (1) with respect to the administration of an election for Federal office or against whom any proceeding for suspension, removal, or relief from duty in violation of paragraph (1) with respect to the administration of an election for Federal

1 office may be pending, may bring an action in
2 an appropriate district court of the United
3 States for declaratory or injunctive relief with
4 respect to the violation. Any such action shall
5 name as the defendant the statewide election
6 administrator responsible for the adverse ac-
7 tion. The district court shall, to the extent prac-
8 ticable, expedite any such proceeding.

9 (B) STATUTE OF LIMITATIONS.—Any ac-
10 tion brought under this subsection must be
11 commenced not later than one year after the
12 date of the suspension, removal, relief from du-
13 ties, or commencement of the proceeding to re-
14 move, suspend, or relieve the duties of a local
15 election administrator with respect to the ad-
16 ministration of an election for Federal office.

17 (3) ATTORNEY’S FEES.—In any action or pro-
18 ceeding under this subsection, the court may allow
19 a prevailing plaintiff, other than the United States,
20 reasonable attorney’s fees as part of the costs, and
21 may include expert fees as part of the attorney’s fee.
22 The term “prevailing plaintiff” means a plaintiff
23 that substantially prevails pursuant to a judicial or
24 administrative judgment or order, or an enforceable
25 written agreement.

1 (4) REMOVAL OF STATE PROCEEDINGS TO FED-
 2 ERAL COURT.—A local election administrator who is
 3 subject to an administrative or judicial proceeding
 4 for suspension, removal, or relief from duty by a
 5 statewide election administrator with respect to the
 6 administration of an election for Federal office may
 7 remove the proceeding to an appropriate district
 8 court of the United States. Any order remanding a
 9 case to the State court or agency from which it was
 10 removed under this subsection shall be reviewable by
 11 appeal or otherwise.

12 (5) RIGHT OF UNITED STATES TO INTER-
 13 VENE.—

14 (A) NOTICE TO ATTORNEY GENERAL.—
 15 Whenever any administrative or judicial pro-
 16 ceeding is brought to suspend, remove, or re-
 17 lieve the duties of any local election adminis-
 18 trator by a statewide election administrator
 19 with respect to the administration of an election
 20 for Federal office, the statewide election admin-
 21 istrator who initiated such proceeding shall de-
 22 liver a copy of the pleadings instituting the pro-
 23 ceeding to the Assistant Attorney General for
 24 the Civil Rights Division of the Department of
 25 Justice. The local election administrator against

1 whom such proceeding is brought may also de-
2 liver such pleadings to the Assistant Attorney
3 General.

4 (B) RIGHT TO INTERVENE.—The United
5 States may intervene in any administrative or
6 judicial proceeding brought to suspend, remove,
7 or relieve the duties of any local election admin-
8 istrator by a statewide election administrator
9 with respect to the administration of an election
10 for Federal office and in any action initiated
11 pursuant to paragraph (2) or in any removal
12 pursuant to paragraph (4).

13 (6) DEFINITIONS.—In this section, the fol-
14 lowing definitions apply:

15 (A) ELECTION.—The term “election” has
16 the meaning given the term in section 301(1) of
17 the Federal Election Campaign Act of 1971 (52
18 U.S.C. 30101(1)).

19 (B) FEDERAL OFFICE.—The term “Fed-
20 eral office” has the meaning given the term in
21 section 301(3) of the Federal Election Cam-
22 paign Act of 1971 (52 U.S.C. 30101(3)).

23 (C) LOCAL ELECTION ADMINISTRATOR.—
24 The term “local election administrator” means,
25 with respect to a local jurisdiction in a State,

1 the individual or entity responsible for the ad-
 2 ministration of elections for Federal office in
 3 the local jurisdiction.

4 (D) STATEWIDE ELECTION ADMINIS-
 5 TRATOR.—The term “Statewide election admin-
 6 istrator” means, with respect to a State, the in-
 7 dividual or entity responsible for the adminis-
 8 tration of elections for Federal office in the
 9 State on a statewide basis.

10 **SEC. 5. PROTECTIONS FOR VOTERS ON ELECTION DAY.**

11 (a) REQUIREMENT.—Subtitle A of title III of the
 12 Help America Vote Act of 2002 (52 U.S.C. 21081 et seq.)
 13 is amended by inserting after section 303 the following
 14 new section:

15 **“SEC. 303A. VOTER PROTECTION REQUIREMENTS.**

16 **“(a) REQUIREMENTS FOR CHALLENGES BY PERSONS**
 17 **OTHER THAN ELECTION OFFICIALS.—**

18 **“(1) REQUIREMENTS FOR CHALLENGES.—**No
 19 person, other than a State or local election official,
 20 shall submit a formal challenge to an individual’s eli-
 21 gibility to register to vote in an election for Federal
 22 office or to vote in an election for Federal office un-
 23 less that challenge is supported by personal knowl-
 24 edge with respect to each individual challenged re-
 25 garding the grounds for ineligibility which is—

1 “(A) documented in writing; and

2 “(B) subject to an oath or attestation
 3 under penalty of perjury that the challenger has
 4 a good faith factual basis to believe that the in-
 5 dividual who is the subject of the challenge is
 6 ineligible to register to vote or vote in that elec-
 7 tion, except a challenge which is based on the
 8 age, race, ethnicity, or national origin of the in-
 9 dividual who is the subject of the challenge may
 10 not be considered to have a good faith factual
 11 basis for purposes of this subparagraph.

12 “(2) PROHIBITION ON CHALLENGES ON OR
 13 NEAR DATE OF ELECTION.—No person, other than
 14 a State or local election official, shall be permitted—

15 “(A) to challenge an individual’s eligibility
 16 to vote in an election for Federal office on any
 17 day on which the individual votes in person on
 18 grounds that could have been made in advance
 19 of such day, or

20 “(B) to challenge an individual’s eligibility
 21 to register to vote in an election for Federal of-
 22 fice or to vote in an election for Federal office
 23 less than 10 days before the election unless the
 24 individual registered to vote less than 20 days
 25 before the election.

1 “(b) BUFFER RULE.—A person who is serving as a
 2 poll observer with respect to an election for Federal office
 3 may not come within 8 feet of a voter or ballot at a polling
 4 location during any period of voting (including any period
 5 of early voting) in such election.

6 “(c) EFFECTIVE DATE.—This section shall apply
 7 with respect to elections for Federal office occurring on
 8 and after January 1, 2022.”.

9 (b) CONFORMING AMENDMENT RELATING TO VOL-
 10 UNTARY GUIDANCE.—Section 311(b) of such Act (52
 11 U.S.C. 21101(b)) is amended—

12 (1) by striking “and” at the end of paragraph

13 (2);

14 (2) by striking the period at the end of para-
 15 graph (3) and inserting “; and”; and

16 (3) by adding at the end the following new
 17 paragraph:

18 “(3) in the case of the recommendations with
 19 respect to section 303A, June 30, 2022.”.

20 (c) CONFORMING AMENDMENT RELATING TO EN-
 21 FORCEMENT.—Section 401 of such Act (52 U.S.C. 21111)
 22 is amended by striking “and 303” and inserting “303, and
 23 303A”.

1 (d) CLERICAL AMENDMENT.—The table of contents
2 of such Act is amended by inserting after the item relating
3 to section 303 the following:

“Sec. 303A. Voter protection requirements.”.

