117TH CONGRESS
1ST Session

S._____

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

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

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”.


SEC. 2. HARASSMENT OF ELECTION OFFICIALS PROHIBITED.

(a) IN GENERAL.—Chapter 29 of title 18, United States Code, is amended by adding at the end the following new section:

“§ 612. Harassment of election-related officials

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

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

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

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

“612. Harassment of election-related officials.”.
SEC. 3. PROTECTION OF ELECTION WORKERS.

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

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

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

(3) by adding at the end the following new subparagraph:

“(E) any individual who is an election official, a poll worker, or an election volunteer in connection with an election for a Federal office;”.

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

(a) FINDINGS.—Congress makes the following findings:

(1) Congress has explicit and broad authority to regulate the time, place, and manner of Federal elections under the Elections Clause under article I, section 4, clause 1 of the Constitution, including by establishing standards for the fair, impartial, and uniform administration of Federal elections by State and local officials.
(2) The Elections Clause was understood from the framing of the Constitution to contain “words of great latitude,” granting Congress broad power over Federal elections and a plenary right to preempt State regulation in this area. As made clear at the Constitutional Convention and the State ratification debates that followed, this grant of congressional authority was meant to “insure free and fair elections,” promote the uniform administration of Federal elections, and “preserve and restore to the people their equal and sacred rights of election.”

(3) In the founding debates on the Elections Clause, many delegates also argued that a broad grant of authority to Congress over Federal elections was necessary to check any “abuses that might be made of the discretionary power” to regulate the time, place, and manner of elections granted the States, including attempts at partisan entrenchment, malapportionment, and the exclusion of political minorities. As the Supreme Court has recognized, the Elections Clause empowers Congress to “protect the elections on which its existence depends,” Ex parte Yarbrough, 110 U.S. 651, 658 (1884), and “protect the citizen in the exercise of rights conferred by the Constitution of the United States essential to the
healthy organization of the government itself,’” id. at 666.

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

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

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

(7) The authority of Congress under the Elections Clause also entails the power to ensure enforcement of its laws regulating Federal elections. “[I]f Congress has the power to make regulations, it must have the power to enforce them.” Ex parte Siebold, 100 U.S. 371, 387 (1879). The Supreme Court has noted that there can be no question that Congress may impose additional penalties for offenses committed by State officers in connection with Federal elections even if they differ from the penalties prescribed by State law for the same acts. Id. at 387–88.

(8) The fair and impartial administration of Federal elections by State and local officials is central to “the successful working of this government,” Ex parte Yarbrough, 110 U.S. 651, 666 (1884), and
to “protect the act of voting . . . and the election itself from corruption or fraud,” id. at 661–62.

(9) The Elections Clause thus grants Congress the authority to ensure that the administration of Federal elections is free of political bias or discrimination and that election officials are insulated from political influence or other forms of coercion in discharging their duties in connection with Federal elections.

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

(11) In certain newly enacted State policies, these appointed statewide election administrators have been granted wide latitude to suspend or remove local election administrators in cases where the statewide election administrators identify whatever the State deems to be a violation. There is no requirement that there be a finding of intent by the local election administrator to commit the violation.

(12) Local election administrators across the 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
office may be pending, may bring an action in an appropriate district court of the United States for declaratory or injunctive relief with respect to the violation. Any such action shall name as the defendant the statewide election administrator responsible for the adverse action. The district court shall, to the extent practicable, expedite any such proceeding.

(B) STATUTE OF LIMITATIONS.—Any action brought under this subsection must be commenced not later than one year after the date of the suspension, removal, relief from duties, or commencement of the proceeding to remove, suspend, or relieve the duties of a local election administrator with respect to the administration of an election for Federal office.

(3) ATTORNEY’S FEES.—In any action or proceeding under this subsection, the court may allow a prevailing plaintiff, other than the United States, reasonable attorney’s fees as part of the costs, and may include expert fees as part of the attorney’s fee. The term “prevailing plaintiff” means a plaintiff that substantially prevails pursuant to a judicial or administrative judgment or order, or an enforceable written agreement.
(4) Removal of state proceedings to federal court.—A local election administrator who is subject to an administrative or judicial proceeding for suspension, removal, or relief from duty by a statewide election administrator with respect to the administration of an election for Federal office may remove the proceeding to an appropriate district court of the United States. Any order remanding a case to the State court or agency from which it was removed under this subsection shall be reviewable by appeal or otherwise.

(5) Right of United States to intervene.—

(A) Notice to Attorney General.—
Whenever any administrative or judicial proceeding is brought to suspend, remove, or relieve the duties of any local election administrator by a statewide election administrator with respect to the administration of an election for Federal office, the statewide election administrator who initiated such proceeding shall deliver a copy of the pleadings instituting the proceeding to the Assistant Attorney General for the Civil Rights Division of the Department of Justice. The local election administrator against
whom such proceeding is brought may also de-
deliver such pleadings to the Assistant Attorney
General.

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

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

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

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

(C) LOCAL ELECTION ADMINISTRATOR.—
The term “local election administrator” means,
with respect to a local jurisdiction in a State,
the individual or entity responsible for the administration of elections for Federal office in the local jurisdiction.

(D) Statewide election administrator.—The term “Statewide election administrator” means, with respect to a State, the individual or entity responsible for the administration of elections for Federal office in the State on a statewide basis.

SEC. 5. PROTECTIONS FOR VOTERS ON ELECTION DAY.

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

“SEC. 303A. VOTER PROTECTION REQUIREMENTS.

“(a) Requirements for challenges by persons other than election officials.—

“(1) Requirements for challenges.—No person, other than a State or local election official, shall submit a formal challenge to an individual’s eligibility to register to vote in an election for Federal office or to vote in an election for Federal office unless that challenge is supported by personal knowledge with respect to each individual challenged regarding the grounds for ineligibility which is—
“(A) documented in writing; and

“(B) subject to an oath or attestation under penalty of perjury that the challenger has a good faith factual basis to believe that the individual who is the subject of the challenge is ineligible to register to vote or vote in that election, except a challenge which is based on the age, race, ethnicity, or national origin of the individual who is the subject of the challenge may not be considered to have a good faith factual basis for purposes of this subparagraph.

“(2) Prohibition on challenges on or near date of election.—No person, other than a State or local election official, shall be permitted—

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

“(B) to challenge an individual’s eligibility to register to vote in an election for Federal office or to vote in an election for Federal office less than 10 days before the election unless the individual registered to vote less than 20 days before the election.
“(b) BUFFER RULE.—A person who is serving as a poll observer with respect to an election for Federal office may not come within 8 feet of a voter or ballot at a polling location during any period of voting (including any period of early voting) in such election.

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

(b) CONFORMING AMENDMENT RELATING TO VOLUNTARY GUIDANCE.—Section 311(b) of such Act (52 U.S.C. 21101(b)) is amended—

(1) by striking “and” at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting “; and”; and

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

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

(c) CONFORMING AMENDMENT RELATING TO ENFORCEMENT.—Section 401 of such Act (52 U.S.C. 21111) is amended by striking “and 303” and inserting “303, and 303A”.


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

"Sec. 303A. Voter protection requirements.".