

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.

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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 \_\_\_\_\_

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**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

1 different standards, potentially exposing them to dif-  
2 ferent political pressures or biases that could result  
3 in uneven administration of Federal elections.

4 (13) The Elections Clause grants Congress the  
5 ultimate authority to ensure that oversight of State  
6 and local election administrators is fair and impar-  
7 tial in order to ensure equitable and uniform admin-  
8 istration of Federal elections.

9 (b) RESTRICTION.—

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

17 (2) PRIVATE RIGHT OF ACTION.—

18 (A) IN GENERAL.—Any local election ad-  
19 ministrator suspended, removed, or otherwise  
20 relieved of duties in violation of paragraph (1)  
21 with respect to the administration of an election  
22 for Federal office or against whom any pro-  
23 ceeding for suspension, removal, or relief from  
24 duty in violation of paragraph (1) with respect  
25 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.”.