118TH CONGRESS
1ST SESSION

To amend 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, Ms. Baldwin, Mr. Merkley, Mr. Fetterman, Mr. Welch, Ms. Hirono, Mr. Wyden, Mr. Warner, Mr. Durbin, and Mrs. Feinstein) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend 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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Preventing Election Subversion Act of 2023”.


SEC. 2. 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 of the United States, 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 of the United States 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 “plenary and paramount jurisdiction over the whole subject” of Federal elections, *Ex parte Siebold*, 100 U.S. 371, 388 (1879), allowing Congress to implement “a complete code for congressional elections.” *Smiley v. Holm*, 285 U.S. 355, 366 (1932). The Elections Clause, unlike, for example, the Commerce Clause, has been found to grant Congress the authority to compel States to alter their regulations as to Federal elections, *id.* at 366–67, even if these alterations would impose additional costs on the
States to execute or enforce. *Association of Community 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, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and the making and publication of election returns.” *Smiley v. Holm*, 285 U.S. 355, 366 (1932).

(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. \textit{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,” \textit{Ex parte Yarbrough}, 110 U.S. 651, 666 (1884), and to “protect the act of voting . . . and the election itself from corruption or fraud,” \textit{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 elec-
tion for Federal office for inefficiency, neglect of
duty, or malfeasance in office.

(2) Private right of action.—

(A) In general.—Any local election ad-
ministrator 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 pro-
ceeding 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 ac-
tion. The district court shall, to the extent prac-
ticable, expedite any such proceeding.

(B) Statute of limitations.—Any ac-
tion brought under this subsection must be
commenced not later than 1 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 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 administrator 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) Review.—In reviewing any action brought under this section, a court of the United States shall not afford any deference to any State official, administrator, or tribunal that initiated, approved, adjudicated, or reviewed any administrative or judicial proceeding to suspend, remove, or otherwise relieve the duties of a local election administrator.

(c) Reports to the Department of Justice.—

(1) In general.—Not later than 30 days after the suspension, removal, or relief of the duties of a local election administrator by a statewide election administrator, the Statewide election administrator shall submit to the Assistant Attorney General for the Civil Rights Divisions of the Department of Justice a report that includes the following information:

(A) A statement that a local election administrator was suspended, removed, or relieved of their duties.

(B) Information on whether the local election administrator was determined to be inefficient or to have engaged in neglect of duty or malfeasance in office.

(C) A description of the effect that the suspension, removal, or relief of the duties of the local election administrator will have on—
(i) the administration of elections and voters in the election jurisdictions for which the local election official provided such duties; and

(ii) the administration of elections and voters in the State at large.

(D) Demographic information about the local election official suspended, removed, or relieved and the jurisdictions for which such election official was providing the duties suspended, removed, or relieved.

(E) Such other information as requested by the Assistant Attorney General for the purposes of determining—

(i) whether such suspension, removal, or relief of duties was based on unlawful discrimination; and

(ii) whether such suspension, removal, or relief of duties was due to inefficiency, neglect of duty, or malfeasance in office.

(2) EXPEDITED REPORTING FOR ACTIONS WITHIN 30 DAYS OF AN ELECTION.—

(A) IN GENERAL.—If a suspension, removal, or relief of duties of a local administrator described in paragraph (1) occurs during
the period described in subparagraph (B), the
report required under paragraph (1) shall be
submitted not later than 48 hours after such
suspension, removal, or relief of duties.

(B) PERIOD DESCRIBED.—The period de-
scribed in this subparagraph is any period
which begins 60 days before the date of an elec-
tion for Federal office and which ends 60 days
after such election.

(d) DEFINITIONS.—In this section, the following defi-
nitions apply:

(1) 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)).

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

(3) LOCAL ELECTION ADMINISTRATOR.—The
term “local election administrator” means, with re-
spect to a local jurisdiction in a State, the individual
or entity responsible for the administration of elec-
tions for Federal office in the local jurisdiction.
(4) Statewide election administrator.—

The term “statewide election administrator” means, with respect to a State—

(A) the individual or entity, including a State elections board, responsible for the administration of elections for Federal office in the State on a statewide basis; or

(B) a statewide legislative or executive entity with the authority to suspend, remove, or relieve a local election administrator.

(e) Rule of Construction.—Nothing in this section shall be construed to grant any additional authority to remove a local elections administrator beyond any authority provided under the law of the State.

SEC. 3. PROTECTIONS FOR VOTERS ON ELECTION DAY.

(a) Requirements.—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 eli-
gibility to register to vote in an election for Federal
office or to vote in an election for Federal office un-
less that challenge is supported by personal knowl-
edge with respect to each individual challenged re-
garding 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 in-
dividual who is the subject of the challenge is

ineligible to register to vote or vote in that elec-
tion, except a challenge that is based on the

race, color, ethnicity, national origin, or mem-
bership in a language minority group (as de-
defined in section 14 of the Voting Rights Act of

1965 (52 U.S.C. 10310)) of the individual who

is the subject of the challenge may not be con-
sidered to have a good faith factual basis for

purposes of this paragraph.

“(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 the
date of the election on grounds that could have
been made in advance of such date; or

“(B) to challenge an individual’s eligibility
to register to vote in an election for Federal of-
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) Effective Date.—This section shall apply
with respect to elections for Federal office occurring on
and after January 1, 2024.”.

(b) Conforming Amendment Relating to En-
forcement.—Section 401 of such Act (52 U.S.C. 21111)
is amended by striking “and 303” and inserting “303, and
303A”.

c) 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.”.