

118TH CONGRESS
1ST SESSION

H. R. 5046

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 HOUSE OF REPRESENTATIVES

JULY 27, 2023

Mr. SARBANES (for himself, Mr. MORELLE, Mr. ALLRED, and Ms. WILLIAMS of Georgia) introduced the following bill; which was referred to the Committee on House Administration, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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 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 2023”.

1 **SEC. 2. RESTRICTIONS ON REMOVAL OF LOCAL ELECTION**
2 **ADMINISTRATORS IN ADMINISTRATION OF**
3 **ELECTIONS FOR FEDERAL OFFICE.**

4 (a) FINDINGS.—Congress makes the following find-
5 ings:

6 (1) Congress has explicit and broad authority to
7 regulate the time, place, and manner of Federal elec-
8 tions under the Elections Clause under article I, sec-
9 tion 4, clause 1 of the Constitution of the United
10 States, including by establishing standards for the
11 fair, impartial, and uniform administration of Fed-
12 eral elections by State and local officials.

13 (2) The Elections Clause was understood from
14 the framing of the Constitution of the United States
15 to contain “words of great latitude,” granting Con-
16 gress broad power over Federal elections and a ple-
17 nary right to preempt State regulation in this area.
18 As made clear at the Constitutional Convention and
19 the State ratification debates that followed, this
20 grant of congressional authority was meant to “in-
21 sure free and fair elections,” promote the uniform
22 administration of Federal elections, and “preserve
23 and restore to the people their equal and sacred
24 rights of election.”.

25 (3) In the founding debates on the Elections
26 Clause, many delegates also argued that a broad

1 grant of authority to Congress over Federal elections
2 was necessary to check any “abuses that might be
3 made of the discretionary power” to regulate the
4 time, place, and manner of elections granted the
5 States, including attempts at partisan entrenchment,
6 malapportionment, and the exclusion of political mi-
7 norities. As the Supreme Court has recognized, the
8 Elections Clause empowers Congress to “protect the
9 elections on which its existence depends,” *Ex parte*
10 *Yarbrough*, 110 U.S. 651, 658 (1884), and “protect
11 the citizen in the exercise of rights conferred by the
12 Constitution of the United States essential to the
13 healthy organization of the government itself,” *id.* at
14 666.

15 (4) The Elections Clause grants Congress “ple-
16 nary and paramount jurisdiction over the whole sub-
17 ject” of Federal elections, *Ex parte Siebold*, 100
18 U.S. 371, 388 (1879), allowing Congress to imple-
19 ment “a complete code for congressional elections.”
20 *Smiley v. Holm*, 285 U.S. 355, 366 (1932). The
21 Elections Clause, unlike, for example, the Commerce
22 Clause, has been found to grant Congress the au-
23 thority to compel States to alter their regulations as
24 to Federal elections, *id.* at 366–67, even if these al-
25 terations would impose additional costs on the

1 States to execute or enforce. *Association of Commu-*
2 *nity Organizations for Reform Now v. Miller*, 129
3 F.3d 833 (6th Cir. 1997).

4 (5) The phrase “manner of holding elections”
5 in the Elections Clause has been interpreted by the
6 Supreme Court to authorize Congress to regulate all
7 aspects of the Federal election process, including
8 “notices, registration, supervision of voting, protec-
9 tion of voters, prevention of fraud and corrupt prac-
10 tices, counting of votes, duties of inspectors and can-
11 vassers, and the making and publication of election
12 returns.” *Smiley v. Holm*, 285 U.S. 355, 366
13 (1932).

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

20 (7) The authority of Congress under the Elec-
21 tions Clause also entails the power to ensure en-
22 forcement of its laws regulating Federal elections.
23 “[I]f Congress has the power to make regulations, it
24 must have the power to enforce them.” *Ex parte*
25 *Siebold*, 100 U.S. 371, 387 (1879). The Supreme

1 Court has noted that there can be no question that
2 Congress may impose additional penalties for of-
3 fenses committed by State officers in connection
4 with Federal elections even if they differ from the
5 penalties prescribed by State law for the same acts.
6 *Id.* at 387–88.

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

13 (9) The Elections Clause thus grants Congress
14 the authority to ensure that the administration of
15 Federal elections is free of political bias or discrimi-
16 nation and that election officials are insulated from
17 political influence or other forms of coercion in dis-
18 charging their duties in connection with Federal
19 elections.

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

1 (11) In certain newly enacted State policies,
2 these appointed statewide election administrators
3 have been granted wide latitude to suspend or re-
4 move local election administrators in cases where the
5 statewide election administrators identify whatever
6 the State deems to be a violation. There is no re-
7 quirement that there be a finding of intent by the
8 local election administrator to commit the violation.

9 (12) Local election administrators across the
10 country can be suspended or removed according to
11 different standards, potentially exposing them to dif-
12 ferent political pressures or biases that could result
13 in uneven administration of Federal elections.

14 (13) The Elections Clause grants Congress the
15 ultimate authority to ensure that oversight of State
16 and local election administrators is fair and impar-
17 tial in order to ensure equitable and uniform admin-
18 istration of Federal elections.

19 (b) RESTRICTION.—

20 (1) STANDARD FOR REMOVAL OF A LOCAL
21 ELECTION ADMINISTRATOR.—A statewide election
22 administrator may only suspend, remove, or relieve
23 the duties of a local election administrator in the
24 State with respect to the administration of an elec-

1 tion for Federal office for inefficiency, neglect of
2 duty, or malfeasance in office.

3 (2) PRIVATE RIGHT OF ACTION.—

4 (A) IN GENERAL.—Any local election ad-
5 ministrator suspended, removed, or otherwise
6 relieved of duties in violation of paragraph (1)
7 with respect to the administration of an election
8 for Federal office or against whom any pro-
9 ceeding for suspension, removal, or relief from
10 duty in violation of paragraph (1) with respect
11 to the administration of an election for Federal
12 office may be pending, may bring an action in
13 an appropriate district court of the United
14 States for declaratory or injunctive relief with
15 respect to the violation. Any such action shall
16 name as the defendant the statewide election
17 administrator responsible for the adverse ac-
18 tion. The district court shall, to the extent prac-
19 ticable, expedite any such proceeding.

20 (B) STATUTE OF LIMITATIONS.—Any ac-
21 tion brought under this subsection must be
22 commenced not later than 1 year after the date
23 of the suspension, removal, relief from duties,
24 or commencement of the proceeding to remove,
25 suspend, or relieve the duties of a local election

1 administrator with respect to the administration
2 of an election for Federal office.

3 (3) ATTORNEY'S FEES.—In any action or pro-
4 ceeding under this subsection, the court may allow
5 a prevailing plaintiff, other than the United States,
6 reasonable attorney's fees as part of the costs, and
7 may include expert fees as part of the attorney's fee.
8 The term "prevailing plaintiff" means a plaintiff
9 that substantially prevails pursuant to a judicial or
10 administrative judgment or order, or an enforceable
11 written agreement.

12 (4) REMOVAL OF STATE PROCEEDINGS TO FED-
13 ERAL COURT.—A local election administrator who is
14 subject to an administrative or judicial proceeding
15 for suspension, removal, or relief from duty by a
16 statewide election administrator with respect to the
17 administration of an election for Federal office may
18 remove the proceeding to an appropriate district
19 court of the United States. Any order remanding a
20 case to the State court or agency from which it was
21 removed under this subsection shall be reviewable by
22 appeal or otherwise.

23 (5) RIGHT OF UNITED STATES TO INTER-
24 VENE.—

1 (A) NOTICE TO ATTORNEY GENERAL.—
2 Whenever any administrative or judicial pro-
3 ceeding is brought to suspend, remove, or re-
4 lieve the duties of any local election adminis-
5 trator by a statewide election administrator
6 with respect to the administration of an election
7 for Federal office, the statewide election admin-
8 istrator who initiated such proceeding shall de-
9 liver a copy of the pleadings instituting the pro-
10 ceeding to the Assistant Attorney General for
11 the Civil Rights Division of the Department of
12 Justice. The local election administrator against
13 whom such proceeding is brought may also de-
14 liver such pleadings to the Assistant Attorney
15 General.

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

1 (6) REVIEW.—In reviewing any action brought
2 under this section, a court of the United States shall
3 not afford any deference to any State official, ad-
4 ministrator, or tribunal that initiated, approved, ad-
5 judicated, or reviewed any administrative or judicial
6 proceeding to suspend, remove, or otherwise relieve
7 the duties of a local election administrator.

8 (c) REPORTS TO THE DEPARTMENT OF JUSTICE.—

9 (1) IN GENERAL.—Not later than 30 days after
10 the suspension, removal, or relief of the duties of a
11 local election administrator by a statewide election
12 administrator, the Statewide election administrator
13 shall submit to the Assistant Attorney General for
14 the Civil Rights Divisions of the Department of Jus-
15 tice a report that includes the following information:

16 (A) A statement that a local election ad-
17 ministrator was suspended, removed, or relieved
18 of their duties.

19 (B) Information on whether the local elec-
20 tion administrator was determined to be ineffi-
21 cient or to have engaged in neglect of duty or
22 malfeasance in office.

23 (C) A description of the effect that the
24 suspension, removal, or relief of the duties of
25 the local election administrator will have on—

1 (i) the administration of elections and
2 voters in the election jurisdictions for
3 which the local election official provided
4 such duties; and

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

7 (D) Demographic information about the
8 local election official suspended, removed, or re-
9 lieved and the jurisdictions for which such elec-
10 tion official was providing the duties suspended,
11 removed, or relieved.

12 (E) Such other information as requested
13 by the Assistant Attorney General for the pur-
14 poses of determining—

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

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

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

23 (A) IN GENERAL.—If a suspension, re-
24 moval, or relief of duties of a local adminis-
25 trator described in paragraph (1) occurs during

1 the period described in subparagraph (B), the
2 report required under paragraph (1) shall be
3 submitted not later than 48 hours after such
4 suspension, removal, or relief of duties.

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

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

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

16 (2) FEDERAL OFFICE.—The term “Federal of-
17 fice” has the meaning given the term in section
18 301(3) of the Federal Election Campaign Act of
19 1971 (52 U.S.C. 30101(3)).

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

1 (4) STATEWIDE ELECTION ADMINISTRATOR.—
2 The term “statewide election administrator” means,
3 with respect to a State—

4 (A) the individual or entity, including a
5 State elections board, responsible for the ad-
6 ministration of elections for Federal office in
7 the State on a statewide basis; or

8 (B) a statewide legislative or executive en-
9 tity with the authority to suspend, remove, or
10 relieve a local election administrator.

11 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
12 tion shall be construed to grant any additional authority
13 to remove a local elections administrator beyond any au-
14 thority provided under the law of the State.

15 **SEC. 3. PROTECTIONS FOR VOTERS ON ELECTION DAY.**

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

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

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

23 **“(1) REQUIREMENTS FOR CHALLENGES.—No**
24 **person, other than a State or local election official,**
25 **shall submit a formal challenge to an individual’s eli-**

1 gibility to register to vote in an election for Federal
2 office or to vote in an election for Federal office un-
3 less that challenge is supported by personal knowl-
4 edge with respect to each individual challenged re-
5 garding the grounds for ineligibility which is—

6 “(A) documented in writing; and

7 “(B) subject to an oath or attestation
8 under penalty of perjury that the challenger has
9 a good faith factual basis to believe that the in-
10 dividual who is the subject of the challenge is
11 ineligible to register to vote or vote in that elec-
12 tion, except a challenge that is based on the
13 race, color, ethnicity, national origin, or mem-
14 bership in a language minority group (as de-
15 fined in section 14 of the Voting Rights Act of
16 1965 (52 U.S.C. 10310)) of the individual who
17 is the subject of the challenge may not be con-
18 sidered to have a good faith factual basis for
19 purposes of this paragraph.

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

23 “(A) to challenge an individual’s eligibility
24 to vote in an election for Federal office on the

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

3 “(B) to challenge an individual’s eligibility
4 to register to vote in an election for Federal of-
5 fice or to vote in an election for Federal office
6 less than 10 days before the election unless the
7 individual registered to vote less than 20 days
8 before the election.

9 “(b) EFFECTIVE DATE.—This section shall apply
10 with respect to elections for Federal office occurring on
11 and after January 1, 2024.”.

12 (b) CONFORMING AMENDMENT RELATING TO EN-
13 FORCEMENT.—Section 401 of such Act (52 U.S.C. 21111)
14 is amended by striking “and 303” and inserting “303, and
15 303A”.

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

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

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