H.R. 1'S IMPACTS ON ELECTION SAFEGUARDS AND VOTING PRACTICES

American democracy is suffering from a credibility crisis. The 2020 election was marred by confusion, haphazard voting changes, and undemocratic efforts to use courts to weaken voting safeguards and skew the rules for partisan advantage. Today, millions harbor doubts about the legitimacy of future elections—doubts which threaten to harden into apathy and disengagement, and drive further discord.[1]

Restoring public trust in elections should be top of mind for lawmakers and public officials. Legitimate elections depend on voting laws that balance two competing interests, access and integrity. Most voters understand this, and by wide margins want election reforms that bolster safeguards and preserve public confidence, rather than eliminate safeguards to make voting "easier."

Progressive officials, meanwhile, are charging in the opposite direction. Earlier this year, the U.S. House of Representatives passed H.R. 1, the "For the People Act," and now the Senate is considering its version of the bill. The legislation constitutes an unprecedented attempt by the federal government to rewrite election laws in all 50 states.[2] The policies contained in its 800 pages would violate the principles of federalism, weaken election security laws, force states to make sweeping changes to elections, and expose the voting process to unnecessary risks of fraud, chaos, and litigation.

THE IMPACT ON ELECTION SAFEGUARDS

States across the country have put in place a variety of safeguards designed to verify voter identity, protect the integrity of voted ballots, and assure the public of the legitimacy of election results. H.R. 1 would override many of them, including:

- **Banning Voter ID:** 36 states have adopted a voter identification requirement.[3] H.R. 1 prohibits states from applying these laws.
- **Mandating Legal Vote Trafficking:** 24 states either limit or ban operatives, campaigns, candidates, and activists from interacting with voters as they cast an absentee ballot or taking unsupervised possession of their voted ballots. H.R. 1 would remove these restrictions.
- **Weakening Absentee Voter Verifications:** 12 states require that absentee ballots be signed by a witness, or that voters comply with an ID requirement when they vote absentee. Both practices are prohibited by the bill.[4]
- **Voter List Maintenance:** H.R. 1 adds additional hurdles to state efforts to keep voter rolls accurate, hindering cleanup efforts and allowing records to become inflated with outdated registrations.

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1 Jason Snead, *Memo: Injecting Reality into the Election Reform Debate* (Mar. 21, 2021), https://www.honestelections.org/wp-content/uploads/2021/03/Memo-on-Voters-and-Elections-1.pdf.

2 Many of the provisions in H.R. 1 are constitutionally dubious, and may be struck down in the courts. Nevertheless, this paper focuses on the policy implications of the bill as currently written, and assumes for the sake of analysis that it is fully enforced.

3 *Voter Identification Requirements | Voter ID Laws*, NCSL (Aug. 25, 2020), https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx.

4 *How States Verify Voted Absentee Ballots*, NCSL (Apr. 17, 2020), https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx.

These policies are the basic prophylactics that help to detect and deter election fraud. Ballot trafficking, for instance, was used in an attempt to fix a 2018 North Carolina congressional election and a 2020 municipal election in Paterson, NJ.[5] It is so prone to abuse that a bipartisan election reform commission co-chaired by former President Jimmy Carter recommended it be outlawed.[6]

EFFECTING ELECTION INTEGRITY PROTECTIONS IN "RED" AND "BLUE" STATES

Proponents of H.R. 1 nevertheless argue that the law is a necessary reaction to discriminatory "voter suppression" by states with Republican-led governments. Voter identification laws, vote trafficking bans, absentee ballot safeguards, restriction on absentee voting, and voter registration deadlines are all held up as examples of extreme conservative policies intended to make it "hard" to vote.

In reality, these policies are broadly popular. In a recent survey of registered voters conducted by HEP Action, 77% backed requiring a photo ID to vote. Black and Hispanic voters also back the policy by 42 and 62 points, respectively.[7] Moreover, 66% of voters want to see an ID requirement applied to absentee ballots, while only 11% back legal vote trafficking.

Moreover, they are also in force in a number of "blue" states—those with Democratic governors or legislatures:

- Connecticut, Delaware, Hawaii, Rhode Island, Virginia, and Washington all have voter ID laws that would be overturned by H.R. 1.[8]
- Vote trafficking is restricted in a number of "blue" states. New Jersey limits individuals to collecting three ballots per election.[9] Incidentally, this limitation was instrumental in quickly identifying and stopping an attempt to steal a 2020 municipal election in Paterson, N.J., after hundreds of ballots were found illegally bundled together.[10] New Mexico limits ballot collection to family and caregivers.[11]
- Connecticut and New York do not regularly offer no-excuse absentee voting, and Delaware will only offer it for the first time beginning in 2022.[12]
- Delaware offers neither automatic nor same-day voter registration.[13] New Jersey, New York, Rhode Island, and Virginia also do not allow same-day registration.

SPOTLIGHT STATE

ARIZONA

- Arizona's voter ID law would be effectively canceled.[1]
- Arizona would be forced to allow unrestricted vote trafficking. Right now, Arizona only allows family or household members, or caregivers, to return ballots.[2]
- Arizona would be required to count ballots that are 10 days late. State law says they must arrive by 7pm on election day.[3]
- Arizona cuts off voter registration at 29 days, but would be required to adopt automatic and same-day voter registration.[4]

1 A.R.S. § 16-579(A).
2 A.R.S. § 16-1005.
3 A.R.S. § 16-547.
4 A.R.S. § 16-120.

5 Jason Snead and Hans von Spakovsky, *North Carolina Election Fraud Should Be a Wake-Up Call for the Left*, Daily Signal, https://www.heritage.org/election-integrity/commentary/north-carolina-election-fraud-should-be-wake-call-the-left; Joe Malinconico, *Paterson Voter Fraud Charges Expand in New Indictments from NJ Attorney General*, NorthJersey.com (Mar. 5, 2021), https://www.northjersey.com/story/news/paterson-press/2021/03/05/2020-election-voter-fraud-new-charges-paterson-nj-attorney-general/4577142001/

6 *Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform*, American University, Sept. 2005, at 46.

7 Snead, *supra* note 1, at 2.

8 NCSL, *supra* note 2.

9 N.J. Stat Ann. § 19:63-16.

10 Joe Malinconico, *Paterson Voter Fraud Charges Expand in New Indictments from NJ Attorney General*, NorthJersey.com (Mar. 5, 2021), https://www.northjersey.com/story/news/paterson-press/2021/03/05/2020-election-voter-fraud-new-charges-paterson-nj-attorney-general/4577142001/.

11 NM Stat § 1-6-10.1.

12 **States with No-Excuse Absentee Voting**, NCSL (May 1, 2020), https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx.

13 *Same Day Voter Registration*, NCSL (Oct. 6, 2020), https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx; *Automatic Voter Registration*, NCSL (Feb. 8, 2021), https://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx.

RESHAPING ELECTIONS

H.R. 1's expansive scope puts it in direct conflict with countless state election laws. States would be compelled to retool major aspects of election administration, and do it within months. H.R. 1's deadlines vary, but generally require that states have their new election procedures in place by the 2022 election.

To meet that obligation, all of the following—and much more—must take place within months

- 14 states will need to develop policies, procedures, and logistics to allow no-excuse absentee voting.[14] However, even in the 36 states that do offer no-excuse absentee or all-mail voting, officials would need to conform their practices to H.R. 1's myriad commands. These range from major undertakings in their own right—the requirement to establish and automatically enroll voters in a permanent absentee.
- 6 states will need to develop early in-person voting, while the remaining 44 would need to assure their systems comply with H.R. 1's specifications for the minimum number of days, polling hours and availability, and other concerns.[15]
- 30 states would be developing Automatic Voter Registration (AVR) systems for the first time.[16] 19 states currently use AVR, but as with absentee balloting, many of these systems deviate from the specific requirements imposed by H.R. 1, necessitating potentially sweeping changes to bring them into compliance. Rushed or implemented with insufficient safeguards, AVR can lead to the registration of ineligible voters.[17]
- 29 states would need to develop same-day voter registration processes.[18] This creates particular challenges for election officials, who lack the time to properly vet registrations to establish eligibility to vote.
- 36 states would have to develop and launch redistricting commissions to handle legislative redistricting.[19]

Each of these is a significant policy shift in its own right. Many states will have to implement several or all of them at once, plus countless other changes called for in the bill. States have historically struggled to meet federally imposed deadlines for even comparatively modest changes.[20] More sweeping reforms require years of planning, training, and development. Washington State, for instance, spent a decade gradually shifting to mail-in voting, followed by

SPOTLIGHT STATE

MONTANA

- Montana's voter ID law would be effectively canceled.[1]
- Montana would be forced to allow unrestricted vote trafficking. Right now, Montana only allows family or household members, acquaintances, or caregivers, to return ballots.[2]
- Montana would be required to count ballots that are 10 days late. State law says they must arrive by close of polls on election day.[3]
- Montana would be required to adopt automatic voter registration.

1 M.C.A. § 13-13-114.
2 M.C.A. § 13-35-703.
3 M.C.A. § 13-13-232.

14 *States with No-Excuse Absentee Voting*, NCSL (May 1, 2020), https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx.
15 *State Laws Governing Early Voting*, NCSL (Oct. 22, 2020), https://www.ncsl.org/research/elections-and-campaigns/early-voting-in-state-elections.aspx.
16 *Automatic Voter Registration*, NCSL (Feb. 8, 2021), https://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx.
17 Jason Snead, *Election Snafus and the DMV: Driving Away Voters?*, Sacramento Bee (Oct. 15, 2018), https://www.heritage.org/election-integrity/commentary/election-snafus-and-the-dmv-driving-away-voters; Mark Maxwell, State Board of Elections Admits Non-U.S. Citizens May Have Voted Illegally in 2018, WCIA (Jan. 20, 2020), https://www.wcia.com/illinois-capitol-news/state-board-of-elections-admits-non-u-s-citizens-may-have-voted-illegally-in-2018/.
18 *Same-Day Voter Registration*, NCSL (Oct. 6, 2020), https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx.
19 *Redistricting Commissions: State Legislative Plans*, NCSL (Mar. 25, 2021), https://www.ncsl.org/research/redistricting/2009-redistricting-commissions-table.aspx.
20 For example, states required years to implement the Help America Vote Act's requirement to implement a computerized statewide voter registration database. The 2002 law gave states an initial deadline of January 1, 2004, with the option for a further two-year extension for good cause. 52 U.S.C. § 21083. 41 states failed to complete the work by the original deadline. *Nine States' Experiences Implementing Federal Requirements for Computerized Statewide Voter Registration Lists*, GAO (Feb. 2006), https://www.gao.gov/new.items/d06247.pdf.

a concerted five-year effort to develop its vote-by-mail system.[21] The odds of success are low, and election officials—including self-described progressives—are voicing serious concerns.[22]

The risk of unintended consequences, however, is high. Elections are complex systems. Even small changes can have significant unintended consequences. A new app intended to expedite the reporting of results at the 2020 Iowa Democratic Caucus failed, and ground the process to a halt.[23] Michigan implemented same-day registration in 2020, but its poll workers were ill-equipped to handle an influx of registrations on top of normal election day operations, resulting in long lines on primary night.[24] Pennsylvania's first election with no-excuse mail-in voting coincided with the COVID-19 pandemic, driving an unanticipated surge in mail balloting which Pennsylvania's officials were unprepared for. Jurisdictions struggled to cope, and Philadelphia required two weeks to fully process ballots after the November election

CONCLUSION

If H.R. 1 is adopted, voters across the nation—and in states across the political spectrum—would see their election systems upended. In their place would come strict mandates from Washington, novel voting systems, impossible deadlines, and the threat of costly lawsuits if and when states fail to implement them. This raises concerns that this bill might not be a recipe for secure, successful elections that inspire confidence in the process. It has the potential to create confusion, chaos, fraud, and litigation.

SPOTLIGHT STATE

WEST VIRGINIA

- West Virginia's voter ID law would be effectively canceled.[1]
- West Virginia would be forced to allow unrestricted vote trafficking. Right now, no one may collect more than two ballots.[2]
- West Virginia would be required to adopt no-excuse absentee voting. Current law requires an excuse.[3]
- West Virginia would be required to count ballots that are 10 days late. State law currently only allows ballots up to five days after election day, if postmarked.[4]
- West Virginia would be required to adopt same-day registration, even though state law cuts off registration 21 days prior to an election.[5]
- Ballot Trafficking: No one may collect more than two ballots.[6]

1 W.Va. Code § 3-1-34.
2 W.Va. Code § 3-3-5.
3 W.Va. Code § 3-3-1.
4 W.Va. Code §§ 3-3-5, § 3-6-9. Ballots may be received if postmarked until canvassing begins, which is set at five days after an election.
5 W.Va. Code § 3-2-6.
6 W.Va. Code § 3-3-5.

The 2020 election cycle was a case study in what can go wrong when elections are hastily tinkered with in an ad hoc, politically motivated fashion. But 2020 also was marked by an unprecedented global pandemic; no such exigency will likely exist in 2022. Nevertheless, the proponents of H.R. 1 are proposing to permanently reshape elections in ways that weaken voting safeguards, put public trust in elections at risk, and ignore the desires of mainstream voters.

21 Lisa Lerer, *Washington*: Where Everyone Votes by Mail, The New York Times (Apr. 15, 2020), https://www.nytimes.com/2020/04/15/us/politics/washington-where-everyone-votes-by-mail.html.
22 Jessica Huseman, *How This Voting Rights Bill Could Turn the Next Election Into a Clusterf*ck*, DailyBeast (Mar. 30, 2021), https://www.thedailybeast.com/how-this-voting-rights-bill-could-turn-the-next-election-into-a-clusterfck.

23 Shane Goldmacher and Nick Corasaniti, *A Systemwide Disaster*': How the Iowa Caucuses Melted Down, New York Times (Feb. 4, 2020), https://www.nytimes.com/2020/02/04/us/politics/what-happened-iowa-caucuses.html.
24 Beth LeBlanc, *Long Lines, Hour-Long Waits Prompt Criticism at Michigan Polls*, Detroit News (Mar. 10, 2020), https://www.detroitnews.com/story/news/politics/2020/03/10/michigan-localities-juggling-rise-same-day-voter- registration/5004002002/.