



Federal Takeover of Elections: 30 New Policy Mandates Required by HR1

House Resolution 1 (HR1), otherwise named “For the People Act of 2019”, is the omnibus election law bill filed in the House of Representatives by its new liberal majority. The legislation is sweeping in nature, overturning the federalism foundation of the electoral process in the United States that has been in place for the past two centuries.¹

The 571-page bill includes over 30 significant new mandates placed on the states from the federal government, not including the dozens of other smaller requirements, policies, and centralized standards placed on the 50 states and over 8,000 local jurisdictions that administer elections in the nation. The far-reaching legislation would reverse the current decentralized nature of elections by preempting state laws across the country and placing the control of election and voting policy within the federal government. The bill takes the first steps to reinstating the Voting Rights Act’s pre-clearance requirements on states, requiring that any change in election law, regulation, or polling places be submitted to the federal government for approval.

The federal government is not designed or equipped to oversee elections in the thousands of communities that administer elections across the country. Yet, if the bill were ever to become law, every state in the nation would be required to significantly alter their means and methods of registration and voting. All states would be required to institute automatic voter registration, same day registration, online voter registration, and reduce the integrity of the registration system by restricting address list maintenance that ensures the accuracy of the voter rolls. All states would be required to implement no-excuse mail voting and two weeks of early voting, and state laws on felons voting in elections would be preempted. The Congress will not investigate and decide for Americans what methods of voting are best and then require them. Instead, the bill simply chooses everything on the menu.

The federal government would also establish new federal security and accuracy standards for voting equipment and voter registration databases and require annual certification in order to receive federal funding. The security of elections will be centralized despite the comments of President Barack Obama who said, “There is no serious person out there who would suggest

¹ For the People Act of 2019, H.R. 1, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-bill/1/text> [hereinafter HR1]. Line and page numbers have been included in some references to assist the reader in finding the provisions.

somehow that you could even rig America's elections, in part because they're so decentralized, and the numbers of votes involved."²

Much of the legislation would be required to be implemented by the 2020 Presidential Election, and the states would certainly need billions of new dollars in appropriations over ten years in order for the new mandates to be properly implemented; otherwise this would be a significant unfunded mandate placed on the states. The legislation provides private rights of action to enforce various sections of the legislation, an act that would light the fuse for a round of voting wars and a litigation green light that would allow any person or third-party group to sue states to enforce the new requirements.

It is remarkable that a bill that fundamentally upends the current electoral infrastructure would be considered the new liberal majority's number one priority in the 116th Congress with over 221 co-sponsors, even more important than addressing health care, immigration, or infrastructure spending. Voting and registration have never been easier, and the real pressing need in elections is upgrading state voting equipment and election technology infrastructure across the country. Despite the pressing needs of the nation, HR1 will likely be the first significant vote of the newly installed majority in the House of Representatives above all other legislation; yet it is doubtful that many of the members of Congress have read the bill or understand its ramifications.

Despite these facts, according to the new Speaker of the House, the omnibus legislation impacting elections, redistricting, campaign finance, and ethics may soon be voted out of committee and a final vote scheduled on the House floor.³ There is an urgency for the House of Representatives to vote on the bill despite the lack of committee hearings, congressional debate, or public discussion on the efficacy of the legislation. The legislation was drafted without the input and insight of state and local election officials who are responsible for administering elections in this country. It is wholly a political document that will be used for partisan purposes and not a serious attempt to gain bipartisan support for a way to address the real challenges to our election infrastructure.

While the legislation also significantly impacts the free speech rights of Americans and campaign finance law, this paper will only address some of the election administration, voting, and redistricting provisions in the proposed bill. This paper will analyze the preemption of state laws and the numerous new federal mandates in election administration that will dramatically and negatively impact the voting process in the states.

² Barack Obama, Speech on Oct. 18, 2016, https://www.youtube.com/watch?v=EbApoas_GYg.

³ Nancy Pelosi and Jim McGovern, *House Democrats will restore transparency, ethics, unity*, USA TODAY, Jan. 3, 2019, <https://www.usatoday.com/story/opinion/2019/01/03/nancy-pelosi-jim-mcgovern-rules-package-house-democrats-congress-column/2462284002/>.

Federal Mandate #1: Requires All States to Implement Online Voter Registration⁴

HR1 would require all states to uniformly implement online voter registration (OVR) with new regulations under the National Voter Registration Act (NVRA), watering down existing protections of state voter registration systems.⁵ At least 37 states already have an online voter registration system in place.⁶ Despite the successful implementation of OVR among the states, the legislation is really an unnecessary attempt to federally regulate the process, decreasing the security and accuracy of online voter registration systems currently implemented in the majority of states. The legislation would preempt state law and force states to authorize non-verified signatures and therefore adopt a non-secure form of OVR that reduces the verification of voters in the registration process.⁷

The bill would not require applicants to provide necessary identifying information such as Social Security number and driver's license information or even their signature at the time of registration. In most of the current systems, if the voter did not enter a driver's license number to the OVR system, the state Department of Motor Vehicles (DMV) would not be able to match the application with the DMV record, verify the identity, and electronically provide the registrant's signature. The bill would allow voters to provide a signature electronically without any matching or verification through the DMV database, thus reducing the integrity of the process. As a result, the bill would dramatically weaken state OVR security and accuracy protections that currently require the matching and verification of the registrant through the DMV database.

Federal Mandate #2: Requires States to Accept the Federal Registration Form Electronically; Preempts State Registration Laws on Signature⁸

HR1 preempts state registration laws and requires that states to accept the federal registration form electronically and create a system where the federal form of registration is accepted online. This would be a technical and very expensive feature that would need to be added to existing voter registration systems in the states, and many states would be required to set up dual voter

⁴ HR1, *supra* note 1, §§ 1001-05.

⁵ Instead of providing uniform protections, verification, and security to online registration, HR1 waters down the security and integrity of existing online voter registration systems in the states. HR1 assumes one size fits all and requires that all states expose their systems to registration fraud and inaccuracies due to a lack of verification.

⁶ National Conference of State Legislatures, "Online Voter Registration," Oct. 10, 2018, <http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx>; U.S. Election Assistance Commission, "Register and Vote in Your State: The 2018 Federal Elections: Key Dates and Information: Online Voter Registration," Mar. 1, 2018, <https://www.eac.gov/voters/register-and-vote-in-your-state/#tabs-2>. Oklahoma has passed online voter registration but not implemented it.

⁷ By eliminating the requirement that online registrations be accepted only with verification of identity and the signature provided by the applicant with the Department of Motor Vehicles (DMV), the Democrats are ignoring the bipartisan recommendations of their own Presidential Commission on Election Administration (PCEA) created by executive order of President Obama. Presidential Commission on Election Administration, *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*, Jan. 2014, at 23-27, 30-31. Instead, the legislation would have the federal government micromanaging the registration process and mandating a notification process with all registrations or updated changes to registrations.

⁸ HR1, *supra* note 1, § 1001(a).

registration systems to comply. Many states currently require the use of state voter registration forms by statute and this provision could provide a great deal of confusion to voters. The federal form would need to be modifiable to include more state-specific information to ensure the voter experience is not one of frustration.

The bill would also remove state registration signature laws that require an affirmation of eligibility from the voter at the time of registration. The voter is currently required to fill out the necessary information to register to vote and affirm, by signature under oath, that the information is true and correct and the voter to the best of his knowledge is eligible to vote. Under the bill, new registrants would not be required to provide a signature at the time of registration. Instead, they would only have to provide their signature at the time the voter requests an absentee mail ballot or when they check-in to vote at a polling place. The change of the registration signature requirements in the states would unnecessarily shift a great deal of responsibility to poll workers who are less trained and experienced in these duties. The additional federal procedure would add one more duty requirement on poll workers and one more factor that may create congestion at the polling place.

HR1 would also preempt the current requirements of state registration forms and require a modification of registration forms, including the federal form, to allow for the electronic mail address of the voter to be used for notification to the voter. While some states currently capture the email if the registrant voluntarily provides it, other states would now be required to modify their voter registration form to allow voters to provide their email address, and choose to receive all notifications and information sent by election authorities.

If provided and the voter requests notification by email, states would be required to send notification of the location and hours of polling places and any identification requirements to that email prior to elections. If voter notification *were required* to be sent via electronic mail upon request, this change would greatly limit the ability of local election officials to conduct registration verification and list maintenance. Notification by mail after registration ensures that voter residential addresses are correct and that the voter is assigned to the correct precinct. The lack of mail notification to a physical address would negatively impact list maintenance and address verification conducted for first time voters, making it easier to create fraudulent registrations.

Federal Mandate #3: States Required to Implement Automatic Voter Registration⁹

As of December 2018, just 16 states and the District of Columbia have authorized automatic voter registration (AVR).¹⁰ Even though a minority of states have implemented automatic voter registration, HR1 would require that all states enact a system in which the Department of Motor

⁹ HR1, *supra* note 1, §§ 1011-21.

¹⁰ National Conference of State Legislatures, “Automatic Voter Registration,” Dec. 3, 2018, <http://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx>.

Vehicles (DMV) and other “contributing agencies”¹¹ transfer customer records to the state election agency in order to register individuals automatically.

Of course, not all customers to the DMV or state agencies are citizens or eligible to vote. AVR places a great deal of additional responsibility on state agencies, whose primary purpose is not voter registration, to ensure that the customers that are registered to vote are citizens and otherwise eligible to vote. In the past, DMVs have not been able to correctly verify the citizenship of customers prior to placing them on the voter rolls.¹² State DMVs have also had difficulty in complying with the existing measures of the NVRA and the result has been extensive litigation.¹³ HR1 is unclear as to what documentation, if any, would be provided to confirm that the individual is a citizen of the United States before automatically placing them on the voter rolls.

These contributing agencies for AVR would include existing NVRA voter registration agencies and additional agencies within state government that may have interaction with state residents. Additionally, each college, university, or institute of higher education that receives any federal funds must also be treated as a contributing agency in the states for purpose of automatic voter registration.¹⁴ The individuals would be automatically registered to vote and remain on the voter rolls unless the individual opts out of the registration within 30 days after receipt of notice by mail.¹⁵ The bill would also mandate a number of federal government agencies transmit customer information to be automatically registered, including the Social Security Administration, the Department of Veteran Affairs, the Defense Manpower Data Center of the Department of

¹¹ Contributing agencies are defined as agencies that provide voter registration services, agencies that provide services under federal law, state firearms entities, state secondary education offices, and state prison facilities. In addition, the following federal agencies must be treated as a contributing agency with respect to individuals who are residents of that state: Social Security Administration, the Department of Veterans Affairs, the Defense Manpower Data Center of the Department of Defense, the Employee and Training Administration of the Department of Labor, and the Center for Medicare & Medicaid Services of the Department of Health and Human Services; The Bureau of Citizenship and Immigration Services, but only with respect to individuals who have completed the naturalization process; any other agency of the federal government which the state designates as a contributing agency. HR1, *supra* note 1, § 1013(e).

¹² Recent examples in California, *e.g.* Bryan Anderson, *Did non-citizens vote last year? California officials still can't say*, SACRAMENTO BEE, Jan. 4, 2019, <https://www.sacbee.com/news/politics-government/capitol-alert/article223886630.html>; Texas, *e.g.* 58,000 non-citizens voted in Texas, state official says, KWTX-TV NEWS 10, Jan. 25, 2019, <https://www.kwtx.com/content/news/58000-non-citizens-voted-in-Texas-state-official-says-504881122.html>; and Pennsylvania, *e.g.* Julian Routh, *State review of voter registrations narrows list of potentially ineligible voters to 8,698*, PHILADELPHIA INQUIRER, July 28, 2018, <http://www.philly.com/philly/news/voter-system-glitch-pennsylvania-non-citizens-registration-motor-voter-20180727.html>.

¹³ *See, e.g.*, Settlement Agreement, *League of Women Voters of California v. Kelly*, No. 3:17-cv-02665-LB (Jan. 10, 2018), <https://www.aclunc.org/docs/20180110-Settlement.pdf>; Complaint, *League of Women Voters of Missouri v. Ashcroft*, No. 2:18-cv-04073 (Apr. 17, 2018), https://advancementproject.org/wp-content/uploads/2018/04/2018_04_17_MO-NVRA-Complaint-w-Exhibits.pdf.

¹⁴ Required if the state and the head of the agency determine that the agency collects information sufficient to carry out the responsibilities of a contributing agency. HR1, *supra* note 1, § 1013(e)(3).

¹⁵ HR1, *supra* note 1, § 1013(b)(3) (page 41, line 22) states that the contributing agency would have 30 days to transmit information to the appropriate State election official, unless during such 30-day period the individual declined to be registered to vote.

Defense, and Medicare and Medicaid of the Department of Health and Human Services, among others.¹⁶

The bill would also prohibit states from treating 16- and 17-year-olds as ineligible to vote for the purposes of automatically being registered to vote under HR1. The implications of this provision are unclear, but at a minimum, it opens the door to 16- and 17-year-olds voting in federal elections.

There is still a great deal of debate over the wisdom of AVR. From a political perspective, the concept of automatic voter registration was still in its infancy in Oregon when it was endorsed by Presidential nominee Hillary Clinton and promptly used as a political weapon.¹⁷ Election administration reforms have the best chance of non-partisan adoption when there has been a great deal of testing, research and data collected from the states to determine the efficacy of the reform and whether there is the opportunity for bipartisan support.

From a policy perspective, individuals have the right under the First Amendment to choose not to vote. Similarly, Americans arguably have the right not to register to vote or participate in the electoral process in any way, and many do not, as shown by surveys and turnout data.¹⁸ For decades, universal registration and full participation in voting has long been utopia in the minds of many. However, the American people often do not make registration and voting enough of a priority to vote in the busy world of work deadlines, needed paychecks, and ultimately flawed candidates and political parties. Sometimes when there is a choice, the voter sits on the bench. Military residents often do not wish to register to vote in a state because they are considered residents of another state and do not wish to register to vote. Occasionally, a citizen may have a religious reason for not wishing to register to vote or vote.

While it is unfortunate that a significant percentage of Americans decide to not participate in the electoral process, should state and federal governments be automatically placing all individuals on the voter rolls for simply interacting for government services? With automatic or mandatory registration, are we not just one stop away from mandatory voting? Individuals who do not wish to register to vote should not have to wait for a postcard notification in the mail within 30 days to provide a written “opt out” of the registration process. Nor should individuals also have to wait weeks to choose a political party in order to vote in primary elections.

We currently have a registration process that is simultaneous to the interaction with state agencies, allowing the voter to choose on the spot to register to vote, sign and affirm their eligibility, and choose a political party, if applicable. It is important for registrants to be able to

¹⁶ See *supra* note 11.

¹⁷ Janell Ross, *Hillary Clinton declares war on Voter ID*, WASHINGTON POST, June 4, 2015, <https://www.washingtonpost.com/news/the-fix/wp/2015/06/04/in-houston-an-adamant-hillary-clinton-declares-war-on-voter-id/>.

¹⁸ U.S. Census Bureau, Voting and Registration in the Election of November 2008 14 (July 2012); U.S. Census Bureau, Voting and Registration in the Election of November 2010—Detailed Tables Table 10 (Oct. 2011).

simultaneously choose a political party because, in many states, affiliation with a political party is required to vote in a primary election, and the registration by party is considered itself to be political expression.

Lastly, there is concern over the impact of AVR on the accuracy of the voter rolls. Inevitably with AVR, individuals who are not eligible to vote would erroneously be placed on to the voter rolls – individuals may be non-citizens, convicted of a felony, temporarily residing in the state, or not wish to register or vote in the state. States already have difficulty with duplicate registrations and maintaining the accuracy of the voter rolls.

There is support on both sides of the aisle for the modernization and automation of the voter registration process to improve the experience for voters.¹⁹ However, with all the current options available in registration and voting such as OVR and NVRA, the opponents of AVR believe the choice of voter registration should rest with the citizen for the entire process.

Federal Mandate #4: Preemption of State Registration Deadlines; Requires “Same Day Registration” in States During Early Voting/Election Day²⁰

HR1 would preempt state voter registration deadlines. Many states currently have registration and registration update deadlines 30 days or a few weeks prior to Election Day. Under the bill, if voters submit information that affects the voter’s eligibility to vote in an election for Federal office, that information must be processed if the voter updates the information not later than seven days before the date of the election. As a result, the effective close of registration would be seven days prior to the election.²¹

Only about 18 states, plus the District of Columbia, currently allow some form of same day registration.²² Despite a minority of states adopting “same day registration”, HR1 would preempt state law and require that all states implement the concept for the 2020 election and all future federal elections. Same day registration would be mandated for “any day” of the early voting period and on Election Day. Many states would be required to implement an expensive statewide voter registration system to verify same day registrations and determine if a voter is eligible to vote on the day of the election.

The mandate of same day registration would require new federal funding and additional resources to states and localities to provide the necessary interconnectivity between the statewide

¹⁹ See, e.g., PCEA Report, *supra* note 7, at 22-31.

²⁰ HR1, *supra* note 1, § 1031.

²¹ *Id.* § 1002(a)(1) (page 27, line 19).

²² As of January 2019, 19 states plus the District of Columbia offer or have recently approved some form of same day registration. For example, North Carolina and Maryland only allow it during the early voting period, but during the 2018 November election, Maryland voters approved an extension of same day registration to Election Day and Michigan voters approved same day registration. National Conference of State Legislatures, “Same Day Voter Registration,” Jan. 25, 2019 <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>; “Same-day voter registration,” May 18, 2018, https://ballotpedia.org/Same-day_voter_registration.

registration systems and local polling places throughout the state to ensure that election jurisdictions are able to instantly verify the registration information of same day registration applicants and prevent individuals from voting twice. This federal mandate would require new and significant federal appropriations, initial and ongoing, to provide the electoral infrastructure necessary to implement same day registration across the country.

The requirements of the bill regarding registration portability and correction would require the voters record to be “corrected” if it contains any incorrect information relating to the individual, including address, name, and party affiliation. After the correction is made, the voter is required to be provided a regular ballot, not a provisional ballot. To meet this requirement of a regular ballot, every polling place would have to have every ballot style available to provide to the voter. The bill would essentially create open primaries nationwide and make every polling place a vote center.²³

Same day registration and voting often causes congestion and unnecessary lines of voters that form when registrants attempt to provide the additional documentation required when attempting to vote. Same day registration does not provide election officials an opportunity to confirm the registration information or residential address provided by the voter. In a normal registration, the election offices have the ability to send a mailer to the residential address to confirm the legitimacy of the address and place the voter in the correct precinct.

Same day registrations often result in erroneous addresses and invalid registrations. For example, a Wisconsin study of the 2016 election found that in the City of Milwaukee there were 44,797 same-day registrations, and 2,563 verification postcards were returned as undeliverable, meaning nearly six percent of all same-day registrants’ addresses registered and voted using an address that was incorrect.²⁴ Statewide, 10,461 out of 368,392 verification postcards mailed to people who registered to vote on Election Day were returned as undeliverable.²⁵

Federal Mandate #5: Requires 15 Days of Early Voting in All States; Regulation of Early Voting Hours and Locations of Polling Sites²⁶

HR1 establishes a new federal mandate in voting, requiring that all states offer 15 days of early voting by 2020 in a manner identical to the form of Election Day voting.²⁷ Currently, 39 states

²³ HR1, *supra* note 1, § 1016 (page 57, line 21).

²⁴ Chris Rochester, “Elections Data Reveals What Wisconsin Voters Should Be Concerned About, and It’s Not Voter ID,” MacIver Institute, July 18, 2018, <http://www.maciverinstitute.com/2018/07/elections-data-reveals-what-wisconsin-voters-should-be-concerned-about-and-its-not-voter-id/>.

²⁵ *Id.*

²⁶ HR1, *supra* note 1, § 1611.

²⁷ HR1 would amend the Help America Vote Act (HAVA) to require states to offer early voting in same manner as Election Day voting. States are required to establish uniform hours beginning fifteen days day prior to the election through Election Day and to identify polling locations near public transportation routes. HR1 directs the Election Assistance Commission (EAC) to establish standards for early voting, including nondiscriminatory geographic

have adopted some form of early voting.²⁸ Early voting is a convenient form of voting for citizens, but it has not increased turnout in elections.²⁹ Not only does the proposed HR1 require early voting uniformly across the nation, but it attempts to micromanage the implementation by strictly regulating the days and hours of early voting, requiring at least four hours of early voting on each day of voting in every jurisdiction. The early voting hours must be uniform each day and may only be less than four hours on Sunday.

The bill also seeks to regulate the placement of early voting sites by providing standards for the geographic location of early voting polling sites. For example, to the greatest extent practicable, each early voting polling place in each jurisdiction shall be located within walking distance of a stop on a public transportation route. The legislation also directs the Election Assistance Commission (EAC) to establish federal standards for early voting, providing a blanket requirement that there must be no “nondiscriminatory geographic placement of polling places.”³⁰ The standards would only allow states to deviate from the requirements in the case of natural disasters, terrorist attacks, or a change in voter turnout.

The bill provides no break between early voting and Election Day, creating an administrative nightmare for local election officials. For example, many of the jurisdiction’s senior and most experienced poll workers who serve during early voting inevitably require a day or two of recuperation before serving long hours on Election Day. The voting equipment and electronic poll books that are used in the early voting period are often reused and updated for Election Day, and election officials will take the day or evening before the election to set up the voting equipment for the next day. The current language of the bill provides no break after the early voting period prior to Election Day.

Federal Mandate #6: New Severe Restrictions on State Voter List Maintenance Activities³¹

HR1 attempts to overturn the recent ruling in the Supreme Court decision in the case of *Husted v. A. Philip Randolph Institute* by amending the NVRA to prohibit states from taking the first steps to removing a voter from a state registration list unless the voter responds directly to a mailing. The legislation directs states that they may not consider the voter’s failure to vote in an election, failure to respond to notice, or the failure to take any other action with respect to election into

placement of polling locations. States may deviate from the standards if unforeseen circumstances, such as natural disasters, occur.

²⁸ “In 39 states (including 3 that mail ballots to all voters) and the District of Columbia, any qualified voter may cast a ballot in person during a designated period prior to Election Day. No excuse or justification is required.” National Conference of State Legislatures, “Absentee and Early Voting,” Jan. 25, 2019, <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

²⁹ Instead of increasing voter turnout, early voting has been associated with lower turnout. See Rich Morin, *Study: Early voting associated with lower turnout*, PEW RESEARCH CENTER: FACTTANK: NEWS IN THE NUMBERS, Sept. 23, 2013, <http://www.pewresearch.org/fact-tank/2013/09/23/study-early-voting-associated-with-lower-turnout/>.

³⁰ Public transportation routes are typically found in the most densely populated areas, where land is scarce and polling places are really hard to find. There are few public buildings, schools, or other facilities that can serve as a polling place.

³¹ HR1, *supra* note 1, §§ 1041, 1201-02.

account when initiating the list maintenance process. The bill would undermine current list maintenance activities based on election mailings to voters within a jurisdiction and require that the voter respond in writing to mailings prior to taking any action.

The Supreme Court in the case of *Husted v. Randolph Institute* noted the state interest in “keep[ing] the State’s voting lists up to date by removing the names of those who have moved out of the district where they are registered” and the fact that as many as 40% of individuals who move fail to inform election officials or the United States Postal Service (USPS).³² As a result of the list maintenance gap, there is a general lack of accuracy and integrity in the voter registration rolls that multiple bipartisan commissions have tried to address.

The existing list maintenance gap was an underlying reason why the Court upheld the Ohio supplemental mailing process to voters who had failed to vote, respond to mailings, or engage in activity for four years, all conditions prior to removal. HR1 would enlarge the existing list maintenance gap by prohibiting local election officials from using undeliverable mailings as the basis for list maintenance activity even if the original impetus of the mailing was the receipt of notice of moving information from the voter via the USPS.

The bill mischaracterizes mailings from election officials to voters as “voter caging” when it is standard list maintenance activity required by the NVRA to maintain the accuracy of the voter rolls. For example, local election officials will periodically send “non-forwardable” mailings with voting information or even ballots that may come back undeliverable, due to the move of the voter. Local and state officials often incorporate these important mailings into list maintenance activities if there is some indication that the voter has moved.

The legislation would require that state and local election officials take additional steps when comparing voter registration lists to other states in determining whether the individual is ineligible to vote because he or she has moved and registered in another state. Local election officials will often interact with each other directly when a person moves from one jurisdiction or state to another state or locality. The overly broad language of the bill would essentially prohibit the transmission of voter registration lists from one election official to another locality to update its voter records, thus dramatically restricting the current ability of localities to interact with each other to maintain the integrity of the voter rolls.

For example, HR1 would restrict current list maintenance activities of election officials at the state and local level by not allowing the comparison of any registration lists with match lists without the signature of the voter. The bill unnecessarily expands the definition of what is a “voter caging document” to official election mailings sent by local or state election officials and, as a result, prohibits legitimate address list maintenance conducted by state and local election officials in the daily performance of their duties. The legislation prohibits any local list maintenance based on the matching of voter registration lists to lists of ineligible voters by virtue

³² *Husted v. A. Philip Randolph Institute*, 584 U.S. ___, 138 S.Ct. 1833, 1838-40 (2018).

of death, conviction, change of address, or other reason unless one of the pieces of information matched includes a signature, photograph, or unique identifying number ensuring that the information from each source refers to the same individual.

These changes, if passed, would dramatically impact the ability of states to maintain the accuracy and integrity of the voter rolls, which reduces the potential for fraud.³³ The legislation does not add new tools to assist local election officials in list maintenance; instead it takes away the few options available. The legislation seeks to further micromanage an already complicated list maintenance process by prohibiting officials from removing ineligible registrants from inaccurate voter registration lists unless the voter directly responds to the mailings.³⁴ The bill would also reduce the amount of time available to election officials to conduct list maintenance by requiring that list maintenance be conducted outside a six-month window prior to an election, instead of the current 90-day window.

Federal Mandate #7: Endorses Restoring Section 5 of the Voting Rights Act to Require Federal Oversight of Elections³⁵

HR1 sets out congressional findings that the Voting Rights Act should restore federal oversight of elections and laws in all states. The Department of Justice's Voting Section would have the authority to pre-clear the voting laws and procedures enacted by covered states, allowing bureaucrats in Washington to veto the laws passed by the people's elected representatives. The bill sets out congressional findings relative to discrimination of Native American voting rights, issues of voting in the U.S. territories, and District of Columbia statehood.

Federal Mandate #8: Requires States to Provide an Automated Telephone Based System to Register to Vote³⁶

In addition to the nationwide requirement of online registration, each state would be required to provide an automated telephone-based system that allows voters to register by phone, as long as the phone is not connected to the Internet. This concept raises a number of issues and concerns, including how the identity of the caller would be verified and how the signature of the caller registrant would be captured.

³³ Both recent bipartisan presidential commissions on election issues have strongly recommended that states maintain accurate voter registration lists to prevent fraud, to help election officials better and more efficiently administer elections, and to improve the voter's experience. See Report of the PCEA, *supra* note 7, at 22-31; Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform, Sept. 2005, at 22-23.

³⁴ HR1 would amend the NVRA to prohibit individuals from being removed by a state from the registration list through interstate cross-check action unless they receive full name, last four digits of Social Security number, and date of birth. HR1, *supra* note 1, § 1041.

³⁵ HR1, *supra* note 1, §§ 2001, 2101, 2201.

³⁶ *Id.* § 1001(a), § 6A(g) (page 22, line 12).

Federal Mandate #9: New Federal Standards for State Registration Databases and Mandatory Annual Certification³⁷

HR1 directs the National Institute for Standards and Technology (NIST) to develop new privacy, accuracy, and security standards for the state voter registration databases. The chief election official of the state is then required to adopt and publish the guidelines online. Each chief election official must file an annual certification affirming that the state is in compliance with federal standards, and a failure to certify compliance would result in the state not receiving additional federal payments or grants.

Federal Mandate #10: Preempts State Laws on “Challenges” of Ineligible Voters³⁸

HR 1 preempts existing state laws and prohibits the challenge of any ineligible voter by persons other than a state or local election official unless sworn statement requirements are met. Under the bill, challenges of ineligible voters must be in writing, sworn to under oath and penalty of perjury, and supported by the good faith belief and personal knowledge of the affiant that there are grounds of ineligibility of the individual to register to vote.

A review of the various state laws shows the diverse ways that state legislatures have accommodated poll watching and the legal challenge of ineligible voters by proscribed individuals.³⁹ Many of these state laws specifically authorize any person, voter, poll watcher, poll worker, or other official to legally challenge voters. It is important to provide poll workers, election judges, and others in the polling place the ability to challenge a potentially ineligible voter before the voter casts a regular ballot that cannot be investigated after the fact. The administrative burden created by HR1 regulating the challenges of ineligible voters is not designed to update the process to the 21st Century, but rather to discourage the process altogether.

Federal Mandate #11: New Voter Registration Reporting Requirements by States⁴⁰

HR 1 adds new reporting requirements on states and localities across the nation. The legislation would require new annual reporting on voter registration activities to the federal government beyond the existing requirements under the NVRA and Help America Vote Act (HAVA). The states would be required to submit annual reports on the number of individuals registered with automatic voter registration, the number of application forms completed by individuals that were transmitted by motor vehicle authorities and other agencies to the chief election officials of the states, the number of voter registration application forms that were accepted and denied by

³⁷ *Id.* § 1015(e)(3)-(5) (page 53, line 17).

³⁸ *Id.* § 1201(a), § 613(c) (page 94, line 11).

³⁹ National Association of Secretaries of State, “State Laws on Authorized Poll Watchers & Voter Challenges,” Sept. 2018, <https://www.nass.org/resources/2018-election-information/Poll-Watchers-Voter-Challenges>.

⁴⁰ *Id.* § 1051.

source of registration, the number of change address forms, and the number of registrations corrected as a result.

The reporting to the EAC also requires the number of individuals on the statewide voter registration list, broken down by race and ethnicity. This in addition to NVRA requirements that already exist. This would be a significant and controversial new mandate as many states do not currently collect registration information by race or ethnicity due to statutory or state constitutional restrictions. If this federal legislation were adopted, those states that do not currently collect race data would be required to update the voter registration forms in their state to request the race or ethnicity of the registrant, modify the voter registration databases and the databases of NVRA agencies, and provide a new system to provide that information to the federal government.

Federal Mandate #12: New 45-Day Deadline to Mail Ballots to Voters with Disabilities⁴¹

HR1 also includes a dramatic expansion of absentee mail voting by requiring that mail ballots be sent to voters with disabilities 45 days before any election by a transmission method of choice, a requirement similar to the significant federal mandates of the MOVE Act passed in 2009.⁴² The bill would allow voters with disabilities to receive blank ballots by mail or electronically, i.e. email, facsimile, or other electronic means.⁴³ Each state must also designate a single office specifically responsible for providing information to voters with disabilities on registration opportunities and accessible absentee voting procedures.

Current law requires that localities have an accessible voting system in each polling place that would allow voters with disabilities to cast ballots in a private and independent manner. HR1 would require states to ensure absentee voting from home is accessible to individuals with a wide range of disabilities by allowing and facilitating the use of assistive technologies available at the residence of the voter.⁴⁴ The legislation would allow pilot projects funded by \$30,000,000 in federal grants that permit individuals with a disability to use their telephone to cast ballots electronically from their own residence, but only if the telephone used is not connected to the Internet.⁴⁵

⁴¹ *Id.* §§ 1101-03.

⁴² Military and Overseas Voter Empowerment (MOVE) Act, 42 U.S.C. §§ 1973ff-1, *et seq.* (2009).

⁴³ In addition, HR1 would amend HAVA to require states to allow individuals with disabilities to register and vote an absentee ballot. States would be required to accept and process registrations and absentee ballot applications at least 30 days prior to a federal election and to develop a mechanism to issue and track blank absentee ballots transmitted to individuals within specified timeframe. States may apply to the Attorney General for a hardship waiver if unable to meet requirements for program. HR1, *supra* note 1, §§ 1101-03.

⁴⁴ These provisions would be extremely costly and challenging to implement because the current rules on replicating or duplicating ballots vary from state to state.

⁴⁵ One additional concern is how to know or verify if the phone system was connected to the Internet. It is difficult to obtain a plain old telephone service (POTS) line, and most home phone service currently involves the Internet.

Federal Mandate #13: New Federal Crimes for Deceptive Practices Related to Time, Manner of Elections⁴⁶

HR1 would create new federal crimes prohibiting any person, within 60 days, of an election from communicating or producing election-related information that the person knows to be materially false and with the intent to impede a person from voting. The bill would forbid false statements related to the time, place, or manner of an election, or the qualifications of voter eligibility for an election, including criminal penalties associated with voting, or information regarding a voter's registration status.

The legislation would prohibit interfering with, hindering, or preventing an individual from registering or exercising the right to vote. The penalties for offenses would include up to five years in prison, a \$100,000 fine, and additional enhanced penalties with voter intimidation. The legislation provides a private right of action, including the recovery of attorneys' fees for prevailing parties.⁴⁷

Federal Mandate #14: Requires States Allow Felons to Vote After Release from Prison⁴⁸

HR1 would preempt existing state laws and constitutions regarding the right to vote of felons and mandate when voting rights would be restored to felons. The legislation would only authorize states to prohibit felons from voting in federal elections when the individual was convicted and currently serving a felony sentence at the time of an election. More specifically, only an individual serving a felony sentence in a correctional institution at the time of the election would be prohibited from voting.

There is a private right of action to enforce the law. The bill delineates that if a state violation is not corrected within 20 days in the period of six months prior to a federal election, the individual felon would be able to bring a civil action against the chief election official of the state. And if the violation occurs within 30 days before a federal election, the individual is not required to give notice to the chief election official prior to bringing a civil action to remedy the ban.

⁴⁶ HR1, *supra* note 1, §§ 1301-04.

⁴⁷ In addition, HR1 would amend U.S. Code Title 18 to prohibit false statements relating to federal elections including time, manner, place, qualifications of candidates, or endorsement of candidates and direct the U.S. Sentencing Commission to review and make necessary amendments to sentencing guidelines. It would authorize the Attorney General to take corrective action if a state is unresponsive to complaints pursuant to published procedures. In addition, the Attorney General is directed to report to Congress on the number of allegations and corrective action taken.

⁴⁸ HR1, *supra* note 1, §§ 1401-08.

Federal Mandate #15: Requires States to Notify All Individuals Convicted of Felony or Misdemeanor of the Right to Vote⁴⁹

Under HR1, the states would be required to notify all individuals who have been convicted of a criminal offense – felony or misdemeanor – that they have the right to vote in federal elections and may register to vote. Additionally, the state is also required to coordinate with prison officials to provide notice of the right to vote to felons serving a sentence in prison upon their release from custody, and provide similar notice to individuals sentenced to a term of probation on the date of sentencing.⁵⁰

In addition, each state must provide notice of the right to vote to all individuals who are convicted of a misdemeanor on the date an individual is sentenced in state court. At the federal level, the notice requirements apply to the Office of Probation and Pretrial Services of the Administrative Office of the United States Courts and they are similarly required to notify all individuals convicted and sentenced to probation of their right to vote on the date of sentencing. The Federal Bureau of Prisons would be required to notify all individuals convicted of a felony of their right to vote in the window of time six months prior to their release and the release date. The legislation would condition federal funding in the construction of prisons, jails, or other correctional facilities on compliance with notification requirements.

Federal Mandate #16: Requires All States to Vote on Paper Ballots and Require Counting of Ballots by Hand or Optical Scan Tabulation⁵¹

HR1 preempts state laws and historic role of states and localities in choosing the type and method of voting for their citizens. The legislation increases the federal regulation of the administration of elections by mandating that states use only paper ballots or ballot marking devices in the casting of ballots in federal elections. The bill states that paper ballots must be counted by hand, optical scanner, or other counting device. The bill would restrict use of ballot marking devices to a “nontabulating ballot marking device,” ending the use of many ballot marking devices that create “abbreviated ballots” which print a paper ballot (or vote cast record) that only shows the candidate selections made by the voter (not all the candidates that were eligible to be voted for) and contain a barcode that is read by the scanner at the polling place for tabulation.⁵² A particular ballot marking device, namely the ES&S ExpressVote Voting System, has been reviewed and certified by the EAC and is currently in use in many states.⁵³

⁴⁹ *Id.* § 1404 (page 112, line 11).

⁵⁰ In addition, HR1 authorizes individuals with criminal convictions to vote and authorizes the Attorney General to enforce the restoration of voting rights. It allows states to enact more relaxed standards for reinstatement of voting rights and prohibits states from using federal funds for construction and improvement of facilities unless a state has a program in place to reinstate individuals.

⁵¹ HR1, *supra* note 1, §§ 1501-05.

⁵² *Id.* § 1502 (page 118, line 16).

⁵³ U.S. Election Assistance Commission, Certified Voting Systems, <https://www.eac.gov/voting-equipment/certified-voting-systems/>; Election Systems & Software, “EAC Certifies the ExpressVote as a Tabulator,” Feb. 27, 2017, <https://www.essvote.com/blog/our-technology/eac-certifies-the-expressvote-as-a-tabulator/>; Election Systems

This provision would effectively end the use of electronic voting or Direct Record Electronic (DRE) voting machines still used by a number of states, and require all states to transition to paper-based voting. Without some exceptions added to the bill, the language would also appear to prohibit any state from permitting military and overseas voters in many states to return ballots by facsimile, email, or other electronic means.⁵⁴

The legislation would appear to require that all paper ballots be suitable for a hand recount or audit, and the paper ballots “shall be counted by hand in any recount or audit with respect to any election for federal office.” If that is the case, this would effectively remove the option of states to conduct machine recounts, instead requiring that all recounts be conducted by hand, a notoriously time consuming and inaccurate means of counting or recounting ballots.⁵⁵

Federal Mandate #17: Requires States to Count Provisional Ballots Cast Outside Precinct⁵⁶

In another significant change required prior to the 2020 election, HR1 would preempt state law and require that all states count provisional ballots regardless of the polling place or precinct where the voter casts a ballot in the state.⁵⁷ Many states do not authorize the counting of individuals’ ballots cast in the wrong precinct or polling place because it is vitally important to races for local office and ballot questions limited to local jurisdictions that out-of-precinct voters are not illegally casting a ballot in a race where the candidate is not representing or the ballot question is not governing where the voter actually resides. Allowing out-of-precinct voting would inevitably result in the election of candidates by non-qualified residents.

If the voter is not on the polling place list of official voters or in the wrong precinct, election officials will usually direct the voter to the correct precinct to vote or provide a provisional ballot to the voter to later determine if the voter is eligible to vote in the precinct and the ballot should be counted. This provision would create immense administrative difficulties for election officials as they tabulate votes on Election Night, as a voter from an entirely different local jurisdiction could have voted a ballot cast in a precinct.

& Software, “The ExpressVote Will Make Voting More Accessible to All in Kanawha County, West Virginia,” Mar. 13, 2017, <https://www.essvote.com/blog/our-customers/the-expressvote-will-make-voting-more-accessible-to-all-in-kanawha-county-west-virginia/>.

⁵⁴ HR1 would amend HAVA to require durable voter verified paper ballots to be used in federal elections, require a verified voter permanent paper ballot to be preserved as the official record for recounts and/or audits, require verified voter paper to be durable and readable and in place by 2022 unless local jurisdictions or polling locations maintain certain paper record printers attached to DRE machines, and require states to notify voters that blank pre-printed paper ballots may be requested, which are to be treated as a regular ballot (unless individuals are already required to cast a provisional ballot).

⁵⁵ HR1, *supra* note 1, § 1502 (52 U.S.C. § 21081(a)(2)(A)(iii)) (page 119, line 14).

⁵⁶ *Id.* § 1601 (page 134, line 11).

⁵⁷ HR1 requires states to establish uniform and nondiscriminatory standards for the issuance, handling and counting of provisional ballots.

Federal Mandate #18: Requires Every State to Implement No Excuse Vote by Mail with Signature Comparison⁵⁸

HR1 would preempt state law and institute another federal mandate by forcing “no-excuse mail voting” on every state and locality in the nation so that any eligible voter could vote by mail. While 28 states and the District of Columbia have instituted some form of no-excuse mail voting,⁵⁹ the federal legislation would require that all states implement the policy regardless of existing statutory and constitutional standards in the states that require that voter request an absentee ballot only with a legitimate reason. Due to state constitutions or existing statutes, approximately 19 states require a reason or excuse by voters to cast an absentee ballot with different means to confirm the identity of the absentee mail voter.⁶⁰ The bill would also require states to accept ballots postmarked by Election Day and received after the election, although the language does not appear to designate how long after the election.

In addition to the requirement that states establish vote by mail programs, the legislation would require that all the states implement signature comparison as the means to confirm the identity of mail voters. Signature comparison is just one way to confirm the identity of the mail voter. The mandated signature comparison requirement would preempt the law of many states that require witness signatures, photo identification, non-photo identification, or other personal identifying numbers (such as the last four digits of the individual’s Social Security number or driver’s license number) to confirm the identity of the mail ballot voter.⁶¹ The legislation would unnecessarily preempt state law and reduce the integrity of the voting process.

While some states have adopted signature comparison as one way to confirm identity, there is no consensus that it should be the sole or best way to confirm the identity of the voter. For example, the signature often changes over time and election officials are not always equipped to accurately compare the signatures of voters on ballots envelopes with the signature of the voter on file with election officials.⁶² On the other hand, while a signature may be necessary to affirm the eligibility of the voter and to attest to the truthfulness of information provided, the personal identifying number of the voter does not normally change over time and can independently and objectively verify the identity of the voter.

⁵⁸ HR1, *supra* note 1, § 1621.

⁵⁹ National Conference of State Legislatures, “Absentee and Early Voting,” Jan. 25, 2019, <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

⁶⁰ *Id.*

⁶¹ In addition, HR1 requires states to transmit ballots no later than two weeks prior to an election or as expeditiously as possible and ensure ballots are accessible to individuals with disabilities. The amendments have no effect on the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

⁶² See, e.g., Christina A. Cassidy, *Rejection of mail-in ballots across US raises alarm ahead of election*, THE PRESS DEMOCRAT, Oct. 20, 2018, <https://www.pressdemocrat.com/news/8895312-181/concerns-growing-across-us-over>; American Civil Liberties Union, Press Release, ACLU Challenges California’s Voter Signature-Matching Law: State Rejects Tens of Thousands of Ballots Over Voters’ Handwriting, Aug. 24, 2017, <https://www.aclunc.org/news/aclu-challenges-california-s-voter-signature-matching-law>.

Federal Mandate #19: Requires States to Send “No-Excuse” Mail Ballots to Voters Two Weeks Prior to Federal Elections⁶³

Under the bill, states would be required to transmit “no-excuse” ballots to voters who have requested a mail ballot no later than two weeks prior to an election. States have different requirements for the postmark and the return of ballots to local election offices in order to be counted. Many states require mail ballots to be timely returned and delivered to election offices by election night to be counted. However, the proposed federal legislation would preempt all state laws on mail ballot return deadlines that require mail ballots be delivered to election offices on election night in order to be counted. With the appropriate postmark on Election Day, the ballot will be required to be counted.

Federal Mandate #20: Reporting Requirements from States in Administration of Elections⁶⁴

The proposed bill mandates a number of new reports by state and local election officials to the Attorney General, the EAC, and the Designee of the Department of Defense (Federal Voting Assistance Program) at least 55 days prior to every federal election. The states’ certification must confirm that mail ballots are prepared, available, and ready to be transmitted to Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voters by state or local election officials. Specifically, the mandate requires the states to certify information about ballot availability from each unit of local government that administers the election, i.e. counties, cities, or localities. The report must be in a form specified by the Attorney General and the EAC.

There is an additional reporting requirement at 43 days prior to the election where the state election office must provide a report on the successful transmission of all UOCAVA ballots on the 45-day deadline. Then at 90 days after the election, another post-election report is due to the federal government that delineates the total number of UOCAVA ballots sent, received, and counted from overseas and absentee military voters. The legislation also requires all states accept a single ballot application to include a request for all ballots in all subsequent elections until the next regularly scheduled election.

To enforce the law, the Attorney General would have the authority to assess civil penalties on states that do not comply with the reporting requirement. In addition to civil enforcement by the Department of Justice, the legislation also includes a private right of action to allow third parties to bring suit against states for failing to comply with the reporting requirements. Despite the fact that most failures with the transmission of mail ballots to UOCAVA voters occur at the local level, the bill legislates that the state is the only necessary party in a lawsuit enforcing the requirement. As a result, the actual county or locality that fails to comply or fails to provide information to the state will not be considered a necessary party in the lawsuit.

⁶³ HR1, *supra* note 1, § 1621, subsections (c) and (e) (page 140, line 6; page 141, line 1).

⁶⁴ *Id.* §§ 1701-05.

Federal Mandate #21: Makes Election Day a Federal Holiday⁶⁵

HR1 would make Election Day a federal holiday to give all federal employees the day off to vote or work as a poll worker. The bill would also direct that federal workers be granted six days of leave to be used for training and/or to serve as poll workers in federal elections. The legislation also provides the sense of the Congress that all private employers should also be give their employees the day off to vote in the 2020 election and future federal elections.

Federal Mandate #22: Requires Colleges and Universities to Serve as Voter Registration Agencies⁶⁶

The language of HR1 would require all colleges, universities, and institutions of higher learning that receive federal funds to also serve as voter registration agencies and register students to vote simultaneous to any transaction with these institutions. The legislation would provide students flexibility to register in the jurisdiction of domicile or in the jurisdiction of the institution of higher learning where the student is attending. This requirement would be problematic for election officials because students often remain registered in their home state and receive absentee ballots at their college address. Maintaining the accuracy of the voter rolls for college students remains a significant challenge for state and local election officials, because students who register at their college dorm or apartment, then move out at the end of the school year seldom notify the election office of address changes and remain on the voter rolls for years after their departure.

Federal Mandate #23: Eliminates Photo ID/Non-Photo ID Prior to Casting a Vote⁶⁷

Many states have adopted identification requirements to reduce the potential for fraudulent voter impersonation and increase the integrity of elections. The bipartisan Help America Vote Act requires a photo or non-photo ID requirement be provided by first-time voters who register by mail. Despite the popularity of voter ID in many states and among voters of all demographics and political affiliations,⁶⁸ HR1 would preempt those state laws and constitutional provisions that require identification and eliminate states' photo and non-photo ID requirements. The bill would replace the use of photo or non-photo ID to confirm the identity of the voter with a simple

⁶⁵ *Id.* §§ 1801, 1903.

⁶⁶ *Id.* § 1901.

⁶⁷ *Id.* § 1904.

⁶⁸ Public opinions polls consistently show widespread support for photographic voter identification laws. A 2018 Pew Research Center poll found that 76% of respondents supported a photo voter ID requirement, including 91% of Republicans and 63% of Democrats. Pew Research Center, *Elections in America: Concerns Over Security, Divisions Over Expanding Access to Voting*, Oct. 29, 2018, at 3, file:///Users/ldixon/Downloads/10-29-18-Elections-in-America-for-release-corrected.pdf. A 2016 Gallup poll showed 80% support for photo voter ID requirements, including 95% of Republicans and 63% of Democrats. Justin McCarthy, *Four in Five Americans Support Voter ID Laws, Early Voting*, GALLUP NEWS, Aug. 22, 2016, <https://news.gallup.com/poll/194741/four-five-americans-support-voter-laws-early-voting.aspx>.

requirement of only a sworn affidavit signed by the voter affirming their identity. Approximately 35 states have laws requesting or requiring voters show some form of identification at the polls, while the remaining 15 states use other methods to verify the identity of voters, such as signatures or affidavits.⁶⁹

Federal Mandate #24: States Required to Reimburse USPS for Ballots Carried Free of Postage and Develop Mail Ballot Tracking System⁷⁰

In the language of HR1, voters would no longer pay the postage of a ballot transmitted through the mail postal system. While voters in most states simply put a stamp on the ballot envelope to return their ballot, under the bill, the postage of mail ballots would now be free to voters with the cost of the postage covered by state and local election officials. Under the law, states would be required to reimburse USPS for all absentee ballots that were carried free of postage by the USPS. To reimburse the states, the legislation directs the states to use HAVA requirement payments to pay for these ballots carried free of postage. There is no similar language to reimburse for bus fare or the mileage for voters who drive to early voting sites or Election Day polling places. Under the bill, the EAC would also be directed to reimburse states for the costs of establishing an absentee ballot tracking program with respect to federal elections.

Federal Mandate #25: State Chief Election Officials Prohibited from Taking Part in Federal Political Campaigns⁷¹

The legislation would amend the Federal Election Campaign Act (FECA) to make it unlawful for the chief election official of a state to any active part in the political management of or participate in a political campaign with respect to any election for Federal office over which the official has supervisory authority. For example, the chief election official would not be able to serve as a member of an authorized committee of a candidate for federal office or exercise any official authority or influence for the purpose of affecting the result of an election for Federal office. He or she would also not be permitted to solicit, accept, or receive any contribution from any person on behalf of a candidate for federal office, the only exception being if an immediate family member is running for office.

Federal Mandate #26: Establishment of Voter Hotline and State-Based Response System⁷²

HR1 directs the Attorney General to establish an official voter hotline and coordinate a state-based response system to questions, complaints, and other problems reported by voters. The program would record any problems in registering to vote or identified during the voting process, including incidents of voter intimidation or voter suppression. The toll-free telephone service

⁶⁹ National Conference of State Legislatures, Voter Identification Requirements, Jan. 17, 2019, <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>.

⁷⁰ HR1, *supra* note 1, §§ 1905-06.

⁷¹ *Id.* § 1821.

⁷² *Id.* § 1907.

would provide voting information to citizens on the different ways to vote, polling place locations, and the ways to obtain absentee ballots.

The Department of Justice would collaborate with state and local election officials to develop the state-based hotline system in consultation with civil rights groups, voting rights groups, voter protection groups, and those with experience in operation of similar systems and services.⁷³ The legislation requires a biannual report to Congress on the number and type of complaints, and a compilation and description of the incidents with recommendation on how voting systems may be upgraded to accommodate voters and ensure the integrity of elections.

Federal Mandate #27: Requires States to Complete Federal Post-Election Surveys Requested by the Election Assistance Commission⁷⁴

HR1 requires states to furnish additional information or data as requested by the EAC in the form of any post-election surveys.⁷⁵ The bill also directs the EAC to carry out a review of the effectiveness and efficiency of the current state-based administrative complaint procedures established under HAVA section 402 and report recommendations to Congress.

Federal Mandate #28: Requires States to Establish Independent Redistricting Commissions for Congressional Redistricting⁷⁶

Through federal decree, the Congress would limit states to a single redistricting each decade following apportionment unless required by the judicial branch. The legislation requires states to establish a “non-partisan agency” in the state legislative branch to appoint 15 members of a independent redistricting commission. The legislation requires that the EAC provide payments to states to establish redistricting commissions.⁷⁷

⁷³ HR1 directs the Attorney General to establish a voter hotline task force comprised of at least three members who are responsible for providing an ongoing assessment of operations. Task force members serve two-year terms and while not compensated are authorized to have travel, lodging and per diem expenses paid. HR1 authorizes such sums as needed to carry out the section.

⁷⁴ *Id.* § 1913.

⁷⁵ “Each State shall furnish to the Commission such information as the Commission may request for purposes of conducting any post-election survey of the States with respect to the administration of regularly scheduled general election for Federal office.” *Id.* (page 180, line 22).

⁷⁶ *Id.* §§ 2400-35.

⁷⁷ The redistricting section sets out a constitutional authority statement regarding Congress’ interest in redistricting, requires the new nonpartisan agency to provide notice to the public regarding the opportunity to serve on commission, and requires the nonpartisan agency to submit pool of candidates using criteria set forth in statute to a Select Commission on Redistricting for approval. At the same time, the nonpartisan agency must submit a report detailing the process for selecting candidates, including criteria. Upon approval of the pool, the nonpartisan agency selects six members of the Independent Redistricting Commission. The first six appointees are responsible for selecting the next nine appointees. The Chair is an independent who is selected from among the first six appointees. HR1 requires the Commission to hold a minimum of three public hearings on organization, preliminary plan and final plan. The Commission must provide 14-day notice of any action. HR1 sets out criteria for the redistricting plan including compliance with constitutional requirements of equal population, compliance with the Voting Rights Act, providing equal opportunity to ethnic, racial and language minorities to participate, and minimizing division of

The bill is an attempt by the federal government to micromanage the independent redistricting commissions in each state, providing a “one size fits all” blueprint to states with specific requirements on how members are to be selected, the method to fill vacancies, provisions for selection of alternate members, the rules and procedures for conducting redistricting commission business, how the selection pool of individuals eligible to serve as commission members is established, the qualification of members of commission, the criteria for creation of redistricting plan or maps, and even the level of public input required for the plan.

Federal Mandate #29: Requires Testing of State Voting Systems in Federal Labs Nine Months Prior to Each Federal Election⁷⁸

HR1 requires the EAC to conduct testing of every voting system (hardware and software) at an accredited lab at least nine months prior to every federal election, and if the voting system fails, the EAC is directed to decertify the voting equipment. The testing, review, and certification of equipment should take place well in advance of an election and not so close to an election as to interfere with the smooth administration of the election. There are rare cases in which states or a locality will be required to transition to new pre-certified voting systems within a few months of an election. If an existing system is decertified for any reason by state or federal authorities, there would not be enough time to complete additional testing prior to early voting or Election Day. The legislation ignores the fact that logic and accuracy testing on voting machines takes place on the local level days prior to and after elections or even recounts or audits.

In another significant change, the bill would also define “electronic poll books” as part of the voting system and require the development of federal standards and testing of electronic poll books prior to certification by the EAC. While many states have existing review programs for the certification of electronic poll books, this bill would have a dramatic impact on reducing the market of electronic poll books available to election officials to only products from the major voting equipment vendors.

The bill appropriates additional federal funding to improve election infrastructure with voting system security improvement grants.⁷⁹ This new grant program would include one billion dollars

communities of interest. It authorizes a three-judge court convened under 28 U.S.C. § 2284 to establish a state’s redistricting plan if: a state fails to establish a nonpartisan agency or to establish a Select Commission on Redistricting; the Select Commission on Redistricting fails to approve the selection pool; or the Independent Redistricting Commission fails to adopt a final plan. It establishes the process for terminating the Independent Redistricting Commission and authorizes payments to states to carry out redistricting in an amount that equals the product of: the number of Representatives times \$150,000.

⁷⁸ HR1, *supra* note 1, §§ 3001-03, 3301-02.

⁷⁹ HR1 amends HAVA to establish a grant program for states to (1) facilitate improving voting system security, including establishing criteria for election infrastructure vendors; or (2) replace voting systems if they fail to meet the requirements of division A, title 1, subdivision F of HR1, or fail to meet voluntary voting system guidelines. The grant amounts to states are the product of: \$1 times the average number of individuals who cast ballots. It requires the EAC to coordinate with the Department of Homeland Security (DHS), including authorizing the Secretary of DHS to serve on Board of EAC Advisors, authorizes a technical representative from DHS to serve on

in funding for 2019 and \$175 million in subsequent years. However, the federal government grants are tied to strict new criteria established for election infrastructure vendors and requires the replacement of voting systems if they fail to meet new “voluntary” voting system guidelines.

Federal Mandate #30: Federal Government to Establish Cybersecurity Standards for All Aspects of Elections⁸⁰

HR1 directs the Technical Guidelines Development Committee (TGDC), an advisory committee of the EAC, to establish new federal cybersecurity standards for all aspects of the election process in states, including best practices in maintaining, testing, operating, and updating of cybersecurity protections. Under the bill, each state chief election official would be required to submit to the federal government a detailed pre-election plan on the usage of voting systems, electronic poll books, and other voting equipment in all their jurisdictions at least 120 days prior to each federal election.⁸¹

EAC’s Technical Guidelines Development Committee, and requires the EAC to consult with the Secretary of DHS periodically on election administration issues.

⁸⁰ HR1, *supra* note 1, §§ 3301, 3303 (page 279, line 23; page 282, line 9).

⁸¹ HR1 amends HAVA to direct the EAC to issue cybersecurity guidelines and to provide for testing nine months prior to an election to ensure compliance with guidelines and allows decertification of states’ hardware or software that do not meet the guidelines.