



COMMITTEE ON HOUSE ADMINISTRATION  
CHAIRPERSON ZOE LOFGREN (D-CALIF.)

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REPORT ON

H.R. 1, The For The People Act,  
As Introduced In The  
117th Congress

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*March 2, 2021 | 117th Congress, First Session*



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# PURPOSE AND SUMMARY

H.R. 1, the For the People Act, is innovative, once-in-a-generation legislation that will advance the democratic promise of responsive, representative government.

It will eliminate barriers to voting for all eligible Americans, save money, and bolster the integrity of election administration. For example, it will modernize voter registration systems by implementing online voter registration, automatic voter registration, and same-day voter registration. It will require the disclosure of dark, undisclosed money that influences campaigns and subsequent policy debates and protect Americans' right to know who is influencing their votes and their views. It will also shore up protections against foreign election interference. Further, it will provide an alternative, voluntary system for candidates to finance their campaigns and empower small donors. This will reduce candidates' reliance on major dollar donors and wealthy special interests and their undue influence, while opening up the political process so more people can run competitive campaigns and represent their communities in Congress. It will also strengthen high ethical standards for Members of Congress and the Executive Branch. Altogether, the reforms in H.R. 1 will expand access to the ballot box, protect the right to vote, bolster the integrity of our democracy, and boost sorely needed confidence in self-government.

The Federalist No. 57 states,

“Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States.”<sup>1</sup>

H.R. 1 furthers this bedrock principle of American democratic self-governance. It is legislation for the “great body of the people” to hold government accountable and to give all Americans a voice in the decisions that affect their lives and their families.

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<sup>1</sup> *Federalist* No. 57, in *The Federalist Papers*, available at <https://guides.loc.gov/federalist-papers/text-51-60#s-lg-box-wrapper-25493433>. The Federalist Papers, a series of eighty-five essays written by Alexander Hamilton, James Madison, and John Jay, are “considered one of the most important sources for interpreting and understanding the original intent of the Constitution.” They were published anonymously under the pen name “Publius.” Federalist No. 57 is considered to be the work of either Alexander Hamilton or James Madison.

# BACKGROUND AND NEED FOR LEGISLATION

## TRUST IN GOVERNMENT AND CHALLENGES IN THE ELECTORAL PROCESS

Trust in government has plummeted to near record lows. According to the Pew Research Center, at the end of 2019, only 17 percent of Americans said “they can trust the government in Washington to do what is right ‘just about always’ (3%) or ‘most of the time (14%).”<sup>2</sup> Without trust, the legitimacy of our representative system of government suffers. People no longer perceive themselves as having a say in the decisions of government that affect their lives.

Only about one-half of the voting-eligible population voted in the 2018 midterm elections, and about two-thirds voted in the 2020 general elections.<sup>3</sup> While the increase in voter turnout was historic in 2020, especially considering the global pandemic of COVID-19, the fact remains that roughly one-third of the voting-eligible public did not vote. For a country that holds itself out as the “gold standard” of participatory democracy, a turnout rate where nearly one-third of eligible voters do not vote belies this characterization.

Despite increased turnout, the 2020 elections were still fraught with long-standing challenges in our electoral system: legal and structural efforts to disenfranchise voters, especially African American, Native American, and Latino voters, extreme partisan gerrymandering, outsized spending by wealthy special interests, the continued proliferation of dark money, deceptive practices, and disinformation campaigns about the election results.<sup>4</sup>

Disinformation campaigns about the integrity of our elections premised on lies about non-existent voter fraud were particularly disruptive before, during, and in the weeks and months after the 2020 general election. After filing over 60 lawsuits, former President Donald Trump and his allies were unable to provide any evidence of illegal voting.<sup>5</sup> Nevertheless, baseless claims about voter fraud persisted long after the election results were certified and came to a

<sup>2</sup> *Public Trust in Government: 1958-2019*, PEW RESEARCH CENTER, <http://www.people-press.org/2017/12/14/public-trust-in-government-1958-2017/> (last visited Jan. 4, 2021).

<sup>3</sup> Kevin Schaul, Kate Rabinowitz & Ted Mellnik, *2020 turnout is the highest in over a century*, THE WASHINGTON POST (Nov. 5, 2020), <https://www.washingtonpost.com/graphics/2020/elections/voter-turnout/>; Camila Domonoske, “A Boatload of Ballots: Midterm Voter Turnout Hit 50-Year High,” NPR (Nov. 8, 2018), <https://www.npr.org/2018/11/08/665197690/a-boatload-of-ballots-midterm-voter-turnout-hit-50-year-high>.

<sup>4</sup> Wendy R. Weiser, Daniel I. Weiner & Dominique Erney, *Congress Must Pass the ‘For the People Act’*, THE BRENNAN CENTER FOR JUSTICE (Jan. 29, 2021), <https://www.brennancenter.org/our-work/policy-solutions/congress-must-pass-people-act>; *How H.R. 1 Will Help Us Achieve a Government for the People*, CAMPAIGN LEGAL CENTER (Jan. 4, 2021), <https://campaignlegal.org/update/how-hr-1-will-help-us-achieve-government-people>.

<sup>5</sup> Jim Rutenberg, Nick Corasaniti & Alan Feuer, *Trump’s Fraud Claims Died in Court, but the Myth of Stolen Elections Lives On*, THE NEW YORK TIMES (updated Jan. 7, 2021), <https://www.nytimes.com/2020/12/26/us/politics/republicans-voter-fraud.html>.

head on January 6, 2021, when a violent mob rampaged and desecrated the U.S. Capitol in an attempt to halt the counting of the Electoral College votes and prevent a peaceful transition of power. Five people, including a Capitol police officer, tragically lost their lives that day.<sup>6</sup>

The deadly insurrection on January 6 revealed the somber reality about the state of our democracy: it is fragile and under attack, and the will of the people must urgently be protected and strengthened. H.R. 1 offers bold, timely, and comprehensive structural reforms that meet this moment in history in which trust in government is low and our democratic institutions are at stake.

## BARRIERS TO DEMOCRATIC PARTICIPATION

Too many Americans view themselves as shut out from our representative system. Others cannot participate in our electoral process because of arbitrary election administration procedures that fail to account for how Americans live and work in the 21<sup>st</sup> century. Some of these barriers to participation are designed to make it harder for certain populations, especially African American, Native American, and Latino communities and other underrepresented groups, to vote. H.R. 1 would eliminate barriers to voting, detailed below, that have obstructed democratic participation for far too long.

### VOTER REGISTRATION BARRIERS

Among major democracies around the world, the United States is alone in requiring “individuals to shoulder the onus of registering to vote (and re-register[] when they move).”<sup>7</sup> A 2001 commission chaired by former Presidents Ford and Carter found that “[t]he registration laws in the United States are among the most demanding in the democratic world ... [and are] one reason why voter turnout in the United States is near the bottom of the developed world.”<sup>8</sup>

Voter registration barriers are a contributing factor to voter turnout and citizen participation in our democracy. Every election, millions of Americans encounter problems when trying to vote because of registration issues.<sup>9</sup> One in four eligible Americans is not registered to vote.<sup>10</sup> In the November 2016 elections, nearly one in five (18 percent) eligible people cited problems with voter registration as their main reason for not casting a ballot, including not meeting registration

<sup>6</sup> Jack Healy, *These Are the 5 People Who Died in the Capitol Riot*, THE NEW YORK TIMES (Jan. 11, 2021), <https://www.nytimes.com/2021/01/11/us/who-died-in-capitol-building-attack.html>.

<sup>7</sup> *For the People: Our American Democracy*, Hearing on H.R. 1 Before the H. Comm. on Administration, 116th Cong. 3 (2019) (statement of Wendy R. Weiser, Director, Democracy Program at the Brennan Center for Justice).

<sup>8</sup> John Mark Hansen, *To Assure Pride and Confidence in the Electoral Process*, TASK FORCE ON THE FEDERAL ELECTION SYSTEM 1-3 (2001), [http://web1.millercenter.org/commissions/comm\\_2001\\_taskforce.pdf](http://web1.millercenter.org/commissions/comm_2001_taskforce.pdf).

<sup>9</sup> Weiser, *supra* note 7, at 3.

<sup>10</sup> *Id.* at 2-3 (citing *Inaccurate, Costly, and Inefficient: Evidence that America’s Voter Registration Systems Needs an Upgrade*, THE PEW CENTER ON THE STATES 1 (2012); see also U.S. CENSUS BUREAU, *Voting and Registration in the Election of 2016* (May 2017) Tbl. 1, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html>).

deadlines and not knowing the processes to register.<sup>11</sup> Further, one in four Americans incorrectly believe that the U.S. Postal Service’s change-of-address processes will automatically update their address.<sup>12</sup>

During the 2020 elections, many states experienced a considerable decline in voter registration due to limitations in registration options during the COVID-19 pandemic.<sup>13</sup> Stay at home or shelter in place directives were necessary to protect lives, but also impeded the accessibility and functioning of government offices that provide voter registration services and the processing of registration applications by election officials.<sup>14</sup> Government agencies such as state departments of motor vehicles, public assistance agencies, and disability offices, that serve as voter registration agencies by law, were closed down.<sup>15</sup> Voter registration drives by non-profit organizations that typically take place within communities, on college campuses, and through door-to-door canvassing were severely impacted too.<sup>16</sup>

It does not have to be this way. H.R. 1 includes comprehensive reforms that modernize voter registration, such as online voter registration, automatic voter registration and same-day voter registration, as will be described in more detail later in this report. These legislative solutions to registration barriers are cost-effective and will improve access to the franchise for all eligible Americans.

### VOTER SUPPRESSION AFTER *SHELBY COUNTY*

Barriers to voting, especially for African American, Native American, and Latino communities and other underrepresented groups, have become more pronounced after the Supreme Court struck down the preclearance formula of the Voting Rights Act of 1965 (“VRA”) in *Shelby County v. Holder* (“*Shelby County*”).<sup>17</sup> In the wake of *Shelby County*, some jurisdictions implemented changes to their election administration and voting laws that had a disparate impact on African American, Native American, and Latino communities or were enacted with a discriminatory intent to make it harder for such communities to vote. Cuts to early voting, strict voter identification laws, and other changes to the rules have pushed people away from

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<sup>11</sup> *For the People: Our American Democracy, Hearing on H.R. 1 Before the H. Comm. on H. Admin.*, 116th Cong. 8 (2019) (statement of Chiraag Bains, Director of Legal Strategies, Demos)(citing U.S. CENSUS BUREAU, Current Population Survey, November 2016 Voting and Registration Supplement).

<sup>12</sup> Weiser, *supra* note 7 (citing *Inaccurate, Costly, and Inefficient: Evidence that America’s Voter Registration Systems Needs an Upgrade*, THE PEW CENTER ON THE STATES 7 (2012)).

<sup>13</sup> *The Impact of COVID-19 on Voting Rights and Elections Administration—Ensuring Safe and Fair Elections: Hearing Before the Subcomm. on Elections in the H. Comm. on H. Admin.*, 116th Cong. 2 (2020) (statement of Lawrence D. Norden, Director of the Election Reform Program, The Brennan Center for Justice).

<sup>14</sup> *The Impact of COVID-19 on Voting Rights and Elections Administration—Ensuring Safe and Fair Elections: Hearing Before the Subcomm. on Elections in the H. Comm. on H. Admin.*, 116th Cong. 2 (2020) (statement of Sherrilyn Ifill, President and Director-Counsel, NAACP Legal Defense and Educational Fund, Inc.).

<sup>15</sup> *The Impact of COVID-19 on Voting Rights and Elections Administration—Ensuring Safe and Fair Elections: Hearing Before the Subcomm. on Elections in the H. Comm. on H. Admin.*, 116th Cong. 2 (2020) (statement of Kristen Clarke, President and Executive Director, Lawyers’ Committee for Civil Rights Under Law).

<sup>16</sup> *Id.*

<sup>17</sup> *Shelby County, Alabama v. Holder*, 570 U.S. 529 (2013).



participating in our democracy. According to the United States Commission on Civil Rights, states have required overly

[S]trict forms of voter ID, purged voter rolls, reduced polling locations, required documentary proof of citizenship to register to vote, and cut early voting, among other contested voting changes that, on the specific facts ... operate to denigrate minority voting access in ways that would have violated preclearance requirements if they were still in effect. Data indicate that these voting procedure changes disproportionately limit minority citizens' ability to vote.<sup>18</sup>

In its 2018 report, the Commission found that “at least 23 states have enacted newly restrictive statewide voter laws since the *Shelby County* decision.”<sup>19</sup>

The legislature of North Carolina, for example, enacted an omnibus voter suppression bill in 2013, just a few months after the *Shelby County* decision struck down the VRA's preclearance formula.<sup>20</sup> Among other things, the North Carolina “monster law” imposed a strict photo identification requirement on voters, cut a week of early voting, eliminated same-day voter registration, eliminated the counting of out-of-precinct provisional ballots for voters who voted in the correct county but incorrect precinct, and eliminated preregistration of 16- and 17-year-olds.<sup>21</sup> In 2016, the United States Court of Appeals for the Fourth Circuit struck down the law after finding that it violated both the U.S. Constitution and Section 2 of the VRA. The court wrote that the law “target[ed] African Americans with almost surgical precision,” by, among other things, requiring “in-person voters to show certain photo IDs, beginning in 2016, which African Americans disproportionately lacked, and eliminat[ing] or reduc[ing] registration and voting access tools that African Americans disproportionately used.”<sup>22</sup>

Texas, too, implemented one of the strictest photo ID laws in the United States soon after *Shelby County*.<sup>23</sup> The United States Court of Appeals for the Fifth Circuit ruled that the Texas law discriminated against African American and Hispanic voters.<sup>24</sup> Subsequent litigation and legislative action led to significant changes in the law.<sup>25</sup>

Mass purges of eligible voters from the rolls have also become a major problem in election administration post *Shelby County*. Between 2014 and 2016, more than 16 million voters were

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<sup>18</sup> U.S. COMMISSION ON CIVIL RIGHTS, AN ASSESSMENT OF MINORITY VOTING RIGHTS ACCESS IN THE UNITED STATES: 2018 STATUTORY REPORT 9 (2018), [https://www.usccr.gov/pubs/2018/Minority\\_Voting\\_Access\\_2018.pdf](https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf).

<sup>19</sup> *Id.* at 82.

<sup>20</sup> North Carolina State Conference of the NAACP v. McCrory, 831 F.3d 204 (2016).

<sup>21</sup> *See id.*

<sup>22</sup> *See id.* at 215, 216.

<sup>23</sup> Matt Vasilogambros, *That Was Quick: Texas Moves Forward With Voter ID Law After Supreme Court Ruling*, THE ATLANTIC (June 25, 2013), <https://www.theatlantic.com/politics/archive/2013/06/that-was-quick-texas-moves-forward-with-voter-id-law-after-supreme-court-ruling/438108/>.

<sup>24</sup> *Veasey v. Abbott*, No. 14-41127 (5th Cir. 2016).

<sup>25</sup> *Voting Rights in Texas: An Advisory Memorandum of the Texas Advisory Committee to the U.S. Commission on Civil Rights*, TEXAS ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS 10 (July 2018), <https://www.usccr.gov/pubs/2018/07-23-TX-Voting-Rights.pdf>.

purged from voter registration rolls and between 2016 and 2018, at least 17 million voters were purged.<sup>26</sup> According to the Brennan Center for Justice:

Almost 4 million more names were purged from the rolls between 2014 and 2016 than between 2006 and 2008. Purge activity has increased at a substantially greater rate in states that were subject to federal oversight under the Voting Rights Act prior to the Supreme Court’s decision in *Shelby County v. Holder*. Georgia, for example, purged 1.5 million voters between the 2012 and 2016 elections – double its rate between 2008 and 2012. Texas purged 363,000 more voters between 2012 and 2014 than it did between 2008 and 2010. [The Brennan Center for Justice] found that 2 million fewer voters would have been purged between 2012 and 2016 if jurisdictions previously subject to pre-clearance had purged at the same rate as other jurisdictions.<sup>27</sup>

The Supreme Court’s 2018 decision in *Husted v. A. Philip Randolph Institute* opened the door to even more aggressive voter purges.<sup>28</sup> The Court upheld Ohio’s “use it or lose it” purge law, which used non-voting as a reason to initiate purge processes. The Court held that this practice did not violate the National Voter Registration Act, which governs list-maintenance programs and prohibits activities that “result in the removal of the name of any person” from the rolls “by reason of the person’s failure to vote.”<sup>29</sup>

There are many reasons why someone may miss voting in an election. This should not result in their removal from voter registration rolls for subsequent elections. Purges can disproportionately affect underrepresented populations, which has a deleterious effect on representative democracy. As Dēmos has explained:

[B]arriers to voting such as transportation issues, inflexible work schedules, caregiving responsibilities, illnesses, inaccessible polling locations, and language access problems can disproportionately prevent persons of color, housing-insecure individuals, persons with disabilities, low-income individuals, older voters, and persons with limited English proficiency from making it to the polls to vote. Using a person’s failure to vote to initiate a removal process will therefore disproportionately target such groups and result in their subsequent removal from the registration rolls.<sup>30</sup>

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<sup>26</sup> *Voting Rights and Election Administration in the United States of America*, Subcomm. on Elections, H. Comm. on H. Admin, 116<sup>th</sup> Cong. 6 (2019), available at <https://cha.house.gov/report-voting-rights-and-election-administration-united-states-america> (citing Jonathan Brater, Kevin Morris, Myrna Pérez, & Christopher Deluzio, *Purges: A Growing Threat to the Right to Vote*, THE BRENNAN CENTER FOR JUSTICE (2018), [https://www.brennancenter.org/sites/default/files/publications/Purges\\_Growing\\_Threat\\_2018.1.pdf](https://www.brennancenter.org/sites/default/files/publications/Purges_Growing_Threat_2018.1.pdf) and Kevin Morris, *Voter Purge Rates Remain High, Analysis Finds*, THE BRENNAN CENTER FOR JUSTICE (Aug. 1, 2019), <https://www.brennancenter.org/blog/voter-purge-rates-remain-high-analysis-finds>.)

<sup>27</sup> Weiser, *supra* note 7, at 8.

<sup>28</sup> *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833 (2018).

<sup>29</sup> *See id.*; 52 U.S.C. § 20507(b)(2); Bains, *supra* note 11, at 5.

<sup>30</sup> Bains, *supra* note 11, at 5.

Throughout 2019, the Committee on House Administration’s Subcommittee on Elections held eight hearings<sup>31</sup> across the United States and collected evidence on barriers to voting in the post-*Shelby County* era. The Subcommittee heard testimony across states of the purging of eligible voters from registration rolls, billed as “list maintenance” or anti-fraud measures, even though voter fraud is extremely rare. In North Dakota, the Subcommittee heard testimony about how North Dakota’s state legislature passed a voter ID law that required a voter’s residential address, which disproportionately impacted Native Americans and effectively created a poll tax for voters who otherwise would not have needed to purchase an ID. The Subcommittee also heard testimony in Texas and Alabama about how voter IDs are financially burdensome and how voter ID laws disproportionately negatively impact minority voters. In Texas, Georgia, and North Carolina, the Subcommittee heard testimony about how the loss of preclearance has forced litigators and stakeholders “to expend significant resources to play what was described as a ‘whack-a-mole’ defense against persistent, discriminatory voting changes.”<sup>32</sup> The Subcommittee also heard testimony about the lack of access to multilingual ballots and multilingual voting assistance at the polls.

In total, the Subcommittee heard from over 60 witnesses, including lawyers, advocates, elected officials, tribal officials, and voters, and collected several thousand pages of testimony about a vast array of voting barriers implemented post-*Shelby County*: “polling place closures; frequent polling place movements; cutbacks and restrictions on early voting; voter ID requirements that disenfranchise targeted populations; purges of otherwise eligible voters from the registration rolls; the enormous expense of enforcing the Voting Rights Act through Section 2 litigation; the disenfranchisement of millions of formerly incarcerated Americans; and a lack of access to multilingual ballots and assistance...”<sup>33</sup>

The Subcommittee’s hearing series culminated in the release of a staff report, *Voting Rights and Election Administration in the United States of America*, which concluded that the hearings showed “the right to vote is not yet shared equally among all Americans.”<sup>34</sup> The report pointed out that “while the evidence collected by the Subcommittee shows many legacy voter suppression tactics are still pervasive, a new wave of surreptitious tactics has also emerged.”<sup>35</sup>

Such legislative voter suppression tactics have not only continued but have escalated recently.<sup>36</sup> Following the historic turnout of the 2020 general election, several state legislators rushed to introduce restrictive voting bills. According to the Brennan Center for Justice, as of February 2021, state legislators across forty-three states have “carried over, prefiled or introduced 253

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<sup>31</sup> The Subcommittee on Elections held hearings in Georgia, North Dakota, North Carolina, Ohio, Florida, Alabama, Arizona and the District of Columbia and also held a listening session in Texas.

<sup>32</sup> *Voting Rights and Election Administration in the United States of America*, Subcomm. on Elections, H. Comm. on H. Admin, 116<sup>th</sup> Cong. 7 (2019), available at <https://cha.house.gov/report-voting-rights-and-election-administration-united-states-america>.

<sup>33</sup> *Id.* at 3.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 6.

<sup>36</sup> *Voting Laws Roundup 2020*, THE BRENNAN CENTER FOR JUSTICE (Feb. 4, 2020), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2020>.

bills with provisions that restrict voting access.”<sup>37</sup> Many of these bills aim to restrict access to voting by mail, establish new or stricter voter ID requirements, reduce voter registration opportunities and expand flawed and aggressive voter roll purges<sup>38</sup> under the false premise that such restrictions are necessary for ensuring voter confidence and election integrity.<sup>39</sup>

In Georgia, for example, Republican state legislators introduced a bill on February 19, 2021—just one of several restrictive voting proposals pending in the state legislature—that a coalition of voting rights groups said is “designed to reduce the influence of Black voters.”<sup>40</sup> The bill would impose new ID requirements for absentee voting, reduce the time period in which a voter can request an absentee ballot, restrict the use of drop boxes, and eliminate early voting on Sundays, which would end the “Souls to the Polls” voter turnout initiative run by African American churches across Georgia.<sup>41</sup> This comes on the heels of Georgia’s record turnout in the 2020 presidential election, in which there was a 22.1 percent increase in participation from 2016 to 2020 and the highest total number of African American voters in Georgia’s electoral history.<sup>42</sup>

Georgia is not the exception. State legislators in Arizona, which saw a growth in voter turnout by 27.2 percent from 2016 to 2020 largely driven by more Latino and Native American voters, have introduced bills that would roll back no-excuse voting by mail, ban the return of ballots by mail, and implement racially discriminatory voter purging, amongst other measures that would disproportionately harm voters of color.<sup>43</sup> In Pennsylvania, which also experienced historic voter turnout in 2020, the highest in over 60 years, state legislators have rushed to file bills that would repeal no-excuse absentee voting, prohibit voters from being able to cure errors on their ballots, repeal the permanent early vote list, support voter purges, amongst various other measures that would restrict voting.<sup>44</sup> Several other states are witnessing a wave of legislative voter suppression tactics as well during the 2021 state legislative session.<sup>45</sup>

### ELECTORAL VULNERABILITIES EXPOSED DURING THE COVID-19 PANDEMIC

The COVID-19 pandemic fundamentally disrupted American life in 2020, including how we vote. Although a record number of people turned out to vote, the pandemic exposed and exacerbated existing and unaddressed vulnerabilities in our election system as well as racial disparities in access to voting. Several states experienced a considerable decline in voter

<sup>37</sup>*Voting Laws Roundup Appendix: February 2021*, THE BRENNAN CENTER FOR JUSTICE (Feb. 24, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-appendix-february-2021>.

<sup>38</sup>*Voting Laws Roundup: February 2021*, THE BRENNAN CENTER FOR JUSTICE (Feb. 8, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2021>.

<sup>39</sup> See *Strengthening American Democracy: Hearing Before H. Comm. on H. Admin.*, 117th Cong. 2 (2021) (statement of Stacey Y. Abrams, Founder of Fair Fight Action).

<sup>40</sup> Julia Harte & John Whitesides, *Voting rights advocates decry ‘devastating’ Georgia measure limiting ballot access*, REUTERS (Feb. 19, 2021), <https://www.reuters.com/article/us-usa-politics-voters/voting-rights-advocates-decry-devastating-georgia-measure-limiting-ballot-access-idUSKBN2AJ2I0>.

<sup>41</sup> *Id.*

<sup>42</sup> *Strengthening American Democracy: Hearing Before H. Comm. on H. Admin.*, 117th Cong. 2 (2021) (statement of Stacey Y. Abrams, Founder of Fair Fight Action).

<sup>43</sup> *Id.* at 3.

<sup>44</sup> *Id.* at 3-4.

<sup>45</sup> *Id.* at 4.

registration due to limited options to register at government offices or through registration drives.<sup>46</sup> Wait-times to vote were considerably longer in 2020 than in 2016, according to the MIT Election Data and Science Lab.<sup>47</sup> In Atlanta, for example, some voters reported waiting in line for more than 10 hours to vote.<sup>48</sup>

Long lines and wait times have historically made voting difficult, discouraged voting, and disproportionately impacted African American and Latino voters.<sup>49</sup> In addition to long lines and wait times, other election administration failures during the 2020 elections, such as barriers to accessing absentee voting and polling place closures, disproportionately harmed voters of color. For instance, during the April 7 primary election in Milwaukee, Wisconsin, which has 60.32 percent of the state's African American voters and 29.69 percent of the state's Hispanic voters, the number of polling places was severely cut from 180 to 5 due to poll worker shortages.<sup>50</sup> To exercise their constitutional right to vote, in-person voters were forced to wait for hours in long lines that stretched across many city blocks, risking exposure to the deadly coronavirus.<sup>51</sup> Further, many voters in Wisconsin, reportedly in the tens of thousands, never received the absentee ballots they requested or did not receive them in time to vote.<sup>52</sup> And while turnout was lauded in the April 7 primary in Wisconsin, statistical analysis shows that there was a severe racial disparity in turnout: the average turnout in white wards was 49 percent while in African American and Hispanic wards, it was 18 percent.<sup>53</sup>

During the 2020 elections, there was a significant increase in demand for and utilization of absentee voting, and State and local election administrators struggled to meet the increased demand and adapt their administrative capacity. The demand for voting by mail as a convenient

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<sup>46</sup> Norden, *supra* note 13.

<sup>47</sup> Charles Stewart III, *How We Voted in 2020: A First Look at the Survey of the Performance of American Elections*, MIT ELECTION DATA AND SCIENCE LAB 18-19 (Dec. 15, 2020), <http://electionlab.mit.edu/sites/default/files/2020-12/How-we-voted-in-2020-v01.pdf>.

<sup>48</sup> Sam Levine, *More than 10-hour wait and long lines as early voting starts in Georgia*, THE GUARDIAN (Oct. 12, 2020), <https://www.theguardian.com/us-news/2020/oct/13/more-than-10-hour-wait-and-long-lines-as-early-voting-starts-in-georgia>.

<sup>49</sup> See Hannah Klain, Kevin Morris, Max Feldman & Rebecca Ayala, *Waiting to Vote*, THE BRENNAN CENTER FOR JUSTICE (June 3, 2020), <https://www.brennancenter.org/our-work/research-reports/waiting-vote>.

<sup>50</sup> *The Impact of COVID-19 on Voting Rights and Elections Administration: Ensuring Safe and Fair Elections: Hearing Before the Subcomm. on Elections in the H. Comm. on H. Admin.*, 116th Cong. 2 (2020) (statement of Gwen S. Moore, Representative of Wisconsin's 4th District); see also Shruti Banerjee & Dr. Megan Gall, *COVID-19 Silenced Voters of Color in Wisconsin*, DEMOS (May 14, 2020), <https://www.demos.org/blog/covid-19-silenced-voters-color-wisconsin>.

<sup>51</sup> *The Impact of COVID-19 on Voting Rights and Elections Administration: Ensuring Safe and Fair Elections: Hearing Before the Subcomm. on Elections of the H. Comm. on H. Admin.*, 116th Cong. 2 (2020) (statement of Gwen S. Moore, Representative of Wisconsin's 4th District); *The Impact of COVID-19 on Voting Rights and Elections Administration: Ensuring Safe and Fair Elections: Hearing Before the Subcomm. on Elections of the H. Comm. on Administration*, 116th Cong. 3 (2020) (statement of Sherrilyn Ifill, President and Director-Counsel, NAACP Legal Defense and Educational Fund).

<sup>52</sup> *The Impact of COVID-19 on Voting Rights and Elections Administration: Ensuring Safe and Fair Elections: Hearing Before the Subcomm. on Elections in the H. Comm. on H. Admin.*, 116th Cong. 2 (2020) (statement of Gwen S. Moore, Representative of Wisconsin's 4th District).

<sup>53</sup> Shruti Banerjee & Dr. Megan Gall, *COVID-19 Silenced Voters of Color in Wisconsin*, DEMOS (May 14, 2020), <https://www.demos.org/blog/covid-19-silenced-voters-color-wisconsin>.



and secure alternative to in-person voting has been steadily increasing over the years,<sup>54</sup> but in 2020, the demand increased double fold in the face of the dangerous COVID-19 pandemic. While 24.9 percent of voters cast their ballot by mail during the 2016 general election, the Pew Research Center found that during the 2020 primaries, about 50.3 percent voted by mail.<sup>55</sup> For the 2020 general election, 46 percent voted by mail, 27 percent cast their ballot through in-person early voting, and 27 percent through in-person voting on Election Day.<sup>56</sup>

Vulnerabilities in the patchwork of absentee voting systems across states were exposed during 2020. A handful of Western states that already conduct mail-in elections were adequately prepared to run their elections during the pandemic. But states that restrict access to absentee or mail-in voting or whose voters have not historically utilized this option at a high rate faced significant pressures to implement or ramp-up no-excuse absentee voting, to eliminate legal barriers such as notary and witness requirements, and to build up administrative capacity.

Some states adapted and took legislative or executive action to expand access to absentee voting during the pandemic,<sup>57</sup> while others, like Arkansas, Louisiana, Mississippi, Tennessee, and Texas, refused to do so, making voting by mail inaccessible to many voters.<sup>58</sup> Other states were compelled to lower barriers through voting rights litigation.<sup>59</sup> The Brennan Center for Justice estimates that at least 182 voting rights suits were filed between January 1 and September 15, 2020, out of which 147 cases involved absentee or mail-in voting challenges.<sup>60</sup>

Some states enacted impediments to voting during the pandemic. In Alabama, curbside voting, an important voting option for voters with disabilities and those at-risk of the harmful effects of COVID-19, was arbitrarily banned.<sup>61</sup> In Texas, drop box locations for voters that want to hand deliver their absentee ballots were limited to one per county. This restriction unjustly burdened voters in larger counties, such as Harris County, which has about 1.15 million residents, who

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<sup>54</sup> Hannah Hartig, Bradley Jones & Vianney Gomez, *As states move to expand the practice, relatively few Americans have voted by mail*, PEW RESEARCH CENTER (June 24, 2020), <https://www.pewresearch.org/fact-tank/2020/06/24/as-states-move-to-expand-the-practice-relatively-few-americans-have-voted-by-mail/>.

<sup>55</sup> Drew Desilver, *Mail-in voting became much more common in 2020 primaries as COVID-19 spread*, PEW RESEARCH CENTER (Oct. 13, 2020), <https://www.pewresearch.org/fact-tank/2020/10/13/mail-in-voting-became-much-more-common-in-2020-primaries-as-covid-19-spread/>.

<sup>56</sup> *The voting experience in 2020*, PEW RESEARCH CENTER (Nov. 20, 2020), <https://www.pewresearch.org/politics/2020/11/20/the-voting-experience-in-2020/>.

<sup>57</sup> See Clarke, *supra* note 15.

<sup>58</sup> Wendy R. Weiser, Eliza Sweren-Becker & Dominique Erney, *Mail Voting: What Changed in 2020*, THE BRENNAN CENTER FOR JUSTICE (Sept. 17, 2020), <https://www.brennancenter.org/our-work/research-reports/mail-voting-what-has-changed-2020>.

<sup>59</sup> See *id.*

<sup>60</sup> *Id.*

<sup>61</sup> Josh Gerstein, *Supreme Court restores ban on curbside voting in Alabama*, POLITICO (Oct. 21, 2020), <https://www.politico.com/news/2020/10/21/alabama-curbside-voting-supreme-court-431130>.

would have to travel long distances and possibly wait in long lines to drop off their ballots.<sup>62</sup> Ohio also enacted a new drop box restriction that limited drop-boxes to one per county.<sup>63</sup>

During the 2020 elections, significant and disruptive operational policy changes at the United States Postal Service resulted in slower mail delivery and the exacerbation of challenges with absentee ballot voting.<sup>64</sup> Any delay in mail delivery can have a negative impact on the requesting and returning of absentee ballots.

H.R. 1 addresses existing vulnerabilities in election administration that were exacerbated in 2020 by the COVID-19 pandemic by ensuring adequate opportunities to register to vote and to vote in-person and by mail. Furthermore, H.R. 1 will work to combat the new wave of legislative voter suppression tactics following the 2020 election through comprehensive voting and election administration reforms, as described in the next section, that ensure that every American has equal access to voting regardless of the state they live in.

## ELIMINATING BARRIERS TO VOTING – SOLUTIONS IN H.R. 1

### ONLINE VOTER REGISTRATION

H.R. 1 will require states to offer voter registration services online. As of the writing of this report, online voter registration is offered by at least 40 states and the District of Columbia, according to the National Conference on State Legislatures.<sup>65</sup> As Americans use the internet to accomplish basic tasks, from banking, to facilitating transit, to accessing healthcare, H.R. 1 will ensure that all Americans will also be able to use the internet to register to vote, as well as update their voter registration records.

In addition to improving accessibility and convenience for eligible voters, online voter registration saves costs. A 2010 study funded by the Pew Center on the States found that paper registration, for example, cost Arizona \$0.83 per voter to process, whereas online voter registration cost only \$0.03 per voter.<sup>66</sup> After establishing online registration in 2012, California saved about \$2.34 per online registration (for a total of about \$2 million in savings), according to

<sup>62</sup> Ashley Killough & Caroline Kelly, *Texas Supreme Court sides with governor on rule requiring one ballot drop box per county*, CNN (Oct. 27, 2020), <https://www.cnn.com/2020/10/27/politics/texas-supreme-court-drop-boxes/index.html>.

<sup>63</sup> Jo Ingles, *Ohio's Ballot Drop Box Limits Lead to Allegations Of Voter Suppression*, NPR (Sept. 24, 2020), <https://www.npr.org/2020/09/24/916413716/ohios-limit-on-ballot-drop-boxes-leads-to-allegations-of-voter-suppression>.

<sup>64</sup> Michelle Ye Hee Lee & Jacob Bogage, *Postal Service backlog sparks worries that ballot delivery could be delayed in November*, THE WASHINGTON POST (July 30, 2020), [https://www.washingtonpost.com/politics/postal-service-backlog-sparks-worries-that-ballot-delivery-could-be-delayed-in-november/2020/07/30/cb19f1f4-d1d0-11ea-8d32-1ebf4e9d8e0d\\_story.html](https://www.washingtonpost.com/politics/postal-service-backlog-sparks-worries-that-ballot-delivery-could-be-delayed-in-november/2020/07/30/cb19f1f4-d1d0-11ea-8d32-1ebf4e9d8e0d_story.html).

<sup>65</sup> *Online Voter Registration*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Oct. 22, 2020), <http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx>.

<sup>66</sup> WASHINGTON INSTITUTE OF THE STUDY OF ETHNICITY AND RACE (University of Washington, Seattle) & ELECTION ADMINISTRATION RESEARCH CENTER (University of California, Berkeley), *Online Voter Registration (OLVR) Systems in Arizona and Washington: Evaluating Usage, Public Confidence and Implementation Process* 93 (Apr. 1, 2010), [https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs\\_assets/2010/onlinevoterregpdf.pdf](https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2010/onlinevoterregpdf.pdf).

the Pew Charitable Trusts.<sup>67</sup> In Washington state, officials “reported savings of 25 cents with each online registration (for a total of \$176,000 in savings) in the first two years of the program, and its local officials save between 50 cents and two dollars per online transaction,” according to a Brennan Center analysis of the data.<sup>68</sup>

### AUTOMATIC VOTER REGISTRATION

Another critical policy included in H.R. 1 is automatic voter registration (“AVR”). As of the writing of this report, nineteen states and the District of Columbia have adopted AVR.<sup>69</sup> Like online voter registration, AVR saves jurisdictions money, improves the accuracy of voter registration lists, and helps streamline the voter registration process, reducing unnecessary barriers to accessing the ballot. AVR significantly decreases the necessity of paper and takes advantage of electronic, automated systems to add eligible Americans to the rolls. Voter lists are more accurate, jurisdictions save money by not relying on staff to process paper registration forms, and fewer eligible voters who show up to vote will have to vote a provisional ballot.<sup>70</sup> According to a Pew Research Center poll conducted in 2020, 69 percent of Americans support implementing automatic voter registration nationwide.<sup>71</sup>

Rather than placing the burden to register to vote on prospective voters—which, as discussed above in this report, leads to confusion and keeps large swaths of Americans off the rolls—AVR is rooted in an “opt-out” model of voter registration. Unless a prospective voter declines, they will be added to the rolls when they provide information to the government to obtain certain services (including public services, Social Security benefits, driver’s licenses, and when individuals become naturalized citizens).<sup>72</sup>

Data shows AVR may lead to higher turnout. In Oregon, the first state to adopt and implement AVR in 2009-10, voter turnout increased by four percent—2.5 percent higher than the national average.<sup>73</sup> This increase in turnout happened when there were zero competitive statewide races on the ballot.

AVR, as included in H.R. 1, is designed to ensure that agencies facilitating voter registration do not add ineligible voters to the rolls. Agencies that are designated to participate in AVR collect citizenship information. If an individual affirms citizenship, the agency will inform the person of the qualifications necessary to register to vote, the consequences for false registration, and will

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<sup>67</sup> *Understanding Online Voter Registration*, THE PEW CHARITABLE TRUSTS 2 (Jan. 2014), [https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs\\_assets/2013/understandingonlinevoterregistrationpdf.pdf](https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2013/understandingonlinevoterregistrationpdf.pdf).

<sup>68</sup> See Weiser, *supra* note 7, at 7.

<sup>69</sup> *Automatic Voter Registration, a Summary*, THE BRENNAN CENTER FOR JUSTICE (Feb. 16, 2021), <https://www.brennancenter.org/our-work/research-reports/automatic-voter-registration-summary>.

<sup>70</sup> See Weiser, *supra* note 7, at 6.

<sup>71</sup> *Two-Thirds of Americans Expect Presidential Election Will Be Disrupted by COVID-19*, THE PEW RESEARCH CENTER (Apr. 28, 2020), <https://www.pewresearch.org/politics/2020/04/28/two-thirds-of-americans-expect-presidential-election-will-be-disrupted-by-covid-19/>.

<sup>72</sup> See Weiser, *supra* note 7, at 4.

<sup>73</sup> *Id.* at 5.



provide the individual with an opportunity to decline registration. There are also safeguards in place for the unlikely situation that any ineligible person is inadvertently registered.

The data show that AVR can accomplish its goals of adding eligible voters to the rolls. The results have been exceptionally strong. According to the Brennan Center for Justice:

In Oregon, registration rates quadrupled at DMV offices. In Vermont, registrations jumped 62 percent in the six months after AVR was put in place compared to the same period in the previous year. One state, California, experienced minor glitches at first, because of a computer programming design flaw. But that error was quickly caught and contained, and according to the state's motor vehicle office has since been fixed. ... AVR has dramatically increased registration rates in nearly every state.<sup>74</sup>

### SAME-DAY VOTER REGISTRATION

Same-day voter registration is another important reform included in H.R. 1 that will modernize our elections. It ensures that a voter registration deadline does not deprive any eligible voter of their right to vote. Voters are offered an opportunity to register to vote and cast a ballot on the same day, including during early voting and on Election Day. Same-day voter registration provides voters with an opportunity to correct errors in their registration, ensures no voter is disenfranchised because they moved residences after a voter registration deadline, and provides a remedy for any voter who was improperly removed from the voter rolls. Particularly when combined with AVR, same-day voter registration boosts turnout. It has been shown to increase turnout by upwards of 10 percentage points.<sup>75</sup>

As of the writing of this report, twenty-one states and the District of Columbia offer some form of same-day voter registration.<sup>76</sup> Some states have had it since the 1970s.<sup>77</sup> For example, Maine established same-day voter registration in 1973 and was a reform pushed forward by State Representative Rodney Ross, a Republican.<sup>78</sup> Maine is among the top five states with the most voter participation.<sup>79</sup>

Through automatic voter registration, along with online voter registration and same-day voter registration, H.R. 1 sets an important nationwide standard that will reduce unjustified and unnecessary barriers to voting. These nonpartisan reforms will make our elections freer and fairer for all eligible voters to make their voices heard.

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<sup>74</sup> See Weiser *supra* note 7, at 4-5.

<sup>75</sup> See Bains, *supra* note 11, at 8.

<sup>76</sup> *Same Day Voter Registration*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Oct. 6, 2020), <https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>.

<sup>77</sup> See Weiser, *supra* note 7, at 7.

<sup>78</sup> *Strengthening American Democracy: Hearing Before H. Comm. on Administration*, 117th Cong. 3 (2021) (statement of Shenna Bellows, Secretary of State, Maine).

<sup>79</sup> *Id.*

## EARLY VOTING

H.R. 1 sets a nationwide standard for early voting of at least 15 days prior to Election Day. Early voting is an important policy that ensures voters who choose to vote in-person but cannot do so on Election Day have an opportunity and provides voters with free and fair access to the ballot.

Early voting is not a new policy. Forty-three states and the District of Columbia allow voters to vote in person before Election Day.<sup>80</sup> More than a dozen of these states provide an early voting period “comparable to or greater than” the 15 day standard set by H.R. 1.<sup>81</sup> Beyond being a convenient option for voters, early voting can reduce long lines and wait times at the polls on Election Day and give election administrators more time to troubleshoot issues with registration databases or voting machines before they could cause bigger slowdowns or problems.<sup>82</sup>

H.R. 1 would also require states to start processing and scanning ballots cast during early voting at least 14 days before Election Day. The early processing and scanning of ballots will speed up the counting process on Election Day and the reporting of results.

## ADDRESSING VOTER IDENTIFICATION LAWS THAT RESTRICT VOTING

H.R. 1 would allow voters to submit sworn written statements in lieu of other forms of voter identification that would otherwise be required to cast a ballot. Strict voter identification laws have been one of the most unjustified barriers to participation for underrepresented communities. Approximately 11 percent of the American population lacks the specific form of photo identification that more than a dozen states require to vote. The voters impacted are disproportionately voters of color, senior citizens, and low-income citizens.<sup>83</sup> Providing this sworn statement alternative is an important safeguard for those that these identification laws would otherwise block from voting.

## PROTECTIONS AGAINST PURGES FOR FAILURE TO VOTE

To respond to the Supreme Court’s decision in *Husted v. A. Philip Randolph Institute*, H.R. 1 amends the National Voter Registration Act of 1993 to prohibit a registrant’s failure to vote as objective and reliable evidence that a voter is ineligible to vote. It also limits the authority of states to remove registrants from the official list of eligible voters based on interstate voter registration cross-checks systems.

Such systems have been found to have high error rates.<sup>84</sup> For example, a 2020 study found that the “Crosscheck” program created by former Kansas Secretary of State Kris Kobach had a

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<sup>80</sup> *State Laws Governing Early Voting*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Oct. 22, 2020), <https://www.ncsl.org/research/elections-and-campaigns/early-voting-in-state-elections.aspx>.

<sup>81</sup> See Weiser, *supra* note 7, at 12.

<sup>82</sup> See *id.*

<sup>83</sup> See Bains, *supra* note 11, at 3.

<sup>84</sup> *Voting Rights and Election Administration in the United States of America*, *supra* note 32, at 49.

greater than 99 percent error rate.<sup>85</sup> In 2021, Georgia’s Secretary of State settled a lawsuit over Georgia’s use of and participation in the Crosscheck program.<sup>86</sup> Georgia purged 534,000 voter registrations in 2017 and 287,000 registrations in 2019, but Georgia election officials claim they did not use Crosscheck to conduct their massive, disenfranchising purges.<sup>87</sup>

H.R. 1 establishes safeguards to ensure that the use of interstate crosscheck systems does not result in eligible voters getting wrongly purged from voter registration rolls.

### ACCESS TO VOTING FOR INDIVIDUALS WITH DISABILITIES

H.R. 1 requires states to promote access to voter registration and voting for individuals with disabilities. Specifically, it mandates the availability of absentee ballots for individuals with disabilities and requires states to allow individuals with disabilities to be able to request and receive, by mail or electronically, registration forms and absentee ballots. States must accept and process these voter registration and absentee ballot applications if received within the deadline. It also requires states to designate a state office that will be responsible for providing voting-related information to individuals with disabilities.

### ACCESS TO VOTING BY MAIL

H.R. 1 would greatly reduce barriers to voting by mail. The bill establishes a nationwide standard of no-excuse voting by mail by prohibiting states from imposing restrictions on the eligibility of voters to vote by mail. According to a Pew Research Center poll conducted in 2020, 70 percent of Americans support no-excuse voting by mail.<sup>88</sup>

H.R. 1 provides due process protections to absentee voters by requiring states to provide notice and an opportunity to cure any signature discrepancy, a missing signature, or any other curable absentee ballot defect. The legislation also requires that voters that submit an absentee ballot request at least five days before Election Day must receive their ballot before Election Day and sets a uniform deadline for the acceptance of absentee ballots. Absentee ballots, absentee ballot applications, and voter registration applications transmitted by mail must be accompanied by self-sealing return envelopes and include prepaid postage. Further, H.R. 1 requires states to set up state-run absentee ballot tracking programs that will allow voters to track and confirm receipt of their ballots online.

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<sup>85</sup> *Annotated Guide to the For the People Act of 2021*, THE BRENNAN CENTER FOR JUSTICE (Jan. 20, 2021), <https://www.brennancenter.org/our-work/policy-solutions/annotated-guide-people-act-2021#t1-se> (citing Sharad Goel, et al. *One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections*, AMERICAN POLITICAL SCIENCE ASSOCIATION (2020), <https://scholar.harvard.edu/files/morse/files/1p1v.pdf>.)

<sup>86</sup> Mark Niesse, *Lawsuit over Georgia’s participation in Crosscheck purge program settled*, THE ATLANTIC JOURNAL-CONSTITUTION (Jan. 25, 2021), <https://www.ajc.com/politics/lawsuit-over-georgias-participation-in-crosscheck-purge-program-settled/MVC26T6QIFDCDH2PC6WX7ZYXO4/>.

<sup>87</sup> *Id.*

<sup>88</sup> *Two-Thirds of Americans Expect Presidential Election Will Be Disrupted by COVID-19*, PEW RESEARCH CENTER (Apr. 28, 2020), <https://www.pewresearch.org/politics/2020/04/28/two-thirds-of-americans-expect-presidential-election-will-be-disrupted-by-covid-19/>.

H.R. 1 would also require states to set up secure drop-boxes in each county for voters to drop off their voted absentee ballots, set minimum standards for the number of drop boxes required, and ensure the distribution of the drop-boxes is equitable, accessible, and non-discriminatory.

### ACCESS TO VOTING ON INDIAN LANDS

H.R. 1 would improve access to voting by mail for Native American voters. Native American voters face various unique barriers to voting by mail, such as not having mail delivery at their homes, lacking traditional addresses, distant post offices or mailboxes, too few PO boxes, slow mail routes, and unmet language assistance needs.<sup>89</sup> H.R. 1 requires election administrators to provide mail ballots to each registered voter living on tribal lands without requiring a residential address or voter request. Further, Tribes would be able to designate buildings as ballot pick-up and collection locations and such buildings would be permitted to serve as the residential and mailing addresses of voters living on Indian lands. Additionally, all jurisdictions covered under Section 203 of the Voting Rights Act must offer language access services for all mail ballots and voting materials. These provisions are enforceable by the Department of Justice and by private suit. Altogether, these provisions will help eliminate long-standing barriers to voting by mail for Native American voters.

### DEMOCRACY RESTORATION

H.R. 1 would restore the federal voting rights of Americans with felony convictions who are no longer incarcerated. This restoration of voting rights will help reintegrate Americans, who have paid their debt to society, back into their communities and will strengthen civic participation.<sup>90</sup> Laws that disenfranchise voters that were formerly incarcerated date back to the Jim Crow era and disproportionately affect African Americans.<sup>91</sup> One out of every 13 African Americans are disenfranchised by these laws, which is four times the rate for other Americans.<sup>92</sup> There is a disproportionate representation of African Americans in the prison population,<sup>93</sup> a reflection of structural racism in the criminal justice system. African Americans are incarcerated at 5.9 times the rate of incarceration of white Americans.<sup>94</sup>

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<sup>89</sup> *Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters*, THE NATIVE AMERICAN RIGHTS FUND, 93-102 (2020), [https://vote.narf.org/wp-content/uploads/2020/06/obstacles\\_at\\_every\\_turn.pdf](https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf).

<sup>90</sup> See Bellows, *supra* note 78.

<sup>91</sup> *Annotated Guide to the For the People Act of 2021*, THE BRENNAN CENTER FOR JUSTICE (Jan. 20, 2021), <https://www.brennancenter.org/our-work/policy-solutions/annotated-guide-people-act-2021#t1-se>.

<sup>92</sup> *H.R. 1, the "For the People Act of 2019": Hearing Before the H. Comm. on the Judiciary*, 116th Cong. 3 (2019) (statement of Vanita Gupta, President and CEO, The Leadership Conference on Civil and Human Rights).

<sup>93</sup> *H.R. 1, the "For the People Act of 2019": Hearing Before the H. Comm. on the Judiciary*, 116th Cong. 9 (2019) (statement of Sherrilyn Ifill, President and Director-Counsel, NAACP Legal Defense and Educational Fund, Inc.).

<sup>94</sup> *Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System*, THE SENTENCING PROJECT (Apr. 19, 2018), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

H.R. 1's restoration of voting rights could result in the adding of more than 5.2 million voters, or 2.3 percent of the voting age population, to the voter rolls.<sup>95</sup> This democratic reform is consistent with measures across red, purple and blue states to reverse felon disenfranchisement laws.<sup>96</sup>

However, as of November 2020, 30 states still have laws that disenfranchise Americans that were formerly incarcerated.<sup>97</sup> Not only do state felony disenfranchisement laws disproportionately affect racial and ethnic minorities, but the lack of a uniform standard for voting in federal elections and for regaining voting rights across states has led to an unfair disparity and unequal participation in federal elections based off of which state a person lives in. H.R. 1 will standardize re-enfranchisement across the nation and bring an end to this unconstitutional deprivation of the right to vote.

Congress's constitutional authority to restore federal voting rights to formerly incarcerated Americans stems from Article I, section 4 of the Constitution, which grants Congress power to regulate federal elections, and the 14<sup>th</sup> and 15<sup>th</sup> Amendments to the Constitution, which authorize Congress to enact measures to ensure equal protection under our laws and an equal opportunity for citizens to vote in Federal elections.

#### OTHER REFORMS TO BOLSTER ELECTION ADMINISTRATION AND THE RIGHT TO VOTE

There are many other policies in H.R. 1 that implement pro-democracy, pro-voter election administration procedures that improve access to the franchise. H.R. 1 requires election officials to count each vote on provisional ballots for any election in which an individual is registered to vote, notwithstanding whether they cast their ballot in an incorrect precinct within a state jurisdiction.

H.R. 1 ensures the equitable and efficient operation of polling places to prevent long lines and wait times exceeding 30 minutes by requiring states to provide a sufficient number of voting systems, poll workers, and other election resources at polling places. The bill also awards grants to states to develop programs for poll worker recruitment, training, and retention.

H.R. 1 prohibits states from banning curbside voting and from limiting who is eligible to vote through curbside voting.

The bill also prohibits deceptive practices in Federal elections, which include hindering, interfering with, or preventing voting or voter registration, and prohibits the practice of voter caging to remove registered voters from the rolls.

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<sup>95</sup> Chris Uggen, et al., *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, THE SENTENCING PROJECT (Oct. 30, 2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>.

<sup>96</sup> See *H.R. 1, the "For the People Act of 2019"*: Hearing Before the H. Comm. on the Judiciary, 116th Cong. 9 (2019) (statement of Sherrilyn Ifill, President and Director-Counsel, NAACP Legal Defense and Educational Fund, Inc.); See also State Felon Voting Laws, PROCON.ORG, <https://felonvoting.procon.org/state-felon-voting-laws/>, (last updated Nov. 4, 2020).

<sup>97</sup> *Democracy Restoration Act*, THE BRENNAN CENTER FOR JUSTICE (Nov. 4, 2020), <https://www.brennancenter.org/our-work/policy-solutions/democracy-restoration-act>.

H.R. 1 will bolster integrity and confidence in election administration by prohibiting campaign activities by state chief election administration officials. This provision provides an exception for when the official or immediate family member is a candidate, so long as the official recuses from official responsibilities for the administration of the election.

The bill also empowers young people to participate in our democracy by designating institutions of higher education as voter registration agencies and by accepting voter registration applications for pre-registration from individuals that are 16 or 17 years old.

H.R. 1 requires the Attorney General to develop a state-based hotline to provide nonpartisan information about the voting process, including information on how to register to vote, the location and hours of operation of polling places, and how to obtain absentee ballots, in consultation with civil rights and voting rights organizations.

Additionally, H.R. 1 ensures that all states are prepared to administer elections during state and national emergencies, including emergencies that are public health in nature, by requiring states to establish and make publicly available Federal election contingency plans. These plans must include initiatives for recruiting poll workers from resilient and unaffected populations and for protecting the health and safety of poll workers and voters.

Taken together, these reforms improve access to voting by making it convenient, free, fair, and secure for every American to participate in our elections.

## INDEPENDENT REDISTRICTING COMMISSIONS

Every decade, after the decennial census, political parties in an overwhelming majority of states take advantage of the opportunity to lock in their political gains for the following decade by drawing politically gerrymandered district maps.<sup>98</sup> The result is a troubling reality in which politicians choose their voters instead of voters choosing their representatives as the U.S. Constitution intends.<sup>99</sup> An increasing number of states have opted to abandon this tradition in the last two decades by instituting redistricting reforms, including the drawing of district boundaries by independent commissions that are free of political influence.<sup>100</sup>

Redistricting reform is a transformative element of H.R. 1 that will restore voters' trust in the democratic process by establishing a national, uniform process for the drawing of fair Congressional district lines. The bill calls for all states to establish independent, multi-party redistricting commissions that are tasked with drawing fair district maps and also provides strong judicial remedies for violations of this requirement.

These commissions are required to reflect the diversity of the state and to function in a fully-transparent, non-partisan manner. The bill also requires that states use a uniform set of criteria in

<sup>98</sup> Michael Li, *The Redistricting Landscape, 2021–22*, THE BRENNAN CENTER FOR JUSTICE (Feb. 11, 2021), <https://www.brennancenter.org/our-work/research-reports/redistricting-landscape-2021-22>.

<sup>99</sup> Baker et al. v. Carr et al., 369 US 186 (1962).

<sup>100</sup> *More to use redistricting reforms after 2020 census*, AP NEWS (Mar. 5, 2020), <https://apnews.com/article/15945f8bd618d3c749e7c56d3a572d71>.



developing congressional district plans. The criteria, which must be given the same priority by states as the order they are listed in the bill, require districts to equalize total population, comply with the Voting Rights Act of 1965, protect the ability of minority voters to elect candidates of their choice, and respect communities of interest, including demographic groups and political subdivisions. The redistricting criteria also includes a statutory ban on partisan gerrymandering with a prescriptive standard for applying this ban in response to the Supreme Court’s directive to Congress to provide courts with guidance in making partisan gerrymandering determinations.<sup>101</sup>

A state’s failure to set up an independent redistricting commission or to approve a redistricting plan by deadlines set forth in the bill triggers a three-judge federal panel to take over map-drawing using the same redistricting criteria that states are required to follow. The judicial remedies in the redistricting provisions also allow for the U.S. Attorney General or any private citizen aggrieved by their state congressional redistricting plan to sue for non-compliance with the bill’s provisions.

The next round of redistricting “will be the most challenging in recent history” due, in part, to the increasing polarization of political parties and the outlook for legal challenges to redistricting plans.<sup>102</sup> Without the implementation of the redistricting reforms in H.R.1 across the nation, voters, especially from communities of color, will be manipulated as a tool for political parties to draw lines that benefit politicians instead of putting their electorate’s interest first.

## BOLSTERING THE RESILIENCE OF ELECTION INFRASTRUCTURE

There are serious challenges with aging election equipment and the machinery of democracy. Ineffective, aging voting equipment can cause lengthy lines at polling places, discourage participation, and chip away at confidence in election outcomes. A 2014 report by the bipartisan Presidential Commission on Election Administration found that aging systems purchased with Federal money pursuant to the Help America Vote Act in 2002 were “reaching the end of their operational life.”<sup>103</sup> As of March 2019, election officials across 40 states reported that they are using voting machines that are at least a decade old.<sup>104</sup> Additionally, 45 states still had in use voting equipment that was no longer manufactured, meaning maintenance and finding replacement parts would be difficult.<sup>105</sup>

Threats of foreign interference in American elections are also of paramount concern, including the threats that cyberattacks pose to voting systems. The Department of Homeland Security confirmed that “election-related networks, including websites, in 21 states were potentially

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<sup>101</sup> *Rucho v. Common Cause*, 588 US \_ (2019).

<sup>102</sup> Li, *supra* note 98.

<sup>103</sup> PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION, *THE AMERICAN VOTING EXPERIENCE: REPORT AND RECOMMENDATIONS OF THE PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION* 11 (2014), <https://www.eac.gov/assets/1/6/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

<sup>104</sup> Lawrence Norden & Andrea Córdova McCadney, *Voting Machines at Risk: Where We Stand Today*, THE BRENNAN CENTER FOR JUSTICE (Mar. 5, 2019), <https://www.brennancenter.org/our-work/research-reports/voting-machines-risk-where-we-stand-today>.

<sup>105</sup> *Id.*

targeted by Russian government cyber actors” during the 2016 election.<sup>106</sup> Non-state and state actors alike have targeted voter registration systems and Election Night reporting websites.<sup>107</sup> These tactics can sow confusion and undermine confidence in election outcomes should they occur again on a larger scale due to vulnerabilities in our systems.

During the 2020 elections, a U.S. intelligence official warned that Russia, China, and Iran would continue to interfere in our elections through “covert and overt influence measures” and “may also seek to compromise our election infrastructure for a range of possible purposes, such as interfering with the voting process, stealing sensitive data, or calling into question the validity of election results.”<sup>108</sup>

H.R. 1’s election security policies fulfill an ongoing need to bolster the resilience of the machinery of our democracy.

### PAPER BALLOTS AND GRANTS FOR IMPROVED ELECTION SYSTEMS

Paper ballots are the “gold standard” for security in election administration.<sup>109</sup> However, as of the 2020 general election, six states use voting machines that do not have paper back-ups.<sup>110</sup> H.R. 1 amends the Help America Vote Act of 2002 to require voting systems used in Federal elections to use individual, durable, voter-verified paper ballots. This would replace all paperless voting machines now in use for Federal elections.

Paper ballots are an important protection against hacking and cyberattacks. They provide a durable record of each vote that can be hand-counted and audited, when necessary, without depending on software or hardware.

H.R. 1 also authorizes the Election Assistance Commission (“EAC”) to, among other things, issue grants to states to improve and maintain their election systems (including enhanced cybersecurity improvements), transition to voter-verified paper ballot systems, conduct risk-limiting audits, and further election-infrastructure innovation.

### PROMOTING CYBERSECURITY THROUGH IMPROVEMENTS IN ELECTION ADMINISTRATION

Given the threat of interference in our elections from state and non-state actors alike, H.R. 1 provides guardrails to further reinforce cybersecurity. It requires, for example, the EAC’s

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<sup>106</sup> *Addressing Threats to Election Infrastructure: Hearing Before the S. Select Comm. on Intelligence*, 115th Cong. (2017) (statement of Jeanette Manfra, Acting Deputy Under Secretary for Cybersecurity and Communications, National Protection and Programs Directorate, U.S. Dep’t of Homeland Security and Dr. Samuel Liles, Acting Director, Cyber Division, Office of Intelligence and Analysis, U.S. Dep’t of Homeland Security), <https://www.intelligence.senate.gov/sites/default/files/documents/os-jmanfra-062117.PDF>.

<sup>107</sup> Weiser, *supra* note 7, at 33.

<sup>108</sup> *Statement by NCSC Director William Evanina: Election Threat Update for the American People*, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE (Aug. 7, 2020), <https://www.dni.gov/index.php/newsroom/press-releases/item/2139-statement-by-ncsc-director-william-evanina-election-threat-update-for-the-american-public>.

<sup>109</sup> Bellows, *supra* note 78.

<sup>110</sup> Andrea Córdova McCadney, Derek Tisler & Lawrence Norden, *2020’s Lessons for Election Security*, THE BRENNAN CENTER FOR JUSTICE (Dec. 16, 2020), <https://www.brennancenter.org/our-work/research-reports/2020s-lessons-election-security>.



Technical Guidelines Development Committee to issue election cybersecurity guidelines, including standards and best practices for procuring, maintaining, testing, operating, and updating election systems to prevent and deter cybersecurity incidents.

Another innovative element of the bill is the establishment of an Election Security Bug Bounty program to encourage independent assessments of election systems by technical experts.

H.R. 1 also establishes criteria for qualified election infrastructure vendors as well as disclosure requirements and cybersecurity incident reporting requirements that vendors must follow.

## CAMPAIGN FINANCE—TRANSPARENCY AND DISCLOSURE

Americans are concerned with the real and perceived power of wealthy special interests in campaigns and the decisions of government. The Supreme Court’s decision in *Citizens United* recognized a corporation’s First Amendment right to spend unlimited sums out of its general treasury funds to influence elections, unleashing a torrent of money into politics and elections.

Decided over a decade ago, *Citizens United* remains deeply unpopular among Americans of all political stripes. In a 2015 Bloomberg poll, 78 percent of survey respondents said that the *Citizens United* ruling should be overturned.<sup>111</sup> This is consistent with subsequent polling from 2018 that found that 75 percent of Americans, including 66 percent of Republicans and 85 percent of Democrats, are in favor of a constitutional amendment to reverse *Citizens United*.<sup>112</sup>

*Citizens United* has, in many ways, become synonymous with Americans’ dissatisfaction with the influence, real and perceived, of money in the political process. According to the analysis of a poll conducted in 2018 by PRRI/*The Atlantic*, “roughly two-thirds of the public say that participation of too few voters (67%) and the disproportionate influence of wealthy individuals and corporations (66%) are major problems with the current election system.”<sup>113</sup> According to a January 2019 Gallup poll, only 20 percent of Americans said they were satisfied with our campaign finance laws.<sup>114</sup> Among the 22 policy areas surveyed, campaign finance was the policy area Americans were least satisfied about.

Deeply troubling is the appearance that campaign spenders have more influence over public servants and public policy than non-contributors. According to a 2018 survey by the Pew Research Center, “overall, 37% of Americans say that they feel it is at least somewhat likely their representative would help them with a problem if they contacted her or him. However,

<sup>111</sup> Greg Stohr, *Bloomberg Poll: Americans Want Supreme Court to Turn Off Political Spending Spigot*, CHICAGO TRIBUNE (Sept. 28, 2015), <https://www.chicagotribune.com/news/sns-tns-bc-scotus-citizensunited-poll-20150928-story.html>.

<sup>112</sup> Ashley Balcerzak, *Liberals Want to Overturn Citizens United. A New Study Shows Conservatives Do Too*, TIME (May 10, 2018), <http://time.com/5272988/citizens-united-campaign-finance-constitution/>.

<sup>113</sup> Alex Vandermaas-Peeler, et al., *American Democracy in Crisis: The Challenges of Voter Knowledge, Participation, and Polarization*, PRRI (July 17, 2018), <https://www.prii.org/research/American-democracy-in-crisis-voters-midterms-trump-election-2018/>.

<sup>114</sup> Megan Brenan, *Americans Most Satisfied With Nation’s Military, Security*, GALLUP (Jan. 28, 2019), <https://news.gallup.com/poll/246254/americans-satisfied-nation-military-security.aspx>.

about half (53%) of those who have given money to a political candidate or group in the last year believe their representative would help. Belief that one's Member of Congress will help them with a problem is highest (63%) among the subset of donors who have given more than \$250 to a candidate or campaign in the past year."<sup>115</sup> For decades, of course, the Supreme Court recognized the government's interest in deterring "the reality or appearance of improper influence stemming from the dependence of candidates on large campaign contributions," and upheld many campaign finance regulations accordingly.<sup>116</sup>

Money from undisclosed sources have flooded our elections in record amounts since *Citizens United*.<sup>117</sup> Moreover, a gridlocked and dysfunctional Federal Election Commission ("FEC") has left many major violations unaddressed and has failed to keep its regulations on pace with the changing nature of campaigns. H.R. 1 includes key reforms to shine a light on dark money in politics, empower small dollar donors, close loopholes allowing foreign spending in our elections, and reform the FEC to improve the enforcement of our campaign finance laws.

## TRANSPARENCY

Former Supreme Court Justice Louis Brandeis said that "sunlight is said to be the best of disinfectants."<sup>118</sup> H.R. 1 reforms disclosure laws to vindicate every American's right to know who is spending money to influence elections.

Since the Supreme Court's 2010 decision in *Citizens United* opened the floodgates to unlimited campaign spending by corporations and other artificial entities, special interests and others have spent more than \$1 billion to influence Federal elections without disclosing the source of the money.<sup>119</sup> Dark, secret, unlimited money in elections undermines the integrity of the democratic process. It makes it harder for the public to follow the money and hold elected officials and major donors accountable. Money can be laundered through a variety of artificial entities to influence elections, which can lead to circumvention of other campaign finance prohibitions, such as the ban on foreign money in American political campaigns. Polls show that Americans overwhelmingly favor disclosure of donors who are financing major campaign expenditures, including through outside groups.<sup>120</sup>

The Supreme Court has repeatedly affirmed the constitutionality of disclosure laws. In a section of the *Citizens United* decision that had the support of eight Supreme Court justices, Justice Kennedy wrote that with the "advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected

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<sup>115</sup> Bradley Jones, *Most Americans Want to Limit Campaign Spending, Say Big Donors Have Greater Political Influence*, PEW RESEARCH CENTER (May 8, 2018), <http://www.pewresearch.org/fact-tank/2018/05/08/most-americans-want-to-limit-campaign-spending-say-big-donors-have-greater-political-influence/>.

<sup>116</sup> *Buckley v. Valeo*, 424 U.S. 1, 58 (1976) (per curiam).

<sup>117</sup> *Outside Spending by Non-disclosing Groups, Cycle Totals, Excluding Party Committees*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/outsidespending/disclosure.php> (last visited Jan. 26, 2021).

<sup>118</sup> Louis Brandeis, *What Publicity Can Do*, HARPER'S WEEKLY (Dec. 20, 1913).

<sup>119</sup> *Outside Spending by Disclosure, Excluding Party Committees*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/outsidespending/disclosure.php> (last visited Jan. 21, 2021).

<sup>120</sup> *For the People: Our American Democracy: Hearing on H.R. 1 Before the H. Comm. on H.Admin.*, 116th Cong. 9 (2019) (statement of Fred Wertheimer, President, Democracy 21).

officials accountable for their positions and supporters. ... [C]itizens can see whether elected officials are ‘in the pocket’ of so-called moneyed interests.”<sup>121</sup> In the landmark case *Buckley v. Valeo*, the Supreme Court held that,

“disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. The exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate’s most generous supporters is better able to detect any post-election special favors that may be given in return.”<sup>122</sup>

Disclosure does not silence speech, however. Notably, the Supreme Court held in *Buckley* that disclosure requirements “impose no ceiling on campaign-related activities,”<sup>123</sup> and, subsequently, in *McConnell v. FEC*, that disclosure requirements “do not prevent anyone from speaking.”<sup>124</sup>

There is compelling bipartisan public support for disclosure laws. A poll conducted in 2019 by both a Democratic and Republican polling firm found that 83 percent of voters support public disclosure of contributions to organizations that spend money in elections.<sup>125</sup>

#### FOREIGN ELECTION INTERFERENCE

Reforms of campaign finance and disclosure laws are needed not only to enhance transparency and curb corruption in our election system but also to deter and block foreign election interference. Top intelligence and law enforcement officials have warned repeatedly about the ongoing threat of foreign interference in our elections. This includes the need to guard against interference from foreign powers using online influence operations and tactics.

Special Counsel Robert Mueller concluded in his March 2019 report on the investigation into Russian election interference that the “Russian government interfered in the 2016 presidential election in sweeping and systematic fashion.”<sup>126</sup> The Mueller Report detailed how Russian operatives used social media and cyberattacks to influence the 2016 presidential election. As to future involvement in American elections, Mueller testified at a 2019 hearing before the House Permanent Select Committee on Intelligence that “[t]hey’re doing it as we sit here.”<sup>127</sup>

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<sup>121</sup> *Citizens United v. FEC*, 558 U.S. 310, 370 (2010).

<sup>122</sup> *Valeo*, 424 U.S. at 67.

<sup>123</sup> *See id.* at 64.

<sup>124</sup> *McConnell v. FEC*, 540 U.S. 93, 201 (2003).

<sup>125</sup> *Memorandum: Poll Finds Overwhelming Support for Public Disclosure of Political Contributions to Organizations*, ALG RESEARCH AND GS STRATEGY GROUP (Nov. 13, 2019), <https://campaignlegal.org/sites/default/files/2019-11/CLC%20DISCLOSURE%20MEMO.pdf>.

<sup>126</sup> Special Counsel Robert S. Mueller, III, *Report on the Investigation Into Russian Interference in the 2016 Presidential Election*, Volume I, U.S. DEP’T OF JUST. 1 (2019), <https://www.justice.gov/storage/report.pdf>.

<sup>127</sup> *Hearing: Former Special Counsel Robert S. Mueller, III on the Investigation into Russian Interference in the 2016 Presidential Election Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 66 (2019) (Testimony of Former Special Counsel Robert S. Mueller, III).

In January 2017, the Office of the Director of National Intelligence published key judgments in its assessment of Russian activities and intentions in the 2016 presidential election.<sup>128</sup> Among these key judgments, Russian actions to influence the 2016 election represented “Moscow’s longstanding desire to undermine the U.S.-led liberal democratic order. . . . Moscow’s influence campaign followed a Russian messaging strategy that blends covert intelligence operations—such as cyber activity—with overt efforts by Russian Government agencies, state-funded media, third-party intermediaries, and paid social media users or ‘trolls.’”<sup>129</sup>

Foreign election interference attempts did not end with the 2016 election, or even the 2018 election. Interference attempts were ongoing into the 2020 elections and were not limited to the Russian government. On August 7, 2020, the Director of the National Counterintelligence and Security Center William Evanina released an election threat statement in which he warned, “Ahead of the 2020 U.S. elections, foreign states will continue to use covert and overt influence measures in their attempts to sway U.S. voters’ preferences and perspectives, shift U.S. policies, increase discord in the United States, and undermine the American people’s confidence in our democratic process. . . . Many foreign actors have a preference for who wins the election, which they express through a range of overt and private statements; covert influence efforts are rarer. We are primarily concerned about the ongoing and potential activity by China, Russia, and Iran.”<sup>130</sup>

Foreign election interference is not limited to online disinformation tactics and cyberattacks on election infrastructure. It includes explicit attempts to contact and influence political campaigns. Special Counsel Mueller wrote, for example, that the “social media campaign and the GRU hacking operations coincided with a series of contacts between Trump Campaign officials and individuals with ties to the Russian government.”<sup>131</sup> Contacts between high level campaign officials and agents of foreign governments in connection with an election, coupled with offers of foreign assistance and valuable information, undermine long-established principles of democratic sovereignty.

The ease with which foreign entities interfered in the 2016 presidential election emboldens future adversaries to interfere in elections to come. These events and the attempts to interfere throughout the 2020 elections demonstrate that there are steps Congress must take to shore up laws governing the integrity and security of our democracy, steps that are included in H.R. 1, as described below.

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<sup>128</sup> OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, INTELLIGENCE COMMUNITY ASSESSMENT: ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS (2017), [https://www.dni.gov/files/documents/ICA\\_2017\\_01.pdf](https://www.dni.gov/files/documents/ICA_2017_01.pdf).

<sup>129</sup> *Id.* at ii.

<sup>130</sup> *Statement by NCSC Director William Evanina: Election Threat Update for the American People*, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE (Aug. 7, 2020), <https://www.dni.gov/index.php/newsroom/press-releases/item/2139-statement-by-ncsc-director-william-evanina-election-threat-update-for-the-american-public>.

<sup>131</sup> Mueller, *supra* note 126, at 5.

## DUTY TO REPORT

H.R. 1 establishes a duty to report foreign election interference to the FEC and the Federal Bureau of Investigation (FBI). The bill designates a reportable foreign contact as any direct or indirect contact or communication between a candidate, a political committee, or any official, employee, or agent of a committee, and an individual that such a person knows or has reason to know is a “covered foreign national.” Moreover, the contact or communication must involve an offer or other proposal for a contribution, donation, expenditure, disbursement, or solicitation, or coordination or collaboration in connection with an election.

A “covered foreign national” is defined as a foreign government; foreign political party; any of their agents; and anyone included in the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury (referred elsewhere in this report as the “sanctions list”).

H.R. 1 also requires political committees to establish compliance systems, including policies to provide for retention and preservation of records.

## DETERRING FOREIGN INTERFERENCE IN ELECTIONS

### *Restrictions on Exchanges of Campaign Information Between Candidates and Foreign Powers*

Special Counsel Robert Mueller’s report described multiple instances in which the Trump Campaign shared campaign information with foreign nationals. Trump Campaign Chairman Paul Manafort had multiple contacts with a longtime associate, Konstantin Kilimnik, an individual with “ties to Russian intelligence.”<sup>132</sup> Manafort “instructed Rick Gates, his deputy on the Campaign and a longtime employee, to provide Kilimnik with updates on the Trump Campaign—including internal polling data. . . . Manafort expected Kilimnik to share that information with others in Ukraine and with [Russian oligarch Oleg] Deripaska [who is “closely aligned with Vladimir Putin”].<sup>133</sup> Gates periodically sent such polling data to Kilimnik during the campaign.”<sup>134</sup> According to the report, “Manafort [REDACTED] did not see a downside to sharing campaign information.”<sup>135</sup>

Moreover, Kilimnik and Manafort met in person, where Manafort “conveyed campaign information,” including a meeting that Kilimnik requested to deliver a message from a former Ukrainian President who was living in Russia “about a peace plan for Ukraine that Manafort has since acknowledged was a ‘backdoor’ means for Russia to control eastern Ukraine.”<sup>136</sup> According to Special Counsel Mueller, they “also discussed the status of the Trump Campaign and Manafort’s strategy for winning Democratic votes in Midwestern states.”<sup>137</sup> Manafort’s

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<sup>132</sup> S. SELECT COMM. ON INTELLIGENCE, 116TH CONG., REP. ON RUSSIAN ACTIVE MEASURES CAMPAIGNS AND INTERFERENCE IN THE 2016 U.S. ELECTION, VOLUME 2: RUSSIA’S USE OF SOCIAL MEDIA WITH ADDITIONAL VIEWS 6 (2020), [https://www.intelligence.senate.gov/sites/default/files/documents/Report\\_Volume2.pdf](https://www.intelligence.senate.gov/sites/default/files/documents/Report_Volume2.pdf).

<sup>133</sup> *Id.* at 129; 131.

<sup>134</sup> *Id.* at 129.

<sup>135</sup> *Id.* at 130.

<sup>136</sup> *Id.* at 130.

<sup>137</sup> *Id.* at 6-7.

campaign strategy briefing “encompassed the Campaign’s messaging and its internal polling data. According to Gates, it also included discussion of ‘battleground’ states, which Manafort identified as Michigan, Wisconsin, Pennsylvania, and Minnesota.”<sup>138</sup>

Existing law prohibits a person from soliciting, accepting, or receiving a contribution or donation of money or other thing of value from a foreign national, including foreign government.<sup>139</sup> But the law does not explicitly prohibit sharing nonpublic, internal polling data with a foreign power, even when sharing such information would violate campaign finance coordination rules if, for example, the materials were shared with a Super PAC.<sup>140</sup>

H.R. 1 closes this gap in the law and further protects American elections from foreign interference. It does so by treating an offer to share nonpublic campaign materials with a covered foreign national (including a foreign government, foreign political party, their agent, or an individual on the sanctions list) as a prohibited solicitation from a covered foreign national.

Specifically, if a candidate or an individual affiliated with the campaign of a candidate (or a political committee) provides or offers to provide nonpublic campaign material to such a covered foreign national, or to another person whom the candidate, committee, or individual knows or has reason to know will provide that material to a covered foreign national, such an action will be deemed a prohibited solicitation. Nonpublic campaign material includes polling and focus group data and opposition research.

*Clarification of standard for determining existence of coordination between campaigns and outside interests.*

In his 2019 report, Special Counsel Mueller wrote that he “understood coordination to require an agreement—tacit or express—between the Trump Campaign and the Russian government on election interference. That requires more than the two parties taking actions that were informed by or responsive to the other’s actions or interests.”<sup>141</sup>

However, in amending the Federal Election Campaign Act (“FECA”) in 2002, Congress made clear that any new coordination communication regulations issued by the FEC “shall not require agreement or formal collaboration to establish coordination.”<sup>142</sup> This is in keeping with Supreme Court precedent that campaign spending made “after a ‘wink or nod’ often will be ‘as useful to the candidates as cash.’”<sup>143</sup>

H.R. 1 clarifies and makes explicit that agreement or formal collaboration is not necessary to find coordination, but in fact, coordination can occur absent a formal agreement.

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<sup>138</sup> *Id.* at 140.

<sup>139</sup> 52 U.S.C. § 30121(a)(1)-(2)..

<sup>140</sup> *See id.* § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20.

<sup>141</sup> Mueller, *supra* note 126, at 2.

<sup>142</sup> Note to 52 U.S.C. § 30116(a)(7).

<sup>143</sup> *McConnell v. FEC*, 540 U.S. 93, 221 (2003) (quoting *FEC v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431, 442, 446 (2001)).



## DISCLOSE ACT

Through the DISCLOSE Act, H.R. 1 closes gaping loopholes in our campaign finance system's disclosure laws left open since *Citizens United*. It also closes loopholes in campaign finance law through which foreign nationals, including foreign governments, can spend money to influence and interfere in U.S. elections in contravention of the existing prohibition on campaign spending by foreign nationals.<sup>144</sup>

The DISCLOSE Act requires covered organizations—corporations, non-profit organizations, section 527 organizations, and others—to report their campaign-related spending if they spend more than an aggregate of \$10,000 in an election cycle. Campaign-related spending is defined to include independent expenditures, electioneering communications, federal judicial nomination communications, covered transfers, and advertisements that promote, attack, support, or oppose the election of candidates.<sup>145</sup> Covered organizations have a choice of setting up a separate account to be used for making campaign-related expenditures. If they use the separate account, only donors of an aggregate of \$10,000 or more to that account are disclosed. If they do not use a separate account, all donors of an aggregate of \$10,000 or more to the covered organization are disclosed.

There are three exceptions for disclosure. First, amounts from commercial transactions received in the ordinary course of any trade or business conducted by the covered organization. Second, amounts that a donor prohibits from being used for campaign-related spending, provided that the covered organization agrees to follow the prohibition and deposits the payment in an account which is segregated from any account used to make campaign-related disbursements. Third, the requirement to include information relating to the name or address of any donor shall not apply if the inclusion of the information would subject the person to serious threats, harassment, or reprisals.

The DISCLOSE Act also addresses the problem of money that is laundered through various front groups or shell entities to hide the original source of campaign-related spending. The bill requires disclosure of transfers between covered organizations when those transfers are made for the purpose of campaign-related expenditures or are deemed to be made for campaign-related expenditures.

The DISCLOSE Act encompasses several provisions that strengthen the ban on foreign spending in our elections. It codifies existing FEC regulations that prohibit foreign nationals from directing, dictating, controlling, or participating in decision-making concerning campaign spending. It also makes explicit that foreign nationals may not make contributions to independent expenditure-only committees (Super PACs) and enacts strong compliance rules.

The DISCLOSE Act requires the FEC to determine the incidence of illicit foreign money in each Federal election cycle and to provide a report to Congress after each Federal election cycle with

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<sup>145</sup> The Supreme Court upheld the PASO test in *McConnell v. FEC*, 540 U.S. 93 (2003).

the results of the audit as well as recommendations to address the presence of any illicit foreign money.

The bill also extends the existing foreign money prohibition to include ballot initiatives and referenda, which are currently not explicitly considered Federal, State, or local elections for purposes of the existing foreign money prohibition.<sup>146</sup>

It clarifies and expands the scope of the prohibition on spending by foreign nationals on advertisements by extending the foreign national spending prohibition to digital and online campaign advertisements that refer to a clearly identified candidate within 60 days of a general, special or runoff election or 30 days before a primary or preference election, convention, or caucus. This foreign national spending prohibition already applies to broadcast, cable, or satellite communications.<sup>147</sup>

The bill also applies the foreign spending prohibition to campaign advertisements that promote, support, attack, or oppose [“PASO”] the election of candidates, irrespective of whether the advertisement explicitly calls for the election or defeat of a candidate. In upholding this “PASO” test against a constitutional challenge, the Supreme Court stated in *McConnell v. FEC* that the “words provide explicit standards for those who apply them.”<sup>148</sup>

The bill prohibits foreign governments, foreign political parties, their agents, and those on the aforementioned sanctions list from spending money on advertisements that discuss national legislative issues of public importance during a year in which a regularly-scheduled general election for Federal office is held and on federal judicial nomination communications. It also prohibits foreign governments, foreign political parties, their agents, and those on the aforementioned sanctions list from compensating any person for internet activity that promotes, supports, attacks, or opposes the election of clearly identified candidates for Federal, State, or local office.

And finally, the DISCLOSE Act prohibits the establishing of corporations with the intent of concealing an activity of a foreign national. The penalty for violating the prohibition would be imprisonment for not more than five years, a fine, or both.

## HONEST ADS ACT

Digital political advertising continues to skyrocket. Digital advertising is a relatively inexpensive and effective medium to spread a message quickly and efficiently.<sup>149</sup> According to a May 2020 report released by Advertising Analytics and Cross Screen Media, spending on digital ads in the 2020 election season was expected to have cost \$1.8 billion, or approximately 27 percent of overall political advertising.<sup>150</sup>

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<sup>146</sup> 52 U.S.C. § 30121.

<sup>147</sup> *Id.* at § 30121 (a)(1)(C).

<sup>148</sup> *McConnell*, 540 U.S. at 93, 170, n. 64.

<sup>149</sup> *See Weiser, supra* note 7, at 23.

<sup>150</sup> *See Zach Montellaro, Political ads expected to explode, even as economy tanks*, POLITICO (May 15, 2020), <https://www.politico.com/news/2020/05/15/political-ad-spending-increases-as-economy-tanks-259653>.



The failure of campaign finance laws to keep pace with technology, especially with the emergence of social media, has opened up our system to vulnerabilities.<sup>151</sup> Russia’s efforts to sow division and distrust in democracy during the 2016 election included “overt efforts by Russian Government agencies, state-funded media, third-party intermediaries, and paid social media users or ‘trolls.’”<sup>152</sup> Facebook disclosed that it “identified more than \$100,000 worth of divisive ads on hot-button issues purchased by a shadowy Russian company linked to the Kremlin.”<sup>153</sup> The *Washington Post* reported that “two teams of independent researchers found that the Russians exploited American-made technology platforms to attack U.S. democracy at a particularly vulnerable moment ... as part of a broadly effective strategy of sowing distrust in U.S. democracy and its leaders.”<sup>154</sup>

The Honest Ads Act included in H.R. 1 updates the rules that apply to online political advertising by incorporating disclosure and disclaimer concepts that apply to traditional media, while providing regulatory flexibility for new forms of digital advertising. This will help ensure that voters make informed decisions at the ballot box and know who is spending money on digital political advertisements.

It also expands the definition of public communication to include paid internet or paid digital communications and amends the definition of electioneering communication to include certain digital or internet communications placed or promoted for a fee on an online platform.

In addition, the bill requires that large online platforms (defined to include those with 50 million or more unique monthly United States visitors or users) maintain public databases of political ad purchases. This is a concept that already applies to broadcasters, who must maintain public files of political advertisements. The online databases maintained by the platforms will provide the public with information about the purchasers of online political ads, including how the audience is targeted. Political advertisements are defined to include those that communicate messages relating to political matters of national importance, including about candidates, elections, and national legislative issues of public importance.

Finally, the Honest Ads Act requires broadcasters, cable or satellite television, and online platforms to take reasonable efforts to ensure that political advertising is not purchased by foreign nationals, directly or indirectly.

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<sup>151</sup> See Hamsini Sridharan and Ann M. Ravel, *Illuminating Dark Digital Politics: Campaign Finance Disclosure for the 21<sup>st</sup> Century*, MADISON (2017) (finding that the “lack of a 21<sup>st</sup> century disclosure system is all the more stark when considering the pace with which communication is moving online.”).

<sup>152</sup> OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, INTELLIGENCE COMMUNITY ASSESSMENT: ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS ii (2017), [https://www.dni.gov/files/documents/ICA\\_2017\\_01.pdf](https://www.dni.gov/files/documents/ICA_2017_01.pdf).

<sup>153</sup> Scott Shane & Vinu Goel, *Fake Russian Facebook Accounts Bought \$100,000 in Political Ads*, THE NEW YORK TIMES (Sept. 6, 2017), <https://www.nytimes.com/2017/09/06/technology/facebook-russian-political-ads.html>.

<sup>154</sup> Craig Timberg, *Russian Propaganda Effort Helped Spread ‘Fake News’ During Election, Experts Say*, THE WASHINGTON POST (Nov. 24, 2016), [https://www.washingtonpost.com/business/economy/russian-propaganda-effort-helped-spread-fake-news-during-election-experts-say/2016/11/24/793903b6-8a40-4ca9-b712-716af66098fe\\_story.html?utm\\_term=.24841509a330](https://www.washingtonpost.com/business/economy/russian-propaganda-effort-helped-spread-fake-news-during-election-experts-say/2016/11/24/793903b6-8a40-4ca9-b712-716af66098fe_story.html?utm_term=.24841509a330).

## STAND BY EVERY AD ACT

H.R. 1 also includes the Stand By Every Ad Act. Currently, only candidates are required to “stand by” their advertisements to indicate that they have approved certain political messages. The Stand By Every Ad Act applies this requirement to election-related advertisements purchased by outside entities such as corporations, 527 organizations, and nonprofit organizations. It would also require such advertisements to include a list of the Top Five funders of the entity (in video advertisements or Internet and digital advertisements transmitted in a text or graphic format) or the Top Two funders of the entity (for audio advertisements). These provisions improve transparency and accountability in campaign spending and are in keeping with the need for better disclosure provisions, particularly with the steep increase in outside group spending after *Citizens United*.

## CAMPAIGN FINANCE – EMPOWERING EVERY VOICE IN OUR DEMOCRACY

Money plays an outsized role in determining who runs for office, who wins office, and in setting policy priorities in Washington. The total costs of elections continue to rise exponentially. The total cost of Congressional elections in 2008, for example, was \$2.5 billion.<sup>155</sup> A decade later, the 2018 midterms cost more than \$5.7 billion.<sup>156</sup> And the cost for Congressional elections in 2020 is estimated to have been \$8.7 billion.<sup>157</sup>

The eye-popping sums themselves do not tell the whole story. Important, too, is the source of the money. American political campaigns are funded by a tiny, wealthy, and highly unrepresentative segment of the population. In the 2020 election cycle, only 1.42 percent of the population gave \$200 or more to political campaigns.<sup>158</sup> This slice of America contributed 76 percent of the money that went to Federal candidates, PACs, parties, and outside groups.<sup>159</sup> This class of donors is not representative of the public at large. It is largely white, wealthy, and male.<sup>160</sup> According to Dēmos:

Ninety-two percent of federal election donors in 2014 and 91 percent of donors in 2012 were white. The numbers are even more skewed among large donors. Ninety-four percent of those giving more than \$5,000 in 2014 and 93 percent in 2012 were white. Men make up slightly less than half of the population, but comprised 63 percent of federal election donors in 2012 and 66 percent of donors in 2014. The

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<sup>155</sup> *Cost of Elections*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/overview/cost.php/> (last visited Feb. 25, 2021).

<sup>156</sup> *See id.*

<sup>157</sup> *See id.*

<sup>158</sup> *Donor Demographics*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/overview/donordemographics.php> (last visited Feb. 25, 2021).

<sup>159</sup> *See id.*

<sup>160</sup> *See Bains, supra* note 11, at 12.

pool of donors who give more than \$1,000 has less gender diversity, with men making up 65 percent of donors giving more than \$5,000.<sup>161</sup>

This pales in comparison to the rich diversity of our country and undermines principles of equal representation.

When it comes to so-called “independent” spending—campaign spending by Super PACs, corporations, and other nonprofit organizations—the financial muscle of the donor class is even more stark. Since the Supreme Court’s decision in *Citizens United*, Super PACs alone have raised more than \$8.3 billion.<sup>162</sup> In the 2020 cycle alone, Super PACs raised more than \$3.4 billion,<sup>163</sup> and the top one percent of donors contributed 95.9 percent of the money raised.<sup>164</sup>

A direct threat to a responsive democracy is how money sets policy priorities—or even *appears* to set policy priorities. As the Supreme Court reasoned in *Buckley*, when it upheld contribution limits, “[of] almost equal concern as the danger of actual *quid pro quo* corruption is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.”<sup>165</sup>

Numerous studies have demonstrated that major campaign donors have more influence than voters over policy, and often the policy objectives take a divergent path from that preferred by voters.<sup>166</sup> This lack of responsiveness, real and perceived, is counter to the ideals of democratic self-government.

Candidates for office today face the difficult challenge of having to raise significant amounts of funds and to do so quickly if they want to be considered viable. Few can manage this without relying heavily on a network of donors and organized interests. It is true that the Internet can be a revolutionary tool to empower small dollar donors. Still, small dollar donors that contributed \$200 or less made up only 24 percent of the money raised in the 2020 election cycle.<sup>167</sup>

### SMALL DOLLAR FINANCING OF CONGRESSIONAL ELECTION CAMPAIGNS

H.R. 1 provides a voluntary, alternative method to raise funds for Congressional elections. It will allow candidates to run for office without depending on deep pocketed donors or special interest

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<sup>161</sup> *Id.*

<sup>162</sup> *Outside Spending by Super PAC*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/outsidespending/summ.php?chrt=V&type=S> (last visited Feb. 25, 2021).

<sup>163</sup> *Id.*

<sup>164</sup> *Super PACs: How Many Donors Give*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/outside-spending/donor-stats> (last visited Feb. 25, 2021).

<sup>165</sup> *Buckley*, 424 U.S. at 27.

<sup>166</sup> See Weiser, *supra* note 7, at 17 (citing Chris Tausanovitch, *Income, Ideology and Representation*, RUSSELL SAGE FOUNDATION JOURNAL OF THE SOCIAL SCIENCES 2 (2016) 33, 49; Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and American Citizens*, PERSPECTIVES ON POLITICS 12 (2014) 564, 575; Christopher Ellis, *Social Context and Economic Biases in Representation*, JOURNAL OF POLITICS 75 (2013) 773, 779; MARTIN GILENS, AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA 84 (Princeton University Press 2012); LARRY BARTELS, UNEQUAL DEMOCRACY: THE POLITICAL ECONOMY OF THE NEW GILDED AGE 285 (Princeton University Press 2010).

<sup>167</sup> *Donor Demographics*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/overview/donordemographics.php> (last visited Feb. 25, 2021).

fundings.<sup>168</sup> It will empower ordinary Americans to make their small contributions matter as greatly as large contributions to candidates.<sup>169</sup> It will free candidates to run competitive races solely on small dollar donors.<sup>170</sup> And it will open up the political process to new and diverse candidates to run competitive campaigns.<sup>171</sup>

Such voluntary public funding systems have been created in recent years in Berkeley, CA; Portland, OR; Denver, CO; Baltimore, MD; Montgomery County, MD; Howard County, MD; Prince George’s County, MD; Suffolk County, NY; and Seattle, WA.<sup>172</sup> Existing public financing systems have been updated in New York City, Los Angeles, CA, Maine, and Connecticut.<sup>173</sup>

One of the most successful public funding programs is in New York City, which matches donations up to \$175 and where the vast majority of candidates participate.<sup>174</sup> A Brennan Center study found that “participating city candidates raised money from 90 percent of the city’s census blocs, as compared to roughly 30 percent for state assembly candidates (who do not receive public matching dollars) running in the same areas.”<sup>175</sup>

As established in H.R. 1, the small dollar financing of Congressional campaigns will provide a 6-to-1 match of contributions of \$200 or less for participating candidates. It would cap the total amount of matching funds for a candidate to half of the average of the 20 most expensive winning campaigns in the previous cycle. To qualify for participation, candidates must raise at least \$50,000 in small dollar contributions from at least 1,000 individuals during the qualifying period. Participating candidates agree to only raise funds from qualified small dollar contributions, matching funds, nonqualified contributions of up to \$1,000 (which are not subject to the match), personal funds, and certain political committees. Multicandidate committees and party committees may contribute to participating candidates, but only if the contributions come from segregated accounts that only raise funds pursuant to the requirements for small dollar contributions.

H.R. 1 will also revise and modernize the once popular presidential public financing system. For decades, presidential candidates of both major political parties used the system to fund their political campaigns. The system fell into disrepair and has not kept pace with changes in how campaigns raise money, particularly with the rise in “soft money” in the 1990s and with the explosive growth of Super PACs after *Citizens United*. H.R. 1 will provide a matching system for primary presidential campaigns and increases the grant amount that is made available during the general election.

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<sup>168</sup> See Wertheimer, *supra* note 120, at 3.

<sup>169</sup> See *id.*

<sup>170</sup> See *id.*

<sup>171</sup> See *id.*

<sup>172</sup> See *id.*

<sup>173</sup> *Id.*

<sup>174</sup> See Weiser, *supra* note 7, at 20.

<sup>175</sup> *Id.*

All matching funds for the small dollar financing programs will come from the Freedom From Influence Fund, which will be funded entirely by a surcharge on corporations and corporate officers who break the law, as well as on any person who violates tax laws. No appropriated funds or taxpayer dollars will be used for the Freedom From Influence Fund. Matching fund payments are subject to a mandatory reduction in case of insufficient amounts in the Freedom From Influence Fund.

The Supreme Court has upheld the constitutionality of voluntary public financing programs. In *Buckley v. Valeo*, it held that such alternative ways of financing campaigns “reduce the deleterious influence of large campaign contributions on our political process” and “facilitate communication by candidates with the electorate.”<sup>176</sup> It went on to describe public funding programs as “a congressional effort, not to abridge, restrict, or censor speech, but rather ... to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people.”<sup>177</sup> In 2011, the Court held that “governments may engage in public financing of election campaigns and that doing so can further significant government interest[s], such as the state interest in preventing corruption.”<sup>178</sup>

### HELP AMERICA RUN ACT

In addition to the small dollar empowerment programs, H.R. 1 includes the Help America Run Act, which is designed to promote the ability of more people, including those of modest means, to run for office. Current regulations allow candidates to pay themselves salaries, although this is not a feasible option for some candidates, particularly first-time candidates. This provision of H.R. 1 will allow nonincumbent candidates to cover specific expenses such as childcare, elder care, health insurance, and other necessities. It is essential that new pathways be opened to candidates for political office so that our Congress can reflect the people that it represents.

In sum, these programs in H.R. 1 reduce opportunity for corruption, increase electoral competition, and expand citizen participation so that government works for and is accountable to the people.

## CAMPAIGN FINANCE – INDEPENDENT SPENDING AND COORDINATION

As discussed above, the Supreme Court held in *Buckley* that contribution limits are justified by a constitutional interest in curbing corruption and the appearance of corruption. At the same time, the Court has struck down limits on “independent” spending, most recently in *Citizens United*, on the theory that independent spending is attenuated from candidates and does not pose the same danger of corruption or its appearance.

Still, due to a patchwork of laws and nonenforcement by the FEC, new types of Super PACs have sprung up in recent years that essentially operate as close arms of candidate campaigns while claiming to be independent. Such single-candidate Super PACs raised more than \$177

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<sup>176</sup> *Buckley*, 424 U.S. at 91.

<sup>177</sup> *Id.* at 92-93.

<sup>178</sup> *Arizona Free Enterprise Club’s Freedom PAC v. Bennett*, 546 U.S. 721 (2011).

million in the 2018 midterm elections alone,<sup>179</sup> and more than \$800 million in the 2020 presidential election.<sup>180</sup>

According to the nonpartisan Center for Responsive Politics, these types of Super PACs:

[F]ocus almost exclusively on one candidate, either by advertising in support of that candidate or attacking his or her opponents. Like other Super PACs, they can raise and spend unlimited amounts of money, so they provide a convenient way for wealthy supporters to contribute large sums to bolster their favored candidates. Though Super PACs are supposed to operate independently and refrain from coordinating their strategy with someone running for office, these groups are often created and run by individuals with very close ties to the candidates they support.<sup>181</sup>

The ultimate concern here is that single-candidate Super PACs, and other unregulated coordinated spending, can be used to circumvent and eviscerate candidate contribution limits that would otherwise apply. If spending by outside groups and candidates is not actually independent—and it is coordinated—then expenditures are treated as in-kind contributions to candidates under federal law.<sup>182</sup> Such contributions are subject to source prohibitions and contribution limits. This is in keeping with the Supreme Court’s decision in *Buckley*, which found that campaign expenditures coordinated with candidates can be treated as contributions to the candidate, because the “ultimate effect is the same as if the [spender] had contributed the dollar amount [of the expenditure] to the candidate.”<sup>183</sup>

To be clear, the Supreme Court has said that independent spending must be done “totally independently;”<sup>184</sup> “not pursuant to any general or particular understanding with a candidate,”<sup>185</sup> “without any candidate’s approval (or wink or nod),”<sup>186</sup> and must be “truly independent.”<sup>187</sup>

H.R. 1 uses these Court decisions to establish updated coordination standards to address the rise of single-candidate Super PACs and other types of coordinated spending. Its purpose is to ensure spending is truly independent, including by establishing new standards for “coordinated spenders” that are based on relationships between outside spenders and candidates. Revising coordination rules, as provided in the bill, furthers the government’s interest in curbing corruption and the appearance of corruption.

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<sup>179</sup> 2018 *Outside Spending by Single-Candidate Super PACs*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/outsidespending/summ.php?cycle=2018&chrt=V&disp=O&type=C> (last visited Feb. 25, 2021).

<sup>180</sup> 2020 *Outside Spending by Single-Candidate Super PACs*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/outsidespending/summ.php?cycle=2020&chrt=V&disp=O&type=C> (last visited Feb. 25, 2021).

<sup>181</sup> *Id.*

<sup>182</sup> 11 C.F.R. § 109.20; 109.21.

<sup>183</sup> *Buckley*, 424 U.S. at 36-37.

<sup>184</sup> *Buckley*, 424 U.S. at 47.

<sup>185</sup> *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604, 614 (1996).

<sup>186</sup> *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 442 (2001).

<sup>187</sup> *Id.* at 465.



Importantly, there are express protections in place to ensure that advocacy and lobbying activities are unaffected by updated coordination rules. For example, H.R. 1 makes clear that there can be no finding of coordination based solely on sharing of information regarding legislative or policy positions.

### REFORMING THE FEDERAL ELECTION COMMISSION

The mission of the FEC is to administer and enforce Federal campaign finance law. It plays a critical role in ensuring the public has access to data about the raising and spending of money to influence Federal elections, and it provides advice and guidance to candidates and others seeking to comply with Federal campaign finance law.

Unfortunately, the Commission has not been fulfilling its mission. Former FEC Chair Ann Ravel told the *New York Times* in 2015 that “the likelihood of the laws being enforced is slim. ... People think the F.E.C. is dysfunctional. It’s worse than dysfunctional.”<sup>188</sup>

An analysis by former Commissioner Ravel’s office found that the Commission—made up of six members, no more than three of whom can be from the same political party—has dramatically increased in the number of deadlocked substantive votes between 2006 and 2016.<sup>189</sup> Whereas in 2006, only 4.2 percent of enforcement cases had at least one deadlocked vote, in 2016, 37.5 percent of all enforcement cases had a deadlocked vote. Fines dramatically reduced in the intervening years, and the Commission has failed to enact new regulations post-*Citizens United* to address the rise of secret, dark money in elections.

The Commission has been encumbered by numerous management challenges as well, including multiyear vacancies on the Commission itself and in key offices. The Commission has not had a permanent General Counsel in more than seven years. Further, the Commission lacked a quorum (*i.e.*, at least four Commissioners) throughout much of the 2020 election cycle, resulting in its inability to issue guidance and a growing backlog of cases. A quorum is required for the agency to provide guidance and to enforce campaign finance laws. The Commission lost its quorum in August 2019 when a Commissioner resigned, leaving only three Commissioners.<sup>190</sup> Although a quorum was restored briefly nearly nine months later in May 2020,<sup>191</sup> the Commission lost its quorum again in July 2020 when another Commissioner resigned, and it was not restored until

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<sup>188</sup> Eric Lichtblau, *FEC Can’t Curb 2016 Election Abuse, Commission Chief Says*, THE NEW YORK TIMES (May 2, 2015), <https://www.nytimes.com/2015/05/03/us/politics/fec-cant-curb-2016-election-abuse-commission-chief-says.html>.

<sup>189</sup> Office of Commissioner Ann M. Ravel, *Dysfunction and Deadlock: The Enforcement Crisis at the Federal Election Commission and the Unlikelihood of Draining the Swamp*, FEDERAL ELECTION COMMISSION (Feb. 2017), [https://www.fec.gov/resources/about-fec/commissioners/ravel/statements/ravelreport\\_feb2017.pdf](https://www.fec.gov/resources/about-fec/commissioners/ravel/statements/ravelreport_feb2017.pdf).

<sup>190</sup> Daniel I. Weiner, *FEC Dormant Heading into 2020 Election*, THE BRENNAN CENTER FOR JUSTICE (July 29, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/fec-dormant-heading-2020-election>.

<sup>191</sup> Zach Montellaro, *FEC reaches quorum after Senate confirms Trainor*, POLITICO (May 19, 2020), <https://www.politico.com/news/2020/05/19/fec-reaches-quorum-senate-confirms-trey-trainor-269659>.

five months later in December 2020. Without a quorum, the Commission amassed a backlog of nearly 450 enforcement matters.<sup>192</sup>

The result has been a lack of clear enforcement and guidance concerning an ever-evolving body of complex campaign finance law.

H.R. 1 reforms the FEC to fulfill its mission, while guarding against arbitrary and partisan enforcement of campaign finance law. It reduces the Commission from six to five commissioners, of whom no more than two can be affiliated with the same political party. An odd number of commissioners will avoid the inaction and dysfunction that comes with the current partisan split, as well as provide for an independent or minor party commissioner to break partisan ties. It also changes the quorum requirement from four to three Commissioners, limits Commissioners to serving a single six-year term, prohibits holdover for more than one year, and provides for a “blue-ribbon” advisory panel to suggest potential nominees to the President that are made public. This provides some accountability to the appointment process.

H.R. 1 also reforms the enforcement process to empower the General Counsel’s office to make initial findings and recommendations, subject to Commission override.

## STRENGTHENING HIGH ETHICAL STANDARDS IN GOVERNMENT

Americans witnessed an unprecedented torrent of ethical scandals emanating from Washington and the former Trump Administration. From nepotism and influence peddling, to misuse of public funds, to self-enrichment, former President Trump, his Administration, and other elected officials stress-tested our ethics laws and exposed new loopholes that H.R. 1 will close. During the four years of the Trump Administration, cabinet and other senior officials faced dozens of ethics and conflict-of-interest investigations that led to their resignation or cast a cloud over their tenure.<sup>193</sup> The “revolving door” continued to spin between private industry and public service, all while the Office of Government Ethics lacked key tools to best uphold the public interest in high ethical standards.

H.R. 1 would implement measures that expand conflict of interest laws, slow down the revolving door between the public and private sector, increase disclosure requirements for both elected officials and lobbyists, and equip the Office of Government Ethics to more effectively enforce federal ethics laws, amongst various other reforms, which all will ultimately serve to ensure that our government works in the interest of the American people.<sup>194</sup>

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<sup>192</sup> Brian Naylor, *The Federal Election Commission Can Finally Meet Again. And It Has A Big Backlog*, NPR (Dec. 24, 2020), <https://www.npr.org/2020/12/24/949672803/the-federal-election-commission-can-finally-meet-again-and-it-has-a-big-backlog>.

<sup>193</sup> *Trump Team’s Conflicts and Scandals: An Interactive Guide*, BLOOMBERG (Mar. 14, 2019), <https://www.bloomberg.com/graphics/trump-administration-conflicts/>.

<sup>194</sup> See Michael Sozan, *Momentum Grows for Bold Democracy Reform*, CENTER FOR AMERICAN PROGRESS, Feb. 10, 2021, <https://www.americanprogress.org/issues/democracy/reports/2021/02/10/495607/momentum-grows-bold-democracy-reform/>.



## CONGRESSIONAL ETHICS REFORMS

The cynicism emanating from ethical scandals threatens to undermine confidence in all levels of government, including Congress. In 2020, about 41 percent of the public said it had “very little” confidence in Congress as an institution.<sup>195</sup> According to Gallup, Americans’ job approval rating for Congress stands at approximately 25 percent as of January 2021.<sup>196</sup>

Americans run for Congress to make a difference in their communities and to steward the public interest. Bolstering high ethical standards will improve trust in the institution. Ultimately, reforms to ethics and transparency rules that apply to Congress improve democratic accountability.

H.R. 1 enacts new Congressional ethics reforms as part of this process. First, it requires Members of Congress to reimburse Treasury for amounts paid as settlements and awards under the Congressional Accountability Act of 1995 in all cases of employment discrimination acts by Members.

It also codifies the conflict of interest rules for Members of Congress and Congressional staff. It prohibits Members, House officers, and other employees of the House from using their position to introduce or help pass legislation for pecuniary gain.

It will shine a light on influence-seeking by requiring FEC campaign finance reports to be linked with Lobbying Disclosure Act reports. This will help voters hold elected officials and special interests accountable to the public interest and allow them to follow how levers of influence are linked.

Finally, the bill requires all reports from Federal agencies mandated by Congress to be published online in a searchable and downloadable database. This strengthens the public’s access to information and enhances government transparency.

## FARA AND LOBBYING REFORMS

In 2016, the Department of Justice (DOJ) Office of Inspector General released a report that found that the DOJ “lacks a comprehensive enforcement strategy”<sup>197</sup> for the Foreign Agents Registration Act (FARA), a law that requires agents of foreign principles to register with the Attorney General and to disclose their activities. The OIG report also found that FARA registrations have drastically declined over the last two decades and that the enforcement of FARA is rare.<sup>198</sup> H.R. 1 reforms and strengthens the FARA enforcement mechanism by

<sup>195</sup> *Confidence in Institutions*, GALLUP (2020), <https://news.gallup.com/poll/1597/confidence-institutions.aspx>.

<sup>196</sup> *Congress and the Public*, GALLUP (Jan. 2021), <https://news.gallup.com/poll/1600/congress-public.aspx>.

<sup>197</sup> *Annotated Guide to the For the People Act of 2021*, THE BRENNAN CENTER FOR JUSTICE (Jan. 20, 2021), <https://www.brennancenter.org/our-work/policy-solutions/annotated-guide-people-act-2021#t1-se> (citing *DOJ OIG Releases Report on the DOJ’s Enforcement of the Foreign Agents Registration Act*, OFFICE OF THE INSPECTOR GENERAL, U.S. DEPT. OF JUSTICE (Sept. 7, 2016), <https://oig.justice.gov/news/doj-oig-releases-report-dojs-enforcement-foreign-agents-registration-act>.)

<sup>198</sup> *DOJ OIG Releases Report on the DOJ’s Enforcement of the Foreign Agents Registration Act*, OFFICE OF THE INSPECTOR GENERAL, U.S. DEPT. OF JUSTICE (Sept. 7, 2016), <https://oig.justice.gov/news/doj-oig-releases-report-dojs-enforcement-foreign-agents-registration-act>.

establishing and funding a FARA investigation and enforcement unit within the DOJ, authorizing the unit to impose civil penalties against those who violate FARA, requiring disclosure by FARA registrants of transactions involving things of financial value conferred on officeholders, and ensuring public online access to FARA registration statements.

H.R. 1 also improves lobbyist disclosure requirements. The bill reduces the threshold for lobbyist registration from 20 percent of time spent lobbying to 10 percent. It also clarifies that counseling services that support lobbying activities are activities that qualify as lobbying and prohibits the receipt of compensation for lobbying activities on behalf of foreign countries that the President has deemed to have engaged in gross violations of human rights. And finally, H.R. 1 requires lobbyists to disclose their status upon making any lobbying contacts with legislative or executive branch officeholders.

To promote further transparency to the American public of the activities of lobbyists and foreign agents, H.R. 1 establishes a clearinghouse under the Department of Justice to ensure easy public access to statements filed under the Lobbying Disclosure Act of 1995 and the Foreign Agents Registration Act of 1938.

### EXECUTIVE BRANCH ETHICS REFORMS

H.R. 1 enacts a range of ethics reforms within the executive branch that reduce the influence of industry lobbyists on senior government officials and slow down the revolving door between government and the private sector. Amongst many reforms, the bill, for example, bans companies from paying out “golden parachutes” to reward former employees for joining the government. It also increases the “cooling-off” period for senior government officials leaving their positions from one year to two years before they can lobby their former agency.

H.R. 1 also enacts ethics reforms that will enhance financial transparency and disclosure by the President and Vice President. Within 30 days of taking office, the President and Vice President must divest from personal financial interests that pose a conflict of interest with their duties or they must disclose information about their business interests. In addition, the bill requires the President and the Vice President to file new financial disclosure reports within 30 days of taking office and prohibits them and cabinet members from entering into federal contracts while in office. Further, the bill requires the President, Vice President, and candidates for such offices to disclose their individual tax returns and certain business tax returns to the FEC and for the FEC to make them publicly available.

Additionally, the bill requires Presidential appointees to recuse themselves from any matter in which there is a conflict of interest, such as if a party in a matter is the President that appointed them.

Further, the bill reauthorizes the Office of Government Ethics (OGE) and bolsters its enforcement mechanisms and investigatory power so that it can properly serve as a watchdog over the executive branch.<sup>199</sup> The OGE will be given clear authority to obtain information from

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<sup>199</sup> See *Report on the Executive Branch Comprehensive Ethics Enforcement Act of 2019*, H. Comm. on Oversight and Reform, 116<sup>th</sup> Cong. (2020).

agencies, subpoena documents and enforce subpoenas in a district court, report to Congress instead of going through the Office of Management and Budget, and issue administrative penalties for violations of ethics laws. The bill also clarifies that the White House must also abide by the Ethics in Government Act.

Taken together, these reforms, along with other ethics reforms in H.R. 1, target potential conflicts of interest across the legislative and executive branches and strengthen transparency in government and disclosure requirements of officeholders and those trying to influence government, which all in turn will work to enhance and strengthen public trust in our democratic institutions.

# HEARINGS

On February 14, 2019, the Committee on House Administration held a hearing titled “For the People: Our American Democracy” to consider many of the concerns addressed by H.R. 1. The following witnesses testified: Chiraag Bains, Director of Legal Strategies, Demos; Wendy Weiser, Director, Democracy Program, Brennan Center for Justice; Fred Wertheimer, President, Democracy 21; The Honorable Kim Wyman Secretary of State, State of Washington; Alejandro Rangel-Lopez, Senior at Dodge City High School, Dodge City, Kansas, and plaintiff *in LULAC & Rangel-Lopez v. Cox*; Peter Earle, Wisconsin Civil Rights Trial Lawyer; Brandon A. Jessup, Data Science and Information Systems Professional; Executive Director, Michigan Forward; and David Keating, President, Institute for Free Speech.

During the 116<sup>th</sup> Congress, the Committee on House Administration and the Subcommittee on Elections held a combined seventeen hearings on voting and election administration issues across the nation.

On February 25, 2021, the Committee on House Administration held a hearing titled “Strengthening American Democracy” to review the structural and administrative barriers to voting in our elections following the 2020 elections and the need for Congress to pass H.R. 1. The following witnesses testified: Stacey Abrams, Founder and Chair, Fair Fight Action; The Honorable Shenna Bellows, Secretary of State, Maine; Guy-Uriel Charles, Edward and Ellen Schwarzman Professor of Law, Duke Law School; and Ricky Hatch, CPA, County Clerk/Auditor, Weber County, Utah.

# STATEMENT OF CONSTITUTIONAL AUTHORITY

Congress has an explicit and broad authority under the Constitution to regulate Federal elections. Specifically, Article 1, Section 4 of the Constitution authorizes Congress to regulate the time, place, and manner of Federal elections: “The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; *but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators* [emphasis added].”<sup>200</sup>

The Supreme Court has affirmed that the Elections Clause provides broad authority to Congress to regulate Federal elections:

“It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns—in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.”<sup>201</sup>

The Supreme Court has also affirmed that Federal election laws supersede state election laws: “[t]he power of Congress over the ‘Times, Places and Manner’ of congressional elections ‘is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith.’”<sup>202</sup>

Congress is also authorized under the 14th, 15th, 19th, 24th and 26th Amendments to the Constitution to enact Federal election laws that protect the right to vote from infringement.<sup>203</sup>

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<sup>200</sup> U.S. Const. Art. 1, § 4.

<sup>201</sup> *Smiley v. Holm*, 285 U.S. 355 (1932).

<sup>202</sup> *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 8-9 (2013).

<sup>203</sup> See *Strengthening American Democracy: Hearing Before H. Comm. on Administration*, 117th Cong. 9 (2021) (statement of Guy-Uriel E. Charles, Professor of Law and Edward & Ellen Schwarzman Professor of Law, Duke Law School).

# SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION



## H.R. 1 THE FOR THE PEOPLE ACT OF 2021

Section 1. Short title. States that the title of this Act is the “For the People Act of 2021.”

Section 2. Organization of Act into divisions; table of contents. States that the Act is divided into: Division A – Voting; Division B – Campaign Finance; and Division C – Ethics. Provides a table of contents.

Section 3. Findings of General Constitutional Authority.

- Overview: Details Congress’ explicit and broad authority granted by the Constitution to protect the right to vote, to regulate elections for Federal office, and to defend the Nation’s democratic process.

Section 4. Standards for Judicial Review.

- Overview: Outlines the process and standards for judicial review for any provision or amendment of the Act, specifying venue requirements, notice requirements, appeal requirements and rules governing intervention by Members of Congress.



### Division A – Voting

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#### TITLE I – ELECTION ACCESS

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Section 1000. Short Title; Statement of Policy. This title may be called the “Voter Empowerment Act of 2021”. Declares that it is the policy of the United States that all



eligible citizens should have free and fair access to the vote, and that the integrity, security, and accountability of the voting process must be vigilantly protected.

#### Subtitle A – Voter Registration Modernization

Section 1000A. Short Title. This subtitle may be called the “Voter Registration Modernization Act of 2021”.

#### Part 1 – Promoting Internet Registration

- Overview: Requires each state to make available online voter registration, correction, cancellation and designation of party affiliation.

Section 1001. Requiring Availability of Internet for Voter Registration. Amends the National Voter Registration Act (NVRA) to require the availability of online application, assistance, completion, submission, and receipt of voter registration applications. Allows online signature through use of State agency databases in which the individual has a signature on file, an electronic copy, or the individual executes a computerized mark in the signature field on the online form in accordance with reasonable security measures established by the State. Directs States to allow voters who complete all other parts of the online voter registration, except for the signature verification, to submit a signature upon requesting a ballot in person or by mail. Requires States to inform potential voters about the signature process and their rights. Requires States to certify receipt of online voter registration applications and update potential voters on the status and, no later than 7 days after the appropriate State or local election official has made a decision, inform the applicant of outcome of their application in a direct manner by regular mail and email or text message. Requires that services are provided in a nonpartisan manner. Requires the protection of all information provided online. Requires that States ensure services in this section are made available to individuals with disabilities to the same extent as others. Allows States to use a telephone-based system that provides the same services as are available online. Requires that voters registered online be treated the same as those registered by mail. Outlines signature requirements for first-time voters using online registration.

Section 1002. Use of Internet to Update Registration Information. Allows registered voters to update their registration information online. Requires State to send receipt of registration update and notice of disposition of the request. Requires that, within 7 days of an election official accepting or rejecting updated information, the official shall send the requesting individual notice of the disposition of the update.

Section 1003. Provision of Election Information by Electronic Mail to Individuals Registered to Vote. Adds a space to voter registration form for applicant to provide email address (at the applicant's option). Restricts the use of voter's email address to official election purposes only. Requires that voters who provide an email address be sent an email not later than 7 days before an election including providing information on how the voter may obtain, by electronic means, the name and address of their polling place, the polling place hours of operation, and a description of any identification required.

Section 1004. Clarification of Requirement Regarding Necessary Information to Show Eligibility to Vote. The State shall consider an applicant to have provided a valid voter registration form if the applicant substantially completes the application and attestation and, in the case of online registration, the applicant provides a signature.

Section 1005. Prohibiting State from Requiring Applicants to Provide More Than Last 4 Digits of Social Security Number. To the extent that an application requires the applicant to provide a Social Security number, the State may not require the applicant to provide more than the last 4 digits of their Social Security number.

Section 1006. Effective Date. With limited exceptions, subtitle takes effect on January 1, 2022.

## Part 2 – Automatic Voter Registration

- Overview: Requires chief State election officials to automatically register to vote any eligible unregistered citizens, while protecting from prosecution ineligible voters mistakenly registered. Deems State agencies and federal offices within a State as contributing agencies for the purposes of registration.

Section 1011. Short Title; Findings and Purpose. The short title of this section is the “Automatic Voter Registration Act of 2021.” Finds the right to vote is a fundamental right of citizens; the State and Federal government are charged with ensuring every eligible citizen is registered to vote; the existing voter registration systems can be inaccurate, costly, inaccessible, and confusing and can be underinclusive; and the existing voter registration systems must be updated with 21<sup>st</sup> Century technology and procedures. Establishes the purpose of the section is to enable governments to register all eligible citizens, to modernize federal voter registration, and to protect and enhance the integrity, accuracy, efficiency, and accessibility of the U.S. electoral process.

Section 1012. Automatic Registration of Eligible Individuals. Requires chief State election officials to establish an automatic voter registration system. Defines an automatic voter registration system, where unless the individual affirmatively declines to be registered, the individual will be registered to vote. Requires the chief State election official to register eligible individuals within 15 days of receiving transmitted information and to notify the individual of their voter status within 120 days of such information being transmitted. Outlines the notification and opt-out process for one-time automatic voter registration for existing contributing agency records in a manner that allows individuals to choose or decline a party affiliation, correct erroneous information, provide any additional information and learn more about the process. Directs chief State election officials to complete the one-time automatic voter registration within 45 days of sending notice unless the individual declines to register. Allows eligible individuals above age 16 and under age 18 to participate in the automatic voter registration process.

Section 1013. Contributing Agency Assistance in Registration. Requires contributing agencies to assist the chief State election official in registering all eligible individuals served by the agency. Directs each contributing agency, including institutions of higher education, to inform confirmed, eligible citizens of the automatic voter registration process, update, and need to select a party affiliation if required by State law -- unless they exercise their right to decline or do not meet the federal qualifications. Each contributing agency shall ensure that every individual has the opportunity to decline to be registered to vote. Unless the individual declines during the 30-day notice period, each contributing agency will electronically transmit the voter registration information to the chief State election official in a compatible format.

Prescribes that the individual's name, date of birth, address, proof of citizenship, date information was collected or updated, electronic signature if available, political party affiliation, and any additional information required for Federal office is included in the transmission. Provides an alternate procedure for certain contributing agencies, including institutions of higher education that do not request confirmation of citizenship information from individuals. Requires each contributing agency to provide an opportunity for individuals to register to vote every time the individual applies for service or assistance, without regard to whether an individual previously declined a registration opportunity. Defines State and Federal contributing agencies -- including institutions of higher education that receive Federal funds and, in a State in which an individual is disenfranchised by a criminal conviction may become eligible to vote, the agency responsible for administering the sentence or restoration of rights. Requires the chief State election official to publish the list of contributing agencies 180 days

in advance of a Federal election. Directs the chief State election official to educate the public about the automatic voter registration process.

Section 1014. One-Time Contributing Agency Assistance in Registration of Eligible Voters in Existing Records. Prescribes the timeline for the initial transmission of information.

Section 1015. Voter Protection and Security in Automatic Registration. Protects an individual from prosecution under Federal and State law, adverse impact in any civil adjudication concerning immigration status or naturalization, or being subject to an allegation in any legal proceeding that the individual is not a citizen on any of the following grounds: (1) the individual notified an election office of their automatic registration; (2) the individual is not eligible to vote but was automatically registered; (3) the individual was automatically registered at an incorrect address; (4) the individual declined the opportunity to register to vote or did not make an affirmation of citizenship. The automatic registration of any individual or the fact that they declined to register or did not make an affirmation of citizenship may not be used as evidence against the individual in any State or Federal law enforcement proceeding; an individual's lack of knowledge or willfulness may be demonstrated by the individual's testimony alone.

Requires that the chief State election official adopt a policy specifying each class of users with authorized access to the computerized statewide voter registration list and their level of access, and set forth safeguards to protect the privacy, security, and accuracy of the information on the list. Requires the chief executive officer of the state to annually file with the Election Assistance Commission certifying compliance with the privacy and security standards offered by the National Institute of Standards and Technology. Failure to timely file such certification will result in a State not receiving payment under this section for the upcoming fiscal year. Allows that in the case of a State that requires State legislation to carry out an activity covered by the certification, for a period of not more than 2 years the State shall be permitted to make the certification notwithstanding that the legislation has not been enacted at the time the certification is submitted, and such State shall submit an additional certification once such legislation is enacted. Restricts usage of information, providing no one acting under color of law may discriminate against any individual based on their voter registration records, decision to decline to register, or their voter registration status. Further prohibits use of voter registration information for commercial purposes.

Section 1016. Registration Portability and Correction. Allows registered voters to update and correct their voter registration information at the polling station and cast a regular ballot based

upon the most current information. Requires election officials to update statewide voter registration lists with the updated or corrected information provided by the voter.

Section 1017. Payments and Grants. Authorizes the Election Assistance Commission (EAC) to distribute grants to the States, monitor their use, and allocate funding based on a set of priority investments, including technological upgrades and public education. Authorizes an appropriation of \$500,000,000 beginning in fiscal year 2021 to implement this Subtitle, authorizes such sums as may be necessary for each succeeding fiscal year, and permits funds to be available until expended.

Section 1018. Treatment of Exempt States. Clarifies the treatment and availability of funds for exempt States, including States that provide automatic voter registration through the motor vehicle authority of the State or through the permanent Dividend Fund of the State.

Section 1019. Miscellaneous Provisions. Requires contributing agencies to ensure that registration services are equally available to individuals with disabilities. Permits contributing agencies to contract with a third party to enable a secure transmission of voter data. Reiterates that contributing agencies must provide services in a nonpartisan, nondiscriminatory manner. Permits a State to communicate with an individual by email if provided and mandates that, for notices that require a response, the notified individual must be offered the opportunity to respond at no cost. Clarifies that civil enforcement and the private rights of action outlined in the National Voter Registration Act apply to this section. Explains that this Subtitle does not impact other voting rights and election administration statutes.

Section 1020. Definitions.

Section 1021. Effective Date. Applies to States beginning January 1, 2023, although the Election Assistance Commission may grant extensions through January 1, 2025, if a State certifies to the Commission it will not meet compliance deadlines because of extraordinary circumstances and includes reasons for the failure to meet said deadline.

### Part 3 – Same-Day Voter Registration

- Overview: Requires States to permit voters to register on the day of a Federal election, including during early voting.

Section 1031. Same-Day Registration. Mandates that each State permit an eligible individual to register to vote on the day of a federal election or when voting is allowed in a federal election, such as early voting, and further allows already-registered voters to update or correct registration information. Protects the equal sovereignty of States with respect to complying with existing law. Requires compliance in time for the regularly scheduled general election for federal office of November 2022.

#### Part 4 – Conditions on Removal on Basis of Interstate Cross-Checks

- Overview: Limits the authority of States to remove registrants from the official list of eligible voters in elections for Federal office in the State on the basis of interstate voter registration cross-checks.

Section 1041. Conditions on removal of registrants from official list of eligible voters on basis of interstate cross-checks. Maintains other conditions on removal and additionally prohibits a State election official from removing a voter deemed ineligible in a cross-state check from a registration list unless the State obtained the voter’s full name, date of birth, and last four digits of their Social Security number or obtained documentation from the Electronic Registration Information Center (ERIC) system that the voter is no longer a resident of the State. Requires cross-checks to be completed at least six months ahead of an election.

#### Part 5 – Other Initiatives to Promote Voter Registration

- Overview: Requires annual state reports on voter registration statistics to be provided to the Election Assistance Commission.

Section 1051. Annual Reports on Voter Registration Statistics. Requires each State to submit an annual report to Congress and the Election Assistance Commission on voter registration statistics – broken down by race, ethnicity, gender, and age – prescribed by this Title. The report will not share any voter identifying information.

Section 1052. Ensuring Pre-election Registration Deadlines Are Consistent with Timing of Legal Public Holidays. Changes the deadline for mail-based registration under the National Voter Registration Act from 30 days to 28 days to avoid a conflict with Columbus Day.

Section 1053. Use of Postal Service Hard Copy Change of Address Form to Remind Individuals to Update Voter Registration. Requires the United States Postal Service’s change



of address form to include a reminder to update voter registration information when changing addresses.

Section 1054. Grants to States for Activities to Encourage Involvement of Minors in Election Activities. Establishes a grant program to award States funding to increase youth civic engagement, preregistration, and involvement in the electoral process.

#### Part 6 – Availability of Help America Vote Act Requirement Payments

- Overview: Provides HAVA funds for the purpose of implementing the voter registration modernization reforms.

Section 1061. Availability of Requirements Payments Under HAVA to Cover Costs of Compliance with New Requirements. Provides that a State may use a requirements payment to carry out any of the requirements of the Voter Registration Modernization Act of 2021.

#### Part 7 – Prohibiting Interference with Voter Registration

- Overview: Makes it unlawful to hinder, interfere, or prevent an individual from registering to vote. Instructs the Election Assistance Commission to develop best practices for States to deter and prevent such violations.

Section 1071. Prohibiting Hindering, Interfering with, or Preventing Voter Registration. Prohibits any person, whether acting under color of law or otherwise, from corruptly hindering, interfering with, or preventing another person from registering to vote. Prohibits anyone from corruptly hindering, interfering with, or preventing another person from aiding another person in registering to vote. Ascribes the same penalties to attempting the same offense and provides that violations will be penalized through a fine or imprisonment for not more than five years, or both.

Section 1072. Establishment of Best Practices. Requires the Election Assistance Commission to develop and publish best practice recommendations for States to educate voters, poll workers, and election officials about illegal interference with the registration and voting process.

#### Part 8 – Voter Registration Efficiency Act

- Overview: Requires State DMVs to update the previous States in which applicants for driver's licenses were registered to vote when applicants register in a new State.

Section 1081. Short title. Provides that this part may be cited as the Voter Registration Efficiency Act.

Section 1082. Requiring applicants for motor vehicle driver's licenses in new State to indicate whether state serves as residence for voter registration purposes. Requires State DMVs to ask applicants for driver's licenses if the applicant intends to register to vote in the State and if so, requires the DMV to inform the State in which the applicant was previously registered to vote.

#### Part 9 – Providing Voter Registration Information to Secondary School Students

- Overview: Establishes a pilot program to provide voter registration information to high school seniors.

Section 1091. Pilot Program for Providing Voter Registration Information to Secondary School Students Prior to Graduation. Creates a pilot grant program to which local educational agencies can apply for grants to provide voter registration information to students in the 12<sup>th</sup> grade.

Section 1092. Reports. Requires local educational agencies to provide to the EAC reports detailing the funded programs and their effectiveness. Requires the EAC to report to Congress on the pilot program's effectiveness.

Section 1093. Authorization of Appropriations. Authorizes appropriations for the grant program.

#### Part 10 – Voter Registration of Minors

- Overview: Requires States to allow 16- and 17-year-olds to preregister to vote.

Section 1094. Acceptance of Voter Registration Applications from Individuals Under 18 Years of Age. Prohibits States from refusing to process registration applications from 16- and 17-year-olds but does not require States to allow minors to vote.

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## Subtitle B – Access to Voting for Individuals with Disabilities

- Overview: Requires States to promote access to voter registration and voting for persons with disabilities. Funds grants to improve voting accessibility for persons with disabilities and creates a pilot program to allow persons with disabilities to register and vote from home.

Section 1101. Requirements for States to Promote Access to Voter Registration and Voting for Individuals with Disabilities. Mandates the availability of absentee ballots for individuals with disabilities. Allows for individuals with disabilities to request and receive, by mail or electronically, registration forms and absentee ballots. Requires States to accept and process any otherwise valid voter registration or absentee ballot application from an individual with a disability if received by an appropriate State election official within the deadline for the election applicable under Federal law. Provides absentee ballots no later than 45 days prior to an election, when the request has been received at least 45 days prior to an election. Mandates the designation of a single State office to be responsible for providing voting-related information to individuals with disabilities. Requires States to provide a means of electronic communication of information related to registration, voting, etc. Includes guidance to ensure that absentee ballots sent to voters with disabilities are the same as those returned. Includes hardship exemption for States incapable of providing electronic transmissions, which must be approved by the Attorney General.

Section 1102. Expansion and Reauthorization of Grant Program to Assure Voting Access for Individuals with Disabilities. Provides grants for making absentee voting and voting at home accessible, making polling places accessible, providing solutions to problems of access that are universally designed and providing the same opportunities to vote for individuals with and without disabilities.

Section 1103. Pilot Programs for Enabling Individuals with Disabilities to Register to Vote Privately and Independently at Residences. Directs the Election Assistance Commission to, subject to the availability of appropriations to carry out this section, make grants to eligible States to conduct pilot programs under which individuals with disabilities may use electronic means, including the internet and telephones utilizing assistive devices, to register to vote and to request and receive absentee ballots in a manner which permits such individuals to do so privately and independently at their own residences.

Section 1104. GAO Analysis and Report on Voting Access for Individuals with Disabilities. Requires the Government Accountability Office to produce a report after each general election analyzing voting access for individuals with disabilities, including examining facilities that are exempt from the Americans with Disabilities Act and whether poll workers were adequately trained to assist voters with disabilities.

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#### Subtitle C – Prohibiting Voter Caging

- Overview: Prohibits the use of returned non-forwardable mail as the basis for removing registered voters from the rolls. Prohibits challenges to eligibility from individuals who are not election officials without an oath of good faith factual basis.

Section 1201. Voter Caging and Other Questionable Challenges Prohibited. Prohibits the use of a non-forwardable document returned to sender, a not-returned document, or an unverified list of ineligible individuals, as a basis for preventing an individual from registering to vote or voting in any federal election. Prohibits challenges to an individual's eligibility to vote by any person other than an election official unless the challenge is supported by personal knowledge regarding the grounds for ineligibility which it is documented and subject to an oath that the challenger has a good faith factual basis. Clarifies that race, ethnicity, and national origin are not permitted as a good faith, factual basis for a challenge. Provides penalties for knowingly causing an eligible voter to be challenged.

Section 1202. Development and Adoption of Best Practices for Preventing Voter Caging. Mandates that the EAC develop best practices to deter and prevent voter caging, include such practices in voter information materials, and provide information on how individuals may report allegations of violations of this prohibition on voter caging.

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#### Subtitle D – Prohibiting Deceptive Practices and Preventing Voter Intimidation

- Overview: Prohibits providing false information about elections to hinder or discourage voting and increases penalties for voter intimidation. Prescribes sentencing guidelines for those individuals found guilty of such deceptive practices.

Section 1301. Short title. Provides the title may be cited as the “Deceptive Practices and Voter Intimidation Prevention Act of 2021.”

Section 1302. Prohibition on Deceptive Practices in Federal Elections. Makes it unlawful to impede, hinder, discourage, or prevent another person from voting by knowingly providing materially false information about the time or place of voting or the qualifications for voting. Prohibits materially false written, electronic, telephonic, or other statements regarding Federal elections within 60 days of an election and allows criminal penalties for any infraction. Prohibits false written, electronic, telephonic, or other statements regarding public endorsements within 60 days of an election. Defines materially false information. Bans any person from interfering or hindering another person from voting, registering to vote, or aiding another person to vote or register to vote in a Federal election, includes a private right of action, and permits criminal penalties for any violation. Provides a maximum penalty of \$100,000 and/or five years in prison for deceptive practices – including hindering, interfering with, or preventing voting or voter registration – in Federal elections. Provides the same penalties for those who attempt to commit the offense. Prohibits payments for refraining from voting. Authorizes the United States Sentencing Commission to amend the Federal Sentencing Guidelines.

Section 1303. Corrective Action. Requires the Attorney General to communicate any correction upon receipt of a credible report of materially false information and a determination that State and local election officials failed to clarify and correct the information. Provides that such information must, to the extent practicable, be disseminated by a means that will reach the persons to whom the materially false information has been or is being communicated, and further that the correction shall not be designed to favor or disfavor any particular candidate, organization, or political party.

Directs the Attorney General, in consultation with the Election Assistance Commission, State and local election officials, civil rights organizations, voter rights and protection groups, and other interested community organizations to publish written procedures and standards for determining corrective action under this section within 180 days of enactment.

Section 1304. Reports to Congress. Requires the Attorney General to submit a detailed report to Congress within 180 days of enactment and to make the report available to the

public. The report should compile all allegations received by the Attorney General of deceptive practices and shall not include information that is privileged or otherwise protected from disclosure.

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#### Subtitle E – Democracy Restoration

- Overview: Declares the right of citizens to vote in federal elections will not be denied because of a criminal conviction unless a citizen is serving a felony sentence in a correctional facility. Requires states and the federal government to notify individuals convicted of state or federal felonies, respectively, of their re-enfranchisement.

Section 1401. Short Title. Provides the title may be cited as the “Democracy Restoration Act of 2021.”

Section 1402. Findings. Congress finds that the right to vote is the most basic constitutional act of citizenship. Regaining the right to vote reintegrates individuals with criminal convictions into free society. Basic constitutional principles of fairness and equal protection require an equal opportunity for citizens to vote in Federal elections. The 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup>, 24<sup>th</sup> and 26<sup>th</sup> Amendments empower Congress to enact measures to protect the right to vote in Federal elections, and the 8<sup>th</sup> Amendment provides for no excessive bail to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. An estimated 5,200,000 citizens of the U.S. (or about 1 in 44 adults) currently cannot vote as a result of a felony conviction, only 22% of which are in prison. Approximately 2,200,000 citizens who have completed their sentences remain disenfranchised due to restrictive State laws. State disenfranchisement laws disproportionately impact racial and ethnic minorities. The U.S. is the only Western democracy that permits the permanent denial of voting rights for individuals with felony convictions.

Section 1403. Rights of Citizens. Prohibits denial or abridgment of the right to vote because of conviction of criminal offense unless person is serving felony sentence in a correctional institution at the time of an election.

Section 1404. Enforcement. Allows the Attorney General to obtain declaratory or injunctive relief. Provides for private right of action for individual aggrieved, who may



provide written notice of the violation to the chief election official of the State involved. Includes an exception that if the violation occurred within 30 days of a Federal election, the aggrieved person need not provide notice to the chief election official of the State before bringing a civil action to obtain declaratory or injunctive relief with respect to the violation.

Section 1405. Notification of Restoration of Voting Rights. States must notify any individual convicted that such individual has the right to vote and provide any materials necessary for registration. For felony convictions, notification must be made when individual is serving probation or is released from custody. For misdemeanor convictions, notification must be made at the time of sentencing by a State court. For individuals convicted of a criminal offense under federal law, notification obligations and timelines vary: for felony convictions, individuals committed to the custody of the Bureau of Prisons shall be notified by the Director of the Bureau of Prisons as early as 6 months before release; for misdemeanor convictions, notification shall be given on the date of sentencing by a court established by an Act of Congress. Notification to individuals convicted under federal law must include any materials necessary for registration.

Section 1406. Definitions.

Section 1407. Relation to Other Laws. Provides that the Subtitle may not be construed to prohibit States from enacting laws affording the right to vote in any federal election on terms less restrictive than those in this Subtitle.

Section 1408. Federal Prison Funds. Provides that no State may receive or use federal funds to construct or otherwise improve a site of incarceration without first implementing a program to notify released individuals of their right to vote.

Section 1409. Effective Date. Applies to every federal election that occurs after the bill is enacted.

- Overview: Requires states to use individual, durable, voter-verified paper ballots and that said ballots are counted by hand or an optical character recognition device. Provides the voter an opportunity to correct ballot should a mistake be made and requires that ballots are not preserved in any manner that makes it possible to associate a voter to the ballot.

Section 1501. Short Title. Provides the title may be cited as the “Voter Confidence and Increased Accessibility Act of 2021.”

Section 1502. Paper Ballot and Manual Counting Requirements. Requires individual, durable, voter-verified, paper ballots. Votes must be counted by hand or read by an optical character recognition device or other counting device. Provides the voter an opportunity to correct ballot. Ballots are not preserved in any manner that makes it possible to associate a voter to the ballot without the voter’s consent. Paper ballot constitutes official ballot and shall be used for any recount or audit. Each paper ballot shall be suitable for a manual audit. Applies paper ballot requirement to all ballots cast in elections for Federal office, including ballots cast by absent uniformed services voters and overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act and other absentee voters. Provides a special rule for treatment of disputes when paper ballots have been shown, by clear and convincing evidence, to be compromised, and in such numbers that the results of the election could be changed. Provides that the appropriate remedy shall be made in accordance with applicable State law, except that the electronic tally may not be used as the exclusive basis for determining the official certified result. Ensures that the entire process retains alternative language accessibility standards.

Section 1503. Accessibility and Ballot Verification for Individuals with Disabilities. Ensures that individuals with disabilities and others are given an equivalent opportunity to vote, including with privacy and independence, in a manner that produces a voter-verified paper ballot as for other voters. Allows the voter to privately and independently verify the permanent paper ballot through the presentation, in accessible form, of the printed or marked vote selections from the same printed or marked information that would be used for any vote counting or auditing; and allows the voter to privately and independently verify and cast the permanent paper ballot without requiring the voter to manually handle the paper ballot.

Authorizes \$5,000,000 for the Director of the National Science Foundation to make grants to at least three entities to study, test, and develop accessible paper ballots for public use

to enhance accessibility for voters with disabilities, voters whose primary language is not English, and/ or voters who have difficulties with literacy.

Section 1504. Durability and Readability Requirements for Ballots. Requires that all voter-verified ballots are printed on durable paper that is able to maintain the accuracy and integrity of the ballot over repeated handling and for the full duration of a retention and preservation period of 22 months.

Section 1505. Study and Report on Optimal Ballot Design. Requires the Election Assistance Commission to report to Congress on best practices for designing paper and digital ballots.

Section 1506. Paper Ballot Printing Requirements. Requires that all voter-verified ballots are printed on American-made paper.

Section 1507. Effective Date for New Requirements. With some exceptions, requires each State and jurisdiction to be in compliance for any election for Federal office held in 2022 or any succeeding year.

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#### Subtitle G – Provisional Ballots

- Overview: Requires that provisional ballots from eligible voters at incorrect polling places be counted.

Section 1601. Requirements for Counting Provisional Ballots; Establishment of Uniform and Nondiscriminatory Standards. Requires that a provisional ballot shall be counted for statewide election, notwithstanding at which polling place it was cast. Each State shall establish uniform and nondiscriminatory standards for the issuance, handling, and counting of provisional ballots for elections held on or after January 1, 2022.

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#### Subtitle H – Early Voting

- Overview: Requires at least 15 consecutive days of early voting for federal elections. Requires that early voting locations be near public transportation and open for at least 4 hours per day.

Section 1611. Early Voting. Requires early voting in Federal elections to occur for at least 15 consecutive days, including weekends, of no less than 10 uniform hours each day, including times outside of normal business hours, and notes that the early voting should occur within walking distance to public transportation to the greatest extent practicable and in rural areas. Requires the Election Assistance Commission to establish voluntary early voting standards. Standards shall include the nondiscriminatory geographic placement of polling places at which such voting occurs. Standards shall permit States, upon providing adequate public notice, to deviate from any requirement in the case of unforeseen circumstances such as a natural disaster, terrorist attack, or a change in voter turnout. Requires the State begin processing and scanning ballots cast during early voting for tabulation at least 14 days before Election Day. Makes this section effective with respect to the regularly scheduled general election for Federal office held beginning in November 2022.

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#### Subtitle I – Voting by Mail

- Overview: Prohibits a state from imposing restrictions on an individual’s ability to vote by mail.

Section 1621. Voting By Mail. Institutes nationwide no-excuse absentee voting, prohibiting any additional conditions or requirements to voting by absentee mail ballot, other than deadlines for requesting and returning the ballot. Prohibits a State from requiring an individual to provide any form of ID as a condition of obtaining an absentee ballot, except that nothing prevents a State from requiring a signature or similar affirmation as a condition of obtaining an absentee ballot. Prohibits States from requiring notarization or witness signature or other formal authentication (other than voter attestation) as a condition of obtaining or casting an absentee ballot. Allows States to impose a deadline for requesting the absentee ballot and related voting materials and for returning the ballot to the appropriate officials.

Provides due process protections specific to signature verification, including provision of an immediate notice and opportunity to cure any discrepancy before making final determination on ballot's validity; provides a 10-day period to cure beginning on the date the official notifies the voter of the discrepancy. Also provides for notice and opportunity to cure a missing signature or other defect that, if left uncured, would cause the ballot not to be counted (except missing the applicable return deadline). Also notes an election official may not determine signature discrepancy unless at least two officials make the same determination, and each official has received training in procedures to verify signatures. Requires that States report after each election cycle on the numbers of invalidated ballots and efforts to contact voters. Requires States to permit individuals to submit a request for an absentee ballot online and through an automated telephone-based system. State or local election officials will ensure that the ballot and voting materials are received by the individual prior to the date of the election so long as the request is received by the official no later than 5 days before Election Day, though nothing shall preclude a State or local election official from allowing for the acceptance and processing of requests submitted or received after such period. Ensures that all absentee ballots and voting materials are equally accessible to voters with disabilities.

Establishes that State and local election officials must accept any otherwise-appropriate ballot postmarked on or before the date of a Federal election and is received within the 10-day period after Election Day. Allows voters to submit mail ballots in-person at polling places or at a designated ballot drop-off location. Allows voters to designate any person to return a voted and sealed ballot to the post office, a ballot drop-off location, tribally designated building, or election office so long as the person returning the ballot does not receive any form of compensation based on the number of ballots they return, and prohibits the State from putting any limit on how many voted and sealed ballots a designated person can return. States shall begin processing and scanning (but not tabulating) ballots cast by mail at least 14 days prior to Election Day. Certifies that this title has no effect on ballots cast by military and overseas voters. This section shall apply with respect to the regularly scheduled general election in November 2022 and each Federal election after. Directs National Institute of Standards, in consultation with Election Assistance Commission, to develop standards for use of biometric methods which can be used voluntarily in place of signature verification requirements for purposes of verifying identity of individual voting by absentee ballot in federal election. Provides for notice and comment, and publication of standards not later than a year after enactment of this Act.

Section 1622. Absentee Ballot Tracking Program. Requires each State to carry out a program to track and confirm the receipt of absentee ballots in an election for Federal office and make that information available to the individual who cast the ballot. The information provided shall include information on whether the vote cast was counted, and in the case that it was not, the reasons why. If the program is established by a State or local election official whose office does not have an Internet site, they may meet the requirement via a toll-free telephone number. Shall be effective beginning with the November 2022 general election for Federal office. Includes payments to reimburse states for costs incurred in establishing program to track and confirm receipt of absentee ballots.

Section 1623. Voting Materials Postage. The appropriate State or local election official shall provide a self-sealing return envelope with any mailed voter registration application, any mailed application for an absentee ballot, and any blank mailed absentee ballot. The State or unit of local government shall also provide pre-paid postage on the return envelope. There is no effect on ballots or balloting materials transmitted to UOCAVA voters. Generally, the section takes effect 90 days after enactment.

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#### Subtitle J – Absent Uniformed Services Voters and Overseas Voters

- Overview: Requires States to send absentee ballots at least 45 days before an election and allows civil penalty for failure.

Section 1701. Pre-election Reports on Availability and Transmission of Absentee Ballots. Requires report 55 days prior to election certifying that absentee ballots will be available for uniformed services voters and overseas voters by not later than 45 days prior to election. Requires report 43 days prior to election confirming that ballots have been sent. Not later than 90 days after election, requires report on combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters and the combined number of such ballots that were returned by such voters and cast in the election.

Section 1702. Enforcement. Permits Attorney General to bring civil action for declaratory or injunctive relief. Allows civil penalty up to \$110,000 for first and up to \$220,000 for each subsequent violation. Attorney General must report to Congress by end of each year on any civil actions brought against States. Provides for private right of action for declaratory or injunctive relief. Clarifies that the State is the only necessary party defendant. Makes the effective date of this section the day of enactment of this Act.

Section 1703. Revisions to 45-day Absentee Ballot Transmission Rule. Requires express delivery of ballots if State misses 45-day deadline. Requires State enable express delivery for ballot to be returned if sent fewer than 40 days prior to election. Clarifies 45 days prior to an election, or most recent weekday which proceeds 45th day in case of weekend or public holiday.

Section 1704. Use of Single Absentee Ballot Application for Subsequent Elections. Requires State send absentee ballot for each subsequent election after official post card form has been submitted, except for when the voter notifies the State that voter no longer wishes to be registered to vote in the State or has registered in another State or is otherwise no longer eligible to vote in the State. Prohibits State from refusing an application for absentee ballot because it was sent before the first date on which the State otherwise accepts.

Section 1705. Extending Guarantee of Residency for Voting Purposes to Family Members of Absent Military Personnel. Allows spouses and dependents of absent uniformed services voters to maintain their previous residency for voting purposes.

Section 1706. Requiring Transmission of Blank Absentee Ballots Under UOCAVA to Certain Voters. Requires each State to transmit blank absentee ballots electronically to qualified individuals who requests it under the same terms and conditions under which the State transmits UOCAVA ballots. Does not allow for completed ballots to be returned electronically. A State cannot refuse to accept and process any otherwise valid ballot because of a lack of notarization or witness signature, restrictions on paper type, or restrictions on envelope type. A qualified individual means an otherwise qualified voter who previously requested an absentee ballot from the State/jurisdiction and has not received such absentee ballot at least 2 days before Election Day; the voter resides in an area of the State in which an emergency or public health emergency has been declared within 5 days of Election Day and has not previously requested an absentee ballot; among others.

Section 1707. Effective Date. This subtitle applies to every election occurring after January 1, 2022.

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### Subtitle K – Poll Worker Recruitment and Training

- Overview: Requires the Election Assistance Commission to develop model training programs and award grants for training.

Section 1801. Grants to States for Poll Worker Recruitment and Training. EAC shall make grants to States, subject to the availability of appropriations provided to carry out this section, for recruiting and training non-partisan poll workers. Grant recipients must use EAC materials, which must include training practices for delivering services in a culturally competent manner. Amount of grant shall be equal to the product of the aggregate amount made available for grants to States under this section and the proportion of voting age population of the state. States must submit reports to the EAC 6 months after final grant is made. The EAC must submit a report to Congress no later than one year after grant is made.

Section 1802. State Defined. Defines the term “State” to include the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

### Subtitle L – Enhancement of Enforcement

- Overview: Allows individuals private rights of action and ability to file administrative complaints.

Section 1811. Enhancement of Enforcement of Help America Vote Act of 2002. Allows a person aggrieved by a violation of Title III to file a complaint with the Attorney General, to State-based administrative complaint processing entity. Provides for a private right of action. Does not affect any administrative remedies made available by the State. This title applies to violations occurring with respect to Federal elections held beginning in 2022.

### Subtitle M – Federal Election Integrity

- Overview: Prohibits State chief election officials from participating in federal campaigns. Prohibits using official authorities to affect the results of elections.

Section 1821. Prohibition on campaign activities by chief State election administration officials. Chief State election administration officials may not take part in a Federal office campaign over which such official has supervisory authority, including serving as a member of an authorized committee of a candidate, using official authority to interfere with or affect the result, or taking part in contributions on behalf of any candidate. An exception is provided for when official or an immediate family member is a candidate, but only if the official recuses themselves from all official responsibilities for the administration of such election, and the official who then assumes those responsibilities for supervising the administration of the election does not report directly to such official. Defines immediate family member as a father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law. Federal elections held after December 2021 must comply with this section.

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## Subtitle N – Promoting Voter Access Through Election Administration Improvements

### Part 1 – Promoting Voter Access

Section 1901. Treatment of institutions of higher education. Designates institutions of higher education as voter registration agencies subject to the requirements of the National Voter Registration Act of 1993 if the institution does not already serve as a contributing agency for the purpose of the automatic voter registration provisions of the bill. Requires an institution to designate a Campus Vote Coordinator, who shall provide assistance and information to students related to voting and registering to vote. Authorizes the Secretary of Education to administer grants to institutions that exceed the “good faith” requirements of paragraph 23 of the Higher Education Act. Includes a sense of Congress that students of these institutions have the options of registering either in the State of the institution or the State of their domicile.

Section 1902. Minimum notification requirements for voters affected by polling place changes. State must notify an individual, not later than 7 seven days before an election or start of early voting, that voter’s polling place has changed. If the reassignment is made fewer than seven days before the election and the individual appears on the date of the election at the previously-assigned polling place, the State must make every reasonable effort to enable to individual to vote on the date of the election.

Section 1903. Permitting Use of Sworn Written Statement to Meet Identification Requirements for Voting. If a State has an identification requirement, the State shall permit any individual who is not a first-time voter who registered by mail, to submit a sworn written statement under penalty of perjury to attest to the individual's identification and eligibility to vote in a Federal election. Tasks the EAC to create a standardized form for this purpose. Applicable States must provide a pre-printed copy of the certification statement at polling places or with absentee ballot information. Any individual who presents a sworn written statement shall be permitted to cast a regular ballot in the same manner as an individual who presents identification. Requires States to include in all voting information material posted at polling places information about the right of voters to meet an identification requirement by signing a sworn, written statement. This section is applicable upon enactment.

Section 1904. Accommodations for Voters Residing in Indian Lands. Permits an Indian Tribe to designate buildings as ballot pickup and collection locations and to designate one building per precinct located within Indian lands at no cost to the Indian Tribe. Requires States or political subdivisions to collect ballots from designated locations and to provide Indian Tribes with accurate precinct maps for all precincts located within Indian lands at least 60 days before an election. Requires States or political subdivisions to provide absentee ballots for federal elections to each individual who is registered to vote and who resides on Indian lands without requiring a residential address or a mail-in or absentee ballot request. Ensures that voters living on Indian lands may use the address of a designated building for ballot pickup and collection as their residential and mailing address if such building is in the same precinct of the voter, and if the building is not in the same precinct, may use the address of another tribally designated building within Indian lands. Requires that States or political subdivisions covered under section 203 of the Voting Rights Act of 1965 provide all applicable language accessibility requirements. Permits the Attorney General to bring a civil action in an appropriate United States District Court as may be necessary to carry out the requirements of this section and permits a private right of action.

Section 1905. Voter Information Response Systems and Hotline. Attorney General shall develop a State-based response system and hotline that provides information on voting, including voter registration, location and hours of polling places, and how to obtain absentee ballots, and provides immediate assistance to individuals encountering problems with registering to vote or voting. Attorney General shall ensure that the response system and hotline are developed in consultation with civil rights and voting rights organizations,

State and local election officials, voter protection groups, and other interested community organizations, especially those that have experience in the operation of similar systems and services. Hotline must allow for individuals to report information on problems encountered in registering or voting, including intimidation or suppression. Hotline must be usable by individuals with disabilities and those with limited proficiency in the English language. Establishes Voter Hotline Task Force to provide ongoing analysis of operation of hotline. In determining members there is special consideration given to appointment of members of civil rights organizations. To be eligible to serve on the Task Force, one must not have been convicted of any criminal offense relating to voter intimidation or suppression. Terms last for two years, and the position is uncompensated. Requires Attorney General to submit a report to Congress no later than March 1st every odd-numbered year, which shall include information about the number and type of calls received, a description of the reports made to the service, a description of any actions taken in response to instances of intimidation or suppression, an assessment of the effectiveness of the service, and any recommendations developed by the Task Force. Appropriates such sums as may be needed, and notes that not less than 15% of appropriations must be used for public awareness of availability of the hotline with an emphasis on outreach to individuals with disabilities and individuals with limited English language proficiency.

Section 1906. Ensuring Equitable and Efficient Operation of Polling Places. Requires States to provide a sufficient number of voting systems, poll workers, and other election resources at polling places to ensure a fair and equitable waiting time for all voters and that voters will not be required to wait longer than 30 minutes to cast a ballot. In determining the number of resources to provide at a polling place, States must consider certain criteria, including the voting age population, the voter turnout in past elections, the number of voters registered and other factors. Clarifies that nothing in this section shall be interpreted to authorize the closing of any polling place, the prohibition of an individual from entering a line at a polling place or the refusal to permit an individual who has arrived at a polling place before its closing time to vote. Requires that discrepancies in polling hours between polling places in a State not exceed two hours, with exceptions for States that use a population basis to set voting hours or allow local jurisdictions to set voting hours.

Section 1907. Requiring States to Provide Secured Drop Boxes for Voted Absentee Ballots in Elections for Federal Office. Requires States to provide in each county in-person, secured and clearly labeled drop boxes for 45 days before a federal election. Requires States to ensure that the drop boxes are accessible for use by individuals with disabilities and by individuals with limited proficiency in the English language. To ensure accessibility

for individuals with disabilities, State and local election officials must consult with protection and advocacy systems and comply with criteria established by the Attorney General. The required number of drop boxes in a county shall be equal to or greater than the number of registered voters divided by 20,000. In the case of a county in which the number of registered voters is less than 20,000, the number of drop boxes must be equal to one or greater. Requires States to determine the location of the drop boxes according to certain criteria that can help ensure an equitable and non-discriminatory distribution of drop boxes. For Tribal lands, requires States to consult with Tribal leaders before determining the number and location of drop boxes and take into consideration certain criteria. Requires States to treat ballots cast into a drop box in the same manner as any other vote cast during early voting. Requires States to post information about absentee voting requirements on or adjacent to the drop box.

Section 1908. Prohibiting States from restricting curbside voting. States are prohibited from banning curbside voting as a method of voting and from imposing restrictions that would exclude any eligible voter from casting a ballot through curbside voting.

## Part 2 – Disaster and Emergency Contingency Plans

Sec. 1911. Requirements for Federal Election Contingency Plans in Response to Natural Disasters and Emergencies. Requires States and jurisdictions to establish and make publicly available contingency plans that enable voting in federal elections during a state of emergency, public health emergency or national emergency and to update such plans at least every five years. Contingency plans must include initiatives to provide equipment and resources necessary to protect the health and safety of poll workers and voters and to recruit poll workers from resilient and unaffected populations. Permits the Attorney General to bring a civil action in an appropriate United States District Court as may be necessary to carry out the requirements of this section and permits a private right of action.

## Part 3 – Improvements in Operation of Election Assistance

Section 1921. Reauthorization of Election Assistance Commission. Authorizes Election Assistance Commission beginning in fiscal year 2021. Eliminates the existing funding cap.

Section 1922. Requiring States to Participate in Post-general Election Surveys. Requires each state to comply with any Election Assistance Commission request for a post-election

survey following any regularly scheduled general election for Federal office beginning in November 2022.

Section 1923. Reports by National Institute of Standards and Technology on use of Funds Transferred from Election Assistance Commission. The Director of the National Institute of Standards and Technology must certify at the time of any transfer of funds from the Election Assistance Commission that the Director will submit a report to the Commission within 90 days of the end of the fiscal year detailing how the Director used the funds. This section is applicable beginning in fiscal year 2022.

Section 1924. Recommendations to Improve Operations of Election Assistance Commission. Directs the Election Assistance Commission to assess the security, cybersecurity, and effectiveness of the Commission's information technology systems. Requires the Election Administration Commission to carry out a review of the effectiveness and efficiency of the State-based Help America Vote Act administrative complaint procedures for the investigation and resolution of allegations and violations. Requires the Commission to submit a report to Congress, not later than December 31, 2021, on these findings and recommendations to streamline and improve administrative procedures.

Section 1925. Repeal of Exemption of Election Assistance Commission from Certain Government Contracting Requirements. Repeals certain existing contracting exemptions for the Election Assistance Commission.

#### Part 4 – Miscellaneous Provisions

Section 1931. Application of Laws to Commonwealth of Northern Mariana Islands. Amends the National Voter Registration Act of 1993 and the Help America Vote Act of 2002 to include the Commonwealth of the Northern Mariana Islands, alongside the States and the District of Columbia.

Section 1932. Definition of Election for Federal Office. Defines the term 'election for Federal office' to mean a general, special, primary or runoff election for the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.

Section 1933. No Effect on Other Laws. States that, except as specifically provided, nothing in this Subtitle may be construed to authorize or require conduct prohibited under the following laws, or to supersede, restrict, or limit the application of such laws: The Voting Rights Act of 1965, The Voting Accessibility for the Elderly and Handicapped Act, The Uniformed and Overseas Citizens Absentee Voting Act, The National Voter Registration Act of 1993, The Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973. States the approval of a payment or grant under this title, or any action taken under this title, shall have no effect on preclearance or other requirements under the Voting Rights Act. States that nothing in this title or its amendments may be construed to prohibit states from providing greater opportunities to register to vote or vote than are provided by this title, creating a floor and not a ceiling for State action.

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#### Subtitle O – Severability Clause

- Overview: Clarifies that if any provision of this Title or amendment made by this Title is held unconstitutional, the remainder of the Title shall not be affected by the holding.

Section 1941. Severability. Establishes severability such that the application of the provisions of this Title and amendments made by this Title shall not be affected by a holding finding any provision of the Title or amendment made by the Title unconstitutional.



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## TITLE II – ELECTION INTEGRITY

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### Subtitle A – Findings Reaffirming Commitment of Congress to Restore the Voting Rights Act

- Overview: Declares that Congress finds that the *Shelby County v. Holder (Shelby)* decision ushered in a new era of voter suppression and that Congress should build a record of the voter suppression efforts ushered in across the country since *Shelby*. Declares that, per the Supreme Court’s ruling, Congress should restore the protections of the Voting Rights Act by updating the formula for determining which jurisdictions are subject to federal preclearance.

Section 2001. Findings Reaffirming Commitment of Congress to Restore the Voting Rights Act. Finds the right to vote is sacrosanct and highlights the role played by the Voting Rights Act to empower the Department of Justice and the federal courts to block discriminatory voting practices prior to implementation in states with ongoing records of racial discrimination. Acknowledges the post-*Shelby* movement to erect barriers to accessing the franchise and identifies said barriers, including photo identification requirements, limiting early voting, eliminating same-day registration, purging voters from the rolls, and reducing polling places.

Further identifies that racial discrimination in voting is both evident and persistent, citing at least 10 post-*Shelby* findings in federal courts of intentional discrimination, and that Congress must conduct investigatory and evidentiary hearings to determine the legislation necessary to restore the Voting Right Act. Identifies a need to modernize the electoral system, including (1) improving access to the ballot; (2) enhancing the integrity and security of voting systems; (3) ensuring greater accountability in election administration; (4) restoring voter protections in those localities experiencing persistent disenfranchisement; and (5) ensuring that federal civil rights laws protect voters’ rights against discriminatory and deceptive practices.

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### Subtitle B – Findings Relating to Native American Voting Rights

- Overview: Declares Congress’ intent to fulfill the Federal government’s trust responsibility to protect and promote Native Americans’ exercise of their constitutionally

guaranteed right to vote, including voter registration and equal access to all voting mechanisms.

Section 2101. Findings Relating to Native American Voting Rights. Declares that Congress has broad authority to enact legislation to safeguard voting rights of Native Americans; that the federal government has a responsibility to uphold its obligations toward Indian Tribes and their members; and cites survey data and field hearings that reveal obstacles Native Americans have encountered while voting, including a lack of accessible and proximate registration and polling sites, non-traditional addresses for residents living on Indian reservations, inadequate language assistance for Tribal members, and discriminatory voter identification laws.

Further cites experience of voter marginalization in the 2018 midterms and 2020 general election as evidence of the necessity of restoring key provisions of the Voting Rights Act and the need for Congress to conduct investigatory and evidentiary hearings to determine legislation necessary to restore the Voting Rights Act and combat efforts to suppress the franchise on Tribal lands, including but not limited to the Native American Voting Rights Act and the Voting Rights Advancement Act.

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### Subtitle C – Findings Relating to District of Columbia Statehood

- Overview: Declares Congress' perspective that District of Columbia residents deserve full Congressional voting rights and self-government, which only statehood can provide.

Section 2201. Findings Relating to District of Columbia Statehood. Declares that residents of the District of Columbia (D.C.) deserve the voting rights and self-government that are only accessible through full statehood; that the U.S. is the only democratic country that denies both voting representation in national government and local self-government to the residents of its nation's capital; that D.C. residents lack full and equal representation in Congress in spite of bearing all the obligations of citizenship, including paying taxes and serving in wars, and that D.C. residents pay more federal taxes per capita than any State. Identifies that no constitutional, historical, financial, or economic reasons counsel against the granting of statehood; that D.C.'s numerical population is comparable to and greater than several States; that the District's fiscal position is strong; that Congress possesses the

authority to admit new States into the Union; and that the House passed H.R. 51, the Washington, D.C. Admission Act, on June 26, 2020, by a vote of 232-180.

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#### Subtitle D – Territorial Voting Rights

- Overview: Declares Congress' view that the right to vote is one of the most powerful instruments that residents of the territories of the United States have to ensure their voices are heard and establishes Congressional Task Force on Voting Rights of United States Citizen Residents of Territories of the United States.

Section 2301. Territorial Voting Rights. Finds that the right to vote is one of the most powerful instruments that residents of the territories of the United States have to ensure their voices are heard; that these Americans have played an important role in democracy and served in American wars, serving and dying on a per capita basis at a higher rate in every U.S. war and conflict since WWI; that voter participation in the territories consistently ranks higher than in many mainland communities; and that political participation and the right to vote are among the highest concerns of territorial residents.

Section 2302. Congressional Task Force on Voting Rights of United States Citizen Residents of Territories of the United States. Establishes a 12-member Congressional task force to report on consequences of the disenfranchisement of U.S. citizens living in territories; impediments in current law to voting for citizen residents of territories; and recommendations for changes in Federal law that, if adopted, would allow for full and equal voting rights and representation for citizens who are residents of territories of the United States in Federal elections and for full and equal voting representation in the House of Representatives.

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#### Subtitle E – Redistricting Reform

- Overview: Requires states to adopt independent redistricting commissions for purposes of drawing Congressional districts.

Section 2400. Short Title; Finding of Constitutional Authority. Declares that this subtitle may be called the “Redistricting Reform Act of 2021” and finds that Congress’ authority for this subtitle is derived from Article I, Section 4 of the Constitution and Section 5 of the 14<sup>th</sup> Amendment.

#### Part 1 – Requirements for Congressional Redistricting

Section 2401. Requiring Congressional Redistricting to be Conducted Through Plan of Independent State Commission. Requires the development and enactment of redistricting plans using independent redistricting commissions, or a 3-judge court in the event a State does not establish a commission or enact a plan. Creates exemption for States provided they meet certain minimum requirements and for the State of Iowa’s existing independent redistricting process.

Section 2402. Ban on Mid-Decade Redistricting. Prohibits States that have undergone redistricting in accordance with the Subtitle from redrawing districts until after the next apportionment of Representatives, unless required to do so by a court.

#### Part 2 – Independent Redistricting Commissions

Section 2411(a). Independent Redistricting Commission. Establishes deadline of October 1 of a year ending in numeral zero and procedures for state nonpartisan agency selection of first 15 members of state’s Independent Redistricting Commission (IRC); requires alternates be designated and vacancies on the commission be filled; and allows for the removal of commissioners who are deemed ineligible to serve by a majority vote of the commission.

Section 2411(a)(1). Appointment of Members. Establishes procedures and deadlines for first nonpartisan agency appointment of first 15 IRC members as follows: calls for the first six members of the IRC to be appointed in a public meeting that takes place after 15 days’ notice, and not later than October 15 of a year ending in numeral zero. Provides that 6 members of the commission be selected randomly by the nonpartisan agency from an approved pool of candidates, according to the following criteria: two from the State’s majority party, defined as the political party whose candidate received the most votes in the most recent statewide election for federal office held in the State; two from the State’s minority party, defined as the political party whose candidate received the second most votes in the most recent statewide election for federal office held in the State; and two

must be unaffiliated with either the majority or minority political party. Requires first 6 IRC members appointed by the nonpartisan agency to appoint an additional 9 IRC members from the approved selection pool, after 15 days' notice and not later than November 15 of a year ending in numeral zero, according to the following parameters: 3 members from the majority category; 3 members from the minority category; 3 members from the unaffiliated category.

Section 2411(a)(2). Rules for Appointment of Members Appointed by First Members. Requires affirmative vote of at least 4 members of first 6 IRC Members, including one vote from each category of commissioners described in 2411(a)(1), for selection of additional commissioners or designation of alternates; ; necessitates that commissioners making selections do so to reflect the demographic and geographic diversity of the State and to ensure groups protected under the Voting Rights Act of 1965 (VRA) are provided a meaningful opportunity to participate in the development of their State's redistricting plan.

Section 2411(b). Procedures for Conducting Committee Business. Requires IRCs to elect, by majority vote, a Chair, who must be a commissioner unaffiliated with their State's majority or minority political party, prior to taking action on developing a redistricting plan; further requires that a majority vote of the whole commission, that includes at least one commissioner from each political affiliation subcategory (majority party, minority party, unaffiliated) is required for the commission to take any action, such as publishing a draft or final redistricting plan.

Section 2411(c). Staff; Contractors. Calls for staff applications to be made public and contractor hiring decisions be subject to majority vote; requires applicants for hire and vendors bidding for contracts to make disclosures of political expenditures and payments received for political activities for a 10-year period; further requires employees and vendors to disclose political expenditures and organization dues annually; states that hiring decisions should be made with the goal of impartiality and allows staff and contractors to be disqualified from service, subject to waiver by a unanimous vote of the commission, for meeting any ineligibility criteria applied to applicants for service on the commission, set forth in Section 2412(a)(2).

Section 2411(d). Termination. Sets termination date for IRC; requires that states ensure IRC records are preserved.

Section 2012. Establishment of Selection Pool of Individuals Eligible to Serve as Members of Commission.

Section 2412(a)(1). Criteria for Commissioner Eligibility. Sets the following eligibility requirements for individuals to be entered into the commissioner selection pool: registered to vote for federal office in the State; continually registered for a 3-year period with the same political party or no political party; provided a written statement, with an attestation under penalty of perjury, attesting to name, demographic information, political and non-political organizational ties, and desire, qualifications, and information relevant to their ability to be fair and impartial to serve on the commission.

Section 2412(a)(2). Disqualifications. Disqualifies applicants who themselves meet, or have immediate family members who meet, any of the following criteria: holds public office or is a candidate for election for public office; serves as an officer of a political party or as an officer, employee, or paid consultant of a campaign committee of a candidate for public office or of any political action committee; is a registered lobbyist; is an employee of an elected public official, a contractor with the legislature of the State, or a donor to the campaign of any candidate for public office or to any political action committee (other than anyone who contributes less than \$1,000 in total over the covered period); has been fined or imprisoned for violating the Federal Election Campaign Act; or is a registered foreign agent. Establishes the covered period as 10 years. Defines “immediate family member.”

Section 2412(b)(1). Development of Selection Pool. Establishes a deadline of June 15 of each year ending in numeral zero for the nonpartisan agency to submit to the Select Committee on Redistricting a pool of 36 candidates from which commissioners will be selected; requires selection pool to be evenly divided among 3 groups: those affiliated with the State’s majority party, those affiliated with the minority party, and those unaffiliated any party or a party other than the state’s majority or minority parties; stipulates that the nonpartisan agency shall interview applicants under oath and publish transcripts of those candidates included in the selection pool.

Section 2412(b)(2). Factors Taken Into Account in Developing Pool. Provides factors to be considered in developing candidate pool, including diversity and relevant skills; clarifies that nonpartisan agency has duty to verify applicants’ stated party affiliations; directs nonpartisan agency to conduct applicant interviews under oath; further establishes nonpartisan agency’s obligation to ensure that residents across various geographic regions

and demographic groups are aware of the opportunity to serve on IRC; requires publication of a report on nonpartisan agency's website describing candidate pool selection process and extent to which individuals in selection pool meet the eligibility requirements and factors to be considered by the nonpartisan agency; directs nonpartisan agency to accept public comments on the candidate pool for a 14-day period and transmit comments to Select Committee on Redistricting; allows Select Committee on Redistricting to approve or reject the candidate pool no earlier than 15 and no later than 21 days after receiving the pool from the nonpartisan agency and deems inaction by deadline by the Select Committee as rejection of the selection pool.

Section 2412(c)-(d). Development of Replacement Selection Pool. Sets forth procedures for development and consideration of second and third selection pools in case of rejection of first and/or second selection pools by Select Committee on Redistricting; compels court intervention if Select Committee rejects third selection pool.

Section 2413. Criteria for redistricting plan; public notice and input.

Section 2413(a). Criteria for Redistricting Plan. Directs IRCs to establish single-member congressional districts using criteria in the following order of priority: (1) comply with U.S. Constitution, including that they equalize total population; (2) comply with the VRA and all applicable federal laws; (3) provide all groups equal opportunity to participate in political process; (4) respect communities of interest, neighborhoods, and political subdivisions; defines community of interest Prohibits a plan that unduly favors or disfavors a political party on a statewide basis, except in certain circumstances; Further prohibits, with exceptions, the use of the following data in developing plans: (1) residence of a Member of the House of Representatives or candidate; and (2) political party affiliation or voting history of a district.

Section 2413(b). Public Notice and Input. Directs IRCs to hold meetings in public and solicit comments, including proposed maps; sets forth requirements for the IRC website, including deadline for operability by January 1 of a year ending in numeral one, searchable format, live streaming of commission hearings, repository of commission records, and method for public to submit maps and comments to commission; requires IRC to solicit and accept comments from public on its duties and activities and establishes comment period of January 1 of year ending in numeral one through seven days before commission's vote on final map enactment; instructs IRCs to vary locations of meetings



throughout State; and requires any public notices to be made available in all languages required for election materials under section 203 of the VRA.

Section 2413(c). Development and Publication of Preliminary Redistricting Plan. Requires IRC to develop and publish preliminary plan prior to adopting final plan; sets minimum requirement for public preliminary plan hearings at no few than 3, with a minimum of 14-day prior notice for public comment; allows members of public to submit their own complete or partial maps and requires proposed maps to be published on website; requires preliminary plan to be published online and in newspapers and 14-day prior notice to public of such publication; requires a comment period of no less than 30 days after publication of preliminary plan; further requires no fewer than 3 public post-publication hearings, with a minimum of 14-day prior notice; clarifies that subsequent preliminary plans may be developed and published, after publication of the first preliminary plan, so long as they comply with the requirements of the section.

Section 2413(d). Process for Enactment of Final Redistricting Plan. Emphasizes that a final plan cannot be developed and published until a preliminary map has been considered; sets forth requirements for enacting a final plan: a public meeting must take place 14 days prior to which a notice, including the proposed final plan, a report analyzing the plan, and any dissenting or additional views must be published; requires majority vote, including at least one member of the commission's three subgroups to be deemed enacted into law.

Section 2413(e). Written Evaluation of Plan Against External Metrics. Requires that any plan developed and published by IRCs be accompanied by a report measuring it against external metrics based on criteria set forth in section 2413(a)(1), including the impact of the plan on the ability of communities of color to elect candidates of choice, measures of partisan fairness using multiple accepted methodologies, and the degree to which the plan preserves or divides communities of interest.

Section 2413(f). Timing. Allows IRC to begin work on map development upon receipt of relevant population information from the Bureau of the Census; requires approval of a final redistricting plan not later than 8 months after the date on which the state receives the state apportionment notice or October 1, whichever occurs later, in each year ending in numeral one.

Section 2414. Establishment of Related Entities.

Section 2414(a). Establishment or Designation of Nonpartisan Agency of State Legislature. Requires States to either establish or designate an existing nonpartisan agency for the purposes of appointing members to the IRC in accordance with section 2411, no later than October 15 of a year ending in nine; sets forth requirements for the agency to be considered nonpartisan: provide services on nonpartisan basis, maintain impartiality, and be prohibited from advocating for or against legislative proposals; establishes deadline of January 15 in a year ending in numeral one for nonpartisan agency to provide commissioners with training on duties, including under the VRA; calls for agency to adopt and publish regulations, after notice and comment, establishing procedures the agency will follow in fulfilling its duties; provides that if a new agency is created it will be terminated upon enactment of the state's redistricting plan; and clarifies that State shall ensure preservation of nonpartisan agency records.

Section 2414(b). Establishment of Select Committee on Redistricting. Requires that, no later than January 15 of a year ending in zero, States establish a Select Committee on Redistricting for the purpose of approving or rejecting a commission selection pool; sets forth appointment procedures of the Select Committee as follows: 1 member from the upper house of the State legislature appointed by the leader of the party with greatest number of seats in upper house; 1 member from upper house of the State legislature by leader of the party with the second greatest number of seats in upper house; 1 member from the lower house of the State legislature by leader of the party with the greatest number of seats in the lower house; 1 member from lower house by leader of the party with the second greatest number of seats in the lower house; and provides for a special rule for appointments in the case of a unicameral legislature.

Section 2415. Report on Diversity of Memberships of Independent Redistricting Commissions. Requires the Comptroller General (GAO) to produce a report every 10 years analyzing whether State independent redistricting commissions have met the diversity requirements from this subtitle.

### Part 3 – Role of Courts in Development of Redistricting Plans

Section 2421(a). Enactment of Plan Developed by 3-Judge Court. Compels development and enactment of a redistricting plan by a 3-judge court, subject to Section 2413 redistricting criteria and with public notice and participation, triggered by States' failure to meet requirements and deadlines, set forth in Section 2421(f), for setting up IRCs or in developing or enacting plans; allows filing party the option of choosing between the

District of Columbia or the judicial district in which the capital of the State is located; requires that courts shall have access to IRC records; allows courts to appoint special master to assist in plan development; provides that courts may put in place interim plans if there is insufficient time to develop and publish a final redistricting plan for an upcoming election to proceed; defines triggering events as failure of: a State to establish or designate a nonpartisan agency by January 15 of a year ending in numeral one; State to appoint a Select Committee on Redistricting by January 15 of a year ending in zero; Select Committee on Redistricting to approve the final replacement selection pool 21 days after submission by the nonpartisan agency; and, in a year ending in numeral one, failure of the State to approve a final plan not later than 8 months after the date on which the State receives the State apportionment notice or October 1, whichever occurs later.

Section 2422. Special Rule for Redistricting Conducted Under Order of Federal Court. States that Section 2413 criteria shall apply with respect to the redistricting done pursuant to a court order, except that the court may revise any of the deadlines required in order to provide for a timely enactment of a new redistricting plan for the State.

#### Part 4 – Administrative and Miscellaneous Provisions

Section 2431. Payments to States for Carrying Out Redistricting. Authorizes the Election Assistance Commission (EAC), subject to availability of appropriations, to make payments to States in an amount equal to the product of the number of Representatives to which the State is entitled and \$150,000; requires funds be used to establish and operate IRCs, implement State's redistricting plan, and to otherwise carry out congressional redistricting; prohibits payments until a State certifies to the EAC that the nonpartisan agency has submitted a selection pool to the Select Committee on Redistricting or that the State meets the existing independent commission exemption requirements of Sections 2401(c) and 2401(d).

Section 2432. Civil Enforcement. Provides that Attorney General may bring civil action to enforce violations of this Subtitle for such relief as may be appropriate; creates a private right of action for any citizen of a State aggrieved by failure of a State to meet requirements of this Subtitle and allows plaintiffs to choice of venue between District of Columbia or judicial district in which the capital of the State is located; establishes expedited consideration by the U.S. Supreme Court for appeals of any redistricting court action; allows court to award reasonable attorney fees to prevailing party; clarifies that rights and remedies established under this section are in addition to others provided by law

and do not supersede or limit application of VRA; further provides that nothing in this Subtitle authorizes or requires conduct prohibited by VRA.

Section 2433. State Apportionment Notice Defined. Defines “state apportionment notice” as the notice sent to a State from the Clerk of the House of Representatives of the number of Representatives to which the State is entitled.

Section 2434. No Effect on Elections for State and Local Office. Clarifies that nothing in the Subtitle may be construed to affect the manner in which a State carries out elections for state or local office, including State redistricting.

Section 2435. Effective Date. States that the requirements shall apply to redistricting carried out pursuant to the 2030 decennial census and any succeeding decennial census.

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#### Subtitle F – Saving Eligible Voters from Voter Purging

- Overview: Responds to the *Husted v. A. Philip Randolph Institute (Ohio)* decision by clarifying that failure to vote is not grounds for removing registered voters from the rolls.

Section 2501. Short Title. Establishes the bill may be cited as the “Stop Automatically Voiding Eligible Voters Off Their Enlisted Rolls in States Act” or the “Save Voters Act.”

Section 2502. Conditions for Removal of Voters from List of Registered Voters. Amends the National Voter Registration Act (NVRA) and the Help American Vote Act (HAVA) to prohibit states from removing any registered voter from the voter list unless the State verifies, on the basis of objective and reliable evidence, that the registrant is ineligible to vote in such elections. Sets out conditions for removal from official list of registered voters and provides that the following shall not be treated as objective and reliable evidence: failure to vote in any election, failure to respond to notice under NVRA unless returned as undeliverable, or failure to take any other action with respect to voting or one’s status as a registrant. Also requires States to send individualized notice to removed registrant not later than 48 hours after removal, including the grounds for the removal, and how to contest removal or be reinstated. Provides exceptions for registrant who confirms in writing ineligibility to vote or is confirmed deceased. Requires public notice that list maintenance is taking place and registrants should check their registration status no later than 48 hours

after conducting any general program to remove the names of ineligible voters from the official list of eligible voters. Provides that a State may not transmit a removal notice to registrant unless State obtains objective and reliable evidence that the registrant has changed residence to a place outside the registrar’s jurisdiction. Also amends HAVA to include the “objective and reliable evidence” standard to ensure that failure to vote does not trigger the HAVA removal process.

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#### Subtitle G – No Effect on Authority of States to Provide Greater Opportunities for Voting

- Overview: Clarifies that the provisions in this Title set a floor, not a ceiling, for State’s actions on voting rights.

Section 2601. No Effect on Authority of States to Provide Greater Opportunities for Voting. States that nothing in this Title or its amendments may be construed to prohibit States from providing greater opportunities to register to vote or vote than are provided by this Title, creating a floor and not a ceiling for State action.

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#### Subtitle H – Residence of Incarcerated Individuals

- Overview: Ends practice of “prison gerrymandering” by counting incarcerated persons in their former places of residence.

Section 2701. Residence of Incarcerated Individuals. Requires that the decennial census count, for the purpose of Congressional apportionment, incarcerated persons in their most recent places of residence prior to incarceration instead of their places of incarceration.

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#### Subtitle I – Severability Clause

- Overview: Clarifies that if any provision of this Title or amendment made by this Title is held unconstitutional, the remainder of the Title shall not be affected by the holding.

Section 2801. Severability. Establishes severability such that the application of the provisions of this Title and amendments made by this Title shall not be affected by a holding finding any provision of the Title or amendment made by the Title unconstitutional.

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### TITLE III – ELECTION SECURITY

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Section 3000. Short title; sense of Congress. Declares that this Title may be called the “Election Security Act”. States the sense of Congress that, in light of Russian interference in the 2016 election, the Federal Government should improve the security of election infrastructure in the United States.

#### Subtitle A – Financial Support for Election Infrastructure

- Overview: Establishes standards for election vendors based on cybersecurity and company ownership and expands the Election Assistance Commission’s ability to issue grants to harden our nation’s election infrastructure.

#### Part 1 – Voting System Security Improvement Grants

Section 3001. Grants for Obtaining Compliant Paper Ballot Voting Systems and Carrying out Voting System Security Improvements. Amends Subtitle D of Part II of the Help America Vote Act of 2002 to direct the Election Assistance Commission to make available grants for States to replace voting machines that are not compliant paper ballot voting systems or do not meet the most recent voluntary voting system guidelines promulgated by the Commission, as well as carry out voting system security improvements and implement best practices for ballot design. Compliant paper ballot voting systems meet the requirements of the Voter Confidence and Increased Accessibility Act of 2021.

Each State shall receive an amount not less than the product of \$1 and the average of the number of individuals who cast votes in any of the two most recent regularly scheduled general elections for Federal office held in the State. In the event that Congress appropriates insufficient funds to provide States the amount directed under subsection (b), there shall be a pro rata reduction. Also provides that to the greatest extent practicable, an eligible State which receives a grant to replace a voting system under this section shall ensure such replacement system is capable of administering a system of ranked choice voting.

Defines eligible voting system improvements as: (1) The acquisition of goods and services from qualified election infrastructure vendors by purchase, lease, or such other arrangements as may be appropriate; (2) Cyber and risk mitigation training; (3) A security risk and vulnerability assessment of the State’s election infrastructure which is carried out by a provider of cybersecurity services under a contract entered into between the chief State



election official and the provider; (4) The maintenance of election infrastructure, including addressing risks and vulnerabilities which are identified under either of the security risk and vulnerability assessments described in paragraph (3), except that none of the funds provided under this part may be used to renovate or replace a building or facility which is used primarily for purposes other than the administration of elections for public office; (5) Providing increased technical support for any information technology infrastructure that the chief State election official deems to be part of the State's election infrastructure or designates as critical to the operation of the State's election infrastructure; (6) Enhancing the cybersecurity and operations of the information technology infrastructure described in paragraph (4); and (7) Enhancing the cybersecurity of voter registration systems.

Defines a "qualified election infrastructure vendor" as any person who provides, supports, or maintains, or who seeks to provide, support, or maintain, election infrastructure on behalf of a State, unit of local government, or election agency who meets certain criteria established by the Chair of the Election Assistance Commission and the Secretary of Homeland Security.

Directs the Chair of the Election Assistance Commission and the Secretary of Homeland Security to include the following in the criteria a person must meet to be considered a "qualified election infrastructure vendor": (1) the vendor must be owned and controlled by a citizen or permanent resident of the United States; (2) the vendor must disclose to the Chairman and the Secretary, and to the chief State election official of any State to which the vendor provides any goods and services with funds provided under this Part, of any sourcing outside the United States for parts of the election infrastructure; (3) the vendor must disclose to the Chairman and the Secretary, and to the chief State election official of any State to which the vendor provides any goods and services with funds provided under this Part, the identification of any entity or individual with a more than five percent ownership interest in the vendor; (4) the vendor agrees to ensure that the election infrastructure will be developed and maintained in a manner that is consistent with the cybersecurity best practices issued by the Technical Guidelines Development Committee; (5) the vendor agrees to maintain its information technology infrastructure in a manner that is consistent with the cybersecurity best practices issued by the Technical Guidelines Development Committee; (6) the vendor agrees to ensure that the election infrastructure will be developed and maintained in a manner that is consistent with the supply chain best practices issued by the Technical Guidelines Development Committee; (7) the vendor agrees to ensure that it has personnel policies and practices in place that are consistent with personnel best practices, including cybersecurity training and background checks, issued

by the Technical Guidelines Development Committee; (8) the vendor agrees to ensure that the election infrastructure will be developed and maintained in a manner that is consistent with data integrity best practices, including requirements for encrypted transfers and validation, testing and checking printed materials for accuracy, and disclosure of quality control incidents, issued by the Technical Guidelines Development Committee; (9) the vendor agrees to meet the notification requirement defined herein with respect to any known or suspected cybersecurity incidents involving any of the goods and services provided by the vendor pursuant to a grant under this part; and (10) the vendor agrees to permit independent security testing by the Commission.

Requires “qualified election infrastructure vendors,” upon learning of a potential cybersecurity incident, to assess whether such incident occurred and to notify the Chair of the Election Assistance Commission and the Secretary of Homeland Security within three days. The “qualified election infrastructure vendor” must also inform any potentially impacted election security agency within three days and cooperate with agency in providing any further notifications necessary. The “qualified election infrastructure vendor” must provide ongoing updates to the Chair of the Election Assistance Commission, the Secretary of Homeland Security, and the affected election security agency.

The notification “qualified election infrastructure vendors” must provide the Chair of the Election Assistance Commission, the Secretary of Homeland Security, and the affected election security agency must include the following: (1) the date, time, and time zone when the election cybersecurity incident began, if known; (2) the date, time, and time zone when the election cybersecurity incident was detected; (3) the date, time, and duration of the election cybersecurity incident; (4) the circumstances of the election cybersecurity incident, including the specific election infrastructure systems believed to have been accessed and information acquired, if any; (5) any planned and implemented technical measures to respond to and recover from the incident; (6) in the case of any notification which is an update to a prior notification; any additional material information relating to the incident, including technical data, as it becomes available.

To be eligible for a grant, a State must: (1) describe how it will use the grant to carry out the activities authorized under this Part; (2) a certify and assure that, not later than 5 years after receiving the grant, the State will implement risk limiting audits; and (3) provide such other information and assurances as the Commission may require. If the amount appropriated exceeds what is needed for carrying out this section, the Commission will

award surplus funds according to a “race to the top” model based on the States’ records of election administration improvements.

Requires the Election Assistance Commission to, not later than 90 days after the end of each fiscal year, submit a report to the appropriate Congressional committees, including the Committees on Homeland Security and House Administration of the House of Representatives and the Committees on Homeland Security and Governmental Affairs and Rules and Administration of the Senate, on the activities carried out with the funds provided under this part.

Authorizes \$1 billion for FY 2021. Authorizes \$175 million for FY 2022, 2024, 2026, and 2028.

Section 3002. Coordination of voting system security activities with use of requirements payments and election administration requirements under the Help America Vote Act of 2002. Adds the Secretary of Homeland Security or the Secretary’s designee to the Board of Advisors of the Election Assistance Commission. Adds a Representative from the Department of Homeland Security to the Technical Guidelines Development Committee.

Directs the Election Assistance Commission to consult with the Department of Homeland Security in conducting periodic studies on election administration and adds to the objectives of the periodic studies ensuring the integrity of election systems against interference through cyber or other means. Amends the allowable uses of requirements payments under the Help America Vote Act of 2002 (52 U.S.C. § 21001(b)) to include election security, including cyber training for election officials, technical support, enhancing cybersecurity of information systems, and enhancing cybersecurity of voter registration databases. Requires States to include protection of election infrastructure into their State plans developed pursuant to 53 U.S.C. § 21004.

Requires the Committee responsible for composing the State plans developed pursuant to 53 U.S.C. § 21004 to be comprised of representatives from Cities, towns, Indian tribes, and urban and rural areas, as appropriate.

Requires States to undertake measures to prevent and deter cybersecurity incidents, as identified by the Commission, the Secretary of Homeland Security, and the Technical Guidelines Development Committee, of computerized voter registration databases.

Section 3003. Incorporation of definitions. Amends the Help America Vote Act to include the definitions of “cybersecurity incident” (6 U.S.C. § 148), “election infrastructure” (Election Security Act), and “State” (States, D.C., Puerto Rico, Guam, American Samoa, USVI, Northern Mariana Islands).

## Part 2 – Grants for Risk-Limiting Audits of Results of Elections

Section 3011. Grants to States for Conducting Risk-limiting Audits of Results of Elections. Authorizes \$20 million in grants for the Election Assistance Commission to provide to States to implement risk-limiting audits for regularly scheduled general elections for Federal office. Describes risk-limiting audit. Establishes guidelines for eligibility of States to receive funding, including requiring States to certify that: (1) it will conduct risk-limiting audits of the results of elections for Federal offices within five years; (2) the Chief election official of the State will establish rules and procedures for performing risk-limiting audits within one year of enactment; (3) the audit will be completed by the time the State certified election results; (4) the State will publish a report on the results of the audit; (5) if the audit leads to a full manual tally of an election, State law requires the manual tally to be the official results of the election; and (6) any other information the Election Assistance Commission requires.

Section 3012. GAO Analysis of Effects of Audits. Requires the Government Accountability Office to do an analysis of the extent to which risk-limiting audits have improved election administration.

## Part 3 – Election Infrastructure Innovation Grant Program

Section 3021. Election Infrastructure Innovation Grant Program. Directs the Secretary of Homeland Security, acting through the Under Secretary for Science and Technology, and in coordination with the Chair of the Election Assistance Commission, and in consultation with the National Science Foundation, to establish a competitive grant program to award grants to eligible entities for research and development that could improve the security of election infrastructure and increase voter participation.

Defines eligible entities as institutions of high education, 501(c)(3)s, and for-profit organizations.

Directs the Department of Homeland Security to report to Congress 90 days after the end of each fiscal year describing the grants and what impact, if any, they have had on improving the security and operation of election infrastructure.

Authorizes \$20 million for fiscal years 2021-2029.

Defines “election infrastructure” as storage facilities, polling places, and centralized vote tabulation locations used to support the administration of elections for public office, as well as related information and communications technology, including voter registration databases, voting machines, electronic mail and other communications systems (including electronic mail and other systems of vendors who have entered into contracts with election agencies to support the administration of elections, manage the election process, and report and display election results), and other systems used to manage the election process and to report and display election results on behalf of an election agency.

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#### Subtitle B – Security Measures

- Overview: Requires the Department of Homeland Security to maintain the designation of election infrastructure as critical. Requires the Department of Homeland Security to provide timely threat information to chief State election officials.

Section 3101. Election Infrastructure Designation. Amends the Homeland Security Act of 2002 to include “election infrastructure” as a subsector of the “government facilities” critical infrastructure sector.

Section 3102. Timely Threat Information. Amends the Homeland Security Act of 2002 to direct the Secretary of Homeland Security to provide timely threat information regarding election infrastructure to the chief State election official of the State with respect to which such information pertains.

Section 3103. Security Clearance Assistance for Election Officials. Authorizes the Secretary of Homeland Security to expedite security clearances for chief State election officials and other appropriate State personnel involved in the administration of elections, sponsor security clearances for election officials, and facilitate temporary clearances for State election officials, as necessary.

Section 3104. Security Risk and Vulnerability Assessments. Clarifies that the Department of Homeland Security shall provide “risk and vulnerability assessments” as a component of “risk management support.” Directs the Secretary to provide within 90 days a risk and vulnerability assessment on election infrastructure to any State that requests one in writing. The Secretary must notify the State if the Department of Homeland Security is unable to commence the risk and vulnerability assessment within 90 days.

Section 3105. Annual Reports. The Secretary of Homeland Security must report to appropriate congressional committees, within one year of enactment and annually thereafter through 2026, information on the Department of Homeland Security’s efforts to assist States in securing election infrastructure, including how many States it helped, which States it helped, how many clearances it sponsored in each State, and a list of States for which it was unable to provide risk and vulnerability assessments, among other things. The Secretary of Homeland Security and the Director of National Intelligence, in coordination with the heads of appropriate Federal agencies, shall, 90 days after the end of each fiscal year, provide to appropriate congressional committees a report on foreign threats to elections, including physical and cybersecurity threats. The Secretary of Homeland Security must solicit and consider information for States for purposes of preparing the reports required under this section.

Section 3106. Pre-election Threat Assessments. The Director of National Intelligence must submit a report to Congress and each chief State election official at least 180 days before a general Federal election detailing threats, including cybersecurity threats, to election infrastructure. The report must include recommendations for threat mitigation developed by the Department of Homeland Security and Election Assistance Commission. The Director of National Intelligence must submit a revised report if the Director determines that the report should be updated to include new information on threats.

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### Subtitle C – Enhancing Protection for United States Democratic Institutions

- Overview: Requires the President to produce a national strategy for protecting U.S. democratic institutions. Creates National Commission to Protect United States Democratic Institutions to counter threats.

Section 3201. National Strategy to Protect United States Democratic Institutions. Requires the President, acting through the Secretary of Homeland Security, in consultation with the Secretary of Defense, the Secretary of State, the Attorney General, the Secretary of Education, the Director of National Intelligence, the Chairman of the Federal Election Commission, and the heads of any other appropriate Federal agency, to issue a national strategy to protect against cyber-attacks, influence operations, disinformation campaigns, and other activities that could undermine the security and integrity of United States democratic institutions.

Requires the national strategy to consider: (1) the threat of a foreign state actor, foreign terrorist organization (as designated pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. § 1189)), or a domestic actor carrying out a cyber-attack, influence operation, disinformation campaign, or other activity aimed at undermining the security and integrity of United States democratic institutions; (2) the extent to which United States democratic institutions are vulnerable to a cyber-attack influence operation, disinformation campaign, or other activity aimed at undermining the security and integrity of such democratic institutions; (3) consequences, such as an erosion of public trust or an undermining of the rule of law that could result from a successful cyber-attack, influence operation, disinformation campaign, or other activity aimed at undermining the security and integrity of United States democratic institutions; (4) lessons learned from other Western governments the institutions of which were subject to a cyber-attack, influence operation, disinformation campaign, or other activity aimed at undermining the security and integrity of such institutions, as well as actions that could be taken by the United States Government to bolster collaboration with foreign partners to detect, deter, prevent, and counter such activities; (5) potential impacts such as an erosion of public trust in democratic institutions as could be associated with a successful cyber breach or other activity negatively-affecting election infrastructure; (6) roles and responsibilities of the Secretary of Homeland Security, the Chairman, and the heads of other Federal entities and non-Federal entities, including chief State election officials and representatives of multi-state information sharing and analysis center; and (7) any findings, conclusions, and recommendations to strengthen protections for United States democratic institutions that have been agreed to by a majority of Commission members on the National Commission to Protect United States Democratic Institutions, authorized pursuant to section 3202.

Requires the President, acting through the Secretary of Homeland Security, in Coordination with the Chair of the Commission, to issue an implementation plan of the national strategy within 90 days, which includes the following: (1) strategic objectives and corresponding



tasks; (2) projected timelines and costs; and (3) metrics to evaluate performance. Requires the strategy to be unclassified and requires the Privacy and Civil Liberties Oversight Board to review and report on potential privacy and civil liberties impacts.

Section 3202. National Commission to Protect United States Democratic Institutions. Establishes within the legislative branch the National Commission to Protect United States Democratic Institutions to counter efforts to undermine democratic institutions within the United States. Describes the composition of the Commission as including 10 members appointed for the life of the Commission as follows: (1) one member shall be appointed by the Secretary of Homeland Security; (2) one member shall be appointed by the Chairman; (3) two members shall be appointed by the majority leader of the Senate, in consultation with the Chairman of the Committee on Homeland Security and Governmental Affairs, the Chairman of the Committee on the Judiciary, and the Chairman of the Committee on Rules and Administration; (4) two members shall be appointed by the minority leader of the Senate, in consultation with the ranking minority member of the Committee on Homeland Security and Governmental Affairs, the ranking minority member of the Committee on the Judiciary, and the ranking minority member of the Committee on Rules and Administration; (5) two members shall be appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Committee on Homeland Security, the Chairman of the Committee on House Administration, and the Chairman of the Committee on the Judiciary; and (6) two members shall be appointed by the minority leader of the House of Representatives, in consultation with the ranking minority member of the Committee on Homeland Security, the ranking minority member of the Committee on the Judiciary, and the ranking minority member of the Committee on House Administration.

Establishes that individuals shall be selected for appointment to the Commission solely on the basis of their professional qualifications, achievements, public stature, experience, and expertise in relevant fields, including, but not limited to cybersecurity, national security, and the Constitution of the United States. Bars members from receiving compensation for service on the Commission but permits reimbursement of certain expenses. Requires members to be appointed by 60 days after the date of the enactment. Provides that a vacancy on the Commission shall not affect its powers and shall be filled in the manner in which the original appointment was made. The appointment of the replacement member shall be made not later than 60 days after the date on which the vacancy occurs.

Establishes the powers of the Commission, including the authority to hold hearings and receive evidence, enter into contracts to enable the Commission to perform its responsibilities, and receive support on a reimbursable basis from the Administrator of General Services and other Federal agencies. Requires any public meetings to be held in a manner that protects the information provided or developed by the Commission. Directs Federal agencies to provide Commission members and staff appropriate clearances expeditiously. Authorizes the Commission to provide to the President and Congress interim reports. Requires the Commission to Provide a final report to the President and Congress within 18 months of enactment. Provides that the Commission shall terminate 60 days after the Commission submits its final report.

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#### Subtitle D – Promoting Cybersecurity Through Improvements in Election Administration

- Overview: Requires the testing of voting systems nine months before the date of each regularly scheduled general election for Federal office. Defines electronic poll books as part of voting systems and requires pre-election reports on voting system usage.

Section 3301. Testing of Existing Voting Systems to Ensure Compliance with Election Cybersecurity Guidelines and other Guidelines. Amends the Help America Vote Act of 2002 to require the Commission to provide, nine months before regularly scheduled Federal elections, for the testing by accredited laboratories under this section of the voting system hardware and software which was certified for use in the most recent such election, on the basis of the most recent voting system guide lines applicable to such hardware or software (including election cybersecurity guidelines) issued under this Act. Requires the Election Assistance Commission to decertify any hardware or software the Commission determines does not meet the most recent guidelines. This section applies to the regularly scheduled general election for Federal office held in November 2022 and each succeeding regularly scheduled general election for Federal office.

Amends the Help America Vote Act to require the Technical Guidelines Development Committee within the Election Assistance Commission to, within six months of enactment, issue election cybersecurity guidelines, including standards and best practices for procuring, maintaining, testing, operating, and updating election systems to prevent and deter cybersecurity incidents.

Section 3302. Treatment of Electronic Poll Books as Part of Voting Systems. Amends the Help America Vote Act of 2002 to include Electronic Poll Books as part of Voting Systems. Defines electronic poll book as the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used: (1) to retain the list of registered voters at a polling location, or vote center, or other location at which voters cast votes in an election for Federal office; and (2) to identify registered voters who are eligible to vote in an election.

Section 3303. Pre-election Reports on Voting System Usage. Requires the Chief State Election Official of each State to submit a report to the Election Assistance Commission containing detailed voting system usage information 120 days prior to any regularly scheduled election for Federal office.

Section 3304. Streamlining collection of election information. Waives subchapter I of chapter 35 of title 44, United States Code for purposes of maintaining the clearinghouse described in this section.

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#### Subtitle E – Preventing Election Hacking

- Overview: Establishes the ‘Election Security Bug Bounty Program’ to encourage independent assessments of election systems by technical experts.

Section 3401. Short title. Declares that this subtitle may be called the “Prevent Election Hacking Act of 2021”.

Section 3402. Election Security Bug Bounty Program. Requires the Secretary to establish the ‘Election ‘Security Bug Bounty Program’ (hereafter in this subtitle referred to as the ‘Program’) to improve the cybersecurity of the systems used to administer elections for Federal office by facilitating and encouraging assessments by independent technical experts, in cooperation with State and local election officials and election service providers, to identify and report election cybersecurity vulnerabilities.

Provides that participation in the Program shall be entirely voluntary for State and local election officials and election service providers. Requires the Secretary of Homeland Security to solicit the input from election officials in developing the program.

Requires the Secretary of Homeland Security to: (1) establish a process for State and local election officials and election service providers to voluntarily participate in the Program; (2) designate appropriate information systems to be included in the Program; (3) provide compensation to eligible individuals, organizations, and companies for reports of previously unidentified security vulnerabilities within the information systems included and establish criteria for individuals, organizations, and companies to be considered eligible for such compensation in compliance with Federal laws; (4) consult with the Attorney General on how to ensure that approved individuals, organizations, and companies that comply with the requirements of the Program are protected from prosecution under section 1030 of title 18, United States Code, and similar provisions of law, and from liability under civil actions for specific activities authorized under the Program; (5) consult with the Secretary of Defense and the heads of other departments and agencies that have implemented programs to provide compensation for reports of previously undisclosed vulnerabilities in information systems, regarding lessons that may be applied from such programs; (6) develop an expeditious process by which an individual, organization, or company can register with the Department, submit to a background check as determined by the Department, and receive a determination as to eligibility for participation in the Program; and (7) engage qualified interested persons, including representatives of private entities, about the structure of the Program and, to the extent practicable, establish a recurring competition for independent technical experts to assess election systems for the purpose of identifying and reporting election cybersecurity vulnerabilities. Authorizes the Secretary of Homeland Security to enter into a competitive contract to manage the Program.

Section 3403. Definitions.

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#### Subtitle F – Election Security Grants Advisory Committee

- Overview: Establishes election security grants advisory committee.

Section 3501. Establishment of Advisory Committee. Creates an advisory committee composed of unpaid election security experts to review election security grant applications and make recommendations to the Election Assistance Commission.

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#### Subtitle G – Miscellaneous Provisions

- Overview: Requires analysis of whether sufficient funds are provided for implementation of the bill.

Section 3601. Definitions.

Section 3602. Initial Report on Adequacy of Resources Available for Implementation. Requires the Secretary of Homeland Security and the Chair of the Election Assistance Commission to within 120 days submit to Congress an assessment on the adequacy of funding, resources, and personnel available to carry out this title.

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#### Subtitle H – Use of Voting Machines Manufactured in the United States

- Overview: Requires that States seek to use American-made voting machines.

Section 3701. Use of Voting Machines Manufactured in the United States. Requires States to seek to exclusively use voting machines made in the United States, beginning with the 2024 election.

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#### Subtitle I – Severability Clause

- Overview: Clarifies that if any provision of this Title or amendment made by this Title is held unconstitutional, the remainder of the Title shall not be affected by the holding.

Section 3801. Severability. Establishes severability such that the application of the provisions of this Title and amendments made by this Title shall not be affected by a

holding finding any provision of the Title or amendment made by the Title unconstitutional.

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## Division B – CAMPAIGN FINANCE

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### TITLE IV – CAMPAIGN FINANCE TRANSPARENCY

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#### Subtitle A – Findings Relating to Illicit Money Undermining Our Democracy

- Overview: Expresses Congress’ intent to curb the use of shell companies and other illicit activities that allow foreign money to enter and undermine our democracy.

Section 4001. Findings Relating to Illicit Money Undermining our Democracy. Declares that Congress finds that criminals, terrorists, and corrupt government officials use anonymous Limited Liability Companies to launder money, often through real estate investments. Declares that Congress should curb the use of shell companies by requiring companies to disclose beneficial owners and that Congress should examine money laundering in the real estate market and combat financial misconduct that drives corruption.

Section 4002. Federal Campaign Reporting of Foreign Contacts. Amends the Federal Election Campaign Act to create a reporting requirement of disclosing reportable foreign contacts. Creates an obligation for each political committee to notify the Federal Bureau of Investigation and the Federal Election Commission of the contact and provide a summary of circumstances not later than one week after said contact. Creates an individual obligation for each candidate to notify the treasurer or other designated official of the principal campaign committee of the reportable foreign contact and to provide a summary of the circumstances of the contact not later than three days after said contact. Requires each official, employee, or agent of a political committee to notify the treasurer or other designated official of the committee of a contact and provide a summary of the circumstances of the contact, not later than three days after said contact. Defines “reportable foreign contact” to mean any direct or indirect contact or communication between a candidate, political committee, or any official, employee, or agent of such committee, and an individual that any of the aforementioned individuals knows, or has reason to know, or reasonably believes, is a “covered foreign national”; where any of the aforementioned individuals further knows, has reason to know, or reasonably believes the contact or communication involves an offer or other proposal for a contribution, donation, expenditure, disbursement, or solicitation forbidden in Section 319 of the Federal Election Campaign Act, or involves a coordination or collaboration with, an offer or provision of information or services to or from, or persistent and repeated contact in connection with an election with a covered foreign national. Creates an exception such that “reportable foreign contact” does not include contact or communication between a covered foreign national



and an elected official or such official's employee solely in their official capacity as an official or employee. Precludes contact or communication that involves a contribution, donation, expenditure, disbursement, or solicitation as defined in Section 319 of the Federal Election Campaign Act from being considered exempt. Defines a "covered foreign national" as a foreign principal that is a government of a foreign country or a foreign political party, an agent of such a foreign government or foreign political party, and persons on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury subject to sanctions related to the conduct of a foreign government or foreign political party. The agent definition applies to United States citizens only to the extent that person involved acts within the scope of that person's status as the agent of a foreign government or foreign political party. Renders this section applicable with respect to reportable foreign contacts occurring on or after the date of the Act's enactment. Establishes that required reports for any reportable foreign contact shall include the date, time, and location of the contact, the date and time a designated committee official was notified of the contact, the identity of the individuals involved, and a description of the contact, including the nature of any contribution, donation, expenditure, disbursement, or solicitation involved or any prohibited activities discussed above. Renders this section applicable with respect to reports filed on or after the expiration of a 60-day period beginning on the date of this Act's enactment.

Section 4003. Federal Campaign Foreign Contact Reporting Compliance system. Establishes a federal campaign foreign contact reporting compliance system, whereby each political committee must establish a policy requiring all officials, employees, and agents of such committee to notify the treasurer or other designated official of the committee of any reportable foreign contact not later than three days following the contact. Requires each political committee to establish a policy that provides for retention and preservation of records and information related to reportable foreign contacts for no fewer than three years. When filing a statement of organization or certain reports, requires the treasurer of each political committee (except for an authorized committee) to certify that the committee has the aforementioned required policies in place, has designated an official to monitor compliance with such policies, and that not later than a week after the beginning of a formal or informal affiliation with the committee, all officials, employees, and agents of said committee will receive notice of such policies, be informed of contact restrictions, and sign a certification affirming their understanding of these policies and prohibitions. For authorized committees, the candidate shall make the required certification. Renders this section applicable with respect to political committees on or after the date of this Act's

enactment. Allows existing political committees to file the aforementioned certification not later than 30 days after this Act's enactment.

Section 4004. Criminal Penalties. Amends the Federal Election Campaign Act to include penalties such that anyone who knowingly and willfully commits a violation these provisions shall be fined not more than \$500,000, imprisoned not more than five years, or both. Further provides that anyone who knowingly and willfully conceals or destroys materials relating to a reportable foreign contact is to be fined not more than \$1,000,000, imprisoned not more than five years, or both.

Section 4005. Report to Congressional Intelligence Committees. Requires the Director of the Federal Bureau of Investigation to submit to the congressional intelligence committees a report within one year of enactment relating to notifications received by the FBI of foreign contacts.

Section 4006. Rule of Construction. Establishes a rule of construction such that nothing in the title or amendments made by the title shall be construed to impede legitimate journalistic activities or to impose any additional limitation on the right to express political views or engage in public discourse for any individual who resides in the United States, is not a citizen or national, and is not lawfully admitted for permanent residence.

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## Subtitle B – DISCLOSE Act

### Part 1 – Regulation of Certain Political Spending (Foreign Money Ban)

- Overview: Strengthens foreign money ban by prohibiting foreign nationals from participating in decision-making about contributions or expenditures by corporations and other entities.

Section 4100. Short Title. Provides name for this Subtitle as the “Democracy Is Strengthened by Casting Light On Spending in Elections Act of 2021” of the “DISCLOSE Act of 2021”.

Section 4101. Clarification of Prohibition on Participation by Foreign Nationals in Election-related Activities. Amends the Federal Election Campaign Act's ban on

foreign nationals making contributions and expenditures in connection with elections by codifying language from an FEC regulation rendering it unlawful for a foreign national to direct, dictate, control, or directly or indirectly participate in the decision making process of any person (including a corporation, labor organization, political committee, or political organization) with regard to such person's election activity, including any decision making concerning the making of contributions, donations, expenditures, or disbursements in connection with elections; under certain circumstances, requires annual certification of compliance with ban on foreign national spending by chief executive officer before any corporation makes any contribution, donation, or expenditure in connection with an election.

Section 4102. Clarification of Application of Foreign Money ban to Certain Disbursements and Activities. Prohibits foreign national contributions to Super PACs, or to any other person for the purpose of funding an expenditure, independent expenditure, or electioneering communication; prohibits any foreign national from participating in decision making by any corporate PAC.

Section 4103. Audit and report on illicit foreign money in federal elections. Requires the FEC to conduct an audit after each election cycle of foreign money spent in elections.

Section 4104. Prohibition on Contributions and Donations by Foreign Nationals in Connections with Ballot Initiatives and Referenda. Applies ban on foreign money in elections to ballot initiatives and referenda.

Section 4105. Disbursements and Activities Subject to Foreign Money Ban. Expands foreign money ban to include paid internet, TV, and radio communications that promote or oppose candidates with or without express advocacy; paid internet, TV, and radio communications that mention a candidate for office within 30 days of a primary election or caucus and within 60 days of a general election; and paid internet, TV, and radio communications paid for by foreign governments, foreign political parties, or registered foreign agents that discuss a national legislative issue during an election year.

Section 4106. Prohibiting Establishment of Corporation to Conceal Election Contributions and Donations by Foreign Nationals. Prohibits an owner, officer, attorney, or incorporation agent to establish or use a corporation, company, or other entity with the intent to conceal the activity of a foreign national. Amends the Federal

Election Campaign Act to include penalties such that any person who violates this section shall be imprisoned for not more than 5 years, fined, or both.

## Part 2 – Reporting of Campaign-Related Disbursements (Secret Money Disclosure)

- Overview: Requires super PACs, 501(c)4 groups, and other organizations spending money in elections to disclose donors who contribute more than \$10,000. Shuts down the use of transfers between organizations to cloak the identity of the source contributor.

### Section 4111. Reporting of Campaign-related Disbursements.

Section 4111(a). Disclosure Requirements for Corporations, Labor Organizations, and Certain Other Entities. Adds new section 324 to Federal Election Campaign Act:

Section 324(a). Disclosure Statement. Requires a “covered organization” to file a disclosure report within 24 hours of making \$10,000 or more of “campaign-related disbursements” that, for the first such report, provides disclosure of information since the beginning of the election cycle or for the period beginning one-year prior to the report, whichever is earlier, and for subsequent reports, provides information since the last filed report. Further provides that disclosure report includes name and place of business of the “covered organization” and for certain corporations, a list of their beneficial owners (as defined in this section), the amount and purpose of each “campaign-related disbursement” of \$1,000 or more, the election to which the disbursement pertains and the name of any candidate identified in the disbursement, and a certification that the disbursement was made independently of a candidate or party. Further provides that if the disbursement was made from a segregated bank account, the report includes the name and address of every donor and date of every donation of more than \$10,000 to the segregated account, and if the disbursement was not made from a segregate bank account, the same information for all payments to the “covered organization,” with the exceptions that payments need not be reported if received in the ordinary course of business, or if received subject to a restriction that the funds cannot be used for “campaign related disbursements.” Amounts received as remittances from an employee to the employee’s collective bargaining representative shall be treated as amounts received in the ordinary course of business. Further provides that donor information also need not be

reported if such disclosure would subject the donor to serious threats, harassment or reprisals.

Section 324(b). **Coordination with Other Provisions.** Provides that information contained in a disclosure report under subsection (a) need not be included in other campaign finance disclosure reports, and that a segregated bank account under subsection (a) may be treated as a separate segregated fund for tax purposes.

Section 324(c). **Filing.** Provides that disclosure reports filed under this section may be filed with the FEC electronically.

Section 324(d). **Campaign-related Disbursement Defined.** Provides that a “campaign-related disbursement” includes an independent expenditure, a public communication that promotes, supports, attacks, or opposes the election of a federal candidate, an electioneering communication, a Federal judicial nomination communication, and a “covered transfer.”

Section 324(e). **Covered Organization Defined.** Provides that a “covered organization” is a corporation (other than a section 501(c)(3) charity), a limited liability corporation, a section 501(c) non-profit organization (other than a section 501(c)(3) charity), a labor organization, a “political organization” under section 527 of the tax code, and a Super PAC.

Section 324(f). **Covered Transfer Defined.** Provides that a “covered transfer” is any transfer from a “covered organization” to another person if any one of five conditions applies to the transfer: (1) the transferor requests the money be used for campaign-related disbursements (or to make a transfer to another person for that purpose), (2) the transfer is made in response to a solicitation for a donation for the purpose of making “campaign-related disbursements” (or for a transfer to another person for that purpose), (3) the transferor engaged in discussions with the recipient about using the money for “campaign-related disbursements” (or for making a transfer to another person for that purpose), (4) the transferor spent, or knew that the recipient had spent, \$50,000 or more for “campaign-related disbursements” in the prior two years, or (5) the transferor knew or had reason to know that the recipient would spend \$50,000 or more for “campaign-related disbursements” in the two years after the transfer. Further provides that a “covered transfer” does not include a disbursement for a commercial transaction or any disbursement where

there is an agreement that the money will not be used for “campaign related disbursements.”

Further provides a special rule for transfers between two “covered organizations” which are “affiliates” of each other. Defines a “transfer between affiliates” to include a transfer between either two organizations which are affiliated with each other, or two organizations each of which is affiliated with the same third organization. Defines “affiliate status” to include an organization whose governing documents require it to be bound by the decisions of another organization, an organization whose governing board includes specifically designated representatives of another organization, or an organization chartered by another organization.

Further provides that in the case of a “covered transfer” between affiliates, the reporting requirement is triggered only if the amount of the transfer is \$50,000 or more, and that transferred amounts consisting of “dues, fees or assessments which are paid by individuals on a regular, periodic basis in accordance with a per-individual calculation which is made on a regular basis” do not count against the \$50,000 threshold.

Section 324(g). No effect on other reporting requirements. Provides that nothing in these provisions waives or affects other reporting requirements in the Federal Election Campaign Act, and cross-references section 324(b) with existing electioneering communication reporting requirements.

Section 4111(b). Coordination with FinCEN. Requires the director of FinCEN to assist the FEC in administering section 324 and requires the chairman of the FEC to report to Congress within 6 months after enactment of the Act on the need for further legislative authority to administer section 324.

Section 4112. Application of Foreign Money ban to Disbursements for Campaign-related Disbursement Consisting of Covered Transfers. Prohibits a foreign national from making a disbursement to any person who made a “covered transfer” during the prior two-year period. There is an exception to the ban on foreign national disbursements to certain covered organizations for disbursements by foreign nationals that are commercial transactions.

Section 4113. Effective Date. Provides that section 324 shall take effect on January 1, 2022, without regard to whether the FEC has promulgated regulations to carry out section 324.

### Part 3 – Other Administrative Reforms

- Overview: Sets forth and clarifies rules governing court challenges to campaign finance law.

Section 4121. Petition for Certiorari. Provides that the FEC has the authority to file a petition for certiorari with the Supreme Court.

Section 4122. Judicial Review of Actions Related to Campaign Finance Laws. Provides that any action brought to challenge the constitutionality of any provision of the campaign finance laws shall be filed in the U.S. District Court for the District of Columbia, with an appeal to the D.C. Circuit Court of Appeals, and that the courts have a duty to expedite such cases. Further provides that Members of Congress shall have a right to bring a case challenging the constitutionality of any provision of the campaign finance laws, or to intervene in such cases.

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### Subtitle C – Honest Ads

- Overview: Requires large digital platforms to maintain a public database of political ad purchase requests of more than \$500. Directs digital platforms to implement measures to prevent foreign nationals from directly or indirectly purchasing political ads.

Section 4201. Short Title. Establishes this subtitle may be cited as the “Honest Ads Act.”

Section 4202. Purpose. Establishes that the purpose of this Subtitle is to improve disclosure requirements for online political advertisements to enhance the integrity of American democracy and national security. Affirms that it does so to uphold the Supreme Court’s well-established standard that the electorate bears the right to be fully informed.

Section 4203. Findings. Establishes Congressional findings, including Russian efforts to influence the 2016 election with paid social media users or “trolls”; Russian efforts to



exploit American-made technology platforms to sow distrust in democracy; and Russian entities that purchased \$100,000 in political advertisements online. Money spent to advertise online has risen dramatically. More than \$1.4 billion was spent on online political advertising in 2016. The findings also establish that large online platforms have a reach far larger than any broadcast, satellite, or cable provider, which facilitates the scope and effectiveness of disinformation campaigns. The findings compare the nature of broadcast television, radio, and satellite advertising, which is by its nature public to the press, fact-checkers, and political opponents. This creates strong disincentives for a candidate to disseminate materially false information to the public. Social media platforms, however, provide advertisers with an ability to target the electorate with direct messages based on private information. The findings assert that the Federal Election Commission has failed to act on the issue of online political advertisements. Ultimately, Congress finds that the current regulations on political advertisements do not provide enough transparency to uphold the public's right to be fully informed about political advertisements made online.

Section 4204. Sense of Congress. Establishes the sense of Congress that the dramatic increase in digital political advertisements, and the growing centrality of online platforms, requires the Congress and the Federal Election Commission to take meaningful action to ensure that laws and regulations provide the accountability and transparency that is fundamental to our democracy; that free and fair elections require transparency and accountability to give the public a right to know the true sources of funding for political advertisements to make informed political choices and hold elected officials accountable; and transparency of funding for political advertisements is essential to enforce other campaign finance laws, including prohibitions on spending by foreign nationals.

Section 4205. Expansion of Definition of Public Communication. Adds “paid internet or paid digital communication” to the definition of public communication. Amends the press exception to the definition of expenditure to account for online or digital outlets, including blogs and digital newspapers, unless such online or digital facilities are owned or controlled by any political party, political committee, or candidate.

Section 4206. Expansion of Definition of Electioneering Communication. Adds “qualified internet or digital communication” to the definition of electioneering communication. Defines “qualified internet or digital communication” to mean any communication which is placed or promoted for a fee on an online platform. Does not require electioneering communications by means of online communications to be targeted to the relevant electorate. Amends the news exemption to the definition electioneering communication to

include communications appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station or any online or digital newspaper, magazine, blog, publication, or periodical, unless such broadcasting, online, or digital facilities are owned or controlled by any political party, political committee, or candidate. Provides that these amendments apply with respect to communications made on or after January 1, 2022.

Section 4207. Application of Disclaimer statements to Online Communications. Substitutes “shall state in a clear and conspicuous manner” for “shall clearly state” when describing disclaimer requirements. Clarifies that communications are not made in a clear and conspicuous manner if it is difficult to read or hear or if the placement is easily overlooked. Provides special rules for disclaimers that apply to qualified internet or digital communications if the communication is disseminated through a medium in which all the information is not possible. Specifically, requires the communication to include in a clear and conspicuous manner the name of the person who paid for the communication, and provide a means for the recipient of the communication to obtain the remainder of the information with minimal effort. Includes a safe harbor for clear and conspicuous statements for text, audio, and video communications. For text or graphic communications, letters must appear at least as large as the majority of the text in the communication, contained in a printed box, and printed with a reasonable degree of color contrast between the background and the printed statement. Audio statements must be clearly audible and intelligible at the beginning or end of a communication and last at least 3 seconds. Video with audio must include the statement at the beginning or end of the communication and be both in a written format that appears for 4 seconds and with audio that is clearly audible and intelligible for at least 3 seconds. All other types of communications must be at least as clear and conspicuous as what is otherwise required for text, video, and audio. The “small items” regulatory exception for bumper stickers, pins, buttons, pens, and similar small items upon which disclaimers cannot be conveniently printed does not apply to qualified internet or digital communications, nor does the impracticability regulatory exception (for skywriting, water towers, wearing apparel) (specifically, 11 CFR §§ 110.11(f)(1)(i) and (ii), or any successor to these rules). Modifies “stand by your ad” requirements for candidates or authorized persons by substituting “audio format” for radio, and “video format” for television.

Section 4208. Political Record Requirements for Online Platforms. Requires online platforms to maintain and make public in machine readable format a complete record of any request to purchase qualified political advertisements made by a person whose

aggregate requests on the online platform during the calendar year exceeds \$500. Requires advertisers to provide the online platform with the necessary information for the online platform to comply. Requires the contents of the record to include a digital copy of the political advertisement, a description of the audience targeted, the number of views generated and the date and timing that the advertisement was first and last displayed, the average rate charged for the advertisement, the name of the candidate to which the advertisement refers (and the office sought) or the national legislative issue to which the advertisement refers. If a candidate is the advertiser, the record must include the name of the candidate, the committee of the candidate, and the treasurer of the candidate. All other records must include the name of the person purchasing the advertisement, the name and address of a contact person, and a list of the chief executive officers or members of the executive committee or of the board of directors of the person. Defines online platforms as any public-facing website, web application, or digital application (including a social network, ad network, or search engine) which sells qualified political advertisements and has 50,000,000 or more unique monthly United States visitors or users for a majority of the months during the preceding 12 months. Qualified political advertisements are defined to mean any advertisements (including search engine marketing, display advertisements, video advertisements, native advertisements, and sponsorships) that are made by or on behalf of a candidate, or communicate a message relating to any political matter of national importance, including (i) a candidate; (ii) any election to federal office, or (iii) a national legislative issue of public importance. Online platforms must make the record public as soon as possible and retain it for a period of not less than 4 years. Provides a safe harbor from enforcement for online platforms making their best efforts to identify requests which are subject to record maintenance requirements. The FEC will be responsible for crafting these best efforts rules. Provides penalties for failure to otherwise comply. Requires the FEC to establish rules, no later than 120 after enactment, requiring common data formats for the online platform records so that they are machine-readable, and establishing search interface requirements relating to such record, including searches by candidate name, issue, purchaser, and date. Requires FEC to report biannually to Congress on matters relating to compliance, recommendations for modifications, and identifying other ways to bring transparency to online political advertisements distributed for free.

Section 4209. Preventing Contributions, Expenditures, Independent Expenditures, and Disbursements for Electioneering Communications by Foreign Nationals in the Form of Online Advertising. Requires broadcasters, providers of cable or satellite television, and online platforms to make reasonable efforts to ensure that political advertising is not purchased by foreign nationals, directly or indirectly. Provides special rules for

disbursements paid with credit card, and specifically notes that reasonable efforts were made under this provision in the case of the purchase of a communication with a credit card if the individual or entity making such a purchase is required to disclose the credit verification value (CVV) of such card, to provide a U.S. billing addresses, or for a U.S. citizen abroad, to provide the domestic mailing address used for voter registration purposes.

Section 4210. Independent Study of Media Literacy and Online Political Content Consumption. Requires the FEC to commission, within 30 days of enactment, an independent study and report on media literacy with respect to online political content consumption among voting-age Americans. Such report must be submitted to the FEC no later than 270 days after enactment and submitted to relevant Congressional committees within 30 days of receipt.

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#### Subtitle D – Stand By Every Ad

- Overview: Expands “stand by your ad” disclosure requirements to leaders of corporations, unions and other organizations purchasing political ads.

Section 4301. Short Title. Establishes that the Subtitle may be cited as the “Stand By Every Ad Act.”

Section 4302. Stand By Every Ad. Applies expanded disclaimer requirements for communications that are not authorized by candidates—for example, for communications by corporations, 527 organizations, or nonprofit organizations that spend money on express advocacy.

If the disclaimer statement is transmitted in a video format or is an Internet or digital communication transmitted in a text or graphic format and is paid for in whole or in part with a payment that is treated as a campaign-related disbursement, it must include a Top Five Funders list (if applicable). If the communication is of such short duration that including the Top Five Funders list would constitute a hardship to the person paying for the communication by requiring a disproportionate amount of the content of the communication to consist of the Top Five Funders list, then it must include the name of a website which contains the Top Five Funders list (if applicable) or in the case of an internet or digital communication, a hyperlink. If the communication is transmitted in an audio

format and is paid for in whole or in part with a payment that is treated as a campaign-related disbursement, then it must include the Top Two Funders list (if applicable), or, if the communication is of such short duration that including the Top Two Funders list is a hardship for the same reasons as for video, the name of a website which contains the Top Two Funders list. The FEC is responsible for determining the basis of criteria for the hardship exception.

If the person paying for the communication is an individual, they must state their name and that they approve the message. If the person paying is an organization, the statement must be “I am [name of applicable individual], the [title of applicable individual] of [name of organization], and [name of organization] approves this message.” If the organization is a corporation, the applicable individual is the chief executive officer (or highest ranking official if there is no CEO). If a labor organization, then the highest-ranking officer of the labor organization. Any other organization should include the highest ranking official.

If the communication is made in a text or graphic format, the disclosure statements must appear in letters at least as large as the majority of the text in the communication. If made by audio, the audio must be clear and conspicuous. If in video, the information must appear in writing at the end of the communication or in a crawl along the bottom of the communication in a clear and conspicuous manner, for at least 6 seconds, and also conveyed by an unobscured full-screen view of the individual making the statement, or a by voiceover with a clearly identifiable photograph or similar image of the individual.

The Top Five or Top Two Funders list is a list of the five or two persons who respectively, during the 12-month period ending on the date of the disbursement, provided the largest payments in an aggregate amount equal to or exceeding \$10,000. Excluded from the calculations are any amounts provided in the ordinary course of trade or business or in the form of investments in the person paying for the communication, or any payment which the person prohibited, in writing, from being used for campaign-related disbursements.

There is an exception for video communications that last 10 seconds or less. For those short videos, the communication must include the person or organizational statement who paid for the ad in a crawl on the bottom of the screen. Moreover, a website address must appear for the full duration of the ad that will provide all of the information otherwise required of longer ads, and the website address must appear for the full duration of the ad. If the communication permits hyperlinks, it must be provided by hyperlink.

Expanded disclaimer requirements are also applied to public communications consisting of campaign-related disbursements, as defined in the DISCLOSE Act, consisting of public communications, including an exception for Federal judicial nomination communications.

This section further creates an exception for communications paid for by political parties and political committees because they are subject to a separate set of existing disclaimer rules. This exception excludes, however, communications by political committees paid for in whole or in part with a campaign-related disbursement, but only if the covered organization making the campaign-related disbursement made campaign-related disbursements aggregating more than \$10,000 in the calendar year.

Section 4303. Disclaimer Requirements for Communications Made Through Prerecorded Telephone Calls. Applies “stand by your ad” disclaimer requirements to prerecorded audio messages distributed by telephone by treating them as communications transmitted in an audio format.

Section 4304. No Expansion of Persons Subject to Disclaimer Requirements on Internet Communications. Nothing in the Stand By Your Ad subtitle may be construed to require any person who is not required by the Federal Election Campaign Act to include a disclaimer on communications made by the person through the internet to include any disclaimer on any such communications.

Section 4305. Effective Date. The amendments made by this Subtitle apply with respect to communications made on or after January 1, 2022, and shall take effect without regard to whether or not the Federal Election Commission has promulgated regulations to carry out such amendments.

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## Subtitle E – Deterring Foreign Interference in Elections

- Overview: Provides several new provisions to address potential foreign interference in domestic elections.

### Part 1 – Deterrence under Federal Election Campaign Act of 1973

Section 4401. Restrictions on Exchange of Campaign Information Between Candidates and Foreign Powers. Amends the Federal Election Campaign Act to clarify that if a candidate or political campaign (or their agent) or a political committee or individual affiliated with a political committee provides or offers to provide nonpublic campaign material to a covered foreign national, that act will be considered a solicitation for the purposes of the Federal Election Campaign Act. Nonpublic campaign material means campaign material that is produced by the candidate or the committee or produced at the candidate or committee's expense or request which is not distributed or made available to the general public or otherwise in the public domain, including polling and focus group data and opposition research.

Section 4402. Clarification of Standard for Determining Existence of Coordination Between Campaigns and Outside Interests. Amends the Federal Election Campaign Act to clarify that there does not need to be an agreement or formal collaboration in order to find "coordination" between a candidate and outside spender.

Section 4403. Prohibition on Provision of Substantial Assistance Relating to Contributions or Donations by Foreign Nationals. Amends the Federal Election Campaign Act to prohibit a person from knowingly providing substantial assistance to another person relating to contributions or donations by foreign nationals. This section provides relevant definitions clarifying "knowingly," "pertinent facts," and "substantial assistance."

## Part 2 – Inadmissibility and deportability of aliens engaging in improper election interference.

Section 4411. Inadmissibility and Deportability of Aliens Engaging in Improper Interference in United States Elections. Amends the Immigration and Nationality Act to provide that any alien, who a consular officer, the Secretary of Homeland Security, the Secretary of State, or Attorney General knows, or has reasonable grounds to believe is seeking admission to the United States to engage in improper interference in U.S. elections, or has previously done so, is inadmissible. The section further provides that such aliens currently residing in the United States are subject to deportation.

## Part 3 – Notifying states of disinformation campaigns by foreign nationals.

Section 4421. Notifying States of Disinformation Campaigns by Foreign Nationals. Upon a determination by the FEC that a foreign national has (or has attempted) to initiate a disinformation campaign targeted at an election in a State, the FEC shall notify the State involved within 30 days.



#### Part 4 – Prohibiting use of deepfakes in election campaigns.

Section 4431. Prohibition on Distribution of Materially Deceptive audio or Visual Media Prior to Election. Amends the Federal Election Campaign Act to prohibit a person, political committee, or other entity to distribute—with actual malice—within 60 days of a Federal election materially deceptive audio or visual media of the candidate with the intent to injure the candidate’s reputation or to deceive voters. The provision includes a number of exceptions.

#### Part 5 – Assessment of exemption of registration requirements under FARA for registered lobbyists.

Section 4441. Assessment of Exemption of Registration Requirements Under FARA for Registered Lobbyists. Within 90 days after enactment, the Comptroller General of the United States shall submit to Congress an assessment of the implications of the FARA exemption for agents of foreign principals who are also registered lobbyists under the Lobbying Disclosure Act and an analysis on whether revisions would mitigate the risk of foreign government money influencing domestic political processes.

#### Subtitle F – Secret Money Transparency

- Overview: Repeals existing prohibition on the IRS from promulgating rules to bring clarity to rules governing 501(c) political activity.

Section 4501. Repeal of Restriction of Use of Funds by Internal Revenue Service to Bring Transparency to Political Activity of Certain Nonprofit Organizations. Declares that an appropriations rider prohibiting the IRS from clarifying rules related to political activity by nonprofit organizations has no force or effect.

Section 4502. Repeal of Revenue Procedure. Repeals Revenue Procedure 2018-38, modifying information to be reported to the IRS by certain nonprofit organizations.

#### Subtitle G – Shareholder Right-to-Know

- Overview: Repeals existing prohibition on the Securities and Exchange Commission from finalizing rules to afford shareholders the opportunity to know about the political spending of publicly traded companies.

Section 4601. Repeal of Restriction on Use of Funds by Securities and Exchange Commission to Ensure Shareholders of Corporations have Knowledge of Corporation Political Activity. Declares that an appropriations rider prohibiting the SEC from requiring disclosure to shareholders of corporate political spending has no force or effect.

Section 4602. Assessment of Shareholder Preferences for Disbursements for Political Purposes. Requires publicly traded companies to annually assess shareholders' views on political disbursements but the assessed preferences are not binding on the disburser. This section includes a clarification that no assessment of preferences of any shareholder who is a foreign national are to occur.

#### Subtitle H – Disclosure of Political Spending by Government Contractors

- Overview: Repeals Existing Prohibition on the Executive Branch from Promulgating Rules to Require Government Contractors to Disclose all of Their Political Spending.

Section 4701. Repeal of Restriction on use of Funds to Require Disclosure of Political Spending by Government Contractors. Declares that an appropriations rider prohibiting the Executive Branch from requiring government contractors to disclose political spending has no force or effect.

#### Subtitle I – Limitation and Disclosure Requirements for Presidential Inaugural Committees

- Overview: Requires Presidential Inauguration Committees to disclose their expenditures, limits aggregate contributions and restricts funds being used on purposes unrelated to the inauguration.

Section 4801. Short Title. Provides that this subtitle may be cited as the “Presidential Inaugural Committee Oversight Act.”

Section 4802. Limitations and Disclosure of Certain Donations to, and Disbursements by, Inaugural Committees. Prohibits inaugural committees from raising donations from non-individuals and foreign nationals. Prohibits the use of inaugural funds for personal use unrelated to the inauguration. Limits the maximum amount an individual can donate to an inaugural committee to \$50,000, indexed for inflation. Requires an inaugural committee to disclose, within 24 hours, contributions of more than \$1,000. Requires an inaugural committee to file within 90 days of an inauguration a final report disclosing all contributions and expenditures of more than \$200.

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#### Subtitle J – Miscellaneous Provisions

- Overview: Clarifies the relevant effective dates and that if any provision of this Title or amendment made by this Title is held unconstitutional, the remainder of the Title shall not be affected by the holding.

Section 4901. Effective Dates of Provisions. Provides that the provisions of this title and each amendment made shall take effect on the effect date provided under this title.

Section 4902. Severability. Establishes severability such that the application of the provisions of this Title and amendments made by this Title shall not be affected by a holding finding any provision of the Title or amendment made by the Title unconstitutional.

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TITLE V – CAMPAIGN FINANCE EMPOWERMENT

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Subtitle A – Findings Relating to *Citizens United* Decision

- Overview: Expresses that Congress finds that the *Citizens United* decision is detrimental, and the Constitution should be amended accordingly.

Section 5001. Findings Relating to Citizens United Decision. Expresses that Congress finds that the *Citizens United* decision is detrimental to democracy and that the Constitution should be amended to clarify Congress’ and the States’ authority to regulate campaign contributions and expenditures.

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Subtitle B – Congressional Elections

- Overview: Creates small dollar incentives to expand the universe of low-dollar contributors. Establishes a publicly financed 6-1 matching system on small-dollar donations up to \$200 for House candidates who demonstrate broad-based support and reject high-dollar contributions.

Section 5100. Short Title. Provides name for this subtitle as the “Government By the People Act of 2021”.

Part 1 – My Voice Voucher Pilot Program

Section 5101. Establishment of Pilot Program. Establishes state-based pilot demonstration of \$25 My Voice voucher (per election cycle) for political giving to candidates for the U.S. House of Representatives. Using the three participating states as laboratories of innovation, the pilot would seek to develop best practices for a potential nation-wide campaign voucher program. States will be judged on their capacity to execute the program. Provides that all payments to states shall come from the Freedom From Influence Fund, which is subject to a mandatory reduction of payments in case of insufficient amounts in the Fund. No appropriated funds shall be used for the Freedom From Influence Fund. Payments are capped at \$10,000,000 for each of the three states.

Section 5102. Voucher Program Described. Prescribes certain programmatic requirements state applying to participate in the voucher pilot must satisfy, including the creation of an

electronic routing system, contribution clearinghouse, and implementation of anti-fraud measures. States would also be prohibited from conditioning the receipt of the voucher based on individual's voter registration status. States are required to engage in a public awareness campaign.

Section 5103. Reports. Requires participating states to complete reports for submission to the FEC on the operation and efficacy of the pilot programs, including the making of recommendations for the programs' expansion or adjustment. The Federal Election Commission will be required to submit a report to Congress synthesizing the state reports and making recommendations by the end of the fifth election cycle.

Section 5104. Definitions. Defines "election cycle" to mean the period beginning on the day after the date of the most recent regularly scheduled general election for Federal office and ending on the date of the next regularly scheduled general election for federal office. Defines periods of application, preparation, and operation for the pilot program.

## Part 2 – Small Dollar Financing of Congressional Election Campaigns

Section 5111. Benefits and Eligibility Requirements for Candidates. Establishes a publicly financed matching system for Congressional campaigns by amending the Federal Election Campaign Act of 1971 to include the following:

### Title V – Small Dollar Financing of Congressional Election Campaigns

#### Subtitle A – Benefits

Section 501. Benefits for Participating Candidates. Provides for a 6-to-1 match of contributions of less than \$200 per election for participating candidates. Caps the total amount of matching funds for a candidate at half of the average of the 20 most expensive winning campaigns in the previous cycle.

Section 502. Procedures for Making Payments. Requires the Federal Election Commission to disburse payments to qualified candidates upon receipt of statements detailing the amount of qualifying contributions raised since the last request, the amount of matching funds sought, and the total amount of matching funds received during the cycle. Prohibits candidates from requesting matching funds on less than \$5,000 in qualified contributions, except during the final 30 days

of a campaign, and from requesting funds more than once in a 7-day period. Requires the FEC to make payments within 2 days of receiving a request.

Section 503. Use of Funds. Authorizes the use of matching funds exclusively for direct payments for authorized expenditures for campaign funds. Explicitly prohibits the use of funds for legal expenses or fines.

Section 504. Qualified Small Dollar Contributions Described. Defines a “qualified small dollar contribution” as a donation of \$1-200 per election from an individual or segregated small-dollar account of a political committee. Prohibits donors who make qualified small dollar contributions to a candidate from making additional nonqualified contributions to that candidate. Requires candidates to return the additional nonqualified contribution or to repay matching funds on the original qualified contribution from that donor. Requires participating candidates to disclose information about matching funds and qualified contributions in fundraising materials.

#### Subtitle B – Eligibility and Certification

Section 511. Eligibility. Deems a candidate eligible for matching funds if the candidate seeks certification from the FEC, meets the qualifications in section 512, certifies that the candidates’ authorized committees meet the notification requirements in section 504(d), and, during the Small Dollar Democracy qualifying period (within 180 days of filing to run), files an affidavit with the FEC that the candidate will comply with contribution and expenditure requirements, will run as a qualified candidate for both the primary and general elections and will qualify under State law to appear on the ballot. Specifies that for a general election, qualified candidates must have been chosen as their parties’ nominees or otherwise qualified to appear on the ballot.

Section 512. Qualifying Requirements. Requires participating candidates to raise at least \$50,000 in qualified small dollar contributions from at least 1,000 individuals during the Small Dollar Democracy qualifying period. Requires the FEC to establish random audits to ensure compliance.

Section 513. Certification. Requires the FEC to certify qualified candidates within five days of receiving an affidavit seeking certification. A certification covers both

the primary and general elections. Requires the FEC to decertify a candidate who does not comply with requirements, withdraws from the race, does not make it onto the ballot, or is criminally sanctioned for conduct relating to the election. Requires certain decertified candidates to repay all matching funds with interest, prohibits decertified candidates from becoming certified during the next election cycle, and prohibits a candidate who is decertified three times from becoming certified for any future election.

#### Subtitle C – Requirements for Candidates Certified as Participating Candidates

Section 521. Contribution and Expenditure Requirements. Restricts the sources from which participating candidates can raise funds to qualified small dollar contributions, matching funds, nonqualified contributions of up to \$1,000 per election, personal funds up to \$50,000 and certain political committees. Establishes rules for funds raised prior to seeking qualification as a participating candidate. Creates prohibitions on leadership PACs and joint fundraising committees for participating candidates.

Section 522. Administration of Campaign. Requires campaigns to establish separate accounting for each different type of contribution received, disclose all donors making qualified small dollar contributions, and publish on the internet all materials provided to the FEC relating to contributions and expenditures.

Section 523. Preventing Unnecessary Spending of Public Funds. Limits the amount of expenditures campaigns can make from matching funds to the amount of expenditures made from other sources of funds, if available.

Section 524. Remitting Unspent Funds after Election. Requires candidates to return unspent matching funds within 180 days of an election, except that a candidate may retain up to \$100,000 in matching funds if the candidate signs an affidavit promising to seek certification again in the next cycle. Retained funds are sequestered until the candidate is certified again.

#### Subtitle D – Enhanced Match Support

Section 531. Enhanced Support for General Election. Allows eligible candidates to receive additional matching funds.



Section 532. Eligibility. Requires that a qualified candidate in a general election raise at least \$50,000 in qualified small dollar contributions during the “enhanced support qualifying period” in order to qualify for additional matching funds. Defines the “enhanced support qualifying period” as the period between 60 and 14 days before a general election.

Section 533. Amount. A candidate who qualifies for enhanced support receives an additional 3-to-1 match on qualified small dollar contributions raised during the enhanced support qualifying period. A candidate cannot receive more than \$500,000 in enhanced matching funds. Enhanced matching funds do not count against the aggregate limit for matching funds a candidate can receive.

Section 534. Waiver of Authority to Retain Portion of Unspent Funds After Election. Candidates who receive enhanced funding may not retain any amount of matching funds after an election.

#### Subtitle E – Administrative Provisions

Section 541. Freedom From Influence Fund. Establishes the Freedom From Influence Fund to provide matching funds to qualified candidates. No appropriated funds shall be used for the Freedom From Influence Fund. The Freedom From Influence Fund will be funded by an assessment paid on federal fines, penalties, and settlements for certain tax crimes and corporate malfeasance. Fines, penalties, and settlements paid by natural persons for non-tax crimes and civil cases will not be subject to the assessment, except for those paid by certain executive-level officers or equivalent officers. For tax crimes, the assessment will only apply to fines, penalties, and settlements owed to the IRS if the offender’s income for that year reaches the highest tax bracket.

In the event the balance of the Freedom From Influence Fund is found to be insufficient to cover the projected costs of the matching funds, the Federal Election Commission will reduce the proportional match rate for purposes of the upcoming election cycle to ensure the Fund can meet projected match payments.

Section 542. Reviews and Reports by Government Accountability Office. Requires the Comptroller General to review after every election cycle the small dollar

financing program. The review can include recommendations for adjustments to the criteria for qualification and the aggregate limit of matching funds.

Section 543. Administration by Commission. Requires the FEC to promulgate regulations for the small dollar financing program.

Section 544. Violations and Penalties. The FEC can assess civil penalties against candidates for prohibited contributions or expenditures. Requires the FEC to seek repayment plus interest of any matching funds used in a prohibited manner or not returned as required after an election. Does not preclude other enforcement actions, including criminal referrals. Allows the FEC to refuse to certify as a participating candidate any candidate who has been assessed three or more civil penalties for violations of this section and prohibits certification of a candidate who has been assessed three or more civil penalties for knowing and willful violations of this section. Disqualifies from participation any candidate who has criminally violated the Federal Election Campaign Act.

Section 545. Appeals Process. The U.S. Court of Appeals for the District of Columbia has jurisdiction to review any actions by the FEC relating to the small dollar financing program.

Section 546. Indexing of Amounts. Indexes to inflation the amounts in this title, except for the aggregate limit on matching funds a candidate may receive, which is indexed to campaign costs as described in section 501.

Section 547. Election Cycle Defined. Defines an election cycle as the period between the day after a general election and the next general election.

Section 5112. Contributions and Expenditures by Multicandidate and Political Party Committees on Behalf of Participating Candidates. Allows multicandidate and party committees to contribute to participating candidates if the contributions come from segregated accounts that only raise funds pursuant to the requirements for small dollar qualified contributions. Allows party committees to make unlimited coordinated expenditures with a participating candidate if the committee only spends from the segregated account and does not provide any additional funding to the candidate.

Section 5113. Prohibiting Use of Contributions by Participating Candidates for Purposes Other Than Campaign for Election. Prohibits participating candidates from using contributions for anything other than authorized expenditures.

Section 5114. Assessments Against Fines and Penalties. Amends Chapter 201 of Title 18, United States Code by providing a provision on special assessments for Freedom From Influence Fund. The provision requires additional assessments on any organization defendant or any defendant who is a corporate officer or person with equivalent authority in any organization who is convicted of a criminal offense under Federal law an amount equal to 4.75 percent of any fine imposed on that defendant or on any related financial settlement. The provision also requires the same assessment to be imposed on civil and administrative penalties and settlements.

Section 5115. Study and Report on Small Dollar Financing Program. Requires the Federal Election Commission to assess within two years after the completion of the first election cycle for which the matching system is active whether the matching funds provided are sufficient to meet the goals of the program. The FEC is required to submit to Congress such report.

Section 5116. Effective Date. The program becomes effective during the 2028 election cycle. The FEC is required to promulgate regulations as necessary to implement these provisions by June 30, 2026.

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### Subtitle C – Presidential Elections

- Overview: Establishes a publicly financed 6-1 matching system on the first \$200 of a contribution to the presidential campaign of a participating candidate.

Section 5200. Short Title. Declares that this subtitle may be called the “Empower Act of 2021”.

### Part 1 – Primary Elections

Section 5201. Increase In and Modifications to Matching Payments.

Section 5201(a). Increase and Modification. Provides for a 6-to-1 match of up to \$200 of “matchable contributions” made to Presidential primary election candidates who qualify for receipt of public matching funds. Further provides that a “matchable contribution” is a “direct contribution” made to a candidate by an individual in an aggregate amount of no greater than \$1,000. Further provides that a “direct contribution” is one that is made directly to a candidate by an individual and is not either forwarded to the candidate by another person or received by the candidate with knowledge that the contribution was made at the request or recommendation of another person. Provides that for this purpose a “person” does not include an individual (other than a registered lobbyist), or a political party committee, or a political committee which is not a PAC and which does not make independent expenditures, does not lobby and is not established or controlled by a lobbyist or lobbying organization. Also clarifies that a contribution may be made at the request or recommendation of a person so long as the candidate does not know who provided the information.

Section 5201(b). Modification of Payment Limitation. Provides a cap on public funding a participating candidate may receive of \$250,000,000 for the primary elections, subject to increases for inflation.

Section 5202. Eligibility Requirements for Matching Payments. Provides that a candidate qualifies to receive matching funds by raising \$25,000 in contributions of no more than \$200 in each of at least 20 states. Further provides that a participating candidate will not accept contributions of more than \$1,000 from any person for the primary elections. Further provides that a participating candidate will accept only “direct contributions,” as defined above, and not any bundled contributions. Further provides that a candidate participating in the primary election matching funds system also agrees to participate in the general election matching funds system, if nominated for the general election.

Section 5203. Repeal of Expenditure Limitations. Repeals current state-by-state expenditures limits and continues current expenditure limit of \$50,000 on a candidate’s personal funds.

Section 5204. Period of Availability of Matching Payments. Provides that “matching payment period” begins six months prior to the date of the earliest State primary election.

Section 5205. Examination and Audits of Matchable Contributions. Provides FEC with authority to audit matchable contributions received by a candidate participating in the presidential primary matching funds system.

Section 5206. Modification to Limitation on Contributions for Presidential Primary Candidates. Provides that contribution limit for presidential primary elections applies to all such elections in a four-year election cycle and not for a calendar year.

Section 5207. Use of Freedom From Influence Fund as Source of Payments. Adds Section 9043.

Section 9043. Use of Freedom From Influence Fund as Source of Payments. Provides that all payments shall come from the Freedom From Influence Fund, which is subject to a mandatory reduction of payments in case of insufficient amounts in the Fund. No appropriated funds shall be used for the Freedom From Influence Fund. Has no effect on amounts transferred for pediatric research initiative.

## Part 2 – General Elections

Section 5211. Modification of Eligibility Requirements for Public Financing. Provides that a presidential general election candidate is eligible to receive public matching funds if the candidate participated in the primary election matching funds system, agrees to an audit by the FEC, and accepts only “direct contributions” (and no bundled contributions) as defined by the presidential primary election provisions.

Section 5212. Repeal of Expenditure Limitations and Use of Qualified Campaign Contributions. Repeals existing expenditure limits for presidential general election candidates receiving public funds, provides that presidential candidates participating in the matching funds system in the general election will accept only “qualified campaign contributions” to defray campaign expenses and provides criminal penalties for violation of the restriction. Defines “qualified campaign contribution” to mean contributions that aggregate no more than \$1,000 from an individual donor.

Section 5213. Matching Payments and Other Modifications to Payment Amounts. Provides for a 6-to-1 match of up to \$200 of “matchable contributions” made to Presidential general election candidates who qualify for receipt of public matching funds, up to a total of

\$250,000,000 in public matching funds for the general election, subject to increases for inflation. Further provides that a “matchable contribution” is a “direct contribution” made to a candidate by an individual in an aggregate amount of no greater than \$1,000.

Section 5214. Increase in Limit on Coordinated Party Expenditures. Provides that a national party committee may make coordinated expenditures with a general election Presidential candidate of no more than \$100,000,000, subject to increases for inflation.

Section 5215. Establishment of Uniform Date for Release of Payments. Provides for a uniform date for the payment of matching funds to Presidential general election candidates on the later of the last Friday before the first Monday in September, or within 24 hours after receiving certifications for payment for all eligible major party candidates.

Section 5216. Amounts in Presidential Election Campaign Fund. Provides that Secretary of Treasury shall take into account estimated check-off funds that will be deposited into the Presidential Election Campaign Fund during the election year in determining whether there will be sufficient funds in the Fund to make payments to eligible candidates.

Section 5217. Use of General Election Payments for General Election Legal and Accounting Compliance. Provides that candidate expenses for general election legal and accounting compliance are treated as qualified campaign expenses.

Section 5218. Use of Freedom From Influence Fund as Source of Payments. Adds Section 9013.

Section 9013. Use of Freedom From Influence Fund as Source of Payments. Provides that all payments shall come from the Freedom From Influence Fund, which is subject to a mandatory reduction of payments in case of insufficient amounts in the Fund. No appropriated funds shall be used for the Freedom From Influence Fund. Has no effect on amounts transferred for pediatric research initiative.

### Part 3 – Effective Date

Section 5221. Effective Date. Provides amendments shall apply with respect to 2028 Presidential election without regard to whether the FEC has promulgated regulations to

implement the amendments made by the Act; Requires FEC to promulgate regulations to implement the amendments by June 30, 2026.

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#### Subtitle D – Personal Use Services as Authorized Campaign Expenditures

- Overview: Expands authorized campaign expenditures to include child care, elder service care, professional development, and payments of health insurance costs, and for credible candidates meeting certain employment eligibility requirements, establishes a “right of return” to employment in an effort to make it easier for candidate of modest means to run and win office.

Section 5301. Short title; findings; purpose. States the short title of this section is the “Help America Run Act.” Finds that everyday Americans experience barriers to entry before being able to consider running for federal office. Finds that the current process of identifying those who can run privileges the wealthiest Americans, rather than those who must work to provide necessities like childcare and health insurance and who cannot afford to risk their livelihoods by testing a run for office. Finds that leadership not reflecting the economic realities of the citizenry yields policy that may not reflect the needs of the citizenry. Establishes purpose to ensure that otherwise-qualified, credible candidates may run for office regardless of their economic status, facilitating the candidacy of more representative candidates.

Section 5302. Treatment of Payments for Childcare and Other Personal Use Services as Authorized Campaign Expenditures. Amends the Federal Election Campaign Act to provide that, under limited circumstances, the payment by an authorized committee of a nonincumbent candidate for the following are authorized expenditures if the services are necessary to enable participation of the candidate in campaign-related activities: child care services; elder care services; care for other legal dependents; and health insurance premiums. Renders effective upon enactment. Provides several limitations, including capping the amount of campaign funds that may be used for these circumstances at the salary that would be drawn as an elected as currently provided by existing FEC regulations that cap nonincumbent candidates drawing a salary during a campaign. Also provides that candidates may not “double dip” and must choose between availing themselves of the salary benefit allowed under existing regulations or using campaign funds under the exemptions of this subtitle.



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### Subtitle E – Empowering Small Dollar Donations

- Overview: Incentivizes small dollar fundraising by removing restrictions on party spending from accounts funded by small dollar contributions.

Section 5401. Permitting Political Party Committees to Provide Enhanced Support for Candidates Through Use of Separate Small Dollar Accounts. Increases the amount party committees can donate to candidates to \$10,000 per election and removes the limitation on party-candidate coordinated spending as long as the donations and coordinated spending come from a segregated account that only accepts contributions of \$200 or less.

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### Subtitle F – Severability Clause

- Overview: Clarifies that if any provision of this Title or amendment made by this Title is held unconstitutional, the remainder of the Title shall not be affected by the holding.

Section 5501. Severability. Establishes severability such that the application of the provisions of this Title and amendments made by this Title shall not be affected by a holding finding any provision of the Title or amendment made by the Title unconstitutional.

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## TITLE VI – CAMPAIGN FINANCE OVERSIGHT

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### Subtitle A – Restoring Integrity to America’s Elections

- Overview: Restructures the Federal Election Commission to have five commissioners, in order to break gridlock. Makes permanent FEC’s civil penalty authority.

Section 6001. Short Title. Provides name for this sub-title as the “Restoring Integrity to America’s Elections Act.”

Section 6002. Membership of Federal Election Commission. Provides for reduction in the number of FEC Commissioners from six to five, with no more than two members of the same party, all appointed by the President with the advice and consent of the Senate. Establishes that a commissioner shall be treated as affiliated with a political party if he or she was affiliated, including as a registered voter, employee, consultant, donor, officer, or attorney, with such political party or any of its candidates or elected public officials at any time during the 5-year period ending on the date on which such individual is nominated to be a member of the Commission. Further provides that each member shall serve a six-year term and is not eligible for reappointment. Further provides that President shall convene a Blue-Ribbon Advisory Panel to recommend individuals for appointment as a member of the Commission. The Panel must consist of individuals from each major political party as well as politically unaffiliated individuals and the President must seek to ensure racial, ethnic, and gender diversity on the panel.

Section 6003. Assignment of Powers to Chair of Federal Election Commission. Provides that President designates one member of the Commission as Chairman, assigns certain powers to the Chairman and assigns other powers to the Commission.

Section 6004. Revision to Enforcement Process. Revises enforcement process to provide that general counsel shall make a determination of whether there is reason to believe a violation has occurred, or whether there is probable cause that a violation has occurred, and that determination shall take effect unless a majority of the Commission votes to overrule the general counsel’s determination within 30 days. Further provides that any person aggrieved by a finding of no reason to believe a violation has occurred or no probable cause that a violation has occurred, or aggrieved by a failure of the Commission to act on a complaint within one year after filing a complaint, may seek judicial review in

the United States District Court for the District of Columbia and the court shall determine by de novo review whether the agency action or failure to act is contrary to law.

Section 6005. Permitting Appearance at Hearings on Requests for Advisory Opinions by Persons Opposing the Requests. Provides that an interested party who has submitted written comments on an advisory opinion request may present testimony to the Commission.

Section 6006. Permanent Extension of Administrative Penalty Authority. Extends statutory authority for administrative fines program for violation of certain disclosure requirements.

Section 6007. Restrictions on Ex Parte Communications. Codifies, by reference, limitations on ex parte communications by members of the Commission and their staff.

Section 6008. Clarifying Authority of FEC Attorneys to Represent FEC in Supreme Court. Makes explicit that the Federal Election Commission may represent the FEC before the Supreme Court.

Section 6009. Requiring Forms to Permit Use of Accent Marks. Requires that Federal Election Commission forms allow the use of accent marks in persons' names.

Section 6010. Effective date; transition. Provides effective date of January 1, 2024 for amendments made by this Subtitle, and for procedures for transition.

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## Subtitle B – Stopping Super PAC-Candidate Coordination

- Overview: Defines prohibited coordination between campaigns and super PACs. Creates “coordinated spender” category to ensure single-candidate super PACs do not operate as arms of campaigns.

Section 6101. Short Title. Provides name for this sub-title as the “Stop Super PAC-Candidate Coordination Act.”

Section 6102. Clarification of Treatment of Coordinated Expenditures as Contributions to Candidates.

Section 6102(a). Treatment as Contribution to Candidate. Amends definition of “contribution” to add any payment for a “coordinated expenditure.”

Section 6102(b). Definitions. Adds new section 327 to the Act:

Section 327. Payments for Coordinated Expenditures.

Section 327(a). Coordinated Expenditures. Defines “coordinated expenditure” to mean a payment made in cooperation, consultation or concert with or at the request or suggestion of a candidate or his agents; or a payment to republish candidate materials, but not to include news stories or commentary, or candidate debates or forums conducted pursuant to rules issues by the FEC.

Section 327(b). Coordination Described. Defines “in cooperation, consultation or concert with or at the request or suggestion of” a candidate or their agents to mean a communication which is not made entirely independently of a candidate, or which is made pursuant to any general or particular understanding with the candidate, or pursuant to any communication with the candidate, about the payment. Provides that a payment is not coordinated solely because a person engages in a policy discussion with a candidate or their agents, so long as there is no discussion regarding a campaign. Further provides that this standard does not apply to coordination between a candidate and a political party. Further provides that coordination is determined without regard to whether a person is using a firewall to restrict sharing of information between employees or agents of the person.

Section 327(c). Payments by Coordinated Spenders for Covered Communications. Provides that a payment is made in coordination with a candidate if it is made for a “covered communication” by a “coordinated spender.” Defines a “coordinated spender” as a person who meets any one of five standards: (A) the person was formed or established by the candidate or his agents within the 4 year period prior to the payment; (B) the candidate raised funds for the person during the election cycle; (C) the person is managed by the candidate or by any person who has been employed by the candidate as an adviser or consultant during the prior 4 year period; (D) the person retains the services of a consultant who provided consulting services to the candidate within the prior 2-year period, and (E) the person is established or managed by any member of the candidate’s family.

Section 327(d). Covered Communication Defined. Defines “covered communication” to include a public communication which expressly advocates the election of a candidate, or which promotes, supports, attacks, or opposes a candidate, or which refers to a candidate in the period 60 days before a primary election or 120 days before a general election, provided the communication is disseminated in the jurisdiction of the office the candidate is seeking.

Section 327(e). Penalty. Provides for a fine of 300 percent of the amount of any payment for a coordinated communication that is made in knowing and willful violation of the Act and provides for joint and several liability for officers or directors of a person subject to a penalty.

Section 6103. Clarification of Ban on Fundraising for Super PACs by Federal Candidates and Officeholders. Provides that a federal candidate or officeholder is prohibited from soliciting or directing money to a Super PAC or to any section 527 organization which does not comply with federal contribution limits.

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#### Subtitle C – Disposal of Contributions or Donations

- Overview: Establishes deadline by which candidates not running again must disburse all campaign funds.

Section 6201. Timeframe for and Prioritization of Disposal of Contributions or Donations. Allows candidates to use campaign funds for up to six years after the last election for which the individual was a candidate or until the candidate becomes a registered lobbyist. Requires that within 30 days after that period ends, the candidates dispose of all remaining campaign funds first by paying any debts or obligations of the campaign and then by returning the contributions, transferring them to a party committee, or donating them to a charity.

Section 6202. 1-year Transition Period for Certain Individuals. Requires any individuals with remaining campaign funds who are either registered lobbyists or have not been a candidate for six years to dispose of all remaining campaign funds within one year of enactment of this section.

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#### Subtitle D – Recommendations to Ensure Filing of Reports Before Date of Election

- Overview: Requires the Federal Election Commission to develop recommendations for requiring all political committees to submit FEC reports before an election.

Section 6301. Recommendations to Ensure Filing of Reports Before Date of Election. Requires the Federal Election Commission to submit recommendations, including potential changes to existing law, to Congress for ensuring that all political committees file FEC reports before an election, even if the committee registers after the last filing deadline before an election. The recommendations must account for delays that would hide the identity of contributors until after the election.

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#### Subtitle E – Severability Clause

- Overview: Clarifies that if any provision of this Title or amendment made by this Title is held unconstitutional, the remainder of the Title shall not be affected by the holding.

Section 6401. Severability. Establishes severability such that the application of the provisions of this Title and amendments made by this Title shall not be affected by a holding finding any provision of the Title or amendment made by the Title unconstitutional.

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## Division C – Ethics

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### TITLE VII – ETHICS STANDARDS

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#### Subtitle A – Supreme Court Ethics

- Overview: Requires the development of a code of ethics for Supreme Court justices.

Section 7001. Code of Conduct for Federal Judges. Requires the Judicial Conference of the United States to develop a code of conduct applicable to every federal judge and Supreme Court Justice, but also permits certain provisions of such code of conduct to apply only to certain categories of judges or justices.

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#### Subtitle B – Foreign Agents Registration

- Overview: Increases resources for FARA office, creates FARA investigation and enforcement unit in Department of Justice and provides authority to impose civil penalties. Requires foreign agents to disclose transactions involving things of financial value conferred on officeholders.

Section 7101. Establishment of FARA Investigation and Enforcement Unit Within Department of Justice. Amends FARA to require that, no later than 180 days after date of enactment of this subsection, the Attorney General must establish a FARA enforcement unit within the Justice Department's National Security Division. Such unit is authorized to take appropriate legal actions against anyone suspected of violating FARA and coordinate such legal action with the United States Attorney for the relevant jurisdiction. Section 7102 further requires the Attorney General to consult with the Director of National Intelligence, the Secretary of State, and the Secretary of Homeland Security in the establishment of this unit. Finally, section 7102 authorizes \$10 million for fiscal year 2021 and each fiscal year thereafter to fund the unit.

Section 7102. Authority to Impose Civil Money Penalties. Amends FARA to provide for civil money penalties against those who violate FARA. Those failing to timely file or complete a registration statement are subject to a civil fine of up to \$10,000, while those failing to timely file or complete supplemental filings under FARA are subject to a civil money penalty of up to \$1,000 per violation. Additionally, those who knowingly fail to remedy a defective filing within 60 days after notice of such defect from the Attorney



General or to comply with any other provision of FARA are subject to a civil fine of up to \$200,000 based upon proof of such knowing violation by a preponderance of the evidence and the extent and gravity of the violation. Section 7103 clarifies that no foreign principal may pay a fine under this section on behalf of its agent. Section 7103 also provides that all money collected under this provision must be used to fund the FARA enforcement unit established under Section 7102. Finally, the effective date for this section is the date of enactment.

**Section 7103. Disclosure of Transactions Involving Things of Financial Value Conferred on Officeholders.** Section 7103(a) provides that a FARA registrant must disclose as part of his or her registration a detailed statement describing any transaction within the 60 days preceding the registration in which the foreign principal on whose behalf the agent is acting has conferred on a federal or state officeholder a thing of financial value, including a gift, profit, salary, favorable regulatory treatment, or any other direct or indirect economic or financial benefit, to the extent that the registrant has knowledge of such transaction. Section 7103(b) extends a similar disclosure obligation to current registrants, who must file a supplemental disclosure within 90 days of the date of enactment of this section detailing any transaction described in section 7103(a) that occurred at any time during the registrant's representation of the foreign principal.

**Section 7104. Ensuring Online Access to Registration Statements.** Amends FARA's provision requiring, among other things, electronic filing of registration and supplemental statements in order to clarify that such filing must be made "in a digitized format which will enable the Attorney General to meet the requirement" that information contained in such statements be publicly available on the Internet in a searchable, sortable, and downloadable format. The amendments made by this provision are to apply to statements filed on or after 180 days beginning from the enactment date.

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### Subtitle C – Lobbying Disclosure Reform

- **Overview:** Clarifies that counseling in support of lobbying contacts is considered lobbying under the Lobbying Disclosure Act and therefore triggers registration.

**Section 7201. Expanding Scope of Individuals and Activities Subject to Requirements of Lobbying Disclosure Act of 1995.** 7201(a) amends the LDA's definition of "lobbying

activities” to expand what constitutes such activity. Specifically, it provides that “any efforts” in support of lobbying contacts, including “counseling in support of such preparation and planning activities, research, and other background work,” constitute lobbying activities. This subsection also amends the definition of “lobbying contact” so that any person with authority to direct or substantially influence a lobbying contact made by another person, and who for compensation provides counseling services in support of preparation and planning of the lobbying contact as defined by subsection 7201(a), is considered to have made the same lobbying contact as the person who actually made the lobbying contact. 7201(b) reduces the threshold for lobbyist registration from 20 percent of time spent in service of lobbying to 10 percent. Section 7201(c) provides that the amendments made by this section apply to lobbying contacts made on or after the date of enactment.

Section 7202. Prohibiting receipt of compensation for lobbying activities on behalf of foreign countries violating human rights. Prohibits paid lobbying on behalf of a foreign government deemed by the President to have engaged in gross violations of human rights.

Section 7203. Requiring lobbyists to disclose status as lobbyists upon making any lobbying contact. Requires any person or entity making a lobbying contact with Legislative or Executive Branch officials to disclose whether the person or entity is a registered lobbyist and whether the client is a foreign entity.

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#### Subtitle D – Recusal of Presidential Appointees

- Overview: Requires all Presidential appointees to recuse themselves from any matter in which a party is the President, the President’s spouse, or an entity in which the President or President’s spouse has a substantial interest.

Section 7301. Recusal of Appointees. Amends 18 U.S.C. § 208, the existing conflicts of interest statute applicable to federal employees, to add a new section that requires a federal officer or employee appointed by the President to recuse himself or herself from any matter involving specific parties in which one party is the President who appointed that officer or employee, such President’s spouse, or any entity in which the President or the President’s spouse has a substantial interest.

In the event of a recusal under this section, a career appointee shall perform the functions and duties of the officer or employee who has recused himself or herself with respect to the matter necessitating the recusal. If the agency at issue is an independent regulatory commission for which the authority of the agency is vested in more than one member, if the recusal would result in a lack of a statutorily required quorum of commission members, the commission may nonetheless proceed without such quorum, delegate the authorities and responsibilities of the commission to a subcommittee with respect to the matter, or designate an officer or employee not appointed by the President who appointed the commission member who was required to be recused to exercise authorities and duties with respect to the matter.

Any officer or employee failing to comply with the recusal requirement under this section is subject to penalties set forth in 18 U.S.C. § 216. That provision provides for imprisonment of up to one year, a fine, or both for a violation. For willful violations, a person is subject to up to five years of imprisonment, a fine, or both. Additionally, the Attorney General may pursue civil penalties of up to \$50,000 per violation and seek injunctive relief. Section 7301 imports the definition of “particular matter” from 18 U.S.C. § 207(i), which defines “particular matter” to mean “any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.”

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#### Subtitle E – Clearinghouse on Lobbying Information

- Overview: Establishes a single clearinghouse for Lobbying Disclosure Act and Foreign Agents Registration Act registration forms.

Section 7401. Establishment of clearinghouse. Requires the Department of Justice to establish and maintain a single clearinghouse from which the public may access LDA and FARA registration forms, including in a searchable and sortable electronic format.

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#### Subtitle F – Severability Clause

- Overview: Clarifies that if any provision of this Title or amendment made by this Title is held unconstitutional, the remainder of the Title shall not be affected by the holding.

Section 7501. Severability. Establishes severability such that the application of the provisions of this Title and amendments made by this Title shall not be affected by a holding finding any provision of the Title or amendment made by the Title unconstitutional.

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TITLE VIII – ETHICS REFORMS FOR THE PRESIDENT, VICE PRESIDENT,  
AND FEDERAL OFFICERS AND EMPLOYEES

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Subtitle A – Executive Branch Conflict of Interest

- Overview: Prohibits incentive payments from corporations to individuals entering or leaving government service. Prohibits a federal employee from awarding a contract to a former employer for two years after leaving the company and from working for a company after participating in a contract award to that company, for two years after leaving government service.

Section 8001. Short Title. Identifies the subtitle as the “Executive Branch Conflict of Interest Act.”

Section 8002. Restrictions on Private Sector Payment for Government Service. Clarifies that it is a crime for a federal employee to accept a bonus, pension, benefit, or other profit-sharing plan in exchange for the employee’s government service.

Section 8003. Requirements Relating to Slowing the Revolving Door. Prohibits a senior federal employee from working on a matter that may affect the financial interests of a former client or former employer unless the employee obtains a waiver from the head of the employing agency or, in the case of an agency head, from the designated ethics official for the Executive Office of the President. Requires agencies to provide any waiver issued to the Office of Government Ethics within 48 hours of issuance and to publicly disclose each waiver within 30 calendar days.

Section 8004. Prohibition of Procurement Officers Accepting Employment from Government Contractors. Prohibits federal contracting officers working for a contractor for two years after participating in a contract award to that contractor. Prohibits federal employees from participating personally and substantially in any award to a contractor, or the administration of a contract awarded to that contractor, if the employee worked for that contractor within the previous two years.

Section 8005. Revolving Door Restrictions on Employees Moving into the Private Sector. Prohibits a senior federal official from inappropriately influencing the official’s former agency by prohibiting the former official from communicating with or appearing before any employee of the official’s former agency for two years after leaving

government service, and also prohibits the former official from conducting any lobbying activity to facilitate communication with any employee of the official's former agency.

Section 8006. Guidance on Unpaid Employees. Requires the Office of Government Ethics to develop guidance, within 120 days of enactment, on ethical standards for unpaid employees of an agency, including the Executive Office of the President.

Section 8007. Limitation on Use of Federal Funds and Contracting at Businesses Owned by Certain Government Officers and Employees. Prohibits any federal funds from being used to purchase goods or services from a business owned or controlled by the President, Vice President, department head, Cabinet-level officer, or any family member of such an individual. The prohibition does not extend to security-related costs.

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#### Subtitle B – Presidential Conflicts of Interest

- Overview: Requires the President and the Vice President, within 30 days of taking office, to divest financial interests that pose a conflict of interest or disclose information about their business interests. Requires the President and the Vice President to file new financial disclosure reports within 30 days of taking office.

Section 8011. Short Title. Identifies the subtitle as the “Presidential Conflicts of Interest Act of 2021.”

Section 8012. Divestiture of Personal Financial Interests of the President and Vice President that Pose a Potential Conflict of Interest. Requires the President and the Vice President, within 30 days of taking office, to divest from financial interests that pose a potential conflict of interest by converting the assets to cash or another non-conflicting investment or by placing the interest in a qualified blind trust or a diversified trust. The President or Vice President alternatively could disclose information about the business interests of the President or Vice President, including the names of any other person who holds a significant interest in the business, the value of each liability over \$10,000, and the nature and value of assets worth \$10,000 or more.

Section 8013. Initial Financial Disclosure. Requires the President and the Vice President to file a new financial disclosure report within 30 days of taking office.

Section 8014. Contracts by the President or Vice President. Prohibits the President, Vice President, and Cabinet members from entering into federal contracts while in office.

Section 8015. Legal Defense Funds. Requires all donations for the legal defense of Executive Branch officers and employees, including the President and Vice President, or employees, consultants, contractors, or volunteers of the President's or Vice President's campaign to be made through a legal defense fund approved by the Office of Government Ethics. Requires the Office of Government Ethics to develop limitations on contributions to legal defense funds, including prohibitions on contributions of more than \$5,000 and contributions from foreign governments, State governments, Executive Branch employees, registered lobbyists, and any persons with business before the relevant agency, among others. Requires the Director of the Office of Government Ethics to disclose online all trust agreements, written certifications, and quarterly reports from beneficiaries for each approved legal defense fund.

#### Subtitle C – White House Ethics Transparency

- Overview: Requires Executive Branch ethics waivers to be disclosed to the Office of Government Ethics and the public.

Section 8021. Short Title. Identifies the subtitle as the “White House Ethics Transparency Act of 2021.”

Section 8022. Procedure for Waivers and Authorizations Relating to Ethics Requirements. Requires any official who authorizes a political appointee to receive a waiver from an ethics executive order to make the waiver publicly available and provide it to the Office of Government Ethics within 30 days.

#### Subtitle D – Executive Branch Ethics Enforcement

- Overview: Reauthorizes the Office of Government Ethics. Enhances the Office of Government Ethics' enforcement mechanisms.



Section 8031. Short Title. Identifies the subtitle as the “Executive Branch Comprehensive Ethics Enforcement Act of 2021.”

Section 8032. Reauthorization of the Office of Government Ethics. Reauthorizes the Office of Government Ethics through the year 2025.

Section 8033. Tenure of the Director of the Office of Government Ethics. Prohibits removal of the Director for anything other than inefficiency, neglect of duty, or malfeasance in office. Permits the Director to serve for up to one year beyond the expiration of a term if a successor has not been appointed.

Section 8034. Duties of the Director of the Office of Government Ethics. Strengthens the role of the Director by providing the independent authority to promulgate ethics regulations, conduct training, investigate potential violations of ethics laws, issue subpoenas, and recommend disciplinary actions. Clarifies the Director’s authority to ensure that each agency has appropriate written procedures related to financial disclosure statements, recusals, waivers, and ethics authorizations. Authorizes the Director to obtain information from agencies and to issue subpoenas for documents and information. Authorizes the Director to report directly to Congress.

Section 8035. Agency Ethics Officials Training and Duties. Requires designated and alternate agency ethics officials to register with the Office of Government Ethics. Requires the Director of the Office of Government Ethics to provide training to all designated and alternate ethics officials. Requires agencies to provide public access to waivers, approvals, compliance reviews, directed divestitures, recusals, and other ethics materials, as determined by the Director, in a searchable, sortable, and downloadable format.

Section 8036. Prohibition on Use of Funds for Certain Federal Employee Travel in Contravention of Certain Regulations. Prohibits senior Federal officials from using funds in contravention of the Federal Travel Regulation. Requires each Federal agency to report quarterly on travel by senior Federal officials on government aircraft and requires the Office of Government Ethics to submit to Congress recommendations for strengthening the Federal Travel Regulation.

Section 8037. Reports on Cost of Presidential Travel. Requires the Department of Defense to report quarterly on the costs incurred by the Department in support of presidential travel, with specific mention of the costs of traveling to a property owned by the President or an immediate family member.

Section 8038. Reports on Cost of Senior Executive Travel. Requires the Department of Defense to report quarterly on the costs incurred by the Department in support of travel by senior executive officials, including whether the cost of spousal travel was reimbursed to the Federal government.

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#### Subtitle E – Conflicts from Political Fundraising

- Overview: Require individuals nominated or appointed to Senate-confirmed positions and certain other senior government officials to disclose contributions by, solicited by, or made on behalf of an individual. Also requires disclosure of certain types of gifts to these individuals or their families. Requires the Office of Government Ethics to issue rules on addressing conflicts of interest identified in these disclosures.

Section 8041. Short Title. Identifies the subtitle as the “Conflicts From Political Fundraising Act of 2021.”

Section 8042. Disclosure of Certain Types of Contributions. Requires individuals nominated or appointed to certain high level, confidential, or policymaking executive positions to disclose contributions to political action committees and tax-exempt social welfare organizations or business associations that are made or solicited at the request of those nominated or appointed individuals. Requires appointees to disclose certain gifts they receive or that their spouses or dependent children receive. Allows the Director of the Office of Government Ethics to exempt a covered contribution if the Director determines that the circumstances do not present a risk of a conflict of interest and the exemption would not adversely affect the integrity of the government or the public’s confidence in the integrity of the government. Requires the Office of Government Ethics to provide chairs and ranking members of Congressional committees, upon request, with reports on contributions and ethics agreements for senior officials. Requires the Office of Government Ethics to issue rules on how agencies should address conflicts of interest identified in financial disclosures.

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### Subtitle F – Transition Team Ethics

- Overview: Requires Presidents-elect to develop ethics plans that apply to members of the transition.

Section 8051. Short Title. Identifies the act as the “Transition Team Ethics Improvement Act.”

Section 8052. Presidential Transition Ethics Programs. Amends the Presidential Transition Act of 1963 (3 U.S.C. § 102) by expanding the disclosures required of transition team members designated to a Federal department or agency transition team (“landing team members”). Additional disclosures include a description of the member’s role on the transition, any expected recusals, and affirmation that the individual has no conflicts of interest. Removes provisions that were passed into law in the 116<sup>th</sup> Congress as part of *Presidential Transition Enhancement Act*.

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### Subtitle G – Ethics Pledge for Senior Executive Branch Employees

- Overview: Codifies the Obama-era Executive Branch ethics pledge.

Section 8061. Short Title. Designates the subtitle as Ethics in Public Service Act.

Section 8062. Ethics Pledge Requirement for Senior Executive Branch Employees. Requires political appointees to sign an ethics pledge that contains, at a minimum, the elements of Executive Order 13490, issued by President Obama. Requires that appointees commit to not accepting gifts from registered lobbyists, participating in any matter on which an appointee lobbied in the previous two years, or seek employment from any agency the employee lobbied for one year after leaving. Authorizes the President or the President’s designee to issue a waiver of any restrictions contained in the pledge.

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### Subtitle H – Travel on Private Aircraft by Senior Political Appointees

- Overview: Prohibits senior political appointees from using government funds for private aircraft, with limited exceptions.

Section 8071. Short Title. Provides that the Subtitle may be cited as the Stop Waste and Misuse by Presidential Flyers Landing Yet Evading Rules and Standards, or SWAMP FLYERS.

Section 8072. Prohibition on Use of Funds for Travel on Private Aircraft. Prohibits senior political appointees from using federal funds for non-commercial, private, or chartered flights, unless no commercial flight was available or the government owns the aircraft. Requires appointees who use private air travel to certify to Congress that no commercial options were available.

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#### Subtitle I – Severability Clause

- Overview: Clarifies that if any provision of Title VIII or amendment made by Title VIII is held unconstitutional, the remainder of Title VIII shall not be affected by the holding.

Section 8081. Severability. Establishes that the application of the provisions of Title VIII and any amendments made by Title VIII shall not be affected by a holding finding any provision of the Title or amendment made by the Title unconstitutional.

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## TITLE IX – CONGRESSIONAL ETHICS REFORM

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### Subtitle A – Requiring Members of Congress to Reimburse Treasury for Amounts Paid as Settlements and Awards Under Congressional Accountability Act

- Overview: Prohibits Members of Congress from using taxpayer funds to settle any case of employment discrimination acts by the Members.

Section 9001. Requiring Members of Congress to Reimburse Treasury for Amounts Paid as Settlements and Awards under Congressional Accountability Act of 1995 in All Cases of Employment Discrimination Acts by Members. Requires Members to reimburse Treasury for amounts paid pursuant to a settlement or award for employment discrimination under the Congressional Accountability Act.

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### Subtitle B – Conflicts of Interest

- Overview: Prohibits Members from serving on boards of for-profit entities. Codifies rules prohibiting Members and staff from using official position to further their financial interests or the financial interests of their immediate families.

Section 9101. Prohibiting Members of House of Representatives from Serving on Boards of For-profit Entities. Amends House Rule XXIII – The Code of Official Conduct – to prohibit Members from serving on the board of any for-profit entity.

Section 9102. Conflict of Interest Rules for Members of Congress and Congressional Staff. Prohibits Members, Senators, House officers, and committee staff from using their position to introduce or help pass legislation the principal purpose of which is the pecuniary gain of the aforementioned classes or their immediate families.

Section 9103. Exercise of Rulemaking Powers. Provides that enactment of the subtitle is an exercise in the rulemaking authority of each House of Congress and should be considered part the rules of each House, superseding other rules to the extent that they are inconsistent. This section recognizes the constitutional right of each House to change these rules at any time as they would any other rule of such House.

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### Subtitle C – Campaign Finance and Lobbying Disclosure

- Overview: Requires the online linking of Federal Election Commission reports and Lobbying Disclosure Act reports.

Section 9201. Short Title. Establishes the subtitle may be cited as the “Connecting Lobbyists and Electeds for Accountability and Reform Act” or the “CLEAR Act.”

Section 9202. Requiring Disclosure in Certain Reports Filed with Federal Election Commission of Persons who are Registered Lobbyists. Requires registered lobbyists to file certain disclosure reports with the Federal Election Commission (FEC). Further requires the FEC database containing the information described in this section is linked to the website.

Section 9203. Effective Date. Establishes that with respect to reports required to be filed under the Federal Election Campaign Act, the amendments of this subtitle become effective on or after the expiration of the 90-day period which begins on the date of the enactment of the Act.

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### Subtitle D – Access to Congressionally Mandated Reports

- Overview: Requires that all reports from federal agencies mandated by Congress be published online in a searchable and downloadable database.

Section 9301. Short Title. Establishes that the subtitle may be cited as the “Access to Congressionally Mandated Reports Act.”

Section 9302. Definitions.

Section 9303. Establishment of Online Portal for Congressionally Mandated Reports. Directs the Director of the Government Publishing Office (GPO) to establish a searchable publicly accessible online portal to serve as a repository for congressionally mandated government reports in an open format.

Section 9304. Federal Agency Responsibilities. Requirement of agency heads to submit reports concurrently to GPO with their submission to Congress. Clarifies that this does not relieve agencies of other report submission duties, such as to specific committees, if they exist.

Section 9305. Removing and Altering Reports. Restricts removal or alteration of reports unless the head of the agency consults with each congressional committee to which the report was submitted, and Congress passes a joint resolution authorizing it.

Section 9306. Relationship to the Freedom of Information Act. Clarifies the law's relation to the Freedom of Information Act, excluding otherwise exempt information from disclosure. Does not impose an affirmative duty on the director of GPO to review reports for purpose of identifying information for redaction. Permits agency heads to redact information that is properly withheld from disclosure.

Section 9307. Implementation. Establishes implementation shall occur not later than 1 year after enactment.

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#### Subtitle E – Reports on Outside Compensation Earned by Congressional Employees

- Overview: Requires disclosure of providers of outside compensation to certain Congressional staff.

Section 9401. Reports on Outside Compensation Earned by Congressional Employees. Requires any office of the Senate or House of Representatives to file reports to the relevant ethics committee on outside compensation received by certain employees from a source other than the Federal Government. The report must include the identity of the source of the funding and the total amount.

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#### Subtitle E – Severability Clause

- Overview: Clarifies that if any provision of this Title or amendment made by this Title is held unconstitutional, the remainder of the Title shall not be affected by the holding.

Section 9501. Severability. Establishes severability such that the application of the provisions of this Title and amendments made by this Title shall not be affected by a holding finding any provision of the Title or amendment made by the Title unconstitutional.

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**TITLE X – PRESIDENTIAL AND VICE PRESIDENTIAL TAX TRANSPARENCY**

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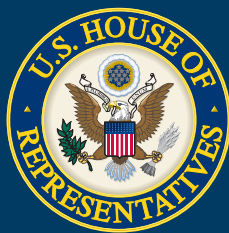
- Overview: Requires the disclosure of individual and certain business tax returns by Presidents and Vice Presidents, as well as certain candidates for the Presidency and Vice-Presidency. Specifies that such tax returns shall be publicly released by the Federal Election Commission.

Section 10001. Presidential and Vice Presidential Tax Transparency. Establishes that Presidents and Vice Presidents, as well as certain candidates for the Presidency and Vice-Presidency, must disclose the most recent ten years of his or her individual and certain business tax returns, namely those of any corporation, partnership, or trust in which such individual holds, directly or indirectly, a significant interest as the sole or principal owner or the sole or principal beneficial owner, to the Federal Election Commission. Requires the Federal Election Commission to make income tax returns received publicly available after appropriate redactions. If any President, Vice-President, or candidate refuses to disclose required income tax returns, specifies that upon request of the Federal Election Commission, the Secretary of Treasury shall provide copies of such income tax returns to the Federal Election Commission for public release.

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