

PUBLIC INTEREST

— LEGAL FOUNDATION —

February 2021

A Tour Through H.R. 1

After the prefatory sections, the 791-page bill¹ divides into three sections: Division A- Voting, Division B- Campaign Finance and Division C- Ethics. This summary focuses on Division A.

In Division A, the bill contains a provision that:

- Prohibits states from requiring more than a **signature to verify** a person’s eligibility to register to vote. [Sec. 1004]
- Prohibits states from requiring **voter ID** at the polls- a sworn statement is all that can be required for identification. [Sec. 1903]
- Forces states to use **same-day registration**, requiring only signature attestation as to a registrant’s eligibility, and requiring that the registrant be allowed to cast a vote that day, with no mention of it being provisional. [Sec. 1031]
- Prohibits states from banning **curbside voting** on election day. [Sec. 1908]
- Forces states to use **ballot drop boxes** for absentee and early voting and have them available at least 45 days before the election and “during all hours of the day.” [Sec. 1907]
- **Automatically registers to vote** all eligible “individuals” (as opposed to “citizens”) whose names and addresses appear in state and federal government databases (this also means that the federal government will decide a person’s domicile and thus their taxing state). States have up to four months to even notify the person that they have been automatically registered. [Sec. 1012]
- Requires all “contributing” state and federal agencies, defined as those that possess a person’s name, address, birthdate and citizen status, to send that information to the state election official for **automatic registration**. [Sec. 1014]

¹ The 2019 version of HR1 was 570 pages long.

- Expands list of agencies that must offer **automatic voter registration** to those utilizing its services to include: state agencies that regulate gun sales (state Attorney General in most states), state departments of education, the Social Security Administration, the VA, the Defense Manpower Data Center of the Department of Defense, the Employee and Training Administration of the Department of Labor, the Center for Medicare and Medicaid Services, the Bureau of Citizenship and Immigration, and the Federal Bureau of Prisons, which must automatically register a convicted felon to vote so long as the felon has completed “any part of” of his sentence. [Sec. 1013(e)]
- Prohibits contributing agencies that do not ask for **citizenship status** in their normal course of business from completing any service transactions for the person until he or she either registers to vote or declines to register to vote (previously such agencies were just required to offer a registration form). [Sec. 1013(c)(2)]
- Forces states to **accept all voter registration applications** by criminalizing the refusal to accept one, even when it is rejected “under the color of law” (i.e., for a lawful reason) by an election official. [Sec. 1071]
- Prohibits states from collecting more than the last 4 of a registrant’s Social Security number. [Sec. 1005]
- Criminalizes “hindering, interfering with, or preventing” anyone from voting or from registering to vote. [Sec. 1302(a)(5),(c)(1)]. The penalty is up to a \$100,000 fine and 5 years in prison. [Sec. 1302(c)(2)]. Query whether providing information to election officials regarding a registrant’s eligibility could be considered “interfering” with the ability of someone to vote.
- Criminalizes **challenging** any registrant’s eligibility to register or vote, with fines and imprisonment up to one year per offense. [Sec. 1201(d)]
- Prohibits state election officials from using a list of potentially ineligible registrants to challenge the eligibility of a registrant unless that list contains the registrant’s photo, signature or unique identifying information; if not, it is an “**unverified match list**” and cannot be used. [Sec. 1201(a)-(b)]

- Forces states to give mail-in ballots to all American Indians living on tribal lands without requiring them to request a ballot or to provide their address. [Sec. 1904(a)(2)]
- Requires states to offer **Internet voter registration**. [Sec. 1001]
- Allows **16-year-olds to register to vote**, even though they cannot vote until age 18. [Sec. 1012, Sec. 1094]. Because Section 1201(c) of the bill makes it illegal for a non-election official to challenge anyone's eligibility to vote on election day, registering 16 and 17-year-olds effectively ensures that they will vote (because their age is not required to be checked at the polling place and no one can challenge their eligibility).
- **Prohibits public disclosure of voter roll data** except for registrant names, address, and birthday (the only information necessary for voter registration) and specifically prohibits release of the signature of the registrant, any part of their social security number, their driver's license number, email address, and phone number. [Sec. 1015 (e)(1)]. By withholding this information from the public, the ability to verify a registrant's identity for list maintenance purposes becomes almost impossible. Thus, non-partisan groups who routinely conduct data comparisons of voter rolls to identify deceased or otherwise ineligible registrants, will be unable to do so, especially in light of the bill's "anti-caging" law, buried later in the bill, which outlaws use of "unverified data" to assess a registrant's eligibility. "Unverified data" is conveniently defined as that which lacks the registrant's signature, or part of a social security number, or other uniquely identifying data. [Sec. 1201(a)(3)]
- Forces states to comply with new "**National Standards**" for **comparing data** when conducting **list maintenance** (standards will govern which data can be compared and the rules for matching it). States that fail to timely report their compliance will have their funding withheld. [Sec. 1015(e)(5)]
- Forces states to have 15 consecutive days of **early in-person voting** prior to election day, with each location open at least 10 hours a day. [Sec. 1611]
- Forces states to "ensure that no individual will be required to wait longer than 30 minutes to cast a ballot at the polling place." [Sec. 1906(a)(1)(B)]

- Requires states to allow all registered voters to cast an **absentee ballot** by mail without needing a reason. [Sec. 1621]
- Requires states to **accept mail in ballots** that are postmarked on or before election day but are received up to **10 days after the election**. [Sec. 1621(e)]
- Requires states to pay for **return postage** of mail-in/absentee ballots, as well as voter registration applications and applications for an absentee ballot. [Sec. 1623]
- Requires states to send a blank absentee ballot to anyone who requests one (not just UACOVA members) so long as the person promises not to vote twice and signs an attestation that he is eligible to vote. [Sec. 1706]
- Designates all universities and colleges as official voter registration agencies and requires each to designate a **“Campus Vote Coordinator.”** [Sec. 1901]
- Limits challenges to a registrant’s eligibility to only those based on personal knowledge and documented in writing. [Sec. 1201(c)]
- Prohibits states from using undeliverable election mail as a basis to challenge a registrant’s eligibility to vote or his registration status. [Sec. 1201(a)-(b)]. This could eliminate a key list maintenance tool states use in which they utilize returned undeliverable election mail to correct their registration lists.
- Prohibits a state’s chief election official from running for office unless he recuses himself from his election responsibilities. [Sec. 1821]
- Changes criminal laws on **felon voting** and criminal convictions because Congress finds that having various state laws creates “an unfair disparity and unequal protection in elections based solely on where a person lives.” [Sec. 1402(4)]
- Criminalizes **“incorrect” statements** about election endorsements, election procedures, voter eligibility requirements and consequences to voting while ineligible by adding them to the criminal code under “Deceptive Acts.” [Sec. 1302]
- Eliminates all penalties in the naturalization process for **non-citizens who vote** after being automatically registered. [Sec. 1015]

- **Prohibits criminal prosecution of non-citizens for voting** if they were automatically registered or consented to automatic registration. [Sec. 1015]. Because nearly all state agencies are now required to make every applicant for social services either affirmatively agree to automatic registration or affirmatively decline to be automatically registered, any noncitizens who agree to be registered will be immune from criminal liability by doing so.
- Authorizes Congress to unilaterally **reduce a state’s representation in Congress “when the right to vote is denied”** [Sec. 3]. Without further definition and separated from the original qualifiers contained in the Fourteenth Amendment itself², these seven words could be used by Congress to reduce a state’s representation on the basis of anything it defines as vote denial.
- **Limits access to the federal court system for any challenges to this bill** or to any laws enacted as a result of this bill, by requiring they be filed in just one court - the District Court for the District of Columbia.³⁴ ⁵ The inclusion of a requirement that *all* litigation over the unconstitutionality of any law stemming from this bill can only be brought in one court⁶ exemplifies just how far the authors of the bill are willing to go to control, contain and extinguish their opposition. Indeed, even if all fifty states and the most experienced and well-funded NGOs joined forces to mount an offensive attack against the constitutional violations contained in this monstrosity, the bill anticipates such a response and aggregates all opposition into one side and just one attorney to argue the merits. [Sec. 4- Standards for Judicial Review]

² Section 2 of the Fourteenth Amendment states that when the right to vote is denied to eligible male citizens, “the basis of the representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.”

³ Section 4, “Standards for Judicial Review.”

⁴ An attempt to control opposition to the bill by controlling access to the courts was not included in the 2019 version of HR1. Notably, at that time, President Trump had only appointed 84 new federal judges to the bench. However, by January 4, 2021, the date the new version was introduced, President Trump had appointed 229 new federal judges to the bench. See [Biographical Directory of Article III Federal Judges, 1789-present | Federal Judicial Center \(fjc.gov\)](#) (last accessed 01/26/21). The bill’s inclusion of the new “Standards for Judicial Review” section (Section 3) effectively prevents any of the new judges from ever reviewing or ruling on the constitutionality of an election-related law.

⁵ Of the 15 active judges in the District of Columbia, 11 were appointed by Democrat presidents and 4 were appointed by President Trump.

⁶ This changes federal law on venue that has been in place for over 50 years and which allows plaintiffs to sue in the districts in which they live or where the issue or injury occurred. See 28 USC 1391(e)(1) (venue for actions where defendant is the United States).

- Prevents state officials from conducting **list maintenance** on the voter roll by preventing them from removing a registrant on the basis of any of the following (now called “Factors Not Considered as Objective and Reliable Evidence of Ineligibility”):
 1. A registrant’s failure to vote in any election,
 2. A registrant’s failure to return any notice (address confirmation card), and,
 3. A registrant’s failure to take any action at all to update or confirm their registration.
 Now, registrants can only be removed for “objective and reliable evidence of ineligibility” which, of course, is not defined.
- Requires all states to use voting machines that offer **ranked choice voting** capabilities [3001(e)]

Regarding Redistricting for Congressional Districts

- Although changing state congressional districts, the bill claims to not affect the manner in which states carry out state and local elections [2434]. This could theoretically create two state congressional maps for every state- one for local and state elections and the other for federal elections.
- Forces states to form a state **Independent Redistricting Commission (IRD)** [2411] to redistrict every state’s congressional districts
- Requires states to appoint a “Nonpartisan Agency” that will pick the IRD commissioners. This agency is appointed by state legislatures [2414] with no guidelines other than members must not provide partisan services, must maintain impartiality and can’t advocate for either party.
- Authorizes the state’s Nonpartisan Agency to pick the first 6 members of the 15-member commission and then 45 days later, the 6 members must pick the remaining 9 members. The members must be 1/3 majority party, 1/3 minority party and 1/3 independent party members. The members must also be diverse with no further definition. [2411]
- Disqualifies as commission members anyone who, during the previous ten years, donated more than \$1,000 combined to a PAC or candidate or multiple candidates during a campaign; all lobbyists, paid campaign

people, public office holders, and relatives of any of the above
[2412(a)(2)]

- Prohibits “mid-decade redistricting” [2402] so that whatever is done via this bill cannot be changed until after the next decennial census
- Prevents state IRD commissions from considering historical voting blocs or residences of current House members or candidates when drawing new district maps. They can, however, consider “communities of interest” so as not to divide them. Such is defined as an “area with recognized similarities of interests including ethnic, racial, economic, tribal, social, cultural, geographic, or historic identities.” They may include political subdivisions like counties, cities, or school districts, but not political similarities. [2413]
- Requires states to establish a “**Select Committee on Redistricting**” as a 4-member partisan group of legislators (2-2) who approve the pool of commission candidates to fill the other 9 spots [2414(b)]. It is unclear how tie votes will be decided.
- Requires that a “Nonpartisan Agency,” which is of an unknown size, be established by the state legislature to appoint the first 6 members of the IRD
- Appropriates federal tax dollars to the states at a rate of \$150,000 for each House member the state has. [2431] So Nebraska, for example, will get $150 \times 5 = 750,000$ while California will get $150,000 \times 55 = 8.25\text{M}$ to do this. Thus, this project will cost the country **\$65,250,000** (435 House reps x 150k each).

Actions to Limit the Power of Federal Judges

- Creates a new appointed Commission to monitor the actions of the federal judiciary to ensure that their rulings are independent and support free and fair elections. **This Commission can require any judge to testify and will submit annual reports to Congress** [3202 establishing the “Commission to Protect Democratic Institutions” and 3601- defining such institutions as those “essential to ensuring an independent judiciary, free and fair elections and the rule of law.”]. This is the third law affecting federal judges and how they rule. The first is the elimination of all of the courts to hear cases regarding this Act except for the United States District Court for the District of Columbia [Sec. 4]. The second is in Sec. 7001 which establishes a new Code of Conduct for federal judges (not yet written).

This third part of the bill, if enacted, will monitor judicial rulings to ensure that the judges remain independent.

Miscellaneous

- Changes Census rules to require that incarcerated people be deemed to reside in the state from which they last lived before going to jail [2701]
- Finds that Washington, D.C. should be a state [2201]
- Creates a task force to increase voting in U.S. Territories [2301 and 2302]