

March 24, 2021

Written Testimony “For the People Act” - West Virginia Secretary of State Mac Warner to the Committee on Rules and Administration of the United States Senate

Chairwoman Klobuchar, Ranking Member Blunt, and members of the Committee:

Thank you for this opportunity to testify before you today regarding S.1, which has been dubbed by politicians here in DC as the “For the People Act.”

And while this proposed 800-page piece of legislation accomplishes many things, being “for the people” is not its strength. Frankly, I wonder how many members of Congress have actually read the entire bill.

Here’s what we know: S.1 will create or continue the existence of barriers to ballot boxes for millions of eligible American voters. As Secretary of State in West Virginia, I can tell you our state has been working hard to eliminate many of those barriers. We’ve been leading the nation with the enfranchisement of our military voters, overseas citizens, voters living with disabilities, and people displaced by emergencies including our first responders.

Even more concerning to me is that S.1 attempts to usurp protections woven into the fabric of the United States Constitution that protect states’ rights to conduct local elections. These constitutional safeguards specifically remove the federal government from the ability to pass laws that force states to succumb to partisan politics and self-interests generated at the federal level.

The framers of the Constitution very clearly indicated that all rights not delegated to the centralized federal government belong to the states. S.1 stands against the very principles that the United States of America were founded upon.

Please allow me to briefly address the following three areas:

First, S.1 creates barriers “for the people” – a bill drafted by incumbent politicians with a political agenda, one political party, and their associated talking points.

I’ll voice my most vehement objection first: this bill strips away the most efficient and secure form of voting ever introduced for our military, the men and women who put their very lives on the line to defend our way of life.

While serving in foreign countries, I personally, along with each of my four children and two sons-in-law, have experienced extreme difficulty in voting while serving in our Armed Forces. The same goes for voters living with disabilities, overseas citizens, and first responders.

West Virginia has gone to great lengths to correct that lapse in accessibility for military voters, and enfranchise these citizens – not just with the right to vote, but the actual opportunity to vote. More than 1,500 West Virginians voted electronically in the November 2020 general election, and this bill expressly strips them of that opportunity in the future.

Second, S.1 is not for the states. Take away the ideology, the politics, and the partisanship:

West Virginia's Putnam County Clerk, Brian Wood told me last week, "It doesn't matter if you're Democrat or Republican. If you want to keep our democracy intact, you've got to leave it up to states to run their elections."

West Virginia County Clerks' Association Chairwoman, Linda Huggins told me county clerks were against S.1 because the deadlines cannot be met, the requirements are not achievable, no machines in existence meet the mandates, and the bill contains unreasonable prescriptions for election administration. All the clerks cited the unfunded mandates as showstoppers for S.1.

One particularly onerous provision is the requirement that state agencies beyond the Department of Motor Vehicles must somehow integrate into our voter registration system to transmit data to the Secretary of State's office. This requirement alone will wreck our budget, and the budget of those numerous agencies, not to mention resulting in the opening of vast vectors of attack for cyber criminals.

S.1 will devastate West Virginia voters, local election officials, state agencies, and the confidence in our elections that we have worked tirelessly to build over the last several years.

Third, S.1 is bad for the United States of America because it federalizes our elections, combining our country's vastly complex and different processes and systems into a "one-size-fits-all" mandate.

Not only is this unrealistic given our great diversity, geography, historical experiences, and lack of reliable high-speed broadband -- it greatly reduces the security we now enjoy with 50 different election processes.

S.1 will provide nefarious actors with a "blueprint" for exploiting states' systems and networks, needing only to infiltrate one weak point (and there are many) in order to sow discord and cause chaos across our homeland.

Tremendously problematic is the private right of action remedy. The vast use of "severability clauses" throughout the bill are an admission that many of S.1's provisions will likely not withstand judicial scrutiny.

The passage of S.1 will lead to numerous legal challenges that will complicate the election process, force last-minute reversals and changes, add uncertainty to our already tense election ecosystem, and cause confusion for election officials and voters alike.

Distrust of the government remains high. The confidence West Virginians have in our elections is in part due to the fact that they are run locally at the county level. The nationalization of elections -- taking power and decision making away from the local level as prescribed in the Constitution -- will exacerbate the lack of trust and skepticism in the federal government and elections.

I do not speak for other states, but no doubt every state has some issue akin to the specifics I will summarize for West Virginia:

S.1. directly disenfranchises voters serving in the military, living overseas, living with disabilities, and first responders called away for duty on the eve of an election (see Sec. 1706);

S.1 eviscerates voters' confidence by allowing mere signatures, which cannot be challenged, as proof eligibility and proper registration (see Sec. 1621 and Sec. 1903);

S.1 expressly requires "decertification" of every single voting machine used in West Virginia, and every other state, which are currently federally certified, wasting tens of millions of dollars in recent upgrades (see Sec. 3301) (note: the new Voluntary Voting System Guidelines were adopted in mid-February 2021, and vendors expect it will take between 12-36 months to have VVSG 2.0 machines on the market—S.1 implementation is less than 12 months away at January 1, 2022);

S.1 mandates "same-day registration," which requires networked electronic poll books, but wholly ignores the severe lack of internet service and broadband in rural areas: an impossible feat in West Virginia (see Sec. 1031);

S.1 forces election officials to accept and count regular -- not provisional -- ballots of voters who vote in the incorrect precinct, without sufficient evidence of eligibility or proof of residence beyond a signature (see Sec. 1016 and Sec. 1621) (note: signature deficiencies must be "cured" under S.1, requiring 10 days of notice and opportunity for voters to cure deficiencies -- interestingly, voters can "cure" signature deficiency electronically, but states are prohibited from accepting an absentee ballot electronically regardless the security of the system used);

S.1 even contradicts itself regarding the reliability and security of electronic transmission by permitting voters to cure signature deficiencies electronically (see Sec. 1621) but prohibiting UOCAVA, voters living with disabilities, and first responders called away for service from transmitting absentee ballots securely using extensively tested procedures and methods (see Sec. 1706);

S.1 promotes ballot harvesting, a process in which West Virginia has a sordid past and strong laws to prohibit the practice to discourage undue influence of voters and fraud; and

S.1 eviscerates West Virginia's ability to conduct voter registration list maintenance by mandating the process solely relies on returned undeliverable mail as a cause of action which, over time, will cause more registered voters than voting age population on registration rolls (see Sec. 2502).

In conclusion, S.1 is not "for the people".....especially not for the people of West Virginia.

It will complicate and disenfranchise eligible voters, especially those serving our country, those living with disabilities, and those affected by natural disasters.

S.1 forces the states in our nation to follow arbitrary guidelines, most of which are impossible or unattainable under the deadlines. S.1 will create chaos in our elections' processes, further divide our country, and will have no greater effect than destroying the foundation of our country.

For West Virginia, S.1 will leave us behind. Without reliable internet or broadband access in the foreseeable future to every area within our borders, our elections will be fraught with controversy, disadvantages, claims of impropriety, and, ultimately, distrust in the results.

Senators, I urge you, consider these grave implications for our country and my state. Federalizing elections has never been done before, and for good measure: it's a constitutional duty left to the states by our founders who knew that each state has different challenges, demographics, geographic makeups, and local experts who work in the elections ecosystem on a daily basis.

Leave election administration up to the states, keep our democracy secure, and allow us to do our constitutional duty to the voters of our individual jurisdictions.

I am not alone in my beliefs, and I encourage you to hear from others who will be impacted by this legislation.

S. 1 disenfranchises voters in 31 states

S. 1 disenfranchises

- Military Voters
- Overseas Voters
- Voters with Disabilities
- Hospitalized Voters
- Voters fleeing natural disaster

