



## West Virginia

Updated May 6, 2021

If enacted in its current form, the For the People Act (H.R. 1/S.1) would make several changes to federal elections in West Virginia that would strengthen the freedom to vote and bar the state from enacting voter suppression laws in the future. Many of H.R. 1/S.1's requirements, such as those pertaining to automatic voter registration, already exist in some form in West Virginia. Other requirements, such as those relating to mail-in voting, would more fundamentally change West Virginia's procedures for conducting federal elections.

The following is a summary of the most salient ways in which H.R. 1/S.1 would affect voting in West Virginia:

### **Expanding & Protecting Voter Registration Opportunities**

- Requires West Virginia to automatically register voters when eligible citizens provide information to designated state or federal government agencies, including, but not limited to, the Department of Motor Vehicles or the Social Security Administration, so long as the resident does not opt out. Establishes a grant program to fund this new requirement.<sup>1</sup> West Virginia currently has limited automatic registration in connection with the Department of Motor Vehicles.<sup>2</sup>
- Permits voters to register to vote at a polling place and vote on the same day, whether on Election Day or during early voting.<sup>3</sup> West Virginia does not currently permit same-day voter registration.<sup>4</sup>
- Provides for pre-registration of 16- and 17-year-olds.<sup>5</sup> In West Virginia, 17-year-olds are allowed to register if they will be 18 years old on the date of the next general election. Such voters may also vote in primaries.<sup>6</sup>
- Requires universities to serve as voter registration agencies and to appoint "Campus Vote Coordinators" responsible for disseminating voter registration information.<sup>7</sup> West Virginia currently does not impose any such obligation on colleges or universities.
- Prohibits using voter caging or unverified match lists to remove voters from the rolls without additional corroborating information.<sup>8</sup> Under West Virginia's current procedures for "systematic purging" of voter registration files, a voter who receives a notice but fails to timely return it becomes "inactive" and must affirm their residence the next time they

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<sup>1</sup> H.R. 1, Title I, Subtitle A, Part 2.

<sup>2</sup> W. Va. Code Ann. § 3-2-11.

<sup>3</sup> H.R. 1, Title I, Subtitle A, Part 3.

<sup>4</sup> W. Va. Code Ann. § 3-2-6.

<sup>5</sup> H.R. 1, Title I, Subtitle A, Part 10.

<sup>6</sup> W. Va. Code Ann. § 3-2-2; W. Va. Code Ann. § 3-1-3.

<sup>7</sup> H.R. 1, Title I, Subtitle N, Part 1.

<sup>8</sup> H.R. 1, Title I, Subtitle C.



appear at the polls to vote. If such a voter fails to vote or otherwise update their registration within two general elections, their registration is canceled.<sup>9</sup>

### **Mandating Secure, Accessible Early Voting & Absentee Voting**

- Gives voters the option of early in person voting for a full 15 days before a federal election, including opportunities before and after business hours, on weekends, and on the day before Election Day.<sup>10</sup> West Virginia provides for early in-person voting to be conducted beginning on the thirteenth day before the election and continuing through the third day before the election, including Saturdays but not Sundays.<sup>11</sup>
- Requires West Virginia to allow any eligible voter to vote by mail in federal elections (no-excuse absentee voting) and requires election officials to transmit mail-in ballot applications to all registered voters at least 60 days before Election Day.<sup>12</sup> West Virginia currently allows voting by mail only for enumerated reasons.<sup>13</sup>
- Mandates that West Virginia provides secure drop boxes (at least one per 20,000 registered voters per county) for mail-in ballots for 45 days preceding an election.<sup>14</sup> West Virginia law does not currently require drop boxes, and in 2020 the Secretary of State argued that West Virginia law prohibited their use.<sup>15</sup>
- Requires West Virginia count mail-in ballots received up to ten days after Election Day if postmarked on or before Election Day.<sup>16</sup> West Virginia currently allows the counting of absentee ballots postmarked on or before Election Day and received by the counting board before the board convenes to begin the canvass, which is five days (excluding Sunday) after Election Day.<sup>17</sup> Absentee ballots that are not postmarked must be received no later than the day after the election.<sup>18</sup>

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<sup>9</sup> W. Va. Code Ann. § 3-2-25(i); W. Va. Code Ann. § 3-2-27(e).

<sup>10</sup> H.R. 1, Title I, Subtitle H.

<sup>11</sup> W. Va. Code Ann. § 3-3-3(a).

<sup>12</sup> H.R. 1, Title I, Subtitle I.

<sup>13</sup> W. Va. Code Ann. § 3-3-1. West Virginia broadly allowed no-excuse absentee voting by mail in 2020 due to the Covid-19 pandemic, but does not generally allow no-excuse absentee voting by mail.

<sup>14</sup> H.R. 1, Title I, Subtitle N, Part 1.

<sup>15</sup> The Center for Public Integrity, "In West Virginia, One Barrier to Voting Removed, Other Stumbling Blocks Still in Place," (Oct. 12, 2020), available at <https://publicintegrity.org/politics/elections/us-polling-places/in-west-virginia-one-barrier-to-voting-removed-other-stumbling-blocks-still-in-place/>; Diane Mufson, Letter to the Editor, The Herald-Dispatch, "Diane Mufson: WV Needs Drop Boxes for Mail-in Ballots," (Sept. 24, 2020), available at [https://www.herald-dispatch.com/opinion/diane-mufson-wv-needs-drop-boxes-for-mail-in-ballots/article\\_2a06e762-414d-502e-ae96-7b03e3a7546b.html](https://www.herald-dispatch.com/opinion/diane-mufson-wv-needs-drop-boxes-for-mail-in-ballots/article_2a06e762-414d-502e-ae96-7b03e3a7546b.html).

<sup>16</sup> H.R. 1, Title I, Subtitle I.

<sup>17</sup> W. Va. Code Ann. § 3-3-5(g)(2); id. § 3-6-9(a)(1).

<sup>18</sup> W. Va. Code Ann. § 3-3-5(g)(1).



- Requires West Virginia to begin processing early voter ballots at least 14 days prior to the date of the election involved.<sup>19</sup> West Virginia currently does not allow the processing of absent voter ballots until the polls close on Election Day.<sup>20</sup>

### Protecting & Expanding Ballot Access

- Makes Election Day a federal holiday.<sup>21</sup> West Virginia currently requires employers to give three hours off to vote.<sup>22</sup>
- Requires West Virginia to take steps to ensure that voters need not wait more than 30 minutes to vote.<sup>23</sup> Reliable data regarding the statewide average wait time in West Virginia is not readily accessible, but there were reports of long lines on the first day of early voting in the 2020 general election.<sup>24</sup>
- Requires notice of polling-place relocations at least seven days before Election Day.<sup>25</sup> West Virginia currently has no such notice requirement.
- Requires that voters may submit sworn affidavits to demonstrate eligibility to vote in lieu of government-issued identification.<sup>26</sup> Since 2018, West Virginia has required one of an enumerated list of forms of identification (or an affidavit from an adult who has known the voter for at least six months) in order to receive a ballot.<sup>27</sup>
- Requires that provisional ballots from eligible voters in the wrong precinct or polling place still be counted for those races in common with the correct precinct. West Virginia currently requires that voters casting a provisional ballot to be warned that if they are casting a ballot in the wrong precinct, their vote may not be counted.<sup>28</sup>
- Precludes challenges to a voter's eligibility based on race, ethnicity, or age by non-election officials. Prohibits challenges on Election Day other than by an election official and requires a challenger to submit an affidavit of good cause based on personal knowledge. West Virginia law currently permits challenges without personal knowledge or an affidavit and by voters and political party chairmen in addition to election officials. West Virginia criminalizes certain frivolous challenges.<sup>29</sup>

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<sup>19</sup> H.R. 1, Title I, Subtitle I.

<sup>20</sup> W. Va. Code Ann. § 3-6-6(a).

<sup>21</sup> H.R. 1, Title 1, Subtitle N, Part 1.

<sup>22</sup> W. Va. Code Ann. § 3-1-42.

<sup>23</sup> H.R. 1, Title I, Subtitle N, Part 1.

<sup>24</sup> See, e.g., Associated Press, "West Virginia residents pack polling places for early voting," (Oct. 21, 2020), available at <https://apnews.com/article/election-2020-virus-outbreak-elections-west-virginia-voting-2020-dd9b94c4e93ef41c0abd9a8bfc51b73c>.

<sup>25</sup> H.R. 1, Title I, Subtitle N, Part 1.

<sup>26</sup> H.R. 1, Title I, Subtitle N, Part 1.

<sup>27</sup> W. Va. Code Ann. § 3-1-34(a)(3), (5).

<sup>28</sup> Title I, Subtitle G; W. Va. Code Ann. §§ 3-1-20, 3-1-41.

<sup>29</sup> H.R. 1, Title I, Subtitle C; W. Va. Code Ann. § 3-1-41(g); W. Va. Code Ann. § 3-2-28; W. Va. Code Ann. § 3-9-7.



- Entitles voters to notice and a meaningful opportunity to cure any signature discrepancies in connection with voting by mail.<sup>30</sup> West Virginia currently does not provide any opportunity to cure a defect in an absentee ballot. Any voter, either in-person or absentee, may be challenged based on a discrepancy from the signature in the poll book. Such voters may vote on an official ballot, which will be marked as challenged and processed with provisional ballots. Voters do not receive notice of a rejection of their ballot but are provided with information on how to find out if their ballot was accepted or rejected.<sup>31</sup>

### Restoring Civil Rights

- Requires West Virginia to restore voting rights to people with felony convictions upon release from prison and requires the state to offer voter registration materials upon eligibility. West Virginia currently requires the automatic cancelation of voter registrations for any citizen convicted of a felony. The citizen may not apply to re-register until their “sentence is complete, which includes being ‘off papers’ for any period of parole or probation” and “is no longer subject to any conditions or restrictions as part of their parole or probation.” Persons in jail for a misdemeanor conviction may register and vote while in jail.<sup>32</sup>

### Strengthening Election Security & Trust in Elections

- Requires the U.S. Postal Service to sweep its facilities and post offices daily to ensure that ballots are expeditiously transmitted to local election officials.<sup>33</sup>
- Prohibits the U.S. Postal Service from making operational changes that would slow the delivery of voting materials in the 120-day period before an election.<sup>34</sup>
- Requires the U.S. Postal Service to appoint Election Mail Coordinators to assist election officials with any voting material questions.<sup>35</sup>
- Permits the security of drop boxes through remote or electronic surveillance.<sup>36</sup>
- Allows voters to check for errors and requires a paper ballot count for recounts.<sup>37</sup> West Virginia currently requires all direct-recording electronic voting machines to generate a paper copy of each voter’s vote, which the voter may examine visually or through

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<sup>30</sup> H.R. 1, Title I, Subtitle I.

<sup>31</sup> W. Va. Code Ann. § 3-1-41(b).

<sup>32</sup> H.R. 1, Title I, Subtitle E; W. Va. Code Ann. § 3-1-3; W. Va. Code Ann. § 3-2-2; West Virginia Secretary of State, Brochure, “You Have the Right to Vote in West Virginia Once You Complete Your Sentence,” available at <https://sos.wv.gov/FormSearch/Elections/Voter/Felon%20Voting%20Rights.pdf> (last accessed May 2, 2021).

<sup>33</sup> Amendment 5 to H.R.1, Part B.

<sup>34</sup> H.R. 1, Title I, Subtitle I.

<sup>35</sup> Amendment 27 to H.R.1, Part B.

<sup>36</sup> Amendment 9 to H.R.1, Part B.

<sup>37</sup> H.R. 1, Title I, Subtitle F.



headphone readout and accept or reject the copy.<sup>38</sup> West Virginia also allows certain uniformed service and overseas voters and voters with physical disabilities to vote an electronic absentee ballot.<sup>39</sup>

## Ending Partisan Gerrymandering in Federal Congressional Redistricting

- Currently, the West Virginia legislature draws congressional districts with no public input requirement. H.R.1/S.1 would do the following:
  - Requires West Virginia to set up an independent commission to draw federal congressional districts, which must take public input and operate in an open, transparent process.<sup>40</sup> There are multiple redistricting commission bills pending before the West Virginia legislature, but under current law, redistricting is performed by the Legislature, subject to the veto by the Governor.
  - Prevents one party from dominating the process or excluding minority groups and takes map-drawing away from politicians.<sup>41</sup>
  - Requires consideration of “communities of interest” when drawing congressional districts.<sup>42</sup>
  - Creates enforceable standards for evaluating and preventing partisan gerrymandering of congressional districts. Prohibits the use of party-based voting history in drawing districts (but not in evaluating them for partisanship).<sup>43</sup> The West Virginia Constitution imposes certain additional requirements on redistricting, which are to be adhered to the greatest extent possible without conflicting with federal law.<sup>44</sup>
  - Counts incarcerated West Virginians as residents of their home community for purposes of representation, ending prison gerrymanders.<sup>45</sup>

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<sup>38</sup> W. Va. Code Ann. § 3-4A-9(12).

<sup>39</sup> W. Va. Code Ann. § 3-3-1(c).

<sup>40</sup> H.R. 1, Title III, Subtitle E.

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

<sup>42</sup> *Id.*

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

<sup>44</sup> See W. Va. Const. Art. 1, § 4; *id.* at Art. 6, § 4; W. Va. Code Ann. § 1-2-1(c).

<sup>45</sup> H.R. 1, Title III, Subtitle E.