September 15, 2021

Dear Senator Manchin:

You can’t fix a bad bill. A bill that is premised on false assumptions, and designed to counter the clear language of the U.S. Constitution and the 10th Amendment, is a bill not worthy of construction or compromise.

The “For the People Act,” “Freedom to Vote Act,” or whatever label placed on a similar bill version, no matter how repackaged, is disingenuous and a troublesome effort. The 2020 election had more people vote than any election in history; the false assumption is the administration of the decentralized and state-managed, record-breaking election systems somehow need to be “fixed.”

The clerks throughout West Virginia have spoken clearly and repeatedly in near-unanimous fashion that they are against many of the provisions of the bill being considered by the U.S. Senate. The inappropriate provisions contained in the 592 pages of this bill are too numerous to address in this letter; the gist is that this bill amounts to an overreach by bureaucrats in Washington, D.C. to direct how elections will be run in the United States.

Here are just 8 of the many provisions that are the basis for my opposition, some of which have had clear opposition via resolution passed by 54 of 55 West Virginia County Clerks, which is attached for review:

1. Same Day Registration (SDR). West Virginia county clerks are strongly opposed to the same day registration provisions of the proposed legislation. West Virginia does not have the broadband capability to ensure election integrity at every polling location for SDR. SDR also puts the onus on clerks to verify the validity of information provided by SDR voters, delaying election results until such verification is made.

2. Voter Identification. West Virginia’s voter identification laws work, and are not in need of alteration at the federal level. So, too, is the matter of forcing the voter ID laws adopted in our state onto each of the remaining 49. The forms and manner of requiring voter ID should be left to each state independently.

3. Early voting. West Virginia county clerks are strongly opposed to the early voting provisions of the proposed legislation. West Virginia’s current 10-day period for early voting, which includes two consecutive Saturdays, is sufficient for the needs and expectations of our voters. Changing that time will put additional strain on county clerks and their staff, and will impede their ability to adequately prepare and hold secure Election Day voting. At least one state, New Hampshire, does not have early voting, and should not be made to implement such unless so determined by their state legislature.

4. Drop boxes. West Virginia clerks are opposed to making drop boxes a permanent condition as envisioned by the proposed legislation. Drop boxes are not a problem that needs a solution here in our state. It creates security issues, adds significant costs, extra duties and staffing problems that may lead to less confidence in the process. Our state legislature has consistently rejected taking up such a proposal in the past two sessions.
5. Mail-in ballots. Our law strikes an appropriate balance between access and security: voters with Code-approved reasons for requesting a mail-in absentee ballot can easily make their absentee requests in person, by phone, by mail, or online 24/7.

6. Audits. West Virginia has been conducting post-election, pre-certification audits for years. However, mandating that all 50 states conduct the same specific type of audit proposed by this legislation forces some of our County Clerks to discard millions of dollars of voting equipment, purchase new equipment, and conduct a style of audit that has not been prescribed by our legislature. Our current audit procedures have served West Virginia well and are in no need of revision at this time.

7. List maintenance. West Virginia clerks just completed a multi-year list maintenance effort following procedures in state law, and we now have arguably the cleanest voter rolls in state history. When election officials uniformly adhere to their laws these processes work well; these processes are built on multiple checks, notifications, and careful analyses. The proposed legislation prohibits mailing confirmation cards to attempt to reach voters who have not voted, for example, for 20 years in any West Virginia election. The common sense approaches to list maintenance eliminated by this bill do nothing to protect eligible active and passive voters’ registrations, but dismount election security and voter roll integrity.

8. Provisional ballots. West Virginia clerks are opposed to making provisional ballots cast in incorrect precincts that include races that the voter is not entitled to vote as a counted ballot as envisioned by the proposed legislation. West Virginia law requires ballots to be cast in the proper precinct. The reason is simple: ballot styles differ based on geographic location to ensure voters have the opportunity to vote for their representatives in their legislative, county, and municipal districts. The proposed legislation requires ballots to be counted regardless of where cast. This places undue burdens on County Clerks and election administrators, complicates election integrity, and makes it impossible for counties to accurately determine and discern the number of ballots and votes cast for any candidate at the precinct level; such accuracy is absolutely necessary for voter confidence. A major check-and-balance that is part of transparency and security is knowing the number of eligible voters by precinct so official can ensure there are no more ballots cast than eligible voters. This provision eliminates that check-and-balance, will delay election results, and will exponentially increase the public distrust in elections.

Furthermore, acknowledge that the co-signers of this legislation caucus with one party; you have consistently said that when it comes to something as fundamental to our democracy as voting, legislation such as this should must have bi-partisan support. Otherwise our society will be further divided, focusing on fights from within the Homeland rather than against our adversaries.

In conclusion, this bill is addressing the wrong aspect of the election problems in the United States. The main focus of the election discussion should be to ensure only votes cast consistent with individual state laws, “legal votes,” are counted. State legislatures should be left to address state-specific processes based on decades of solving the unique issues facing each local jurisdiction.

I urge you and the United States Senate to direct your efforts to single shot approaches rather than an omnibus solution. For example, if Congress wants to make Election Day a Federal Holiday, that is clearly in the purview of Congress. But that can be done with a single bill. Otherwise, the language of the U.S. Constitution is clear that the time, place and manner of elections shall be left to state legislatures.

Sincerely,

Mac Warner
June 10, 2021

WVCCA Resolution Opposing the Passage of H.R. 1 & S. 1

WHEREAS, the United States Constitution recognizes the authority of the legislatures of each State to regulate the times, places, and manner of holding federal elections; and

WHEREAS, election administrators and county officials were not given an opportunity to provide input on the drafting of H.R. 1 and S. 1 prior to the introduction of the legislation, unlike previous bipartisan federal election reforms; and

WHEREAS, H.R. 1 and S. 1 preempt state law that currently restricts ballot harvesting for the prevention of fraud, by expressly providing that states “may not put any limit on how many voted and sealed absentee ballots any designated person can return to the post office, a ballot drop-off location, tribally designated building, or election office”; and

WHEREAS, H.R. 1 and S. 1 preempt state law by mandating same-day registration, regardless of the severe lack of internet service and broadband in rural areas: an impossible feat in West Virginia; and

WHEREAS, Same-day registration provisions in H.R. 1 and S. 1 lack proper security protections, multiplied by the lack of internet capability in polling locations in West Virginia, which undermines the integrity of our elections by making it impossible for election officials to confirm any new voter’s eligibility prior to them casting any ballot or from guaranteeing that no voter both registers and votes more than once in an election on Election Day; and

WHEREAS, H.R. 1 and S. 1 preempt state law by prohibiting requirements for physical proofs of identification for regular in-person and absentee voters, and requiring states to accept just a voter’s signature affidavit as proof of eligibility and proper registration; and

WHEREAS, H.R. 1 and S. 1 preempt state law and adoption of voting systems by requiring decertification of current, federally certified voting systems, and forcing states to purchase new voting equipment—none of which currently comport with the most recently adopted voluntary voting system guidelines (adopted Feb. 2021 by EAC)—wasting millions of dollars in recent upgrades purchased with HAVA funding across West Virginia and requiring new manufacturing by vendors and purchases by counties to the tune of tens of millions of dollars in WV alone; and

WHEREAS, H.R. 1 and S. 1 creates multiple so-called “private rights of action” that would lead to election administrators being targeted for lawsuits all across the country for both real and imagined violations, and causing county clerks to spend more time defending themselves in court than preparing to make sure that elections are run smoothly and securely; and
WHEREAS, H.R. 1 and S. 1 places dozens of additional mandates on county clerks while providing no ongoing operational funding to fulfill the requirements, causing potential cuts in county budgets to law enforcement and public safety; and

WHEREAS, H.R. 1 and S. 1 preempt state law by forcing county clerks to accept regular—not provisional—ballots of voters who vote in the incorrect precinct, without sufficient evidence of eligibility or proof of residence; and

WHEREAS, H.R. 1 fatally contradicts 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; and

WHEREAS, H.R. 1 and S. 1 preempt state law by mandating new dates for the early in-person voting period without regard to state-specific success and voter participation under current election calendars; and

WHEREAS, H.R. 1 and S. 1 lump dozens of state agencies and educational institutions into “voter registration agencies,” and requires them to integrate into an automatic voter registration system without regard to current systems, data collection practices, or security creating more opportunities for voters’ registrations to be mishandled and mistransmitted, and likely resulting in security lapses for agencies currently not covered under the Critical Infrastructure designation of the Department of Homeland Security; and

NOW, THEREFORE, BE IT RESOLVED, that the West Virginia County Clerk’s Association opposes the passage of H.R. 1, S. 1, or any other legislation that impedes the state’s ability to administer elections in an overreaching, one-size-fits-all approach out of Washington D.C.

Adopted the 10th day of June, 2021 in Canaan Valley, WV

EXPIRES: June 2026

Connie Kaufman
Barbour Co. Clerk

Roger Toney
Boone Co. Clerk

Barbara March
Berkeley Co. Clerk

LesAnn Rutherford
Braxton Co. Clerk
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Tyler Co. Clerk

Wayne Co. Clerk

Wetzel Co. Clerk

Wood Co. Clerk

Summers Co. Clerk

Tucker Co. Clerk

Upshur Co. Clerk

Webster Co. Clerk

Wirt Co. Clerk

Wyoming Co. Clerk