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Introduction

My name is Hans A. von Spakovsky.[1] I appreciate the invitation to be here today. The views I express in this testimony are my own, and should not be construed as representing any official position of the Heritage Foundation or any other organization.

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I am a Senior Legal Fellow in the Center for Legal and Judicial Studies at The Heritage Foundation. Prior to joining The Heritage Foundation, I was a Commissioner on the U.S. Federal Election Commission for two years. Before that I spent four years at the U.S. Department of Justice as a career civil service lawyer in the Civil Rights Division, where I received three Meritorious Service Awards (2003, 2004, and 2005). I began my tenure at the Justice Department as a trial attorney in 2001 and was promoted to be Counsel to the Assistant Attorney General for Civil Rights (2002-2005), where I helped coordinate the enforcement of federal voting rights laws, including the Voting Rights Act ("VRA"), the National Voter Registration Act ("NVRA"), the Help America Vote Act ("HAVA"), and the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA").[2]

H.R. 1 – A Combination of Unconstitutional, Redundant and Unwise Policy Mandates

H.R. 1 is a very long, very complex bill that has provisions pertaining to a wide range of subjects, from voter registration and elections to campaign finance, judicial ethics, and lobbying. My testimony today will be limited to only those provisions of H.R. 1 over which the Judiciary Committee has jurisdiction, and not those that are subject to the jurisdiction of other committees within the House of Representatives such as the House Administration Committee.

In summary, many of the provisions of H.R. 1 are clearly unconstitutional. Others are redundant and unnecessary, covering areas and issues where existing federal law is more than sufficient to protect voters. Many of the provisions are just bad policy that will neither help voters nor election officials in administering a fair and secure voter registration and election process.

H.R. 1 interferes with the ability of states to determine the qualifications of their voters, to secure the integrity of the election process, and to determine the districts and boundary lines of their representatives. Overall, H.R. 1 is an attempt to federalize and micromanage the election process and impose unnecessary, unwise and in some cases unconstitutional mandates on the states, reversing the decentralization of the American election process that our Founders believed was essential to preserving liberty and freedom.

As the U.S. Supreme Court recently explained, the "allocation of authority" over elections between state governments and the federal government that is provided in the Constitution "sprang from the Framers' aversion to concentrated power."[3] Existing federal laws such as the VRA, NVRA, HAVA and UOCAVA already provide the protection that Americans need to be able to easily practice their franchise without discrimination, intimidation, or fear.

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[2] I was also a member of the first Board of Advisors of the U.S. Election Assistance Commission. I spent five years in Atlanta, Georgia, on the Fulton County Board of Registration and Elections, which is responsible for administering elections in the largest county in Georgia. In Virginia, I served for three years as the Vice Chairman of the Fairfax County Electoral Board, which administers elections in the largest county in that state. I formerly served on the Virginia Advisory Board to the U.S. Commission on Civil Rights. I am a 1984 graduate of the Vanderbilt University School of Law and received a B.S. from the Massachusetts Institute of Technology in 1981. I am the coauthor of *Who's Counting? How Fraudsters and Bureaucrats Put Your Vote at Risk* (2012) and *Obama's Enforcer – Eric Holder's Justice Department* (2014).

[3] *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S.Ct. 2247, 2258 (2013).

H.R. 1 Provisions Under the Jurisdiction of the Judiciary Committee

Title I, Subtitle A, Part 7, Sec. 1071 of H.R. 1 prohibits "corruptly" hindering, interfering, or preventing another person from registering to vote or hindering, interfering or preventing another person from aiding someone else in registering to vote. This is an unnecessary, redundant, and repetitive provision.

Federal law *already* prohibits such behavior. It is a criminal violation of the NVRA to intimidate, threaten or coerce any person for "registering to vote, or voting, or attempting to register to vote" or "urging or aiding any person to register to vote, to vote, or to attempt to register or vote."[4] Punishment includes not only a fine, but up to five years in prison. The Justice Department has never indicated that the language of this provision is somehow insufficient to prosecute this type of behavior.

Additionally, it is a criminal violation of Section 11 of the VRA to "threaten, intimidate, or coerce" any person for "voting or attempting to vote."[5]

Title I, Subtitle C, Sec. 1201 of H.R. 1 prohibits what some advocates refer to as "vote caging," which the bill in essence defines as election officials using the United States Postal Service's (USPS) national change of address (NCOA) system to verify the address of registered voters. Nothing about this verification process, however, is either sinister or suspect. Indeed, federal law (specifically, the NVRA) *expressly* sanctions this activity. Congress previously determined – quite correctly – that the NCOA database, which consists of change-of-address requests submitted by individuals to the USPS when moving, would help election officials identify registered voters who have moved out of their district.[6]

The proposed change would directly interfere with the ability of states to maintain accurate, up-to-date voter registration lists. Moreover, voters are in no way harmed by the current law. Under the NVRA, even if election officials receive notice from the NCOA system that a voter has moved, the voter cannot be removed from the registration roll unless he/she (i) confirms in writing that he/she has moved or (ii) fails to respond to the notice and then does not vote in either of the two consecutive federal elections following the notice.[7]

This provision of the NVRA was upheld by the U.S. Supreme Court in *Husted v. A. Philip Randolph Institute*, a decision that pointed out how very unreliable and inaccurate voter rolls are in this country.[8] As the Court said, it is estimated that "24 million voter registrations in the United States – about one in eight – are either invalid or significantly registration inaccurate. And about

[4] 52 U.S.C. § 20511(1).
[5] 52 U.S.C. § 20307.
[6] 52 U.S.C. § 20507(c).
[7] 52 U.S.C. § 20507(d).
[8] *Husted v. A. Philip Randolph Institute*, 138 S.Ct. 1833 (2018).

2.75 million people are said to be registered in more than one state."[9]

In its definition of prohibited list matching, the proposed bill also attempts to ban states from participating in both the Interstate Voter Registration Crosscheck ("IVRC) and the Electronic Voter Registration Center ("ERIC") programs. IVRC launched in 2005 as a bipartisan effort by several secretaries of states, including former Kansas Secretary of State Ron Thornburg (R) and former Missouri Sectary of State Robin Carnahan (D). ERIC was formed in 2012 with assistance from the non-partisan Pew Charitable Trust. Both programs, which are managed by the states, compare the voter registration lists of states that voluntarily join the consortium to help identify individuals who are registered in more than one state.

Importantly, no voter whose name happens to appear on multiple states' voter registration lists is *automatically* removed from any such list. Rather, overlapping entries simply trigger an individual investigation by election officials to verify the accuracy of the match and to determine in which state the individual actually resides and should be registered. It is difficult to conceive how that is objectionable. Meanwhile, interfering with the states' ability to participate in these types of cooperative agreements will not only make it more difficult to maintain the accuracy of voter registration rolls, but it is also likely unconstitutional. After all, the constitutional rights, powers, and privileges of establishing voter qualifications – including voter registration and residency requirements – are key components of state sovereignty protected by Article I, Section 2 of the Constitution, the Tenth Amendment, and the Seventeenth Amendment.[10] The Supreme Court has said that it "would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications."[11]

This provision of H.R. 1 additionally imposes federal restrictions and procedural rules on the ability of individual voters to challenge the eligibility of another voter who they believe is not qualified to vote, including imposing a criminal penalty. The procedures for such challenges are strictly within the province of state law since they deal with the qualification of a voter; as long as the challenges are not being done in a racially discriminatory manner that would violate the VRA, the federal government does not have the constitutional authority to dictate to the states the procedural rules used for determining the qualifications of a voter.

Title I, Subtitle D, Section 1301 of H.R. 1, which addresses purportedly "deceptive practices and voter intimidation," is so redundant and so vague in many of its terms that it would violate the First Amendment. This provision makes it a criminal offense to provide "materially false" information that will "impede or prevent" an individual from voting. Included in the criminally prohibited conduct are false statements about an "endorsement." In any event, current law (Section 11 of the VRA) already proscribes the type of conduct the bill is intended to reach – preventing an individual from registering to vote or voting.

[9] *Husted*, 138 S.Ct. at 1838 (citing Pew Center on the States, *Election Initiatives Issue Brief* (Feb. 2012)).
[10] Article I, Section 2, Clause 1 and Seventeenth Amendment. *See also* Article II, Section 1, Clause 1 ("Each State shall appoint, in such Manner as the Legislature thereof may direct," presidential electors).
[11] *Inter Tribal Council of Arizona, Inc.*, 133 S.Ct. at 2258-2259.

H.R. 1 adds the terms "hinder" or "interfere with" to the actions prohibited by the VRA's Section 11 but provides no legal definition for either term. They are so vague that they could easily cover a vast range of perfectly legal activity (e.g., political advertisements that urge individuals not to go to the polls and vote for particular candidates). Furthermore, the "materially false" information standard with regard to political "endorsements" is an attempt to criminalize the ordinary and everyday political activity that happens in campaigns. It would make it extremely risky for any political candidate, citizen, association, or nonprofit to make an endorsement, or even to tell anyone about an endorsement, such as the association's own members. Any mistake could subject the communicators to federal prosecution where they would have to defend themselves by trying to prove that their conduct was not knowing. This provision criminalizes First Amendment activity.

Lest one think that prosecutorial discretion might avoid excessive enforcement, the proposed bill contains a private right of action with the ability to obtain an injunction and restraining order. This provision is certain to, in fact is intended to, usher in a wave of new litigation in the weeks and months prior to an election. Fortunately, political endorsements and other types of political speech are core First Amendment activity and the Supreme Court views any system of prior restraint on political speech as "bearing a heavy presumption against its constitutional validity."[12] In short, this invasion into the area of political speech is unnecessary and unwise. The VRA and the NVRA already adequately protect the ability of individuals to register and vote.

Title I, Subtitle E, Section 1401 of H.R. 1 mandates that states that take away the right of a criminal to vote when he/she is convicted of a felony restore that ability to vote the moment the felon is released from a "correctional institution or facility." This provision is clearly unconstitutional. The issue is not whether it is good public policy to restore the right of a felon to vote after release from prison, or only after the felon has finished probation and paid any ordered fines or restitution to victims, or only after a waiting period in which the felon proves that he/she has turned over a new leaf. The issue here is that Congress cannot override the Constitution with a federal statute.

The Fourteenth Amendment was one of the key post-Civil War, Reconstruction amendments sponsored and passed by Republicans – the party of Abraham Lincoln and abolition – to help secure the rights of black Americans. These same members of Congress deliberately protected the rights of states to withhold the right to vote from citizens who are convicted of serious crimes against their fellow citizens. Section 2 of the amendment specifically provides that states may abridge the right to vote "for participation in rebellion or other crime." By doing so, Congress recognized a process that goes back to ancient Greece and Rome. Such restrictions were adopted by states after the American Revolution; by the beginning of the Civil War, 70% of states had statutes barring felons from voting.[13]

It is true that a handful of states tried to use this provision during Reconstruction and afterward to disenfranchise black voters. However, all those laws have been amended, as they had

[12] *Bantam Books v. Sullivan*, 372 U.S. 58, 70 (1963).
[13] Hans A. von Spakovsky and Roger Clegg, "*Felon Voting and Unconstitutional Overreach*," The Heritage Foundation, Legal Memorandum No. 145 (Feb. 11, 2015).

to be in order to avoid being struck down as discriminatory, as the U.S. Supreme Court did in 1985 with Alabama's law in *Hunter v. Underwood*.[14]

The bottom line is that states have the ability under the Fourteenth Amendment to take away the ability of felons to vote in both state and federal elections. Furthermore, states have the constitutional authority to decide when or if to restore that right, as long as they do so in a manner that is not racially discriminatory under the Constitution.

As the Supreme Court has said, "[p]rescribing voting qualifications...'forms no part of the power to be conferred upon the national government'" by the Elections Clause of the Constitution.[15] The only way that Congress could force states to automatically restore the right of felons to vote as soon as they are out of prison is by passing a constitutional amendment that is then also approved by three-fourths of the states under the procedures outlined in Article V of the Constitution.

Title I, Subtitle L Section 1811 of H.R. 1 adds a private right of action to the Help America Vote Act of 2002.[16] As the members of this Committee should be aware, HAVA was a bipartisan bill passed by Congress after the 2000 presidential election contest in Florida. It was intended to improve election administration in the states, in part by providing them with federal funding for the first time in history. To minimize future litigation fights such as *Bush v. Gore*, Congress made the informed decision at that time not to place a private right of action into HAVA, but instead to place the responsibility to enforce its provisions with the U.S. Justice Department.

The Justice Department has filed 12 lawsuits to enforce HAVA and entered into two settlement agreements.[17] Almost all those enforcement actions were in the first few years after the law became effective in 2002 when state election officials were in a learning curve over the new requirements of this federal statute. Nor can one suggest that the minimal enforcement activity is tied to partisan politics. Indeed, only one enforcement action was filed by the Department of Justice during the eight years of the Obama administration.

There is no evidence that the Justice Department has failed to carry out its enforcement duty under Section 401 of HAVA.[18] There is also no evidence calling into question the decision in 2002 of Democratic and Republican leaders and members of Congress that a private right of action was not needed and would undermine election officials' ability to administer elections and ensure that all eligible citizens are able to vote and have their vote counted fairly and accurately.

Title II, Subtitle E, Section 2400 et seq. of H.R. 1 forces states to establish independent

[14] *Hunter v. Underwood*, 471 U.S. 222 (1985). This case involved Alabama's 1901 Constitution, which disenfranchised persons convicted not just of felonies, but of misdemeanors "involving moral turpitude," a catch-all phrase that was used by state officials specifically to target black Alabamians.
[15] *Inter Tribal Council of Arizona, Inc.*, 133 S.Ct at 2258 (citing The Federalist No. 60, at 371 (A. Hamilton)).
[16] 52 U.S.C. § 20901 et seq.
[17] See "Cases Raising Claims Under the Help America Vote Act (HAVA)," U.S. Dept. of Justice, Civil Rights Division, Voting Section, https://www.justice.gov/crt/voting-section-litigation.
[18] 52 U.S.C. § 21111.

redistricting commissions to draw the boundaries of congressional districts and alternatively gives a three-judge court of the U.S. District of the District of Columbia the authority to draw such districts if the plan of the commission is not enacted into law. This provision is an unfair and unwise interference into the right of the voters and citizens of particular states to make their own decisions, either through the referendum process[19] or through their elected representatives in the state legislatures, on what is the best way of choosing members of Congress from their state. It is potentially unconstitutional, too.

We are a federal system, one in which we have a federal government and fifty independent and sovereign state governments. The forms of state governments vary across the nation, from the organization and operation of state legislatures, the selection of judges, the election or appointment of state officials, the rules that govern election campaigns, and the duties of different state executive officers. This system was deliberately and intentionally chosen by our Founders when they wrote our Constitution and it has been a stable system that has carried us through civil war, two world wars and other conflicts, and both good and bad economic times.

The citizens of different states, for example, have made different choices about how to draw legislative districts, with many leaving it to their state legislatures and others, such as California and Arizona, establishing independent commissions. H.R. 1 would take away the ability of voters to make their own choice about how congressional districts should be drawn. This obviously anti-democratic measure would replace elected state representatives with unelected, appointed members of a commission – members who are unaccountable to the voters in elections.

In states where the legislature draws districts, the regular political process influences redistricting as it does other political issues. Citizens can vote out of office legislators whose redistricting decisions they don't like. If a state's own electorate – either directly through a referendum process or indirectly through its elected legislators – opts for a redistricting commission, so be it. But where an unelected commission has been thrust upon voters via federal law, citizens have no recourse to alter the process or the results since H.R. 1's Section 2412 dictates all the details of the commissions.

As if this was not bad enough, the second part of Section 2402 of the bill potentially punts redistricting decisions to unelected federal judges in Washington, D.C. The real problem here, though, is not political. The problem is that conferring such power on federal courts to draw redistricting plans is a stark violation of the U.S. Constitution's separation of powers. Federal courts get involved in drawing redistricting plans only if the plan drawn by a state legislature or a commission is discriminatory and violates either the VRA or the "one person, one vote" standard of the Fourteenth Amendment's Equal Protection Clause.[20]

This bill would give the judicial branch established under Article III of the Constitution the right to draw the boundaries of legislative districts not only when there has been a violation of the

[19] *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652 (2015).
[20] *Reynolds v. Sims*, 377 U.S. 533 (1964).

law, but also when an independent commission has not adopted a plan by a particular date or a commission has not been established. That is an entirely different circumstance. In so doing, the bill transfers to the *judiciary* a power that the Elections Clause of the Constitution exclusively gives to the legislative branch. That violates basic separation of powers principles as well as the delegation doctrine. It is antidemocratic and unconstitutional.

Title VII, Subtitle A, Section 7001 of H.R. 1 requires the Judicial Conference of the United States, which is chaired by the Chief Justice, to establish a mandatory "code of conduct" (ethics rules) for the justices of the U.S. Supreme Court. This is potentially unconstitutional as a violation of the separation of powers principle of the Constitution.

Article III states that the "judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as Congress may from time to time ordain and establish." Three such inferior courts exist today – the U.S. District Courts, the U.S. Courts of Appeal, and the U.S. Court of International Trade. Congress can mandate that these courts follow codes of judicial conduct and ethics rules because Congress created those courts.

The Constitution, not Congress, created the Supreme Court. It is an independent, co-equal branch. In the same way that the Justices cannot dictate what ethics rules apply to members of Congress or the president, it is highly questionable whether Congress can dictate the ethics rules that apply to the Supreme Court.

As Chief Justice John Roberts explained in his "2011 Year-End Report on the Federal Judiciary," the current Code of Conduct for federal judges applies only to lower federal court judges because there is "a fundamental difference between the Supreme Court and the other federal courts" under Article III.[21] Since the Judicial Conference was established by Congress "for the benefit of the courts it created" and is "an instrument for the management of the lower federal courts, its committees have no mandate to prescribe rules or standards for any other body."[22]

According to the Chief Justice, the Justices use the current Code of Conduct for the lower courts as guidance, as well as "a wide variety of other authorities to resolve specific ethics issues." He points out that while Congress has "directed Justices and judges to comply with both financial reporting requirements and limitations on the receipt of gifts and outside earned income," the Supreme Court has "never addressed whether Congress may impose those requirements on the Supreme Court." This is a very subtle way for the Chief Justice to point out that there may be a serious constitutional problem under Article III with Congress trying to impose such mandates on the justices, although they comply with the current provisions voluntarily.[23]

Title VII, Subtitle B, Section 7101 of H.R. 1 establishes a special unit within the National Security Division of the Justice Department for enforcement of the Foreign Agents Registration Act

[21] https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf.
[22] *Id.*
[23] https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf., pages 3-6.

of 1938 ("FARA"), and it imposes large civil penalties (up to $200,000) based on a "preponderance of the evidence" standard.

This is a textbook example of Congress trying to micromanage the prosecutorial functions of the Justice Department and the executive branch. The head of the National Security Division of Justice is in the best position to determine the resources and staffing necessary to enforce FARA based on the enforcement and compliance experience of the division – and there is no evidence that the division has had insufficient resources for enforcement.

Furthermore, applying the "preponderance of evidence" standard, rather than the criminal "beyond a reasonable doubt" standard, to civil violations that have such large potential civil penalties seems inconsistent with due process principles. It gives too much power to Justice Department prosecutors at the expense of the public and the protections the Constitution and the Bill of Rights provide to those accused of wrongdoing by the government.

Any who doubt such protections are needed or that there is no risk that government prosecutors will abuse their authority in either the civil or criminal area should remember the prosecution of former Sen. Ted Stevens. Judge Emmett Sullivan castigated the Justice Department, saying that in 25 years on the bench, he had never seen "anything approaching the mishandling and misconduct" of Justice Department prosecutors in that case.[24] Or they should review the 129-page order released in 2013 in another prosecution in New Orleans in which the federal judge concluded that Justice Department prosecutors engaged in "grotesque prosecutorial abuse," "skullduggery," and "perfidy" in their unethical and unprofessional behavior.[25]

The new $200,000 penalty would apply to violations as simple as failing to correct a defect in the foreign agent registration form within 60 days, an amount that seems grossly out of proportion to a paper work issue. This proposal is also at odds with the push in Congress, as shown by the bipartisan "First Step Act" that was just enacted into law, to reverse the trend of overcriminalization and prohibitive civil penalties present throughout federal law.[26]

Title VII. Subtitle C, Section 7201 of H.R. 1, which expands the definition of "lobbyists" who must register is an expansion of the law that is unnecessary, unwise, and potentially unconstitutional as too broad and too vague to pass scrutiny under the First Amendment.

This section would expand the definition of a lobbyist to anyone who provides "legislative, political, and strategic counseling services" to another individual who actually contacts and lobbies government officials even if those counselors do not themselves engage in any contacts or lobbying activities of any kind with government officials. Members should be reminded that what we label as

[24] Anna Stollen Persky, "*A Cautionary Tale: The Ted Stevens Prosecution*," Washington Lawyer (Oct. 2009), https://www.dcbar.org/bar-resources/publications/washington-lawyer/articles/october-2009-ted-stevens.cfm.
[25] U.S. v. Bowen, 969 F.Supp. 2d 546 (E.D. LA. 2013), *affirmed and remanded for new trial*, 799 F.3d 336 (5th Cir. 2015).
[26] German Lopez, "Congress just passed the most significant criminal justice reform bill in decades," Vox.com (Dec. 20, 2018).

"lobbying" today, which is often soundly criticized, is an important constitutional right under the Bill of Rights. The First Amendment protects the rights of all citizens – whether they are "counselors" or paid professionals – to "petition the Government for a redress of grievances."

There is no bar to Congress requiring professional lobbyists to register, as long as those registration requirements are not so burdensome as to violate core First Amendment protections by restricting the ability to petition the government. But H.R. 1, by expanding this restriction to anyone who provides so-called "counseling," even when that person is not involved in any actual contacts with government officials, is so broad that it may infringe on First Amendment protections and restrict political speech and activity.

"Counseling" is such an expansive and undefined term that it could cover almost any activity, including simple conversations at cocktail parties, making it difficult for an individual to determine whether his/her activity or speech brings him/her within the statute and the registration requirement. That will chill protected speech and participation in the political arena.

The difficulty in understanding what actions could trigger the registration requirements of this proposal stand in sharp contrast to the current law, which explicitly defines a lobbying contact as an "oral or written communication" with a government official. The proposed amendment is unneeded. Rather than providing a benefit to the public, it could – and likely would – unfairly and unconstitutionally impede the public's ability and willingness to engage in First Amendment activity.

Title VII, Subtitle D, Section 7301 of H.R. 1 would ban political appointees of a president from any involvement in any matter – including litigation – in which the president (or his spouse) is a party and includes any entity in which the president or his spouse has a "substantial interest." It transfers responsibility for that matter to a "career appointee in the agency." This is an unconstitutional provision that violates the principle of separation of powers and directly interferes with the president's constitutional duties.

Article II, Section 3 provides the duty of the president to "take Care that the Laws be faithfully executed." This provision would apply to any litigation against a president's policies, programs, executive orders, or his enforcement of a particular federal statute that names the president. It would prevent the president's political subordinates, such as the Attorney General or the Secretary of the Department of Homeland Security, from participating in, directing the defense of, or assisting in any matter in which the president has been named as a party.

If this provision had been the law when Barack Obama was president, the parties challenging Obama's Deferred Action for Parents of Childhood Arrivals program in the litigation filed by Texas and 25 other states could have easily named Obama as a specific party. Then neither Attorney General Loretta Lynch nor DHS Secretary Jeh Johnson could have participated in the defense of the lawsuit.

Similarly, President Donald Trump's attorney general and DHS secretary would have been

barred from participating in the defense of the president's executive orders restricting the entry of aliens from certain terrorist safe havens since he was a named party in *Trump v. Hawaii*, the litigation in which the Supreme Court upheld those executive orders.[27]

This proposed amendment to federal law violates the Constitution and tries to prevent a president from being able to rely on his own appointees in defending his "faithful" execution of the law and in implementing his policies and programs.

Conclusion

My testimony has only covered the portions of H.R. 1 under the jurisdiction of the Judiciary Committee. As I have explained, many of these provisions are clearly unconstitutional, redundant of federal laws already in place, and simply bad public policy. Many of the provisions I have not covered that affect federal campaign finance law seem intended to protect incumbents, discourage challengers, make it more difficult for the public to participate in politics by chilling political speech and activity, and impose onerous compliance costs. Other provisions on elections come at the expense of federalism and appear intended to nationalize and micromanage the election process, interfere with the right of states to administer elections and determine the qualifications of the electorate, and damage the integrity and security of the election system.

Sometimes legislation proposed by Congress is bad policy; sometimes it is unnecessary; and sometimes it is unconstitutional. H.R. 1 is all three.

[27] 585 U.S. ------ (2018).