To amend the Help America Vote Act of 2002 to require paper ballots and risk limiting audits in all Federal elections, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Wyden (for himself, Mrs. Gillibrand, Ms. Warren, Mrs. Murray, Mr. Markey, and Mr. Merkley) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Help America Vote Act of 2002 to require paper ballots and risk limiting audits in all Federal elections, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protecting American Votes and Elections Act of 2018”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Access to the ballot, free and fair elections, and a trustworthy election process are at the core of
American Democracy. Just as the Founding Fathers signed their names to paper supporting their views for a government by and for the people, access to the paper ballot is the best way to ensure elections stay by and for the American people. Using paper provides an easily auditable, tamper proof, and simple way for citizens to access their ballot. It is for these reasons and more that using paper ballots to ensure resilient and fair elections should be the priority of this Nation.

(2) Risk-limiting audits will help to protect our elections from cyberattacks, by ensuring that if the electoral outcome is incorrect, for instance because someone tampered with the electronic counts or reporting, the audit has a large, known probability of correcting the outcome by requiring a full hand count. Paper ballots are vital to the audit process since, other than through manual inspection of a sample of paper ballots, there is currently no reliable way to determine whether an election was hacked or the outcome was miscalculated.

(3) Risk-limiting audits are a cost effective way of auditing election results. They generally require inspecting only a small percentage of the ballots cast in an election, and proceed to a full hand count only
when sampling does not provide strong evidence that
the reported outcome is correct. This will ensure
that Americans have confidence in their election re-
sults, without the cost of a full recount of every bal-
lot in the country.

SEC. 3. PAPER BALLOT AND MANUAL COUNTING REQUIRE-
MENTS.

(a) In General.—Section 301(a)(2) of the Help
America Vote Act of 2002 (52 U.S.C. 21081(a)(2)) is
amended to read as follows:

“(2) Paper ballot requirement.—

“(A) Voter-verified paper ballots.—

“(i) Paper ballot requirement.—

(I) The voting system shall require the use
of an individual, durable, voter-verified,
paper ballot of the voter’s vote that shall
be marked and made available for inspec-
tion and verification by the voter before
the voter’s vote is cast and counted, and
which shall be counted by hand or read by
an optical character recognition device or
other counting device. For purposes of this
subclause, the term ‘individual, durable,
voter-verified, paper ballot’ means a paper
ballot marked by the voter by hand or a
paper ballot marked through the use of a nontabulating ballot marking device or system, so long as the voter shall have the option to mark his or her ballot by hand.

“(II) The voting system shall provide the voter with an opportunity to correct any error on the paper ballot before the permanent voter-verified paper ballot is preserved in accordance with clause (ii).

“(III) The voting system shall not preserve the voter-verified paper ballots in any manner that makes it possible, at any time after the ballot has been cast, to associate a voter with the record of the voter’s vote without the voter’s consent.

“(ii) Preservation as official record.—The individual, durable, voter-verified, paper ballot used in accordance with clause (i) shall constitute the official ballot and shall be preserved and used as the official ballot for purposes of any recount or audit conducted with respect to any election for Federal office in which the voting system is used.
“(iii) Manual counting requirements for recounts and audits.—(I) Each paper ballot used pursuant to clause (i) shall be suitable for a manual audit, and shall be counted by hand in any recount or audit conducted with respect to any election for Federal office.

“(II) In the event of any inconsistencies or irregularities between any electronic vote tallies and the vote tallies determined by counting by hand the individual, durable, voter-verified, paper ballots used pursuant to clause (i), and subject to subparagraph (B), the individual, durable, voter-verified, paper ballots shall be the true and correct record of the votes cast.

“(iv) Application to all ballots.—The requirements of this subparagraph shall apply to all ballots cast in elections for Federal office, including ballots cast by absent uniformed services voters and overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act and other absentee voters.
“(B) Special rule for treatment of disputes when paper ballots have been shown to be compromised.—

“(i) In general.—In the event that—

“(I) there is any inconsistency between any electronic vote tallies and the vote tallies determined by counting by hand the individual, durable, voter-verified, paper ballots used pursuant to subparagraph (A)(i) with respect to any election for Federal office; and

“(II) it is demonstrated by clear and convincing evidence (as determined in accordance with the applicable standards in the jurisdiction involved) in any recount, audit, or contest of the result of the election that the paper ballots have been compromised (by damage or mischief or otherwise) and that a sufficient number of the ballots have been so compromised that the result of the election could be changed,
the determination of the appropriate remedy with respect to the election shall be made in accordance with applicable State law, except that the electronic tally shall not be used as the exclusive basis for determining the official certified result.

“(ii) Rule for consideration of ballots associated with each voting machine.—For purposes of clause (i), only the paper ballots deemed compromised, if any, shall be considered in the calculation of whether or not the result of the election could be changed due to the compromised paper ballots.”.

(b) Conforming Amendment Clarifying Applicability of Alternative Language Accessibility.—Section 301(a)(4) of such Act (52 U.S.C. 21081(a)(4)) is amended by inserting “(including the paper ballots required to be used under paragraph (2))” after “voting system”.

(c) Other Conforming Amendments.—Section 301(a)(1) of such Act (52 U.S.C. 21081(a)(1)) is amended—
8

(1) in subparagraph (A)(i), by striking “counted” and inserting “counted, in accordance with paragraphs (2) and (3)”;

(2) in subparagraph (A)(ii), by striking “counted” and inserting “counted, in accordance with paragraphs (2) and (3)”;

(3) in subparagraph (A)(iii), by striking “counted” each place it appears and inserting “counted, in accordance with paragraphs (2) and (3)”;

(4) in subparagraph (B)(ii), by striking “counted” and inserting “counted, in accordance with paragraphs (2) and (3)”.

(d) EFFECTIVE DATE.—Notwithstanding section 301(d) of the Help America Vote Act of 2002 (52 U.S.C. 21081(d)), each State and jurisdiction shall be required to comply with the amendments made by this section for the regularly scheduled election for Federal office in November 2020, and for each subsequent election for Federal office.

SEC. 4. ACCESSIBILITY AND BALLOT VERIFICATION FOR INDIVIDUALS WITH DISABILITIES.

(a) IN GENERAL.—Section 301(a)(3)(B) of the Help America Vote Act of 2002 (52 U.S.C. 21081(a)(3)(B)) is amended to read as follows:
“(B)(i) satisfy the requirement of subparagraph (A) through the use of at least 1 voting system equipped for individuals with disabilities, including nonvisual and enhanced visual accessibility for the blind and visually impaired, and nonmanual and enhanced manual accessibility for the mobility and dexterity impaired, at each polling place; and

“(ii) meet the requirements of subparagraph (A) and paragraph (2)(A) by using a system that—

“(I) allows the voter to privately and independently verify the permanent paper ballot through the presentation, in accessible form, of the printed or marked vote selections from the same printed or marked information that would be used for any vote counting or auditing; and

“(II) allows the voter to privately and independently verify and cast the permanent paper ballot without requiring the voter to manually handle the paper ballot; and”
Specific Requirement of Study, Testing, and Development of Accessible Paper Ballot Verification Mechanisms.—

(1) Study and reporting.—Subtitle C of title II of such Act (52 U.S.C. 21081 et seq.) is amended by inserting after section 246 the following new section:

```
SECT. 246A. STUDY AND REPORT ON ACCESSIBLE PAPER BALLOT VERIFICATION MECHANISMS.

(a) Study and report.—The Director of the National Science Foundation shall make grants to not fewer than 3 eligible entities to study, test, and develop accessible paper ballot voting, verification, and casting mechanisms and devices and best practices to enhance the accessibility of paper ballot voting and verification mechanisms for individuals with disabilities, for voters whose primary language is not English, and for voters with difficulties in literacy, including best practices for the mechanisms themselves and the processes through which the mechanisms are used.

(b) Eligibility.—An entity is eligible to receive a grant under this part if it submits to the Director (at such time and in such form as the Director may require) an application containing—
```
“(1) certifications that the entity shall specifically investigate enhanced methods or devices, including non-electronic devices, that will assist such individuals and voters in marking voter-verified paper ballots and presenting or transmitting the information printed or marked on such ballots back to such individuals and voters, and casting such ballots;
“(2) a certification that the entity shall complete the activities carried out with the grant not later than December 31, 2020; and
“(3) such other information and certifications as the Director may require.
“(c) AVAILABILITY OF TECHNOLOGY.—Any technology developed with the grants made under this section shall be treated as non-proprietary and shall be made available to the public, including to manufacturers of voting systems.
“(d) COORDINATION WITH GRANTS FOR TECHNOLOGY IMPROVEMENTS.—The Director shall carry out this section so that the activities carried out with the grants made under subsection (a) are coordinated with the research conducted under the grant program carried out by the Commission under section 271, to the extent that the Director and Commission determine necessary to provide for the advancement of accessible voting technology.
“(e) Authorization of Appropriations.—There is authorized to be appropriated to carry out subsection (a) $10,000,000, to remain available until expended.”.

(2) Clerical Amendment.—The table of contents of such Act is amended by inserting after the item relating to section 246 the following new item:

“Sec. 246A. Study and report on accessible paper ballot verification mechanisms.”.

SEC. 5. RISK-LIMITING AUDITS.

(a) In General.—Title III of the Help America Vote Act of 2002 (52 U.S.C. 21081 et seq.) is amended by inserting after section 303 the following new section:

“SEC. 303A. RISK-LIMITING AUDITS.

“(a) Definitions.—In this section:

“(1) Risk-limiting audit.—

“(A) In General.—The term ‘risk-limiting audit’ means a post-election process such that, if the reported outcome of the contest is incorrect, there is at least a 95 percent chance that the audit will replace the incorrect outcome with the correct outcome as determined by a full, hand-to-eye tabulation of all votes validly cast in that election contest that ascertains voter intent manually and directly from voter-verifiable paper records.
“(B) REPORTED OUTCOME.—The term ‘reported outcome’ means the outcome of an election contest which is determined according to the canvass and which will become the official, certified outcome unless it is revised by an audit, recount, or other legal process.

“(C) INCORRECT OUTCOME.—The term ‘incorrect outcome’ means an outcome that differs from the outcome that would be determined by a full tabulation of all votes validly cast in that election contest, determining voter intent manually, directly from voter-verifiable paper records.

“(D) OUTCOME.—The term ‘outcome’ means the winner or set of winners of an election contest, which might be candidates or positions.

“(2) BALLOT MANIFEST.—The term ‘ballot manifest’ means a record maintained by each county that—

“(A) is created without reliance on any part of the voting system used to tabulate votes;

“(B) functions as a sampling frame for conducting a risk-limiting audit; and
“(C) contains the following information about ballots cast and counted:

“(i) The total number of ballots cast and counted in the election (including undervotes, overvotes, and other invalid votes).

“(ii) The total number of ballots cast in each contest in the election (including undervotes, overvotes, and other invalid votes).

“(iii) A precise description of the manner in which the ballots are physically stored, including the total number of physical groups of ballots, the numbering system for each group, a unique label for each group, and the number of ballots in each such group.

“(b) REQUIREMENT.—

“(1) IN GENERAL.—

“(A) AUDITS.—Each State and jurisdiction shall administer risk-limiting audits of the results of all elections for Federal office held in the State in accordance with the requirements of paragraph (2).
“(B) FULL MANUAL TALLY.—If a risk-limiting audit conducted under subparagraph (A) leads to a full manual tally of an election contest, the State or jurisdiction shall use the results of the full manual tally as the official results of the election contest.

“(2) AUDIT REQUIREMENTS.—

“(A) RULES AND PROCEDURES.—

“(i) IN GENERAL.—Risk-limiting audits shall be conducted in accordance with the rules and procedures established by the chief State election official of the State not later than 1 year after the date of the enactment of this section.

“(ii) MATTERS INCLUDED.—The rules and procedures established under clause (i) may include the following:

“(I) Rules for ensuring the security of ballots and documenting that prescribed procedures were followed.

“(II) Rules and procedures for ensuring the accuracy of ballot manifests produced by jurisdictions.

“(III) Rules and procedures for governing the format of ballot mani-
fests, cast vote records, and other data involved in risk-limiting audits.

“(IV) Methods to ensure that any cast vote records used in a risk-limiting audit are those used by the voting system to tally the election results sent to the Secretary of State and made public.

“(V) Procedures for the random selection of ballots to be inspected manually during each audit.

“(VI) Rules for the calculations and other methods to be used in the audit and to determine whether and when the audit of each contest is complete.

“(VII) Procedures and requirements for testing any software used to conduct risk-limiting audits.

“(B) Timing.—The risk-limiting audit shall be completed not later than the date that the result of the election is certified by the State.

“(C) Public report.—After the completion of the risk-limiting audit, the State shall
publish a report on the results of the audit, together with such information as necessary to confirm that the audit was conducted properly.

“(c) Effective Date.—Each State and jurisdiction shall be required to comply with the requirements of this section for the regularly scheduled election for Federal office in November 2020, and for each subsequent election for Federal office.”.

(b) Conforming Amendments Related to Enforcement.—Section 401 of such Act (52 U.S.C. 21111) is amended by striking “and 303” and inserting “303, and 303A”.

(c) Clerical Amendment.—The table of contents for such Act is amended by inserting after the item relating to section 303 the following new item:

“Sec. 303A. Risk-limiting audits.”.