



WRITTEN STATEMENT OF LISA L. DIXON

EXECUTIVE DIRECTOR, LAWYERS DEMOCRACY FUND

**AMERICAN CONFIDENCE IN ELECTIONS:
ENSURING EVERY ELIGIBLE AMERICAN HAS THE OPPORTUNITY TO VOTE – AND
FOR THEIR VOTE TO COUNT ACCORDING TO LAW**

**THE COMMITTEE ON HOUSE ADMINISTRATION
SUBCOMMITTEE ON ELECTIONS
U.S. HOUSE OF REPRESENTATIVES**

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Thank you, Chairperson Lee, Ranking Member Sewell, and members of the Subcommittee for holding this hearing on ensuring that all eligible Americans can vote and be confident that their votes count according to law. I am honored to appear before you today and testify on behalf of Lawyers Democracy Fund (LDF), a non-partisan organization that promotes the role of ethics, integrity, and legal professionalism in the electoral process, including safeguarding the right of eligible voters to vote.

We are currently facing a crisis of voter confidence. The peaceful transfer of power, so foundational to our system of government, rests upon voters trusting that their votes were counted and that the winner of the election actually won, even when the winner is not a voter's preferred candidate.

Many polls over the past several years have shown a lack of confidence among voters, and the statistics are sobering. The Pew Research Center reported that 41% of voters said the November 2020 election was not run well.¹ In a poll conducted by the California Institute of Technology, 39% of respondents did not have confidence in the 2020 election results nationwide.² A study

immediately after the 2020 election found that 37% of Americans were not confident that it was fair.³

Public confidence in election administration and outcomes is a bipartisan—indeed, non-partisan—concern. For example, a 2022 study for CNN showed that 37% of Democratic-leaning voters and 71% of Republican-leaning voters share concerns about the election system accurately reflecting the will of the voters.⁴

What is the solution? Restoring voters' trust in the election system and election processes at every step so that voters know that balloting, vote counting, and election results are accurate and that the winner was legitimately elected. Then, the public is less likely to believe claims to the contrary, even if the winner is not the person that voter chose.

How to restore voters' confidence? That is more complicated. There are two aspects to establishing confidence in elections. First, the election must *actually* be fair and free—eligible voters having the opportunity to vote and their votes being counted according to law. Second, the election must *appear* fair and free.

If there were flaws in the election administration process that prevented the election from being generally regarded as free and fair or raised fears that it was not free and fair, voters will not have confidence in the outcome. If the election was entirely fair and free but did not *appear* to be, voters still will lack confidence in the outcome. Solutions to our crisis in voter confidence must be geared to both the actual integrity of the election and also the appearance of integrity of the election, to prevent large segments of the population from believing that an election was not free, fair, and open and that the result was not correct.

The Constitution wisely reserved the power of election administration to the states in Article I, Section 4. Conducting, managing, and regulating elections at the local level has many benefits. The Founders' wisdom continues to manifest itself in new ways. For example, our dispersed, federalist system makes it extremely unlikely that an entire election could be “hacked,” thwarting widespread cyber disruptions of elections that will increasingly be attempted by bad actors around the world.

Another example is maintaining primary state and local control over elections. Both show positive results in polling on voters' confidence. The vast majority of voters still trust that their own ballots were counted. That is good. Voter confidence decreases the farther away from the voters the control and administration of the election lies. That is, voters still tend to trust their local election officials even when they do not trust the election results nationwide.⁵ The voter's measure of the quality of the performance of a local election official rests, in large measure, on that official's performance during each election. That, in and of itself, should create a bipartisan interest in effective and transparent election administration.

Rather than leaving regulation of elections to Congress or the federal Executive Branch, state legislatures are assigned, and should continue to have, the primary responsibility for setting the administrative rules for conducting our elections, with local election officials having primary responsibility for administering elections. Congress has a role of checking state legislatures, and

has done so in certain areas such as the Help America Vote Act, the Uniformed and Overseas Citizens Absentee Voting Act, and the Voting Rights Act. The result is a network of state and federal laws implemented at the local precinct level by local election officials.

While the work of election administration is complex and challenging, it is vitally important because it protects one of our most precious constitutional rights. Significantly, the American people's confidence in the election process derives not only from the controlling laws and procedures but also from local election officials' fair, competent, and honest implementation of those laws and procedures.

States should follow these six principles to restore voters' confidence, helping voters to have confidence that only eligible voters are voting and their votes are being counted according to the rules governing the election:

1. The rules governing the election are established well ahead of the election and not changed close to it.
2. The rules governing the election are clear and designed to address many different situations and eventualities that may occur during the voting process.
3. The rules governing every aspect of the election system help ensure the fairness of the voting process while ensuring that eligible voters have an ample opportunity to vote.
4. The rules and processes are super-transparent and well-publicized, and election officials educate the voters on the rules.
5. All guidance and regulations regarding, and procedures for, running the election are consistent with applicable federal and state statutes and are established according to the governing administrative procedural rules.
6. Election officials follow the laws, regulations, rules, procedures, and guidance that govern the running of the election.

The federal government historically has only played, and should continue to only play, a limited role in implementing these principles. The American Confidence in Elections Act (ACE Act) operates within the federal government's limited purview to help increase American's confidence in election processes and outcomes without imposing on the states' primary constitutional duty and responsibility to establish rules of election administration.⁶

The ACE Act establishes rules in two areas of clear federal regulatory authority: the United States Postal Service (U.S.P.S.), and the District of Columbia. The ACE Act would require the U.S.P.S. to deliver expeditiously any election mail, regardless of appropriate postage and to deliver all election mail received that day as practicable.⁷ Regarding Washington, D.C., the ACE Act would turn D.C. into a model for election integrity protections and protecting voter confidence. It would require voters to present identification for a ballot to be issued to the voter, with free IDs available for those who request one; proscribe annual updates of the voter registration rolls; limit the persons who can handle a voter's ballot; require certain election results to be published on Election Day; prevent non-citizen voting; provide rights of observation; require notice and an opportunity to cure be provided to a voter whose mail ballot risks being rejected for a defect; and provide voters the opportunity to return ballots to drop boxes as long as certain requirements for the security and protection of those boxes are met.⁸

Principle #1: Rules Established Ahead of the Election and Not Changed Close to It, Or Even After the Election

Establishing the rules well in advance is a basic due process requirement that protects the rights of all voters. It also allows all stakeholders—voters, election officials, observers, the media, political leaders, candidates, and the general public—to know what the rules are, and assists election administrators in running the election smoothly.

Part of what fueled the crisis of voter confidence over the 2020 election cycle was changes made by states and localities to respond to the exigencies of the COVID-19 pandemic. Some of these changes were made through the normal process but implemented quickly.

For example, Nevada changed its statutes to become an all-mail voting state, but implemented the change so quickly that it could not prepare to implement the new balloting process smoothly. It did not have time to clean its voter rolls prior to mailing a ballot to every name recorded in its outdated registration system, which resulted in tens of thousands undeliverable ballots being mailed.⁹ This undermined voter confidence by generating social media posts showing of piles of ballots in trash cans, in apartment mailrooms, and even on the ground.¹⁰ Ballots were mailed to 75,000 known inactive voters in Clark County who were not removed before the federal deadline for voter roll clean-up prior to an election.¹¹ There were enough problems that local officials had to order a special election for one local office as they “found discrepancies that we can’t explain that would cast a doubt on whether or not that margin of victory is solid.”¹² All of these problems, which occurred partially because of changes made by the legislature, seriously undermined voters’ confidence in the 2020 election results in Nevada.

Some of the changes in 2020 were directed through litigation, using COVID-19 as justification to require changes to state laws and procedures by court order.¹³ Federal courts use the *Purcell* principle as a guideline in election-related litigation, to refrain from making court-ordered changes close to an election to avoid voter confusion.¹⁴ Yet, this prudential rule is applied inconsistently, and it has not been adopted by many state courts.

And some of the changes in 2020 were accomplished by executive order, guidance from state election officials, or independent action of local election offices. All of these means of changing the rules through generally less democratically accountable methods fueled voter confusion and voter distrust, and it often created problems in administration of the election as election officials scrambled to apply new procedures, train staff, and educate voters on the eve of the election.

Although the 2000 presidential election in Florida might be a distant memory, we should not forget that seven justices of the Supreme Court found that Florida’s failure to establish clear rules for the counting of ballots ahead of the elections resulted in such disparate treatment of similarly situated voters to be a violation of the Equal Protection Clause of the 14th Amendment.¹⁵ Florida’s *ad hoc* approach to counting ballots led many Americans to distrust the 2000 election. That experience led many states to require clear standards for processing and counting ballots well in advance of elections. For example, Virginia adopted a lengthy guide to

hand-counting ballots with clear rules for determining voter intent and whether and how a ballot may be counted when ballots are marked unconventionally.¹⁶

Principle #2: Clear Rules Addressing Many Known Eventualities

The rules governing the election must be clear so that voters and election workers can easily understand them, and they must cover many of the circumstances that can and do arise during an election. For example, what happens if there is an emergency, such as a loss of power, at a polling place? What happens if one of the counting machines malfunctions? How are voters who need assistance completing their ballots protected so that their true intent is what is recorded on the ballot? What information is necessary for an absentee ballot to be counted? What happens if a precinct runs out of ballots and what can be done in advance to ensure that does not happen?

State legislatures need to consider these questions and many others to pass clear statutes with clear standards and procedures. State and local election officials need to adopt detailed regulations, guidance, and procedures within the bounds of those statutes to address the many known eventualities that could occur and develop a clear way for election workers to handle them.

Principle #3: Rules for Every Part of the Process Protect Fairness While Ensuring Eligible Voters Can Vote

The rules governing the election at each step of the process must protect the fairness of the election and ensure eligible voters can vote and have their votes counted accurately. They promote confidence in the election by ensuring that eligible voters' votes are actually counted according to law. When election changes are implemented at the expense of important election integrity safeguards, voter confidence is greatly undermined. Recognizing the crisis of voter confidence since 2020, states have been strengthening their election systems through better laws and procedures.

There is a popular narrative in the media and among progressive election activists that lax voting laws increase turnout and voter's confidence in the election. Studies have shown the opposite, however.¹⁷ Data shows that voter identification laws, for example, either increase turnout or have no effect on turnout.¹⁸

An October 2022 study showed that voters' confidence in the 2022 election was higher than the 2020 election but still lower than the 2018 election. Interestingly, the study showed that voters' perceptions of how easy it would be to vote in 2022 were on par with 2018, after a noticeable dip in 2020.¹⁹ What happened in the interim? The changes due to the COVID-19 pandemic and reforms in many states to restore voters' confidence in the election process.

There are many ways states can increase voter confidence by protecting the fairness of the election and ensuring eligible voters can vote and have their votes counted according to law. Here are a few key examples.

Voter Identification Requirements

A popular reform that increases voter confidence is voter identification. Voter ID laws are a commonsense election integrity safeguard that are widely supported by voters on both sides of the aisle. A 2022 study found that 79% of Americans—97% of Republicans, 84% of independents, and 53% of Democrats—supported a photo ID requirement to vote.²⁰ A 2021 study placed the support of voter ID laws at 75% among likely U.S. voters.²¹ This support was strong across partisan and racial lines: 89% of Republicans, 60% of Democrats, 77% of unaffiliated voters and 69% of black and 82% of other minority voters nationwide believe voters should be required to show *photo* identification such as a driver’s license before being allowed to vote.²²

In a polarized time when not many policy issues receive multi-partisan, multi-racial support, support for voter identification consistently polls at high percentages across all demographics. Overwhelming public support for photo voter ID has been consistent: 84% support for photo voter ID in 2022, 80% support for voter ID in 2016, 77% support in 2012, and 80% in 2006.²³

When voters are presented directly, through a ballot measure, with the question of whether their state should have a voter ID requirement for voting, they vote by large margins to adopt voter ID requirements. Nebraska Initiative 432, the Photo Voter Identification Initiative, was on the ballot in Nebraska as an initiated constitutional amendment on November 8, 2022 and passed 65% to 34%.²⁴ In Arkansas, an amendment to require individuals to present valid photo ID to cast non-provisional ballots in person or absentee was on the ballot as a legislatively referred constitutional amendment on November 6, 2018, and it won 79% to 20%.²⁵

In the past several years, states have adopted or strengthened their voter identification requirements due to this immense popular support and the protection it provides to the election process. Missouri, Nebraska, and Ohio established photo voter ID requirements; Wyoming established a photo or non-photo ID requirement; Montana now requires voters without an acceptable form of ID to present two forms of alternative ID; and Arkansas removed the affidavit exception to presenting a photo ID.²⁶

When voters vote outside the polling place by absentee or mail ballot, they should receive the same protections as voters who choose to vote at a polling place. States are increasing the security of their absentee ballot verification procedures to ensure the votes of eligible voters who vote by mail are counted according to law. Florida’s 2021 election reform law (SB 90) requires voters to provide their driver’s license number, state ID number, or the last four digits of their social security number to verify their absentee ballots and applications.²⁷ Georgia’s 2021 election reform (SB 202) requires voters to submit a photo ID along with their absentee ballot or to verify their identity by providing their state ID number or the last four digits of their Social Security number.²⁸

The ACE Act would assist states in verifying the identity of those voting by requiring identification to receive a mail ballot or vote by mail in certain circumstances, allowing states to

require proof of citizenship for those registering with the federal voter registration form, and updating the REAL ID Act to specify whether a voter is a citizen on the face of a REAL ID.²⁹

In its report titled “Building Confidence in U.S. Elections,” the bipartisan Commission on Federal Election Reform, commonly called the Carter-Baker Commission, recognized that voter ID boosts confidence in elections over two decades ago:

“Americans are losing confidence in the fairness of elections The electoral system cannot inspire public confidence if no safeguards exist to deter and detect fraud or to confirm the identity of voters. Photo IDs currently are needed to board a plane, enter Federal buildings, and cash a check. Voting is equally important.”³⁰

Voters support voter ID laws because they increase voter confidence in the fairness of elections by ensuring that only eligible voters can vote.

Accurate Voter Registration Lists

Inaccurate voter registration lists undermine voter confidence by providing opportunities for bad actors to take advantage of incorrect entries by voting on behalf of someone improperly registered, where they no longer live, or twice. President Obama’s bipartisan Presidential Commission on Election Administration asserted that accurate voter rolls are “essential to the management of elections” for how they benefit “the ability of people to vote, of election offices to detect problems, and of courts and others monitoring elections to detect election fraud or irregularities,” and how they can help the processing of voters at polling places, preventing long lines from developing.³¹ Accurate voting rolls also are critically important to voting by mail.

Examples of inaccurate voter rolls are unfortunately common: California had 5 million inactive voters who had moved away or died on its voting rolls³²; the District of Columbia has voter rolls so messy that 11% of ballots mailed to voters in 2020 were returned as undeliverable and signature gatherers complain that their jobs are complicated by the messy rolls³³; Virginia recently discovered nearly 19,000 dead voters from its registration rolls.³⁴ A 2012 nationwide study by the Pew Center on the States found that 24 million, or 1 in 8, voter registrations were invalid or contained significant inaccuracies, that 1.8 million deceased persons were on the voter rolls, and that 2.75 million people were registered in multiple states.³⁵

The National Voter Registration Act requires states to update their voter rolls,³⁶ and states have addressed this problem by adding specific requirements for voter registration list maintenance. Recent changes include legislation in Florida that enhanced processes for address list maintenance activities, to facilitate the removal of voters who have moved; improved the information governmental entities must provide state and local election officials for list maintenance activities; and ensured such information is provided more frequently.³⁷ Mississippi established procedures for moving outdated voter registration records to an inactive list prior to permanent removal and for the sharing of driver’s license data between the Department of Public Safety and election officials.³⁸

The ACE Act would assist states in maintaining their voter rolls by removing some roadblocks currently in federal law, requiring the federal government to provide voter information to election officials, and flagging potentially ineligible voters for removal.³⁹

The starting point for citizen trust in elections should be accurate voter registration rolls.

Preventing Non-Citizens from Voting

For several years our country has been fixated on foreign meddling in our elections. The Federal Election Campaign Act prohibits foreign organizations and individuals from spending so much as a dollar to influence the outcome of our federal, state, and local elections.⁴⁰ Legislation is pending in both houses of Congress which purports to stop some form of foreign influence in our elections.

Of course, there is no greater point of influence in our elections than the actual act of voting. If foreign individuals and non-citizens are not allowed to influence the public debate about our elections, then likewise they should likewise be prohibited from voting to influence our elections.

In addition to removing our democratic elections and representation from the votes of our citizens, allowing non-citizens to vote in state and local elections undermines the public's confidence in election outcomes. A recent survey found that 84% of voters, including 75% of Hispanic voters, 77% of Democratic voters, and 83% of independent voters, believed that only citizens should vote in American elections.⁴¹

Non-citizen voting does not increase turnout and may even decrease turnout, all while creating administrative hassles for election officials.⁴² When non-citizens may vote in state and local elections, election officials must run two elections simultaneously where federal candidates are on the ballot, as non-citizens may not vote in federal elections.⁴³ Only 35 non-citizens registered to vote in San Francisco in the first two years in which they were allowed to register and vote in school board elections.⁴⁴ In Washington, DC, an estimated 50,000 non-citizens can now vote for the city council and school board. This includes 21,000 illegal residents and diplomats with loyalty to countries not friendly to the United States, such as Russia or China.⁴⁵

In 2022, a ballot measure in Ohio banning localities from allowing non-citizens to vote passed with 76% of the vote, and a ballot measure in Louisiana prohibiting non-citizens from registering to vote or voting passed with 73% of the vote.⁴⁶ These states are protecting the integrity of their election processes by passing these measures, which will increase confidence in election outcomes.

To prevent foreign influence in our elections and aid the efforts of the states to prevent non-citizen voting, the ACE Act would require states to keep separate voter registration lists of those who are eligible to vote in state and local elections only; require states to issue ballots to non-citizens that only include those offices that non-citizen voters are eligible to vote on; provide notice to election officials whenever someone is excused from jury duty in the federal courts due to being a non-citizen; clarifies that it is a crime to vote in a federal election if a person is a non-

citizen; and make it illegal for any foreign national to make a contribution to a state or local ballot initiative.⁴⁷

Protecting Transparency

Election officials should not be able to obstruct observers, fail to disclose the procedures for voting, or not meet required deadlines for reporting information. When there is confusion or lack of transparency in the voting process, interested parties appeal to the courts, which inevitably creates more distrust of the system. When the public has information about the voting process and believes that the process is open to inspection and verification throughout every step, voters will have more confidence in the entire election process.

States have recently strengthened protections for the transparency of elections. As of January 2023, 24 states had restricted or prohibited the use of private funding to run election offices.⁴⁸ Private funding of election offices in 2020 reduced voter confidence, with citizens concerned over the unseen amount of influence private actors and interests had on the administration of elections. After DeKalb County, Georgia, found a work around to circumvent the ban on private funding in 2023, Georgia updated its law to close this loophole.⁴⁹

States have also expanded and protected observer access to every part of the election process. Observers assist with the appearance of integrity in the election, and they can also assist with the actual integrity by flagging problems through appropriate channels so that they can be quickly remedied before voters are disenfranchised. In 2022, Utah passed HB 387, which allows preregistered voters to serve as poll watchers, permits poll watchers to observe the ballot curing process, and facilitates effective observation of ballot adjudication in large cities.⁵⁰ Texas specified in 2021 that observers can watch all activities relating to closing a polling place, ballot signature verification, ballot curing, and voter assistance efforts.⁵¹

Principle #4: Transparent and Well-Publicized Rules

The rules governing the election should be well-publicized, using the internet or another readily accessible means. The public should not have to read a state's register or code of regulations to determine what rules govern the casting of ballots. Likewise, election officials should strive to present the rules in a consumable format, through the use of brochures, social media posts, and educational formats that voters can view and consume as they go about their normal lives.

A great threat to transparent and well-publicized election rules is ranked-choice voting (RCV), which confuses voters and election officials. In a recent election in Oakland (Alameda County), California, the wrong person was sworn in as the winner after an RCV election and the error was discovered two months later. RCV lacks transparency so much that even election officials cannot determine what is happening with the election process. *The Wall Street Journal* stated: “[O]ne reason that Alameda County’s goof wasn’t noticed for almost two months is that RCV tabulation is complicated and opaque.”⁵² The Democratic mayoral primary in New York City in June of 2021, conducted using RCV, took nearly a month to certify and 140,000 ballots—nearly 15% of the total cast—were exhausted and those voters effectively disenfranchised.⁵³

RCV confuses voters and election officials, may delay results, and is not transparent, with a complicated formula for counting votes, all of which undermine confidence in the election.

Again, every step of the election administration process should be open and transparent.

Principle #5: Guidance and Procedures Follow the Law

It is vital that election officials clarify the meaning of election statutes and apply them to particular situations through their regulations, guidance, and procedures. But to protect voter trust in the system, these rules must be both within the bounds of the statute passed by the legislature and passed according to the administrative procedures that govern the issuing of that type of directive in that state.

This was another problem that plagued the 2020 election. While Michigan law clearly required signatures on absentee ballot applications and return envelopes to sufficiently agree with those on the voter file to be valid, the Secretary of State issued guidance in October 2020 requiring local clerks in charge of reviewing signatures to *presume* the signatures on absentee ballot applications and ballots were valid and to further accept the signatures as valid if they contained “any redeeming qualities.” With support from LDF, Allegan County Clerk Robert Genetski successfully challenged this guidance. The Michigan Court of Claims held in March 2021 that the guidance violated the Michigan Administrative Procedures Act: the Secretary of State had not followed the procedures for establishing a rule of this level of importance.⁵⁴

Principle #6: Election Officials Follow the Law

Not only do state legislatures and election officials need to establish clear, transparent rules well in advance of the election that follow the procedures for establishing rules and protect the fairness and perceived integrity of the process, but election officials must also follow those rules. An election system can be perfect on paper but the entire system would collapse if election officials did not actually follow the rules and implement them consistently. Failure to follow the election rules often results in voter suppression by government malfeasance.

The most striking recent example of this was in Luzerne County, Pennsylvania, in 2022. Despite clear requirements in the Pennsylvania Election Code that a county must have paper ballots equal to the number of registered voters in the county, Luzerne County did not have nearly enough paper ballots for its voters. The shortage was so extreme that over 40 precincts ran out of ballots, many of them early in the morning on Election Day. This disenfranchised an unknown number of voters, yet the county has provided no explanation for how this could have occurred.

Two Luzerne County voters who were disenfranchised last fall sued to vindicate their constitutional rights and ensure that this does not happen again. LDF is honored to support these two voters in their efforts.⁵⁵

When voters do not know the rules governing the voting process or see them inconsistently applied, they will lose confidence in the election process and not turn out to vote. In 2020, those who voted were more likely to believe that elections are free and fair than those who did not vote.⁵⁶ Giving every eligible voter the opportunity to vote requires not only giving them the actual opportunity to vote but also giving them the confidence to vote knowing that their vote will be counted according to the law. Baseline requirements of due process, transparency, and good election administration should be uncontroversial.

Thank you for the opportunity to appear before you today on the important issue of voter confidence, and I am happy to take questions.

¹ *Sharp Divisions on Vote Counts, as Biden Gets High Marks for His Post-Election Conduct: Voters' evaluations of the 2020 election process*, PEW RESEARCH CENTER (Nov. 20, 2020), <https://www.pewresearch.org/politics/2020/11/20/voters-evaluations-of-the-2020-election-process/>.

² R. Michael Alvarez, et al., *Voter Confidence in the 2020 Presidential Election: Nationwide Survey Results*, at 3, CAL. INST. OF TECH. (Nov. 19, 2020), https://static1.squarespace.com/static/5ace8a6b45776eba2e40cbee/t/5fb6d361f0ceb67888b03c1c/1605817186684/Voter_Confidence_2020_Survey_Report.pdf.

³ Katherine Ognyanova, et al., *The COVID States Project: A 50-State COVID-19 Survey, Report #29: Election Fairness and Trust in Institutions*, COVIDSTATES.ORG (Dec. 2020), <https://osf.io/j8v3u/download>

⁴ SSRS, Overview, Study for CNN Conducted June 13-July 13, 2022, at 4, <https://www.documentcloud.org/documents/22090467-rel9d-elections46>; see also Eli McKown-Dawson, *Voters' confidence in vote counting — before and after the 2022 congressional election*, YOUGOV (Jan. 9, 2023) (finding that before the 2022 election only 49% of Democratic voters, 26% of independent voters, and 12% of Republican voters very confident in vote counting, and after the 2022 election those numbers rose to 72% for Democratic voters, 33% for independent voters, and 19% for Republican voters). But see Justin McCarthy, *Confidence in Election Integrity Hides Deep Partisan Divide*, GALLUP (Nov. 4, 2022) (showing that 85% of Democratic voters and 40% of Republican voters were confident that votes would be accurately cast and counted in 2022).

⁵ Alvarez, *supra* note 2, at 2–3 (finding that 90% of voters were confident their own ballots were counted correctly, 81% were confident that votes were counted correctly in their counties, 78% in their states, and only 58% across the whole country).

⁶ American Confidence in Elections Act (ACE Act), H.R. 8528, 117th Cong. (2022).

⁷ *Id.* § 132.

⁸ *Id.* § 142.

⁹ Rory Appleton, *More than 223K mailed ballots returned undelivered in primary*, LAS VEGAS REVIEW-JOURNAL (Aug. 14, 2020), <https://www.reviewjournal.com/news/politics-and-government/clark-county/more-than-223k-mailed-ballots-returned-undelivered-in-primary-2095001/>.

¹⁰ Adam Paul Laxalt (@adamlaxalt), TWITTER (Nov. 2, 2020, 11:26 AM), <https://twitter.com/AdamLaxalt/status/1323300475093966850> (Tweet thread by then-Nevada Attorney General Adam Paul Laxalt detailing ballots in the trash, sent to deceased people, and on top of mailboxes, individuals receiving more than one ballot, and other problems).

¹¹ Morgan Phillips, *Nevada U.S. attorney announces 'district election officer' to handle growing concerns of election fraud*, FOX NEWS (Oct. 19, 2020), <https://www.foxnews.com/politics/nevada-u-s-attorney-district-election-officer-concerns-election-fraud>.

¹² Caroline Bleakley, et al., *Clark County Commission certifies election results, except District C race; 5 vote twice*, LAS VEGAS 8 NEWS NOW (Nov. 18, 2020), <https://www.8newsnow.com/news/local-news/clark-county-to-certify-election-at-1-p-m/>.

¹³ See, e.g., Pa. Democratic Party v. Boockvar, 238 A.3d 345 (Pa. 2020). See also Marc Elias, *Four Pillars To Safeguard Vote by Mail*, DEMOCRACY DOCKET (Mar. 18, 2020), <https://www.democracydocket.com/opinion/four-pillars-to-safeguard-vote-by-mail/>; Zach Montellaro and Elena Schneider, *Inside the Democratic Party's plan to prevent vote-by-mail disaster*, POLITICO (Aug. 21, 2020), <https://www.politico.com/news/2020/08/21/democrats-vote-by-mail-plan-399671>.

¹⁴ Purcell v. Gonzalez, 549 U.S. 1 (2006) (*per curiam*). For an example of the Purcell principle's application, see Republican Nat'l Comm. v. Democratic Nat'l Comm., 140 S.Ct. 1205, 1207 (2020) (citing Purcell) ("By changing the election rules so close to the election date and by affording relief that the plaintiffs themselves did not ask for in their preliminary injunction motions, the District Court contravened this Court's precedents and erred by ordering such relief. This Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.").

¹⁵ Bush v. Gore, 531 U.S. 98, 105-06, 109 (2000); *Id.* at 134 (Souter, J., and Breyer, J., dissenting).

¹⁶ Virginia State Board of Elections, *Virginia's Guide to Hand-Counting Ballots: Can this vote count? A complete guide to hand-counting printed ballots for elections and recounts*, VIRGINIA.GOV (Sept. 2021), <https://www.elections.virginia.gov/media/formwarehouse/election-management/election-day-instructions-and-forms/2021-Virginia-Guide-to-Handcounting-Ballots.pdf>.

¹⁷ For example, studies of early voting indicate that it does not increase turnout and can decrease confidence in the voting system. Nathaniel Rakich, *Early-Voting Laws Probably Don't Boost Turnout*, FIVETHIRTYEIGHT (Jan. 30, 2019), <https://fivethirtyeight.com/features/early-voting-laws-probably-dont-boost-turnout/>; Rich Morin, *Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform*, PEW RESEARCH CENTER (Sept. 23, 2013), <https://www.pewresearch.org/fact-tank/2013/09/23/study-early-voting-associated-with-lower-turnout/>; Jo Ingles, *Early Voting in Ohio Was Up This Year, But Not Because of Reforms*, WKSU (Dec. 28, 2016), <https://www.wksu.org/government-politics/2016-12-28/early-voting-in-ohio-was-up-this-year-but-not-because-of-reforms#stream/0>.

¹⁸ Enrico Cantoni & Vincent Pons, *Strict ID Laws Don't Stop Voters: Evidence from a U.S. Nationwide Panel, 2008–2018, Working Paper No. 25522*, NAT'L BUREAU OF ECONOMIC RESEARCH, (Feb. 2019, Rev'd May 2021), <https://www.nber.org/papers/w25522>; Jeffrey J. Harden and Alejandra Campos, *Who benefits from voter identification laws?*, PNAS (Feb. 6, 2023), <https://www.pnas.org/doi/10.1073/pnas.2217323120>.

¹⁹ *Two Years After Election Turmoil, GOP Voters Remain Skeptical on Elections, Vote Counts*, PEW RESEARCH CENTER (Oct. 31, 2022), <https://www.pewresearch.org/politics/2022/10/31/two-years-after-election-turmoil-gop-voters-remain-skeptical-on-elections-vote-counts/>.

²⁰ Nicole Willcoxon and Lydia Saad, *Eight in 10 Americans Favor Early Voting, Photo ID Laws*, GALLUP (Oct. 14, 2022), <https://news.gallup.com/poll/403052/eight-americans-favor-early-voting-photo-laws.aspx>.

²¹ *75% Support Voter ID Laws*, RASMUSSEN REPORTS (Mar. 17, 2021), https://www.rasmussenreports.com/public_content/lifestyle/general_lifestyle/march_2021/75_support_voter_id_laws.

²² *Id.*

²³ Memorandum from Jason Snead, Executive Director, Honest Elections Project to National Conference of State Legislatures (Apr. 27, 2022), https://www.honestelections.org/wp-content/uploads/2022/04/April-polling-memo_NCSL21739666.pdf ("82% of low-income voters, 72% of Black voters, and an astounding 90% of Hispanic voters . . . favor photo ID. . . . 75% of voters say they would vote for a ballot initiative requiring everyone to show photo ID in person or write an ID number on a mail ballot, including 66% of Democrats."); Justin McCarthy, *Four in Five Americans Support Voter ID Laws, Early Voting*, GALLUP (Aug. 22, 2016), <https://news.gallup.com/poll/194741/four-five-americans-support-voter-laws-early-voting.aspx> ("Requiring all voters to provide photo identification at their voting place in order to vote Favor: 80%, Oppose: 19%"); *Broad Support for Photo ID Voting Requirements*, PEW RESEARCH CENTER (Oct. 11, 2012), <https://www.pewresearch.org/politics/2012/10/11/broad-support-for-photo-id-voting-requirements> ("By 77% to 20%, voters favor a requirement that those voting be required to show photo ID. Opinion about this is little changed from six years ago, when 80% of voters supported voter photo ID requirements.").

²⁴ Nebraska Sec'y of State, *Official Results: General Election – November 8, 2022*, NEBRASKA.GOV (Dec. 5, 2022), <https://electionresults.nebraska.gov/resultsSW.aspx?text=Race&type=PA&map=CTY>.

²⁵ Arkansas Sec'y of State, November 6, 2018: 2018 General Election and Nonpartisan Judicial Runoff, CLARITYELECTIONS.COM, Issue No. 2 (June 6, 2019) https://results.enr.clarityelections.com/AR/92174/Web02-state.220747/#/c/C_4. Note that modifications to voter ID provisions or efforts to strengthen voter ID provisions do not always pass. For example, an effort to improve Arizona's voter ID law in 2022 failed to pass by less than one percentage point. See Arizona Sec'y of State, *State of Arizona Official Canvass: General Election – Nov 08, 2022*,

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²⁶ Mo. Rev. Stat. § 115.427 (updated by HB 1878 in 2022); Neb. Initiative 432 (2022); Ohio Rev. Code §§ 3501.01(AA)-(DD), 3505.18(A) (updated by HB 458 in 2023); Wyo. Stat. Ann. §§ 22-1-102, 22-2-119, 22-3-118 (updated by HB 0075 in 2022); Mont. Code Ann. §§ 13-2-110, 13-13-14 (updated by SB 169 in 2021); Ark. Code Ann. § 27-16-801(a)(2)(B) (updated by HB 1112 in 2021).

²⁷ Chapter No. 2021-11, Florida Session Laws (May 6, 2021), <https://www.flsenate.gov/Session/Bill/2021/90>.

²⁸ Senate Bill 202 As Passed, Georgia General Assembly (Mar. 25, 2021), <https://www.legis.ga.gov/legislation/59827>.

²⁹ ACE Act, *supra* note 6, §§ 123-125.

³⁰ *Building Confidence in the U.S. Elections*, COMMISSION ON FEDERAL ELECTION REFORM, at ii, 18 (Sept. 2005) https://www.eac.gov/sites/default/files/eac_assets/1/6/Exhibit%20M.PDF.

³¹ Presidential Commission on Election Administration, *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration* (Jan. 2014), at 22–23, <http://web.mit.edu/supportthevoter/www/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

³² Susan Crabtree, *Calif. Begins Removing 5 Million Inactive Voters on Its Rolls*, REAL CLEAR POLITICS (June 20, 2019), https://www.realclearpolitics.com/articles/2019/06/20/calif_begins_removing_5_million_inactive_voters_on_its_rolls_140602.html.

³³ Martin Austermuhle, *Data Errors Imperil D.C.'s Participation In Group That Cleans Up States' Voter Rolls*, DCIST (Feb. 9, 2022), <https://dcist.com/story/22/02/09/dc-voter-rolls-problems/>.

³⁴ Nick Iannelli, *Virginia discovers nearly 19,000 dead people on voter rolls*, WTOP (Apr. 19, 2023), <https://wtop.com/virginia/2023/04/virginia-discovers-nearly-19000-dead-people-on-voter-rolls/>.

³⁵ *Inaccurate, Costly, and Inefficient: Evidence That America's Voter Registration System Needs an Upgrade*, THE PEW CENTER ON THE STATES, at 1 (Feb. 2012) https://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/pewupgradingvoterregistrationpdf.pdf.

³⁶ 52 U.S.C. § 20507.

³⁷ Fla. Stat. §§ 98.065, 98.0655, 98.075, 98.093 (updated by SB 7050 in 2023).

³⁸ Miss. Code Ann §§ 23-15-152, 23-15-153, 23-15-15 (updated by HB 1310 in 2023).

³⁹ ACE Act, *supra* note 6, § 121.

⁴⁰ 52 U.S.C. § 30121.

⁴¹ Memorandum, *supra* note 23.

⁴² John Ketcham, *Noncitizen Voting*, MANHATTAN INSTITUTE, at 2 (Feb. 2022) <https://media4.manhattan-institute.org/sites/default/files/MI-Ketcham-Report-Noncitizen-Voting.pdf>.

⁴³ 18 U.S.C. § 611.

⁴⁴ Olga R. Rodriguez, *San Francisco-Immigrant Voting*, ASSOCIATED PRESS (Oct. 24, 2018), <https://apnews.com/article/north-america-us-news-ap-top-news-elections-voting-8daea73443164bb1a4616ebb3c80f462>.

⁴⁵ Victoria Marshall, *House Republicans Block DC Law That Would Allow Illegal Residents To Vote*, THE FEDERALIST (Feb. 10, 2023), <https://thefederalist.com/2023/02/10/house-republicans-block-dc-law-that-would-allow-illegal-residents-to-vote/>.

⁴⁶ Ohio Sec'y of State, *2022 Official Election Results: General Election: November 8, 2022: Issues Summary*, OHIO SOS <https://www.ohiosos.gov/elections/election-results-and-data/2022-official-election-results/>; Louisiana Sec'y of State, *Official Elections Results: Results for Election Date: 12/10/2022*, SOS.LA.GOV <https://voterportal.sos.la.gov/static/2022-12-10/resultsRace/Statewide>.

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⁴⁸ Sarah Lee and Hayden Ludwig, *States Banning or Restricting "Zuck Bucks"—UPDATED 01/20/2023*, CAPITAL RESEARCH CENTER (Jan. 20, 2023), <https://capitalresearch.org/article/states-banning-zuck-bucks/>.

⁴⁹ Ga. Code §§ 21-2-18, 21-2-71, 21-2-212 (updated by SB 222 in 2023); Fred Lucas, "How 1 Georgia County Skirted 'Zuckerbucks' Ban to Bank \$2 Million Election Grant," *The Daily Signal* (Feb. 3, 2023), <https://www.dailysignal.com/2023/02/03/how-1-georgia-county-skirted-zuckerbucks-ban-to-bank-2-million-election-grant/>.

⁵⁰ Utah Code Ann. §§ 20A-3a-801, 20A-4-303.

⁵¹ Tex. Election Code §§ 127.096, 129.023, 33.059, 61.001, 61.003, 33.001–.061.

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⁵⁴ Opinion and Order Granting Summary Disposition in Part to Plaintiffs and Granting Summary Disposition in Part to Defendants, *Genetski v. Benson*, No. 20-000216-MM (Mich. Ct. Claims Mar. 9, 2021).

⁵⁵ Complaint, *French v. County of Luzerne*, No. 3:23-cv-00538-MEM (M.D. Pa. Mar. 28, 2023), <https://lawyersdemocracyfund.org/wp-content/uploads/2023/03/French-v.-Luzerne-Complaint-File-Stamped.pdf>.

⁵⁶ *Medill School of Journalism/Ipsos Poll: Non-voters in 2020 U.S. Election*, IPSOS (2020), at 6, <https://dc.medill.northwestern.edu/wp-content/uploads/2020/12/Topline-Medill-Non-Voter-Poll-121520.pdf>; Knight Foundation, *The 100 Million Project: The Untold Story of American Non-Voters* (Feb. 18, 2020), <https://knightfoundation.org/reports/the-100-million-project/> (“Non-voters are less likely to believe votes are counted fully and accurately.”).