


# Six Principles to Restore Voter Confidence in Elections

November 2023

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1. The rules governing an election should be firmly established well ahead of the voting period.
  2. The rules governing an election should be clear and designed to address the many different situations and eventualities that may occur during a voting process.
  3. Every rule governing the election system should help ensure the fairness of the voting process while ensuring that eligible voters have an ample opportunity to vote.
  4. The rules and processes should be entirely transparent, well-publicized, and widely known and understood.
  5. All guidance and regulations regarding, and procedures for, running the election must be consistent with applicable federal and state statutes and established according to the governing administrative procedural rules.
  6. Election officials should follow all laws, regulations, rules, procedures, and guidance that govern the running of the election.

America is currently facing a crisis of voter confidence. Many polls over the past several years have shown a lack of confidence among voters, and the statistics are sobering. One study found that forty-one percent (41%) of voters said the November 2020 election was not run well.<sup>1</sup> Another study found that thirty-nine percent (39%) of voters nationwide did not have confidence in the 2020 election

results.<sup>2</sup> Yet another study found that thirty-seven percent (37%) of Americans were not confident that the election was fair.<sup>3</sup>

Public confidence in election administration and outcomes is a bipartisan—indeed, non-partisan—concern. In 2022 a study showed that thirty-seven percent (37%) of Democrat-leaning voters and seventy-one percent (71%) of Republican-leaning voters were concerned that the election system did not accurately reflect the will of the voters.<sup>4</sup>

The peaceful transfer of power, so foundational to our system of government, rests upon voters, candidates, and all Americans trusting in the results of every election. Voters must believe their votes were counted and candidates must have faith that the winner of the election actually won—even if they themselves lose.

The following six principles, if followed, would restore voter confidence in election systems and outcomes.

- 1. The rules governing an election should be firmly established well ahead of the voting period.**

Officials can restore voter confidence by refraining from making last second additions or changes to election rules. 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 during the 2020 election cycle was changes made by states and localities to respond to the COVID-19 pandemic.

Some changes were made through the normative legislative process. For example, Nevada changed its statutes to become an all-mail voting state, but implemented the change so quickly that it could not implement the new balloting process smoothly. The many resulting problems seriously undermined voters' confidence in the 2020 election results in Nevada.<sup>5</sup>

Other election rule changes in 2020 were mandated by court order after suits were brought against the then-current regulations during the pandemic.<sup>6</sup> While federal courts should use the *Purcell* principle—the principle that courts should not order changes shortly before an election to avoid voter confusion—as a guideline in

election-related litigation, this prudential rule is applied inconsistently, and it has not been adopted by many state courts.<sup>7</sup>

Some of the changes in 2020 were accomplished by executive order, guidance from state election officials, or independent action of local election offices. These decrees fueled voter confusion and voter distrust as voters saw how these changes in rules could impact election security, especially when the changes 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.

While the election of 2020 is an extreme example, it showcases the decline in voter confidence that can occur when elections are not conducted under well-established rules. State legislatures, election administrators, and courts must all commit to making firm rules—and sticking to them.

**2. The rules governing an election should be clear and designed to address the many different situations and eventualities that may occur during a voting process.**

The rules governing the election must be clear so that voters and election workers can easily understand them, and they must cover the many different circumstances that can and do arise during an election. If the rules are clear and there are not open questions, voters and officials will know when rules are followed. When everyone knows that the rules have been followed, voters will trust in the integrity of the election.

When considering the 2000 presidential election in Florida, seven justices of the Supreme Court found that Florida's failure to establish clear rules for the counting of ballots ahead of the election resulted in such disparate treatment of similarly situated voters to be a violation of the Equal Protection Clause of the 14th Amendment.<sup>8</sup> 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.<sup>9</sup>

State legislatures need to consider all questions and problems to pass statutes with clear and thorough 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.

**3. Every rule governing the election system should ensure fairness in the voting process while protecting eligible voters and their right to vote.**

There are two reasons why election regulations exist: To ensure elections are conducted in a fair manner; and to help eligible voters exercise their constitutional rights while preventing ineligible voters from casting ballots.

First, elections must be conducted in a manner that is fair for all voters and stakeholders. Election rules should promote fairness and prevent unfairness. When rules do not prevent unfairness, or even protect against it, voters quickly lose confidence in the election process.

Inaccurate voter registrations lists represent one area of significant impact for election fairness. Inaccurate lists undermine voter confidence by providing opportunities for bad actors to take advantage of incorrect, or outdated, entries by improperly voting on behalf of a registered voter who has moved, voting twice, or voting for someone otherwise improperly registered. California recently found 5 million inactive voters who had moved away or died on its voting rolls;<sup>10</sup> the District of Columbia has voter rolls so messy that 11% of ballots mailed to voters in 2020 were returned as undeliverable;<sup>11</sup> Virginia recently discovered nearly 19,000 dead voters on its registration rolls.<sup>12</sup> 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.<sup>13</sup>

While states have rules requiring voter rolls to be cleaned up, many do not have clear regulations for how those cleanups should occur. For voters to have confidence in the results of elections, rules must be implemented to prevent bad actors from unfairly affecting election results.

The second reason election regulations exist is to help eligible voters exercise their constitutional rights while preventing ineligible voters from casting ballots. When election rules allow ineligible voters to cast ballots or to disenfranchise eligible voters, voter confidence greatly drops.

Many states have instituted voter identification requirements as one way to prevent ineligible voters from casting ballots while simultaneously ensuring lawful, eligible voters do not have their votes diluted. Voter ID laws prevent bad actors from casting ballots that are not their own while also ensuring ineligible voters do not have access to ballots.

Moreover, voter ID laws are widely supported by voters on both sides of the aisle. Eighty-nine percent (89%) of Republicans, sixty percent (60%) of Democrats, and seventy-seven percent (77%) of unaffiliated voters nationwide believe voters

should be required to show *photo* identification such as a driver's license before being allowed to cast a ballot.<sup>14</sup> There is a common narrative in the media that lax voting laws increase turnout and voter's confidence in the election. However, studies have shown the opposite.<sup>15</sup> Data shows that voter identification laws either increase or have no effect on turnout.<sup>16</sup>

#### **4. The rules and processes should be entirely transparent, well-publicized, and widely known and understood.**

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. When voters do not know the rules governing the voting process or see them inconsistently applied, they will lose confidence in the election and not turn out to vote. In 2020, those who voted were more likely to believe that elections were free and fair than those who did not vote.<sup>17</sup>

A great threat to transparent and well-publicized election rules is ranked-choice voting (RCV), which confuses both voters and election officials and lacks transparency. In a recent election in Oakland (Alameda County), California, the wrong person was sworn in as the winner after an RCV election, while officials took more than two months to discover the error. *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.”<sup>18</sup> 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 thrown out by the end of the process because the voters had not ranked enough candidates, effectively disenfranchising those voters.<sup>19</sup>

In Arlington County, Virginia, the first jurisdiction in Virginia to use RCV, the county board reverted to traditional voting after just one election.<sup>20</sup> Not only had voters been confused with how results were tabulated, but even board members did not understand how their votes counted.<sup>21</sup> 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.

Election rules that are not transparent and comprehensible to most voters will necessarily cause voters to doubt the integrity of the electoral process. 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.

**5. All guidance and regulations regarding, and procedures for, running the election must be consistent with applicable federal and state statutes and established according to the governing administrative procedural rules.**

It is vital that election officials clarify the meaning of election statutes and apply them to particular situations through their regulations, guidance, and procedures. 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.

Failing to follow the text of a law or promulgating standards outside of a state's administrative procedures act was another problem that plagued the 2020 election. For example, while Michigan law clearly required signatures on absentee ballot applications and return envelopes to 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 both on absentee ballot applications and ballots were valid and to accept the signatures as valid if they contained "any redeeming qualities." The Michigan Court of Claims held in March 2021 that the Secretary's guidance violated the Michigan Administrative Procedures Act because the Secretary of State had not followed the procedures for establishing a rule of this importance.<sup>22</sup>

If administrators do not follow the rules governing the election, voters will not trust that they have overseen a fair and impartial election process and will lose confidence in the integrity of the system.

**6. Election officials should follow all laws, regulations, rules, procedures, and guidance that govern the running of the election.**

State legislatures and election officials need to establish clear, transparent rules well in advance of an election. Officials must follow state procedures for establishing the rules and protect the fairness and integrity of the process. And just as important: Officials must follow those rules. An election system can be perfect on paper, but the entire system would collapse if election officials do not follow the rules and implement them with consistency. 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, and even with an ongoing lawsuit, the county has provided no explanation for how this could have occurred.<sup>23</sup>

Both for the sake of the actual integrity of the election and the appearance of integrity, elections must always be conducted in accordance with all state and federal laws.

## **Conclusion**

The peaceful transfer of power, so foundational to our system of government, rests upon voters, candidates, and all Americans trusting in the results of every election. Giving every eligible voter the opportunity to cast a ballot requires not only giving them the actual opportunity to vote but also giving them the confidence to know that their vote will be counted according to the law. Baseline requirements of due process, transparency, and good election administration should be uncontroversial. These Six Principles are guidelines for state and federal legislatures and election administrators to follow to ensure that elections are held with confidence-building integrity.

# Endnotes

<sup>1</sup> “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/>.

<sup>2</sup> R. Michael Alvarez, *et al.*, “Voter Confidence in the 2020 Presidential Election: Nationwide Survey Results,” at 3, California Institute of Technology (Nov. 19, 2020), [https://static1.squarespace.com/static/5ace8a6b45776eba2e40cbee/t/5fb6d361f0ceb67888b03c1c/1605817186684/Voter\\_Confidence\\_2020\\_Survey\\_Report.pdf](https://static1.squarespace.com/static/5ace8a6b45776eba2e40cbee/t/5fb6d361f0ceb67888b03c1c/1605817186684/Voter_Confidence_2020_Survey_Report.pdf).

<sup>3</sup> Katherine Ognyanova, *et al.*, The COVID States Project: A 50-State COVID-19 Survey, Report #29: Election Fairness and Trust in Institutions, Report for the COVID-19 Consortium for Understanding the Public’s Policy Preferences Across States (Dec. 2020), <https://kateto.net/covid19/COVID19%20CONSORTIUM%20REPORT%2029%20ELECTION%20DEC%202020.pdf>.

<sup>4</sup> 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), <https://today.yougov.com/politics/articles/44936-voters-confidence-vote-counting-2022-election> (finding that before the 2022 election only 49% of Democratic voters, 26% of independent voters, and 12% of Republican voters were 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), <https://news.gallup.com/poll/404675/confidence-election-integrity-hides-deep-partisan-divide.aspx> (showing that 85% of Democratic voters and 40% of Republican voters were confident that votes would be accurately cast and counted in 2022).

<sup>5</sup> 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/>; 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>; 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/>.

<sup>6</sup> *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>.

<sup>7</sup> *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.”).

<sup>8</sup> *Bush v. Gore*, 531 U.S. 98, 105-06, 109 (2000); *Id.* at 134 (Souter, J., and Breyer, J., dissenting).

<sup>9</sup> 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. *See* 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 (Sept. 2021), <https://www.elections.virginia.gov/media/formwarehouse/election-management/election-day-instructions-and-forms/2021-Virginia-Guide-to-Handcounting-Ballots.pdf>.



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<sup>10</sup> 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](https://www.realclearpolitics.com/articles/2019/06/20/calif_begins_removing_5_million_inactive_voters_on_its_rolls__140602.html).

<sup>11</sup> 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/>.

<sup>12</sup> 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/>.

<sup>13</sup> The Pew Center on the States, Inaccurate, Costly, and Inefficient: Evidence That America’s Voter Registration System Needs an Upgrade (Feb. 2012), at 1, [https://www.pewtrusts.org/~media/legacy/uploadedfiles/pes\\_assets/2012/pewupgradingvoterregistrationpdf.pdf](https://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/pewupgradingvoterregistrationpdf.pdf).

<sup>14</sup> *Id.*

<sup>15</sup> 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>.

<sup>16</sup> Enrico Cantoni & Vincent Pons, “Strict ID Laws Don’t Stop Voters: Evidence from a U.S. Nationwide Panel, 2008–2018,” Nat’l Bureau of Economic Research, Working Paper No. 25522 (Feb. 2019, Rev’d May 2021), <https://www.nber.org/papers/w25522>; Jeffrey J. Harden and Alejandra Campos, “Who benefits from voter identification laws?,” 120 Proceedings of the National Academy of Sciences (Feb. 6, 2023), <https://www.pnas.org/doi/10.1073/pnas.2217323120>.

<sup>17</sup> Ipsos, “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.”).

<sup>18</sup> Editorial, “Oops, We Botched Ranked-Choice Voting: That school-board winner from November? Sorry, he actually lost,” *Wall Street Journal* (Jan. 6, 2023), <https://www.wsj.com/articles/oops-we-botched-ranked-choice-voting-11673047465>.

<sup>19</sup> Tarren Bragdon and Madeline Malisa, “NYC shows states why ranked-choice voting is a liberal disaster,” *New York Post* (Feb. 16, 2023), <https://nypost.com/2023/02/16/nyc-shows-why-ranked-choice-voting-is-a-liberal-disaster/> (“it took nearly a month to certify the results because officials messed up the counting process by including the wrong ballots. Can you blame them? They were trying to make sense of a nonsensical system.”).

<sup>20</sup> Martin Austermuhle, “Arlington County’s Ranked Choice Voting Experiment Is Over For Now,” *DCist* (July 17, 2023), <https://dcist.com/story/23/07/17/arlington-wont-use-ranked-choice-voting-november-general-election/>.

<sup>21</sup> Graham Moomaw, “After being first in Virginia to use it, Arlington hits brakes on ranked-choice voting,” *Virginia Mercury* (July 18, 2023), <https://www.virginiamercury.com/2023/07/18/after-being-first-in-virginia-to-use-it-arlington-hits-brakes-on-ranked-choice-voting/>.

<sup>22</sup> 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).

<sup>23</sup> 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>.