



*Fighting for transparent, secure, and accountable elections all voters can trust.*

**Statement of Hon. Kenneth T. Cuccinelli, II**  
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Committee on House Administration  
Committee on Oversight and Accountability  
Joint Hearing | June 7, 2023

*“American Confidence in Elections: The Path to Election Integrity in the District of Columbia”*

Chairman Steil and Chairman Comer, Ranking Members Morelle and Raskin, and members of the House Administration and Oversight committees, thank you for inviting me today to discuss election integrity and Congress' responsibility to implement such measures in the District of Columbia.

I am Ken Cuccinelli and I am the Chairman of the Election Transparency Initiative, where we work every day to help improve the transparency, security, accessibility and accountability of elections in every state, so that every American—regardless of color, creed or party affiliation – has confidence in the outcome of every election. I previously served as the Attorney General of Virginia, the Acting Deputy Secretary of the Department of Homeland Security, a member of the Virginia State Senate, and a private attorney and litigator.

Top of mind for today's hearing is the re-introduction of the *American Confidence in Elections (ACE) Act*, which I support, and its second pillar concerning election administration in our nation's capital.

There are two foundational concepts I'd like to focus on as it relates to understanding the role and responsibility of the states and federal government in elections: that states are primarily responsible for the execution of our elections and that the federal government needs to take steps to make it easier for the states to carry out our elections.

Specifically, our constitution provides that Congress has exclusive jurisdiction over DC elections but limited jurisdiction over the states.

Congress can require reforms to DC elections because Article I, Section 8, Clause 17 of the Constitution gives Congress the power “[t]o exercise exclusive Legislation in all Cases whatsoever, over such District.”

The ACE Act, which features a host of state-based election integrity reforms that Congress can enact at their discretion, preserves this constitutionally prescribed balance by requiring reforms in DC but allowing states to choose.

Let me be clear, the ACE Act does not mandate changes to state election laws, and this is an important factor in ETI's support for the ACE Act. We view Congress in a role similar to a state legislature, as it relates to the nation's capital.

I would briefly note that that previous attempts by the radical left to nationalize our elections in an unprecedented federal takeover via H.R. 1 and H.R. 4 were not motivated by so-called “voting rights” or “voter suppression”—a myth manufactured by race baiters to thrust America back-in-time to *actual* Jim Crow-era voter suppression—but a politically motivated scheme to centralize their power in Washington from our state houses for generations to come. Today it is easier for every American to register and vote than ever before—a measure of progress of which we should all be proud.

Make no mistake, DC should be the gold standard for fair and honest elections in which every legal vote is cast and counted openly, equally, and with the highest standard of integrity. It is the right of every legal, voting-age American citizen to vote and to trust that their vote is properly counted and not cancelled by an improper or illegal vote. But the reality is that D.C. elections have, and continue to be, an unmitigated disaster.

Current DC election laws are fraught with a host of anti-election integrity procedures and practices which unfortunately do more to sow doubt, confusion, and mistrust than they do to inspire confidence and trust in elections that are fair, secure, and transparent. Same day voter registration and automatic voter registration, allowing preregistration of eligible 16-year-old residents who are then automatically registered to vote upon turning 18, inflating the voter rolls with potentially ineligible voters that are then ripe for mismanagement, abuse, and even fraud. Registering to vote should be an affirmative action taken by the elector, not an automated command between differing systems and databases.

Other problems from which D.C. currently suffers include no-excuse absentee voting with a permanent absentee voting list, no ID requirement (just ‘proof’ of residence, photo not required) to vote after the voter has voted once, unsecured and unguarded drop boxes, and DC’s infamous noncitizen voting law, which allows green-card holders and residents who entered or live in the country illegally, so long as they are 18 or older and have lived in DC for at least 30 days.

That’s right, “noncitizens” will be allowed to vote in DC elections thanks in part to Senator Schumer and Senate Democrats [who refused to bring forward](#) DC Bill 24.300, which was passed by the D.C. Council last year but overturned on a bipartisan basis in the House of Representatives this past February with 42 Democrats joining all Republicans in voting to preserve citizen-only voting. In effect, Democrats lowered the qualifications to vote in DC municipal elections and scrapped the previous U.S. citizenship requirement, meaning ‘noncitizens’ including foreign nationals who have pledged loyalty to another country such as Russia or China would be allowed to vote in DC.

Even the left-wing [Washington Post](#) recognizes that elections in our nation’s capital should not be decided by the votes of Russian and Chinese nationals working at their countries’ embassies or non-citizens in the country illegally if they have resided in DC for more than 30 days.

As *The Post’s* Editorial Board noted, the new law will allow 50,000 noncitizen residents, including 21,000 illegal residents, to cast ballots in city elections. Shockingly, this would be almost 10% of ALL voters in Washington, D.C.!

“There’s nothing in this measure to prevent employees at embassies of governments that are openly hostile to the United States from casting ballots,” *The Post* wrote. “We support increasing legal immigration and accelerating the process for the frustrating backlog of citizenship

applications. Giving more people the right to vote is a vital endeavor, but it should be done the right way,” they added.

*The Post* also argued the bill “presents logistical nightmares” for the city, which will have to print separate ballots for noncitizens in an effort that could cost up to \$3 million.

In 2016, [Pew Research Foundation](#) estimated 25,000 non-citizens reside in DC, while the [Migration Policy Institute](#) estimated 21,000 non-citizens in 2019. I do not need to tell you that these numbers have only been exacerbated by a prolonged open borders crisis invited by the Biden Administration and DHS Secretary Mayorkas, not to mention DC mayor Muriel Bowser’s [July 2018 invitation](#) for non-citizens to descend on Washington. “Washington, DC is a sanctuary city,” she declared.

Isn’t it ironic, given all of the hysteria about “foreign influence” in our elections, that foreign nationals are now being empowered to vote on local initiatives, referenda, recalls made possible by changes to the charter of the nation’s capital city?

Even Ranking Member Raskin, who I sit before today, was asked if he supports “allowing non-citizen staff of the embassy of the Russian Federation the right to vote in local D.C. elections.” His reply?

“I’ve opposed Vladimir Putin’s massive social disinformation campaign against American democracy; I’ve opposed all contacts that the Trump Administration had with the Putin Administration; and I’m opposed to Russian subversion of democracy all over the world. So, if they asked me my advice, I would say, ‘Vote against that,’” Mr. Raskin said during a [February 6<sup>th</sup> Rules Committee](#) hearing.

If the notion of letting noncitizens vote in U.S. elections sounds crazy, the Left’s push should not come as much of a surprise. The deceptively named “For the People Act” (H.R. 1) was designed to intentionally connect the overwhelmed U.S. immigration system and the nation’s open borders epidemic to the U.S. election system by requiring that state agencies [automatically register](#) noncitizens and illegal aliens (and 16-year-olds) to vote. In fact, the bill forced states to dump individuals (notably not “citizens”) who comes into contact with state agencies—such as the DMV, housing, education, and more—onto the voter rolls. But that’s not all, the bill would have removed penalties for such illegal voting and intimidated state officials with criminal liability if they attempted to protect voter rolls—thereby cancelling out millions of American votes and disenfranchising legal voters.

So how is the administration of DC elections going?

During the 2020 Primary, voters waited in line at polling places for hours and some [never received](#) their mail-in ballot. 33,194 people voted in person before and during election day. While 91,000 absentee ballots were requested, the D.C. Board of Elections counted only about 50,000 absentee ballots were received before early results were released Wednesday. Because of these issues, [DC allowed](#) voters to submit ballots—by e-mail!

During the 2020 General Election, DC Board of Elections [implemented a plan](#) to mail every registered voter a ballot and double the number of vote and early-vote centers from 20 to 40, but a whopping 11% of ballots [were undeliverable](#). Residents [found dozens](#) of mail-in ballots bundled together sitting at mailboxes and apartment complexes at various locations in DC. An

audit found that the 11% return rate for undeliverable mail ballots was more than eight times higher than the national average.

During the 2022 Mid-term, 16% of Primary mailed ballots were [undeliverable](#), with 17% [undeliverable](#) in the General Election. More than 500 voters [mailed incorrect ballots](#) placing them in the wrong advisory neighborhood commission district.

As part of a [2016 auditor review](#) of DC's Voter Registration File, the Board of Elections conducted a biennial mail canvass and sent postcards to 260,000 inactive voters. 5,713 of the postcards were returned with a new address within DC, 5,542 were returned with out-of-state addresses, 38,179 were returned as undeliverable, and just 619 were returned confirming addresses within DC. The Auditor's review revealed that it contained 6,543 voter registration records with dates of birth listed between 1800 and 1899.

DC explained the extraordinary longevity of its voters as glitches in its computerized system and attempted to contact these voters, but very few responded. Since 2014, DC has had access to a new database that contains social security numbers, but inaccuracies remained.

Were dead voters still on the DC rolls? In 2016 the auditor randomly selected whether 33 deceased voters from a poll of 243 decedent names to determine whether any were still registered to vote. All of them were. The Board claimed it needed further verification for the names to be removed.

What about duplicate registrations? According to the Electronic Registration Information Center (ERIC), of which DC is a member, 13,651 voters were registered in DC *and* in another jurisdiction. The Board of Elections contacted all of them, 6,000 confirming they now resided outside DC with the other 7,651 (56%) failing to respond.

Ladies and gentlemen, without question DC elections are in profound disarray and have been poorly administered, a stark reality many years in the making. Thankfully, Congress can and should exercise its responsibility over DC to repair its self-inflicted broken system.

What helps make an election fair, free, secure and transparent?

The Ace Act would right-size DC elections through proven, fundamental, and commonsense reforms rooted in ballot and voter integrity, beginning with voter ID for in-person and mail voting.

Voter ID, and particularly photo ID, is overwhelmingly popular among virtually every voting demographic—regardless of one's party, race, or where he or she lives—because it protects the right to vote in elections that are fair and secure. (Hyperlinks included in electronic version of this document)

- [NPR/PBS Newshour/Marist](#): 79% of voters believe government-issued photo ID should be required, including majorities of Democrats (57%), Republicans, Independents, whites and nonwhites.
- [Pew](#): 76% of voters, including 61% of Democrats, favor “requiring all voters to show government-issued photo identification to vote.”
- [CNN](#): 64% of voters, including 65% of minority voters, 69% of Independents and 65% of moderates, believe requiring photo ID would make elections fairer.

- [Associated Press](#): “Bipartisan agreement on requiring all voters to provide photo identification at their polling place.”
- [Honest Elections Project](#): 77% of voters, including Republicans (92%), Independents (75%), and Democrats (63%), support requiring voter ID 64% of Black voters, 77% of Hispanics, and 76% of low-income voters reject the notion that presenting a form of ID at the ballot-box is a “burden.”
- [Monmouth University](#): 4 in 5 Americans (80%) support requiring voters to show photo ID.
- [Grinnell College](#): 56% of voters oppose eliminating state laws that require photo ID.
- [Fox News](#): 77% of voters believe a state or federally issued photo ID should be required.
- [Rasmussen](#): 75% of voters say showing a photo ID is necessary for a “fair and secure election process,” while 85% of voters said it is “common sense” to require photo ID.

In 2021, at the same time congressional Democrats were attempting to take over state election laws and effectually abolish voter ID nationwide by forcing H.R. 1 and H.R. 4 into law (by gutting the 60-vote legislative filibuster), [The Washington Post](#) gave Rep. James Clyburn “four Pinocchios” for stating that that “no Democrat” has opposed voter ID laws and he even denied ever holding such a position. He wasn’t to be outdone by Stacey Abrams who [suddenly supported](#) voted ID, in just 2 months going from calling such election integrity laws “Jim Crow in a suit and tie” to something no one ever objected to. And there is Vice President Kamala Harris who spontaneously [suggested she supported](#) voter ID, but added that such laws will make it more difficult for people who live in rural communities—i.e. aren’t capable or smart enough (the “too stupid” argument)—in self-defeating fashion.

Why all the flip-flops? Voter ID is widely supported by voters of all types, something even its most ardent opponents on the Left are forced into acknowledging as a matter of political expediency. However, not before attempting to fight voter ID laws through a manufactured voter “suppression” myth and a “go woke or go broke” strategy consisting of threats and intimidation directed toward private companies.

After the state of Georgia passed election integrity in 2021, which included voter ID requirements for absentee ballots supported by 74% of Georgia voters (63% of Black voters and 89% of those making under \$25K/year) according to an [The Atlanta Journal-Constitution](#) poll, [pressure from Stacey Abrams](#) and Democrats resulted in MLB executives cancelling the 2021 All-Star Game in Atlanta as punishment over the new law—costing the state at least \$100M as the league moved the event to Denver. “The impassioned response to the racist, classist bill that is now the law of Georgia is to boycott in order to achieve change,” Abrams stated before later claiming she never called for anything. It should be noted that while Atlanta is 51% Black by population, Denver is 9% black.

Flashing forward to the 2022 November elections, anyone who took the Left-wing voter “suppression” myth to heart would expect a dramatic decrease in participation at the polls in places like Georgia. After all, President Biden himself fashioned the Georgia law and others like it to “Jim Crow 2.0,” “Jim Crow on steroids,” “Twenty-first Century Jim Crow Laws,” and the biggest threat to the nation “since the Civil War.” The President’s very own “four Pinocchios” issued from [The Washington Post](#) after he falsely claimed Georgia’s law “ends voting early” saw no change in the President’s hyperbolic and false, but dire-sounding warnings continually issued in speeches in Atlanta, Philadelphia, and other major addresses to the nation.

But as Election Day approached for Georgia’s May 2022 Primary, voter participation was shattering turnout records.



“Democrats, corporations and the liberal media repeatedly decried Georgia’s Republican-passed Election Integrity Act as the next Jim Crow, but the Peach State is now seeing record-breaking turnout for early voting ahead of Tuesday’s primary,” [Fox News](#) reported. “There have been nearly 800,000 ballots cast by Georgians as of Friday, a number three times that of 2018 and significantly higher than 2020, an election year when voting typically increases.”

Then came Georgia’s 2022 General Election, and again observers braced for the headlines about “voter suppression” and the common refrain. While this never materialized, what stood out most was a [January 2023 survey](#) from the University of Georgia School of Public and International Affairs, and sponsored by *The Atlanta Journal-Constitution*, which found that 0% of Black and minority voters had a poor experience voting in Georgia’s November elections.

You read that correctly: ZERO PERCENT.

Georgia is not alone. Since 2020, states have made historic changes in their election laws. Lamentably, every statutory change that enhances election administration to ensure that only legal votes are counted is described by the Left and the media who support them as “suppressing” and “restricting” the vote. They have not learned from Georgia.

The American people have the right to know their elections are the most secure ever—every single time. There are steps that can and should be taken to assure that outcome, and some steps that should be avoided.

Election integrity and commonsense voter ID work, not only in application to ensure that every vote is counted fairly, open, and equally in accordance with the law and that they are cast by those who they are who they say they are, but also so voters can believe in an honest process.

The Ace Act would do much to fix DC’s elections so they are more transparent, secure, and accountable, by

- Requiring annual list maintenance in accordance with National Voter Registration Act
- Prohibiting same-day registration
- Prohibiting ballot harvesting (subject to very limited exceptions)
- Prohibiting unsolicited, automatically mailed ballots
- Requiring signature verification process for dated mail-in ballots
- Requiring post-election audits within 30 days of the election
- Requiring release of election results publicly reported at 10am the day after the election
- Requiring all ballots to be received by the close of polls
- Prohibiting non-citizen voting
- Requiring meaningful election observe access
- Prohibiting unsecure drop boxes
- Requiring provisional ballots only be counted when cast in the correct precinct

Imagine an election with no rules, just a table with a stack of empty ballots. Nobody is watching the table. Nobody is dispensing the ballots. Anyone who comes along can fill out a ballot (and since nobody is watching, as many as they choose), and drop those ballots into a drop box. For good measure we will mail a blank ballot to every single name listed in an outdated pollbook and let anyone return those ballots to unsecured drop boxes.

No one would trust the outcome of that “unrestricted” voting process.

We need rules, i.e., time, place and manner rules, and we find that when Americans talk about the mechanics of what makes a good election—outside the umbrella of partisanship—there is broad agreement on good rules for elections.

Only citizens can vote is a reasonable rule [supported by 75%](#) of Americans.

Citizens having to register and registrars having to keep pollbooks up to date are reasonable rules.

One ballot per registered voter is another reasonable rule.

On the basic mechanics of how elections should best be run, when you take the discussion out of the overcharged political atmosphere of the day, Americans tend to agree on what it takes to run good elections. Free and fair elections are not a “threat to democracy,” as the Left would have you believe. They are in fact the foundation of our constitutional republic. Prohibiting or simply not requiring Voter ID or other security measures does not “save Democracy,” in fact such steps undermine confidence in the quality of our elections and our form of Democracy.

One particular place where the Ace Act stops short is Ranked-Choice (RCV) voting, a scheme designed to confuse voters, rig elections in favor of failed incumbents, and defeat challengers from both parties. RCV, also known as a “preferential voting system,” permits a voter to rank each candidate on the basis of “least bad” through a numerical designation from the candidate the voter favors most to the candidate the voter favors least. When [implemented in public elections](#) in New York, Alaska, Utah, California, Maine and elsewhere, disastrous ranked choice voting has made voting more difficult, reduced transparency, and put confidence and certainty at risk for both voters and candidates, first taking root in local elections and then proliferating to primaries and general elections for state and federal office.

In 2021, the head of the NAACP in New York [slammed RCV](#) as “voter suppression.”

“Ranked choice voting is not beneficial to minorities. It’s voter suppression,” said Hazel Dukes, president of the NAACP New York chapter. “I hope that the courts see that ranked choice voting is not right for democracy.”

Following the 2022 Oakland, California mayoral race, the Oakland NAACP [demanded a recount](#) saying that confusion over RCV led thousands of voters to select more than one candidate in the same ranking or submit ballots with no rankings at all.

“I gotta make all these choices...Now I’m confused as hell and I’m trying to explain this to my neighbors,” Oakland NAACP member Richard Breaux said. Dr. Allie Whitehurst, Oakland NAACP Political Action Chair, is also [critical of RCV](#). “The leader who everyone thought might be the winner led up until the eighth round, and so it’s very confusing,” said Whitehurst.

According to mayoral candidate Seneca Scott, voters were misinformed when they went to the polls. “It should trigger an automatic recount after the amount of miseducation done by elected officials and the city clerk’s office in an election that was decided by just over one-half a percent,” Scott said.

An [April 2023 report](#) published by University of Minnesota’s Hubert H. Humphrey School of Public Affairs found that a careful review of RCV “fails to support four of the advocates’ promises for improvements over today’s system.” Additionally, evidence shows “no difference in

turnout in cities using RCV compared to those using the current system. They report errors, confusion, and lower turnout due to the greater complexity of RCV and its process of ranking candidates and tabulating multiple rounds of voting.”

RCV is an election integrity wrecking ball. It is not reliable, should [always be prohibited](#), and I urge Congress’ further examination. Several states have acted to ban the practice, and Congress should follow suit as it relates to DC.

I would also note that, as a constitutional lawyer, there are serious questions about whether RCV violates the equal protection concept of “one person, one vote” because those who vote for candidates dropped from later rounds of voting actually get to vote for more than one candidate.

Separately, the imperative of prohibiting practices that make it nearly impossible for state officials to ensure voter integrity cannot be overstated. Same-day registration, automatic registration, permanent absentee voter lists, and automatic mailing of absentee ballots and/or absentee ballot request forms leave no time to verify the accuracy of voter information, making it harder for states to keep voter rolls up to date and increasing the likelihood of fraud and ineligible voter participation, such as multiple or duplicate registrations

As mentioned earlier, error-prone automatic voter registration requires the state DMV and other contributing agencies (whose primary purpose is not voter registration) to transfer customer records to the state election agency in order to register individuals automatically, in turn threatening election security, creating an administrative burden on election officials, and making it harder to clean up the voter rolls.

According to an analysis by the [Foundation for Government Accountability](#):

*Individuals who are not eligible to vote would inevitably be erroneously placed on to the voter rolls—individuals may be non-citizens, convicted of a felony, temporarily residing in the state, or not wish to register or vote in the state. This would compound the problem states already have with inaccurate and out-of-date voter rolls. Add that to the option voters have to request permanent vote-by-mail status when they register and you have a recipe for stray ballots being delivered all over the country.*

No one should be automatically registered without their consent or knowledge.

We have seen that one does not need fraud to shake confidence in an election. In Bush v. Gore in 2000, Florida’s election system was held up before the world as a sad joke—incompetence, election breakdowns, untrustworthy ballots and machines, and haphazard and inconsistent rules. Americans’ confidence was shaken, and a systematic process of reform ensued to clean up Florida’s elections culminating in the enactment of landmark election integrity legislation in 2021 and 2022.

In 2000, the Left was screaming about its lack of confidence in our elections. And again in 2016 and again in 2018 Democrats questioned election results, when then-election denier Stacey Abrams [refused to concede](#) her loss to Governor Brian Kemp, saying “Concession means...the process was fair.”

Why are elections always fair, so long as the Left is winning them?



In 2003, self-esteemed *New York Times* columnist Paul Krugman declared that "There's nothing paranoid about suggesting that political operatives, given the opportunity, might engage in dirty tricks...You don't have to believe in a central conspiracy to worry that partisans will take advantage of an insecure, unverifiable voting system to manipulate election results," he wrote in his opinion titled "[Hack the Vote](#)."

We agree.

Make no mistake, Congress has work to do to fix DC's elections and the problems referenced in my testimony today. These problems are America's problems, and the Election Transparency Initiative stands ready to assist in fixing them so that the barriers to honest and accurate elections are replaced with those helping to guarantee certainty, trust, and confidence.

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