



**TESTIMONY OF  
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**JOINT HEARING ON “AMERICAN CONFIDENCE IN ELECTIONS: THE PATH TO  
ELECTION INTEGRITY IN THE DISTRICT OF COLUMBIA”**

**BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON HOUSE ADMINISTRATION AND  
COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY**

**June 7, 2023**

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<sup>1</sup> The Brennan Center for Justice at New York University School of Law is a nonpartisan public policy and law institute that works to strengthen the systems of democracy and justice so that they work for all Americans. I am the Vice President for Democracy and Director of the Brennan Center’s Democracy Program, which among other issues focuses on voting rights and election administration. I have authored numerous nationally recognized reports, studies, and articles on voting rights and elections. My work has been featured in academic journals and media outlets across the country. I have served as counsel in many voting rights lawsuits and have testified previously before Congress, and before several state legislatures, on a variety of issues relating to election administration. My testimony does not purport to convey the views, if any, of the New York University School of Law.

Chairman Steil, Chairman Comer, Ranking Members Morelle and Raskin, and Members of the Committees:

On behalf of the Brennan Center for Justice, thank you for the opportunity to testify on the importance of ballot access, safeguarding impartial election administration, and protecting the freedom to vote for all Americans — including those living in the District of Columbia.

Today’s hearing on the American Confidence in Elections Act (“ACE Act” or “the Act”)<sup>2</sup> underscores the important role that Congress plays in safeguarding free, fair, and secure elections in America. The Elections Clause of the U.S. Constitution, Article 1, § 4, cl. 1, provides Congress with broad authority to set baseline national standards for voting and election administration in federal elections.

Now, more than ever, Congress must exercise this authority to safeguard the freedom to vote and protect the integrity of our nation’s elections from serious threats. Chief among those threats are efforts to manipulate election processes and subvert election outcomes, new laws that restrict voting across the country, attempts to interfere with voting machines and other election infrastructure, threats against election workers and voters, and a heightened climate of political violence.<sup>3</sup> The false claims of widespread voter fraud that fueled efforts to overturn the 2020 presidential election continue to drive these attacks on our democracy — even as voters rejected election denial in the 2022 midterm elections.<sup>4</sup>

Unfortunately, the ACE Act’s Washington D.C.-focused provisions<sup>5</sup> fail to meet this moment. First and foremost, the unprecedented scale of the threats to our elections requires a robust, national response applicable to the whole country, not just the District of Columbia. Although Congress has authority to make election rules for the District,<sup>6</sup> it should afford D.C., like other states and localities, the opportunity to set its own election rules subject to pro-voter, pro-democracy baseline national standards that apply to all jurisdictions. We urge Congress to focus on such national standards.

For this reason, my testimony assesses the ACE Act’s D.C. provisions as a proxy for whether they would function as effective national standards. National election rules should be assessed based on whether they protect the freedom to vote and ensure the voting process remains secure and accessible to all eligible voters. They should also protect election

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<sup>2</sup> American Confidence in Elections Act, H.R. 8528, 117<sup>th</sup> Cong. (2022).

<sup>3</sup> Lauren Miller, et al., *Lessons for Our Elections from the January 6 Hearings*, Brennan Center for Justice, 2022, <https://www.brennancenter.org/our-work/research-reports/lessons-our-elections-january-6-hearings>.

<sup>4</sup> See *Hearing on Protecting a Precious, Almost Sacred Right: The John R. Lewis Voting Rights Advancement Act, before the S. Comm. On Judiciary*, 117<sup>th</sup> Cong. (2021) (testimony of Wendy Weiser, Vice President for Democracy, Brennan Center for Justice), <https://www.brennancenter.org/sites/default/files/2021-10/2021-10-06%20Weiser%20-%20Written%20Testimony.pdf>; *Testimony Before the United States H. Select Comm. to Investigate the January 6<sup>th</sup> Attack On the United States Capitol*, 117<sup>th</sup> Cong. (2022) (testimony of Wendy Weiser, Vice President for Democracy, Brennan Center for Justice), <https://www.brennancenter.org/our-work/research-reports/testimony-united-states-house-representatives-select-committee>; and Lauren Miller and Wendy R. Weiser, *The Election Deniers’ Playbook for 2024*, Brennan Center for Justice, 2023, <https://www.brennancenter.org/our-work/research-reports/election-deniers-playbook-2024>.

<sup>5</sup> My testimony addresses Subtitle D of the legislative text.

<sup>6</sup> U.S. Const. Art. 1, § 8, cl. 17.

administration from partisan interference and election denial campaigns. But the ACE Act's D.C.-specific provisions fall short on both counts. In fact, many of these provisions actively undermine free and fair access to the ballot and impartial election administration. Instead, Congress should exercise its broad authority to pass baseline national standards that accomplish these critical goals.<sup>7</sup>

Part I of my testimony provides an overview of the ongoing threats to our nation's electoral system. Part II discusses the ACE Act's provisions and explains why they fail to protect voter access and counter efforts to subvert elections. Where relevant, it also outlines alternative standards that would better achieve these goals — all of which are included in the Freedom to Vote: John R. Lewis Advancement Act that passed in this House and narrowly failed to overcome a Senate filibuster last year. Part III details additional steps that Congress should take to promote free and fair elections and ensure confidence in the integrity of the electoral process across the country. The District of Columbia has already adopted many of these model election policies. Part IV walks through why D.C. voters deserve full political self-determination and the authority to regulate the details of their own elections to the same extent as voters in other jurisdictions.

## **I. The Freedom to Vote and Election Integrity Are Under Attack.**

Despite the successful administration of the last two federal elections, American elections face serious threats — from efforts to undermine access for eligible voters, to a surge of threats and intimidation aimed at election officials and voters, to unprecedented attempts to manipulate election outcomes, and to efforts to infiltrate vulnerable election infrastructure. All these dangers are driven by false claims of widespread voter fraud and related conspiracy theories. And all of them risk undermining confidence in our elections.

The security and integrity of our elections are essential to American democracy. We take pride in how well the system has performed in both determining the will of the voters and preventing and thwarting voter fraud. In 2020, for example, election professionals and experts of all political persuasions overwhelmingly agreed that the 2020 election was secure and well-administered; the U.S. Cybersecurity and Infrastructure Security Agency pronounced it the most secure election in modern history.<sup>8</sup> Study after study has proven that the incidence of voter fraud in America is infinitesimally small; an individual is more likely to be struck by lightning than to impersonate another voter at the polls.<sup>9</sup> In short, our safeguards against voter fraud are strong and effective.

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<sup>7</sup> Miller et al., *Lessons for Our Elections*; and Miller and Weiser, *Election Deniers' Playbook*.

<sup>8</sup> "Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees," Cybersecurity and Infrastructure Security Agency, November 12, 2020, accessed June 6, 2023, <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>; and Brennan Center for Justice, *It's Official: The Election Was Secure*, 2020, <https://www.brennancenter.org/our-work/research-reports/its-official-election-was-secure>.

<sup>9</sup> Wendy R. Weiser and Harold Ekeh, "The False Narrative of Vote-by-Mail Fraud," Brennan Center for Justice, April 10, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>; Max Feldman, *10 Voter Fraud Lies Debunked*, 2020, <https://www.brennancenter.org/our-work/research-reports/10-voter-fraud-lies-debunked>; Max Feldman, *Dirty Tricks: 9 Falsehoods that Could Undermine the 2020 Election*, 2020,

Now, however, our election system faces acute and unprecedented threats that it is less equipped to handle. Two Brennan Center studies demonstrate that the same false allegations of widespread voter fraud that drove efforts to overturn the 2020 presidential election (often referred to as “election denial”) continue to fuel new kinds of attacks on our elections.<sup>10</sup>

First, our elections face elevated levels of harassment and threats of violence. Election officials have experienced a deluge of threats since 2020; an April 2023 Brennan Center poll of local election officials shows that nearly one-in-three officials have experienced threats, harassment, or abuse just for doing their jobs.<sup>11</sup> Forty-five percent of officials fear for the safety of their colleagues, and more than one-in-five are concerned about being assaulted on the job. Predictably, these fears have contributed to an exodus among election officials, draining knowledge and experience from the election system at a time of significant stress. Our poll responses suggest that by the time the 2024 elections take place, we will have lost approximately 1.5 election officials per day since the November 2020 election.<sup>12</sup>

Voters, too, are not spared by this threat. Voter hotlines and election officials in multiple jurisdictions reported elevated levels of intimidation and harassment at polling places throughout the 2022 election cycle.<sup>13</sup> In North Carolina, one county elections director who faced disruptive poll watchers called the state’s May 2022 primary “one of the worst elections I’ve ever worked.”<sup>14</sup> In Texas, a federal judge enjoined discriminatory tactics by officials in Jefferson County based on evidence that election workers shadowed, harassed, and refused to help Black

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<https://www.brennancenter.org/our-work/research-reports/dirty-tricks-9-falsehoods-could-undermine-2020-election>; Lisa Danetz, *Mail Ballot Security Features: A Primer*, Brennan Center for Justice, 2020 <https://www.brennancenter.org/our-work/research-reports/mail-ballot-security-features-primer>; Myrna Pérez, *Election Integrity: A Pro-Voter Agenda*, 2017, <https://www.brennancenter.org/our-work/policy-solutions/election-integrity-pro-voter-agenda>; and Brennan Center for Justice, *Debunking the Voter Fraud Myth*, Memorandum, January 31, 2017, [https://www.brennancenter.org/sites/default/files/analysis/Briefing\\_Memo\\_Debunking\\_Voter\\_Fraud\\_Myth.pdf](https://www.brennancenter.org/sites/default/files/analysis/Briefing_Memo_Debunking_Voter_Fraud_Myth.pdf).

<sup>10</sup> Katie Friel and Will Wilder, *Finding the Same Misinformation in Anti-Voter Lawsuits and Anti-Voter Legislation*, Brennan Center for Justice, 2022, <https://www.brennancenter.org/our-work/research-reports/finding-same-misinformation-anti-voter-lawsuits-and-anti-voter>; and Andrew Garber, *Election Denial Rhetoric from Sponsors of State Voter Suppression Legislation*, Brennan Center for Justice, 2022, <https://www.brennancenter.org/our-work/research-reports/election-denial-rhetoric-sponsors-state-voter-suppression-legislation>.

<sup>11</sup> Brennan Center for Justice, *Local Election Officials Survey — April 2023*, 2023, <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-april-2023>.

<sup>12</sup> Ruby Edlin and Lawrence Norden, “Poll of Election Officials Shows High Turnover Amid Safety Threats and Political Interference,” Brennan Center for Justice, April 25, 2023, <https://www.brennancenter.org/our-work/analysis-opinion/poll-election-officials-shows-high-turnover-amid-safety-threats-and>.

<sup>13</sup> See, e.g., *Hearing on 2022 Midterms Look Back Series: Successes in the 2022 Midterm Elections, before the H. Comm. On Administration Subcomm. On Elections*, 118<sup>th</sup> Cong. 9 (2023) (testimony of Damon T. Hewitt, President and Executive Director, Lawyers’ Committee for Civil and Human Rights Under Law), <https://cha.house.gov/sites/evo-subsites/cha.house.gov/files/evo-media-document/damon-hewitt-house-admin-elections-subcommittee-testimony-3.10.23.pdf> (the nonpartisan Election Protection hotline documented increased reports of voter intimidation in 2022).

<sup>14</sup> Carrie Levine, “Election officials brace for onslaught of poll watchers,” Votebeat, August 22, 2022, <https://www.votebeat.org/2022/8/22/23312841/poll-watcher-increases-election-observer-rules>.

voters.<sup>15</sup> Notoriously, armed individuals intimidated Maricopa County, Arizona voters at drop boxes during early voting, compelling a federal judge to issue an emergency order prohibiting their behavior.<sup>16</sup> For these reasons, far too many Americans have become concerned about polling place safety.<sup>17</sup> The elevated climate of political violence extends well beyond election sites; from the shocking January 6, 2021 attack on the U.S. Capitol to the attempted and actual assaults of public officials and their families,<sup>18</sup> the risk of violence is higher than it has been in decades.<sup>19</sup>

Second, we face a recent trend of efforts to manipulate election processes and subvert outcomes. In 2020, for example, election officials faced immense pressure to refuse to certify election results based on false allegations of election irregularities.<sup>20</sup> These efforts picked up steam in 2022 as a number of local officials refused to certify, until they were forced to do by court intervention.<sup>21</sup> A movement to count ballots entirely by hand has emerged,<sup>22</sup> raising the risk of efforts to manipulate the count. Proponents have been undeterred by the higher risk of error with hand courts.<sup>23</sup> After the first day of hand counting ballots in Nye County, Nevada, for

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<sup>15</sup> Alexa Ura, “Federal judge tells Beaumont election officials not to harass or discriminate against Black voters,” *Texas Tribune*, November 7, 2022, <https://www.texastribune.org/2022/11/07/voting-discrimination-lawsuit-beaumont/>.

<sup>16</sup> Ali Dukakis, “Group accused of voter intimidation must stay clear of ballot boxes, judge rules,” ABC News, November 3, 2022, <https://abcnews.go.com/US/group-accused-voter-intimidation-stay-clear-ballot-boxes/story?id=92570068>.

<sup>17</sup> According to one poll, conducted by Edge Research and commissioned by the Global Project Against Hate and Extremism, less than half of Americans feel safe at their polling places. Global Project Against Hate and Extremism, *Americans’ Fears Suppressing Participation in Democracy*, 2022, <https://globalextrémism.org/post/fear-and-elections/>.

<sup>18</sup> See, e.g., Nicholas Bogel-Burroughs, Shaila Dewan, and Kathleen Gray, “F.B.I. Says Michigan Anti-Government Group Plotted to Kidnap Gov. Gretchen Whitmer,” *New York Times*, last modified April 13, 2021, <https://www.nytimes.com/2020/10/08/us/gretchen-whitmer-michigan-militia.html>; Maham Javaid, Adela Suliman, and Ben Brasch, “Pelosi attacker wanted to hurt more people, according to jailhouse call,” *Washington Post*, last modified January 30, 2023, <https://www.washingtonpost.com/politics/2023/01/29/paul-pelosi-attack-david-depape-interview/>; and Stephanie Lai, Luke Broadwater, and Carl Hulse, “Lawmakers Confront a Rise in Threats and Intimidation, and Fear Worse,” *New York Times*, October 1, 2022, <https://www.nytimes.com/2022/10/01/us/politics/violent-threats-lawmakers.html>.

<sup>19</sup> Rachel Kleinfeld, “The Rise of Political Violence in the United States,” *Journal of Democracy* 32 (2021): 160–76.

<sup>20</sup> See, e.g., Kathleen Gray, Jim Rutenberg, and Nick Corasaniti, “Michigan Republicans Backtrack After Refusing to Certify Election Results,” *New York Times*, last modified November 20, 2020, <https://www.nytimes.com/2020/11/17/us/politics/michigan-certify-election-results.html>; and The Associated Press, “Records show pressure by Trump, allies on Arizona officials not to certify election results,” NBC News, July 2, 2021, <https://www.nbcnews.com/politics/elections/records-show-pressure-trump-allies-arizona-officials-not-certify-election-n1273034>.

<sup>21</sup> See, e.g., Zach Schonfeld, “Arizona judge orders Cochise County board to certify election results after refusal,” *The Hill*, December 1, 2022, <https://thehill.com/regulation/court-battles/3758580-arizona-judge-orders-cochise-county-board-to-certify-election-results-after-refusal/>; Jonathan Lai, “Pennsylvania court orders end to primary election stalemate: Count the undated ballots,” *Philadelphia Inquirer*, October 19, 2022, <https://www.inquirer.com/politics/election/pennsylvania-primary-certification-lawsuit-20220819.html>; and Miller and Weiser, *Election Deniers’ Playbook*. (which collects instances of refusals to certify).

<sup>22</sup> Miller and Weiser, *Election Deniers’ Playbook*.

<sup>23</sup> Miles Parks, “Hand-counting ballots may sound nice. It’s actually less accurate and more expensive,” NPR, October 7, 2022, <https://www.npr.org/2022/10/07/1126796538/voting-explainer-hand-counting-ballots-accuracy-cost>.

instance, the county clerk estimated that it suffered from a “very, very high” 25 percent error rate.<sup>24</sup>

And since 2020, state legislatures across the country have begun advancing novel policies that increase the risk of partisan interference in election outcomes and administration.<sup>25</sup> In 2022, at least seven states passed 12 laws that enable partisan actors to meddle in elections or target those who make elections work, including laws to impose new criminal or civil penalties on election officials and increase partisan influence over election administration structures.<sup>26</sup> In the first weeks of 2023, at least 10 states had pre-filed or introduced 27 such election interference bills.<sup>27</sup> Although no state legislature can override election results outright, legislators have repeatedly tried to advance legislation that seeks to give them that power, including in key battleground states like Arizona, Nevada, and Missouri.<sup>28</sup>

Third, election systems face elevated threats of infiltration, coupled with ongoing risks posed by outdated and less secure equipment. Public reporting has identified at least seventeen incidents in which individuals seeking to discredit election results have gained or attempted to gain access to voting systems.<sup>29</sup> After unauthorized individuals infiltrated election systems, officials in five states were forced to decommission election equipment and purchase new machines.<sup>30</sup>

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<sup>24</sup> Brett Forrest, “Nye County clerk tempers hand count expectations, calls it a ‘test,’” KSNV News, November 12, 2022, <https://news3lv.com/news/local/nye-county-clerk-tempers-hand-count-expectations-calls-it-a-test>.

<sup>25</sup> Will Wilder, Derek Tisler, Wendy R. Weiser, *The Election Sabotage Scheme and How Congress Can Stop It*, 2021, <https://www.brennancenter.org/our-work/research-reports/election-sabotage-scheme-and-how-congress-can-stop-it>.

<sup>26</sup> Brennan Center for Justice, *Voting Laws Roundup: December 2022*, 2022, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2022>.

<sup>27</sup> Brennan Center for Justice, *Voting Laws Roundup: February 2023*, 2023, [https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2023?\\_ga=2.7303217.2018726046.1685726715-1135872536.1674831287](https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2023?_ga=2.7303217.2018726046.1685726715-1135872536.1674831287).

<sup>28</sup> H.B. 2720, 55th Leg., 1st Reg. Sess. (Ariz. 2021); H.B. 2800, 55th Leg., 1st Reg. Sess. (Ariz. 2021); H.B. 2826, 55th Leg., 1st Reg. Sess. (Ariz. 2021); A.J.R. 13, 2021 81st Sess. (Nev. 2021); and H.B. 1301, 101st Gen. Assemb., 1st Reg. Sess. (Mo. 2021).

<sup>29</sup> Lawrence Norden, “Brennan Center Letter to State Associations of Election Officials on Addressing Voting Equipment Breaches,” Statement, August 11, 2022, <https://www.brennancenter.org/our-work/research-reports/brennan-center-letter-state-associations-election-officials-addressing>.

<sup>30</sup> Lacey Latch and Mary Jo Pitzl, “Maricopa County will spend millions to replace voting machines turned over to the Arizona Senate for audit,” *Arizona Republic*, July 14, 2021, <https://www.azcentral.com/story/news/politics/arizona/2021/07/14/arizona-audit-maricopa-county-spend-2-8-m-replace-voting-machines/7965882002/>; Charles Ashby, “Decertified election equipment could prove costly to county,” *Daily Sentinel*, last modified September 19, 2022, [https://www.gjsentinel.com/news/western\\_colorado/decertified-election-equipment-could-prove-costly-to-county/article\\_f76b609e-fc72-11eb-920b-0f423bc7e084.html](https://www.gjsentinel.com/news/western_colorado/decertified-election-equipment-could-prove-costly-to-county/article_f76b609e-fc72-11eb-920b-0f423bc7e084.html); Kanishka Singh, “Georgia to replace voting machines in a county after ‘unauthorized access,’” *Reuters*, September 23, 2022, <https://www.reuters.com/world/us/georgia-replace-voting-machines-county-after-unauthorized-access-2022-09-23/>; Neil Vigdor, “Michigan Poll Worker Charged With Breach; Officials Say Primary Was Sound,” September 29, 2023, <https://www.nytimes.com/2022/09/29/us/politics/michigan-poll-worker-tampering.html>; and Nathan Layne, “Pennsylvania decertifies county’s voting machines after 2020 audit,” *Reuters*, July 22, 2021, <https://www.reuters.com/world/us/pennsylvania-decertifies-countys-voting-machines-after-2020-audit-2021-07-21/>.

Our election cybersecurity is also vulnerable. Thirty-one states will use voting equipment that is at least a decade old during the 2024 elections.<sup>31</sup> There were several instances of attempted cyber-attacks against election systems in the 2022 midterms.<sup>32</sup> We can expect this equipment to experience a high volume of cyber-attacks in 2024.

Fourth, Americans are facing a more concerted effort to restrict access to voting than they have faced in generations. State legislatures in roughly half the country have been passing a wave of new laws making it harder to vote for more than a decade now. That wave became a deluge in 2021, reaching unprecedented heights.<sup>33</sup> Headed into the 2022 general elections, voters in 20 states faced 33 new laws restricting their freedom to vote compared with the last election.<sup>34</sup> This year, we are on pace to see nearly as many restrictive laws enacted as in 2021.<sup>35</sup> In many cases, the states adding new voting restrictions are places that have already done so in recent years, piling hurdle upon unnecessary hurdle on the way to the ballot box. Many of these new hurdles would have been stopped by the Voting Rights Act, but have taken immediate effect after the Supreme Court gutted key provisions of that law in 2013 and 2019.

As these laws are taking effect, they are placing a real and negative impact on voters, particularly voters of color. For example, Brennan Center research shows that just *one provision* of Texas’s omnibus 2021 voter suppression law, which required voters to present a driver’s license number on absentee ballot applications, led to tens of thousands of rejected ballots in the 2022 primaries — more than 10 percent of all mail ballots.<sup>36</sup> Voters of color experienced much higher rejection rates — 16 percent for Black and Latino voters and 19 percent for Asian voters.<sup>37</sup>

While it is difficult to measure the accumulated effects of laws such as this one that have layered restriction on top of restriction, an examination of the gaps in turnout between white voters and voters of color reveal serious inequities. In Texas, for example, where officials rushed to take advantage of the *Shelby County*<sup>38</sup> opinion the day it was released, the gap in turnout

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<sup>31</sup> Derek Tisler and Lawrence Norden, *Securing the 2024 Election*, Brennan Center for Justice, 2023, <https://www.brennancenter.org/our-work/policy-solutions/securing-2024-election>.

<sup>32</sup> Vera Bergengruen, “Election Workers in Battleground States Face Surge of Cyberattacks,” *TIME*, October 12, 2022, <https://time.com/6221168/election-workers-cyberattacks-midterms-2022/>; Nomaan Merchant and Emily Wagster Pettus, “US vote counting unaffected by cyberattacks, officials say,” AP News, November 9, 2022, <https://apnews.com/article/2022-midterm-elections-technology-government-and-politics-bc35b0f1a68b171244bfd8c1fac3bcf>; Chuck Goudie, et al., “Election 2022: Cyberattacks that slowed Champaign County election day voting process ‘resolved,’” ABC7 News, <https://abc7chicago.com/amp/champaign-county-clerk-what-is-ddos-attack-meaning/12430547/>; and Martin Matishak, “Mississippi election websites knocked out by DDoS attack,” *The Record*, last modified November 9, 2022, <https://therecord.media/mississippi-election-websites-knocked-out-by-ddos-attack>.

<sup>33</sup> Brennan Center, *Voting Laws Roundup: December 2022*.

<sup>34</sup> Jasleen Singh, *Restrictive Laws in Effect for the 2022 Midterms*, Brennan Center for Justice, 2022, <https://www.brennancenter.org/our-work/research-reports/restrictive-laws-effect-2022-midterms>.

<sup>35</sup> Brennan Center, *Voting Laws Roundup: February 2023*.

<sup>36</sup> Kevin Morris and Coryn Grange, *Records Show Massive Disenfranchisement and Racial Disparities in 2022 Texas Primary*, Brennan Center for Justice, 2022, <https://www.brennancenter.org/our-work/research-reports/records-show-massive-disenfranchisement-and-racial-disparities-2022-texas>.

<sup>37</sup> Morris and Grange, *Records Show Massive Disenfranchisement*.

<sup>38</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).

between white and Black voters was higher in 2020 than it had been in at least 24 years.<sup>39</sup> In fact, in the last decade racial turnout gaps have grown in most of the states previously covered by the Voting Rights Act’s special procedures for states with a history of voting discrimination.<sup>40</sup> Early data from the 2022 elections suggest this trend is continuing. In Georgia, for example, a Brennan Center analysis found that the gap between white and nonwhite turnout in 2022 was the largest it has been in a decade; the gap between white and Black turnout was roughly double what it was in the previous two midterms.<sup>41</sup> Nationally, the turnout gap between white and Black voters was larger in 2022 than in any federal general election since at least 2000.<sup>42</sup>

Congress must act to address these threats ahead of the 2024 election. But the ACE Act largely ignores them. Instead, many of its D.C.-specific provisions would undermine free and fair access to the ballot and impartial election administration in the name of preventing phantom voter fraud.

## **II. The ACE Act Would Undermine Voter Access and Election Integrity.**

Many of the ACE Act’s provisions would undermine voter access and fair and impartial election administration. And while it includes a few good ideas — such as timely reporting of unofficial election results and mandatory post-election audits — even those ideas should not be imposed solely on D.C. against the will of its voters. In this section, I assess the Act’s principal provisions.

### **A. Thirty-day voter registration deadline and same day voter registration ban**

The ACE Act (section 323) would significantly undermine voter access by prohibiting same-day registration (“SDR”) and any registration in the 30 days prior to an election. In doing so, it would transform D.C.’s voter registration system from one of the more accessible systems in the country to one of the least.

The District has successfully allowed voters to register and vote on the same day for well over a decade. As the D.C. General Auditor found in its audit of the 2020 general election, SDR has served as “an important fail-safe option” for D.C. voters, who use it at far higher rates than voters in other states, with no evidence of glitches or fraud.<sup>43</sup> In addition to D.C., SDR is popular and effective in the 22 other states that employ it in some form.<sup>44</sup> There is ample data that SDR significantly increases voter participation, and that Black and Latino voters in particular benefit

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<sup>39</sup> Kevin Morris, Peter Miller, and Coryn Grange, *Racial Turnout Gap Grew in Jurisdictions Previously Covered by the Voting Rights Act*, Brennan Center for Justice, 2021, <https://www.brennancenter.org/our-work/research-reports/racial-turnout-gap-grew-jurisdictions-previously-covered-voting-rights>.

<sup>40</sup> Morris, et al., *Racial Turnout Gap Grew*.

<sup>41</sup> Sara Loving and Kevin Morris, *Georgia’s Racial Turnout Gap Grew in 2022*, Brennan Center for Justice, 2022, <https://www.brennancenter.org/our-work/analysis-opinion/georgias-racial-turnout-gap-grew-2022>.

<sup>42</sup> Scott Clement and Lenny Bronner, “Black turnout dropped sharply in 2022 midterms, Census survey finds,” *Washington Post*, May 2, 2023, <https://www.washingtonpost.com/politics/2023/05/02/black-voter-turnout-election-2022/>.

<sup>43</sup> Office of the District of Columbia Auditor, *District of Columbia 2020 Election Administration*, 2021, <https://dcauditor.wpenginepowered.com/wp-content/uploads/2021/11/Elections.Administration.Report.11.16.21.pdf>.

<sup>44</sup> “Same-Day Voter Registration,” National Conference of State Legislatures, last modified January 31, 2023, accessed June 6, 2023, <https://www.ncsl.org/elections-and-campaigns/same-day-voter-registration>.



from it.<sup>45</sup> Eliminating SDR after 10 years of successful use would serve no valid purpose, but it would disenfranchise thousands of eligible but unregistered voters who rely on this method of registration.

Beyond eliminating SDR, the ACE Act would impose one of the earliest voter registration deadlines in the country by prohibiting voters from registering in the 30 days before an election. This deadline would make D.C. a national outlier; most states have registration deadlines that are much closer to Election Day, and only 11 still require a 30-day window.<sup>46</sup> The National Voter Registration Act (“NVRA”) and the Supreme Court, interpreting the Constitution, have determined that voter registration deadlines cannot be any further than 30 days before Election Day.<sup>47</sup> But those maximum deadlines were set well before the development of modern technology that allows jurisdictions to process voter registration forms and verify voter eligibility almost instantaneously. Today, there is no justification for such extended deadlines.

Instead of rolling back voter registration deadlines, Congress should embrace SDR as a critical tool in expanding access to the ballot for eligible voters nationally. The Freedom to Vote Act (“FTVA”)<sup>48</sup> would accomplish this goal by requiring states to offer SDR as part of a comprehensive package of improvements that would modernize our voter registration system and address registration problems that routinely prevent eligible Americans from voting.<sup>49</sup>

## **B. Voter list maintenance requirements**

The ACE Act’s voter list maintenance requirements (section 323) create an inflexible timeline for officials and risk purging eligible voters. To be sure, regularly maintained voter rolls are a critical component of any election system. But while it is desirable for jurisdictions to annually update their voter lists, the ACE Act’s mandate is too inflexible and fails to account for practical challenges for election administrators.<sup>50</sup> The NVRA requires states (including D.C.) to have a general program that makes a reasonable effort to identify and remove the names of voters who have become ineligible due to a change of address. The program must, however, be completed 90 days before a federal election.<sup>51</sup> With both a primary and general election in federal election years, the 90-day window leaves jurisdictions with narrower time frames to complete voter list maintenance in even-numbered years; delays caused by vendors, changes in

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<sup>45</sup> Barry C. Burden et al., *The Effects and Costs of Early Voting, Election Day Registration, and Same Day Registration in the 2008 Elections*, University of Wisconsin-Madison, 2009, [https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_assets/2009/uwisconsin1pdf.pdf](https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2009/uwisconsin1pdf.pdf); and Laura Williamson and Jesse Rhodes, *Same Day Registration: How Registration Reform Can Boost Turnout Among Black and Latinx Voters*, Demos, 2021, <https://www.demos.org/policy-briefs/same-day-registration-how-registration-reform-can-boost-turnout-among-black-and#Findings>.

<sup>46</sup> National Conference of State Legislatures, “Same-Day Voter Registration.”

<sup>47</sup> 52 U.S.C. § 20507(a)(1); and *Dunn v. Blumstein*, 405 U.S. 330 (1972).

<sup>48</sup> In its final form, the FTVA passed the House of Representatives and had majority support in the Senate as part of a combined package titled the Freedom to Vote: John R. Lewis Act, H.R. 5746, 117<sup>th</sup> Cong. (2021).

<sup>49</sup> Freedom to Vote: John R. Lewis Act § 1031.

<sup>50</sup> D.C. already requires regular vote list maintenance based on a number of sources. “Voter Registration List Maintenance,” District of Columbia Board of Elections, accessed June 4, 2023, <https://www.deboe.org/Data-Resources-Forms/Voter-List-Maintenance>.

<sup>51</sup> 52 U.S.C. § 20507(c)(2)(A).

equipment, or other unforeseen circumstances may leave states unable to complete annual voter list maintenance despite their best efforts to do so. For this reason, a reasonable or best-efforts requirement for annual list maintenance would better comport with the reality of election administration.

The ACE Act's list maintenance provisions would also require D.C. to initiate the removal process based solely on a voter's failure to vote in two consecutive years (or one federal election). This provision is unwise and risks excluding thousands of infrequent voters. Although the Supreme Court upheld such a procedure in Ohio,<sup>52</sup> only a handful of other states utilize this sort of use-it-or-lose-it policy,<sup>53</sup> and for good reason. Citizens have the right to sit out an election, and doing so is not a sign that a voter is ineligible. Voters should not be penalized such that they face additional hurdles to cast their ballots in future elections.

The FTVA offers a better approach to voter list maintenance. It would prevent faulty and error-prone purge methods while offering election officials sufficient flexibility to keep their voter rolls updated and accurate. And it would help prevent unnecessarily excluding eligible voters based on list maintenance mistakes by providing them with timely notice of the reasons for their removal from the rolls.<sup>54</sup>

### **C. Voter ID requirements**

The Brennan Center does not oppose reasonable voter identification requirements so long as they are not unduly restrictive and discriminatory. Unfortunately, the proposed ID requirements in the ACE Act (section 322) fall short on that measure. For example, one problematic provision would require that mail voters provide a photocopy of their ID with their mail ballot applications. That requirement is unreasonable and unworkable for many. Many voters — especially those who do not work in an office — lack easy access to a photocopier. Voters with disabilities, who particularly rely on mail voting, are likely to find it even more challenging to access a photocopier. In addition, the Act's proof of residency requirement uses vague terms that could open the door to arbitrary or discriminatory application. We appreciate that the Act seeks to improve upon unduly restrictive photo ID requirements by creating an alternative approach for voters who do not have one of the enumerated photo IDs. Nevertheless, the ACE Act's ID requirements still risk excluding too many voters.

More generally, these identification requirements are unnecessary. D.C., like the rest of the country, already has effective identification requirements that adequately protect against fraud and ensure that eligible voters are not denied ballots. Under the Help America Vote Act, all first-time voters who register by mail must show identification bearing their address before voting in-person.<sup>55</sup> This works hand-in-hand with other methods of identifying voters, such as requiring voters to state their name and address and to sign an e-pollbook affirming their

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<sup>52</sup> 138 S. Ct. 1833 (2018).

<sup>53</sup> Brief of the League of Women Voters of the United States, League of Women Voters of Ohio, and the Brennan Center for Justice as Amici Curiae in Support of Respondents, *Husted v. A. Phillip Randolph Inst.*, 138 S. Ct. 1833 (2018) (No. 16–980) at 16.

<sup>54</sup> See Freedom to Vote: John R. Lewis Act § 1911.

<sup>55</sup> “Register to Vote,” District of Columbia Board of Elections, accessed June 4, 2023, <https://dcboe.org/Voters/Register-To-Vote/Register-to-Vote>; and 52 U.S.C. § 21083(b).

eligibility.<sup>56</sup> While the Brennan Center does not believe that additional national voter ID standards are needed, the FTVA provides a more workable national identification standard.<sup>57</sup>

#### **D. Ballot collection restrictions**

The Brennan Center opposes the ACE Act’s limit on ballot collection with exceptions only for election officials, mail carriers, family members, household members, and caregivers (section 324). The implications of this ban are clear: it will pose a significant burden on voters who depend on someone else to deliver their ballot for them, namely voters with disabilities, elderly voters, or voters with limited access to transportation.<sup>58</sup> These voters should not face limitations in choosing who to trust to return their ballots. Nationally, restrictions on ballot collection disproportionately harm Native American voters. Many voters in tribal communities rely on ballot collection to vote due to limited residential mail delivery, variable road conditions, post offices as far as hundreds of miles away, and few polling places.<sup>59</sup>

For decades, voters have used ballot collection in states across the country with few problems. Indeed, efforts to steal or tamper with ballots are already illegal and easy to catch. In 2018, for example, North Carolina election officials caught the unlawful ballot collection scheme attempted by campaign operatives; notably, the Tarheel State already had a ballot collection ban on the books at the time.

#### **E. Timely reporting requirement**

Although the ACE Act’s timely reporting requirements (section 325) contain good ideas, some elements should be revised. First, the Act requires mail ballots to be processed upon receipt.<sup>60</sup> The Brennan Center generally supports policies that allow election officials to process mail ballots prior to Election Day. By authorizing election officials to take reasonable, early steps to process ballots, rules like this one further the important goal of minimizing reporting delays and the consequent cycle of mistrust. However, it is not necessary to pre-process mail ballots *immediately* upon receipt as the Act requires.

Second, the Act requires the total number of ballots to be reported at the time polls close on Election Day, and results to be reported no later than 10:00am after Election Day. The

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<sup>56</sup> D.C. Mun. Regs. tit. 3, § 711.

<sup>57</sup> Freedom to Vote: John R. Lewis Act § 1801.

<sup>58</sup> See Dr. Lisa Schur, *Disability and Voting Accessibility in the 2020 Elections: Final Report on Survey Results*, Submitted to the Election Assistance Commission, Rutgers University, 2021, 9, [https://www.eac.gov/sites/default/files/voters/Disability\\_and\\_voting\\_accessibility\\_in\\_the\\_2020\\_elections\\_final\\_report\\_on\\_survey\\_results.pdf](https://www.eac.gov/sites/default/files/voters/Disability_and_voting_accessibility_in_the_2020_elections_final_report_on_survey_results.pdf) (“Among voters using mail ballots, close to one-ninth (11%) of voters with disabilities reported needing assistance in voting, with 5% needing assistance in completing the ballot and 10% needing assistance in returning the ballot (Table 16, column 5). Family members were the most likely to provide such assistance, though just under one-tenth (8%) relied on friends or neighbors and 7% relied on home health aides (Table 16, column 5)”).

<sup>59</sup> See Dr. James Thomas Tucker, Jacqueline De León, and Dr. Dan McCool, *Obstacles at Every Turn*, Native American Rights Fund, 2020, [https://vote.narf.org/wp-content/uploads/2020/06/obstacles\\_at\\_every\\_turn.pdf](https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf); and the 2021 addendum, Native American Rights Fund, *2021 Addendum to Obstacles at Every Turn*, 2021, <https://vote.narf.org/wp-content/uploads/2021/10/obstacles-2021addendum.pdf>.

<sup>60</sup> Current D.C. regulations already authorize election officials to verify mail ballot signatures and open mail ballot return envelopes before Election Day. D.C. Mun. Regs. tit. 3 § 808.

Brennan Center generally supports efforts to timely process and report election results, with the caveat that any reporting requirement should clarify that results remain unofficial until provisional ballots have been adjudicated and counted, the deadline to receive mail ballots has passed, the total results have been audited, and the results are officially certified.

Third, the provision provides that each election worker in a room where ballots are counted must be accompanied by another election worker of the opposite party. Requiring election workers to complete certain tasks in two-person, bipartisan teams can help ensure impartiality and fairness. But in light of the widely reported election worker shortage across the country,<sup>61</sup> this requirement should be revised to incorporate a reasonable or “best-effort” standard.

#### **F. Ban on counting out-of-precinct provisional ballots**

The ACE Act’s out-of-precinct provisional ballot policy (section 327) would needlessly disenfranchise eligible voters. D.C., like at least 17 other states, counts votes cast by eligible voters outside of their assigned precincts for all the races in which the voter was eligible to vote (and not for races in which the voter was ineligible). This practice ensures full access to the franchise while still preventing improper votes. There is no good reason to throw out a provisional voter’s *entire* ballot when it is easy to simply record their proper votes and exclude any improper ones. And it is especially unfair for voters who show up at the wrong precinct because of government mistakes.<sup>62</sup> Moreover, D.C. now uses vote centers, where voters can cast their ballot regardless of where in the city they live, so an out-of-precinct policy makes little sense.<sup>63</sup>

Baseline national standards should ensure that voters are not disenfranchised simply because they went to the wrong polling place. The FTVA would achieve this goal by requiring provisional ballots to be counted so long as they are cast within the same county in which the voter is registered and eligible to vote.<sup>64</sup>

#### **G. Mandatory post-election audits**

We support the requirement that states and localities conduct post-election audits. However, the ACE Act’s proposed audit mandate (section 328) should be improved in at least two ways. First, it should clarify that the mandated tabulation audit should be a risk-limiting audit (“RLA”) — the gold standard of post-election tabulation audits. Political scientists, statisticians, and election-security experts all have lauded RLAs as “one of the critical measures

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<sup>61</sup> Ines Kagubare, “US faces election worker shortage ahead of midterms due to rise in threats,” *The Hill*, October 2, 2022, <https://thehill.com/policy/cybersecurity/3669329-us-faces-election-worker-shortage-ahead-of-midterms-due-to-rise-in-threats/>.

<sup>62</sup> See, e.g., Laura Vozzella, “Virginia directs 60,000 voters to wrong polling place for midterms,” *Washington Post*, October 21, 2022, <https://www.washingtonpost.com/dc-md-va/2022/10/21/youngkin-virginia-midterms-election/>.

<sup>63</sup> “Find Out Where to Vote,” District of Columbia Board of Elections, accessed June 5, 2023, <https://www.dcboc.org/Voters/Where-to-Vote/Election-Day-Vote-Locations>.

<sup>64</sup> Freedom to Vote: John R. Lewis Act § 3911.

necessary to secure elections and a key component of a broader cybersecurity defense.”<sup>65</sup> The District already has post-election audit requirements, but it does not require officials to conduct RLAs.<sup>66</sup> Second, the provision sets an audit deadline of 30 days from the election, which could lead to audits taking place after certification of results and therefore unnecessarily limit their utility.<sup>67</sup> We recommend requiring audits to be completed before certification of official election results.

The FTVA addresses the same transparency concerns that the ACE Act targets, but requires states to conduct true RLAs, and for them to be completed within five days of certification.<sup>68</sup>

## **H. Expanding election observers’ powers**

The ACE Act’s provision allowing for public observers of election procedures (section 329), as written, would put election workers and voters at risk. We agree that transparency is critical to free and fair elections, and that includes allowing observers to watch the canvassing and processing of mail ballots. The Act, however, does not strike the appropriate balance between transparency, voters’ rights, poll worker safety, and election management needs. It dramatically and unreasonably expands observers’ ability to challenge both voters and poll workers and jeopardizes election officials’ ability to maintain control and safety at polling places.

D.C. law already allows both partisan poll watchers and non-partisan election observers to observe both voting and counting processes.<sup>69</sup> But it gives D.C. election officials discretion to impose reasonable and equitable limitations on the number of watchers or observers allowed in a particular facility “to ensure that the conduct of the election will not be obstructed or disrupted.”<sup>70</sup> In contrast, the ACE Act seems to preclude any such reasonable limitations by prohibiting election officials from obstructing such observation without any exceptions for intimidating conduct, creating a risk of disruption.

D.C. law also already permits registered voters to challenge their fellow voter’s qualifications to vote, but requires a challenge to be made under oath, based upon substantial evidence, and non-discriminatory.<sup>71</sup> It also provides detailed procedures governing the challenge process.<sup>72</sup> The ACE Act would give partisan observers authority not simply to challenge a voter’s qualifications, but to broadly “challenge the casting or tabulation” of any ballot. It provides no limitations or procedures to govern such a challenge. This broad authority is

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<sup>65</sup> Christopher Deluzio, “A Smart and Effective Way to Safeguard Elections,” Brennan Center for Justice, July 25, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/smart-and-effective-way-safeguard-elections>.

<sup>66</sup> D.C. Code § 1-1001.09a.

<sup>67</sup> In 2022, for instance, the D.C. Board of Election certified election results on November 30, 22 days after the election. “General Election 2022—Certified Results,” D.C. Board of Elections, last modified November 30, 2022, [https://electionresults.dboe.org/election\\_results/2022-General-Election](https://electionresults.dboe.org/election_results/2022-General-Election).

<sup>68</sup> Freedom to Vote: John R. Lewis Act § 4001.

<sup>69</sup> D.C. Mun. Regs. tit. 3 § 706

<sup>70</sup> D.C. Mun. Regs. tit. 3 § 706.6.

<sup>71</sup> D.C. Official Code § 1-1001.09(d); and D.C. Mun. Regs. tit. 3 §§ 710, 721.

<sup>72</sup> D.C. Official Code § 1-1001.09(d); and D.C. Mun. Regs. tit. 3 §§ 710, 721.

vulnerable to abuse, creating a serious risk that voters will be harassed or intimidated, and that observers will interfere with elections administration.

The FTVA, in contrast, better balances the need to ensure safe and effective election administration with the need to provide public transparency. It would prohibit in-person challenges by civilians on or near Election Day to limit the potential for harassment, while prohibiting unsubstantiated, baseless, or discriminatory challenges in a similar manner to D.C.’s current law. And it would leave D.C.’s provisions allowing for watchers and observers to monitor election processes untouched.<sup>73</sup> We recommend that Congress adopt those provisions instead.

## **I. Limits on mail ballot transmission**

The Brennan Center opposes the ACE Act’s prohibition on affirmatively sending mail ballots to D.C. voters (section 330). While the policy of sending mail ballots to voters is relatively new in D.C., eight other states use this approach (some of them for decades), allowing them to improve voter access while maintaining the security of their elections.<sup>74</sup> Data show that automatically sending mail ballots to registered voters increases voter participation, including in D.C.<sup>75</sup> And, as the Brennan Center has demonstrated at length, mail voting incorporates many security features that prevent fraud.<sup>76</sup> Even if ballots are sent to the wrong person, these protections — including barcodes and the paper trail inherent in mail voting — prevent ballots from being counted if they were cast improperly.

The Brennan Center also opposes the ACE Act’s prohibition on counting ballots that were sent in a timely manner, i.e., *before* Election Day, but not received until after Election Day (section 330). This policy risks disenfranchising thousands of voters who followed the rules but whose ballots, because of postal delays, do not arrive on time. Instead, we recommend adopting the mail voting provisions of the FTVA, which would allow counting ballots cast by Election Day and received within a reasonable period between Election Day and certification.

In recent years, and especially since the pandemic, mail voting has become increasingly popular. Election officials can administer it securely and effectively. Rather than seeking to limit access to mail voting, Congress should seek to protect and facilitate it as an important option for democratic participation. The FTVA would help accomplish this goal by adopting policies including no-excuse vote-by-mail for every eligible voter and clear guidelines for signature matching.<sup>77</sup>

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<sup>73</sup> Freedom to Vote: John R. Lewis Act § 3601.

<sup>74</sup> “Table 18: States With All-Mail Elections,” National Conference of State Legislatures, last modified February 3, 2022, accessed June 6, 2023, <https://www.ncsl.org/elections-and-campaigns/table-18-states-with-all-mail-elections>.

<sup>75</sup> Eric McGhee, Jennifer Paluch, and Mindy Romero, *Vote-by-Mail and Voter Turnout in the Pandemic Election*, Public Policy Institute of California, 2021, <https://www.ppic.org/publication/vote-by-mail-and-voter-turnout-in-the-pandemic-election/>.

<sup>76</sup> Danetz, *Mail Ballot Security*.

<sup>77</sup> Freedom to Vote: John R. Lewis Act § 1301.

## **J. Drop box restrictions**

The Brennan Center does not oppose drop box surveillance so long as it does not impede voter access and is properly funded. But the ACE Act (section 331) requires drop boxes to be located inside of a D.C. *government building* with 24-hour remote or electronic surveillance. This requirement serves only as an unnecessary step that would eliminate many pre-existing drop box locations.

In previous elections, D.C. voters have successfully used drop boxes at a wide variety of locations such as libraries, recreation centers, and other high traffic areas. Drop-offs are permitted at any time, and many of the drop boxes are located outside. D.C. and other states already have implemented less onerous, yet effective layers of security for drop boxes in these locations, including locks, tamper-evident seals, and secure fastenings to an immovable object if a drop box is located at an unstaffed location.<sup>78</sup> Further complicating matters, the provision does not specify whether the government buildings in question must be open and accessible to voters 24 hours a day — an ambiguity that risks slashing drop box availability even further. In short, section 331 ignores community-specific needs for accessible ballot drop box locations without any compelling security rationale.

Congress should encourage the use of safe and secure drop boxes to make voting accessible and more convenient for eligible individuals. The FTVA would do so by requiring that they be available from the first day that each jurisdiction sends out mail ballots through the time that polls close on Election Day.<sup>79</sup> It further requires that drop boxes be accessible for a reasonable number of hours each day, with at least 25 percent of them accessible 24 hours per day.<sup>80</sup> Importantly, the FTVA would also ensure that drop boxes are available to all voters on a non-discriminatory basis, accessible by public transportation and to voters with disabilities, and geographically distributed to provide a reasonable opportunity for voters to timely cast ballots, among other criteria.<sup>81</sup>

## **III. Congress Should Protect the Freedom to Vote and Election Integrity on a National Level.**

The ACE Act fails to address the most significant threats to our elections: unprecedented levels of violence and intimidation, increasing efforts to manipulate elections and politicize election administration, outdated and insecure election infrastructure and equipment, and cynical and often discriminatory efforts to disenfranchise eligible voters. Each of these challenges poses a serious threat to the freedom to vote, and each requires national solutions.

In addition to the pro-voter protections detailed above in Part II, the Freedom to Vote Act contains essential solutions to address these threats to our elections. Combined with the John R. Lewis Voting Rights Advancement Act (“VRAA”), which would restore the Voting Rights Act’s protections against racial discrimination in voting, as well as regular appropriations providing

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<sup>78</sup> Danetz, *Mail Ballot Security*.

<sup>79</sup> Freedom to Vote: John R. Lewis Act § 1305.

<sup>80</sup> Freedom to Vote: John R. Lewis Act § 1301.

<sup>81</sup> Freedom to Vote: John R. Lewis Act § 1301.

adequate funding for election infrastructure and security, these are the measures that Congress needs to urgently pass. The District of Columbia has adopted many of the best practices in the FTVA, underscoring the need for national standards, rather than standards applicable only to D.C.

### **A. Protecting the freedom to vote**

Above all, Congress must set baseline national standards to protect the freedom to vote for all Americans. The FTVA provides minimum standards for early voting and no-excuse mail voting.<sup>82</sup> It also includes protections for voters subject to excessive lines on Election Day — disproportionately Black and Latino voters,<sup>83</sup> ensures equal access for voters with disabilities,<sup>84</sup> and enhances safeguards against deceptive and intimidating practices intended to deter eligible people from voting.<sup>85</sup>

The FTVA modernizes voter registration, setting automatic voter registration (“AVR,” already in use in D.C.) as the national standard.<sup>86</sup> AVR not only adds eligible voters to the rolls, but it also helps ensure the accuracy of voter rolls by using more reliable data and making the rolls much easier to keep up-to-date.<sup>87</sup> And the FTVA provides a clear, bright-line rule to restore the vote to formerly incarcerated citizens living in the community.<sup>88</sup> Alongside these standards, Congress must prevent creative attempts to disenfranchise voters in new ways by restoring the full protections of the Voting Rights Act against racial discrimination in voting — protections that have long enjoyed broad bipartisan support.

### **B. Protecting election officials and workers**

To prevent irreparable damage to our elections work force, Congress must urgently shore up protections for election officials and workers. The FTVA would do so in part by ensuring that election workers have the same protections against harassment and intimidation as voters.<sup>89</sup>

The FTVA would also offer a critical safeguard for election officials simply by establishing common national standards. As a joint report on the 2020 election by the Brennan Center and the Bipartisan Policy Center found, “many of the outside pressures or threats that election officials face arise when the law is not clear.”<sup>90</sup> By lessening local officials’ discretion over hot-button issues, baseline national standards would not only make it harder for the small minority of unscrupulous officials to abuse their offices; it would also reduce incentives for

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<sup>82</sup> Freedom to Vote: John R. Lewis Act § 1201; and “Table 1: States with No-Excuse Absentee Voting,” National Conference of State Legislatures, last modified July 12, 2022, accessed June 6, 2023, <https://www.ncsl.org/elections-and-campaigns/table-1-states-with-no-excuse-absentee-voting>.

<sup>83</sup> Freedom to Vote: John R. Lewis Act § 1606.

<sup>84</sup> Freedom to Vote: John R. Lewis Act § 1101.

<sup>85</sup> Freedom to Vote: John R. Lewis Act § 3202.

<sup>86</sup> Freedom to Vote: John R. Lewis Act § 1002.

<sup>87</sup> Brennan Center for Justice, *The Case for Automatic Voter Registration*, 2016, 10, <https://www.brennancenter.org/our-work/research-reports/case-automatic-voter-registration>.

<sup>88</sup> Freedom to Vote: John R. Lewis Act § 1703.

<sup>89</sup> Freedom to Vote: John R. Lewis Act § 3101.

<sup>90</sup> Brennan Center for Justice, *Election Officials Under Attack*, 2021, <https://www.brennancenter.org/our-work/policy-solutions/election-officials-under-attack>.



others to harass or pressure election officials, the vast majority of whom are dedicated, law-abiding public servants. Clarifying the permissibility of routine practices such as distributing mail ballot applications would also make it harder to threaten election officials with prosecution or other unwarranted forms of retaliation for doing their jobs.

### **C. Preventing election interference and denial efforts**

To prevent elections from sabotage, Congress must also shore up the national guardrails against attempts to interfere with impartial election administration, vote counting processes, and election certification. Overhauling the flawed Electoral Count Act, as Congress did last year, served as an important first step. But much more remains to be done.<sup>91</sup>

Clear, pro-voter, uniform national standards for counting votes, such as those found in the FTVA, would go a long way toward neutralizing efforts to alter election results or sow distrust in outcomes. To stave off attacks on impartial election administration, the FTVA increases protections for local election administrators and helps prevent them from being removed for partisan or political reasons.<sup>92</sup> To protect against partisan attempts to tamper with election results, the bill would prevent destroying or altering ballots and other election records, as well as expand the categories of what records must be preserved after federal elections.<sup>93</sup> And critically, if an election official unreasonably refuses to certify election results or otherwise attempts to set aside a valid election outcome, the FTVA would allow voters to sue.

### **D. Enhancing the security of election systems**

Congress must also take steps to enhance the security of election equipment and data. In addition to its audit requirements, discussed above, the FTVA would protect election cybersecurity by requiring states that still use old, paperless voting machines to replace them with voting systems that provide voter-verified paper records (and authorizing federal grants to help them do so).<sup>94</sup> Congress should also help states prevent unauthorized access to election equipment and facilities through reliable and consistent funding for tools such as cameras, keycard access systems, and tracking devices.<sup>95</sup>

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<sup>91</sup> Electoral Count Reform Act, Pub. L. No: 117–328, §§ 102–110 (2022); see also Michael Waldman, “Much Needed Reform for the Electoral Count Act,” Brennan Center for Justice, December 23, 2022, <https://www.brennancenter.org/our-work/analysis-opinion/much-needed-reform-electoral-count-act>.

<sup>92</sup> Freedom to Vote: John R. Lewis Act § 3001.

<sup>93</sup> Freedom to Vote: John R. Lewis Act § 3302.

<sup>94</sup> Freedom to Vote: John R. Lewis Act §§ 3902, 3907–08; and Michael Waldman, “Congress Must Fund Election Security,” Brennan Center for Justice, 2022, <https://www.brennancenter.org/our-work/analysis-opinion/congress-must-fund-election-security>.

<sup>95</sup> Lawrence Norden, Derek Tisler, and Turquoise Baker, *Methodology for Estimated Costs of Protecting Election Infrastructure Against Insider Threats*, Brennan Center for Justice, 2022, <https://www.brennancenter.org/our-work/research-reports/methodology-estimated-costs-protecting-election-infrastructure-against>; and Lawrence Norden, Derek Tisler, and Turquoise Baker, *Estimated Costs of Protecting Election Infrastructure Against Insider Threats*, Brennan Center for Justice, 2022, <https://www.brennancenter.org/our-work/research-reports/estimated-costs-protecting-election-infrastructure-against-insider>.

#### IV. D.C.'s Voters Deserve The Same Right to Political Self-Determination As Other Americans.

The ACE Act would restrict voting access for D.C.'s hundreds of thousands of voters — none of whom have voting representation in the Congress considering this bill. It would do so despite the fact that Congress has long delegated its authority over the District's elections and local governance to the D.C. Council under the D.C. Home Rule Act of 1973. Recognizing the importance of local sovereignty, Congress has rarely interfered with that delegation since the passage of the Home Rule Act, typically drawing opposition and controversy.<sup>96</sup>

As I make clear throughout my testimony, baseline standards that safeguard our elections and access to the ballot remain critical for all Americans. But — as with every state — D.C. residents should have the ability to adopt policies that expand access to the ballot or suit their local conditions beyond these baseline standards.

In addition to local sovereignty, the people of D.C. also deserve the full representative citizenship that can only be obtained via statehood. The District's population is greater than that of either Vermont or Wyoming, and yet it has no voting member in Congress.<sup>97</sup> D.C. pays more in federal taxes than 22 states other states combined.<sup>98</sup> The District receives consistently excellent credit ratings and operates under strong governance.<sup>99</sup> D.C. voters have overwhelmingly voted in favor of petitioning Congress to become a state.<sup>100</sup> And for the District's population, which is majority non-white, statehood is an essential civil rights issue.<sup>101</sup> By any standard, D.C. residents deserve the right to full political self-determination in the form of statehood.

The ACE Act also ignores an important feature of D.C.'s elections: they already protect the freedom to vote and safeguard election integrity. As noted above, D.C. has adopted many of the gold-standard policies contained in the FTVA. An audit that the Office of the District of Columbia Auditor conducted into the 2020 election concluded that despite “unprecedented” election administration challenges, officials managed to “successfully conduct a largely by-mail general election in November 2020.”<sup>102</sup> Extensive research demonstrates that mail voting is thoroughly secure.<sup>103</sup> In fact, after D.C. sent every registered voter a mail ballot during the 2020

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<sup>96</sup> Pub. L. No. 93-198 (1973) 87 Stat. 774; Christopher M. Davis, *Congressional Disapproval of District of Columbia Acts Under Home Rule Act*, Congressional Research Service, 2015, <https://sgp.fas.org/crs/misc/IN10249.pdf>; and Congressional Research Service, *Congressional Disapproval of District of Columbia Acts: Overview of Selected Resolutions*, 2023, <https://crsreports.congress.gov/product/pdf/IN/IN12122>.

<sup>97</sup> Maya Efrati, *DC Statehood Explained*, Brennan Center for Justice, 2022, <https://www.brennancenter.org/our-work/research-reports/dc-statehood-explained>.

<sup>98</sup> Efrati, *DC Statehood*.

<sup>99</sup> See, e.g., Moody's Investors Service, Credit Opinion: District of Columbia (Dec. 23, 2022).

<sup>100</sup> Rebecca Hersher, “D.C. Votes Overwhelmingly To Become 51<sup>st</sup> State,” NPR, November 9, 2016, <https://www.npr.org/sections/thetwo-way/2016/11/09/501412360/d-c-votes-overwhelmingly-to-become-51st-state>.

<sup>101</sup> Efrati, *DC Statehood*.

<sup>102</sup> Office of the District of Columbia Auditor, *District of Columbia 2020 Election Administration*.

<sup>103</sup> Danetz, *Mail Ballot Security*; and Weiser and Ekeh, “The False Narrative.”

election, a post-election audit<sup>104</sup> uncovered no evidence of fraud. Instead, it found<sup>105</sup> that D.C. voters “embraced” the District’s shift to mail voting and that D.C. was “in line or compared favorably with states nationwide on key indicators of effective [election] administration.” D.C.’s election policies have even contributed to a rare feat — it was one of only 11 states that saw participation increase for its non-white voters between 2018 and 2022.<sup>106</sup>

In short, D.C. has long set its own election rules, while still following the minimum standards in national election laws like other states. Congress should continue to let them do so, and instead focus its attention on protecting the freedom to vote for all Americans.

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<sup>104</sup> Martin Austermuhle, “Audit Finds High Number of Mail Ballots Returned As ‘Undeliverable’ In 2020,” *DCist*, November 16, 2021, <https://dcist.com/story/21/11/16/large-number-of-dc-mail-ballots-were-returned-as-undeliverable-in-2020/>.

<sup>105</sup> Office of the District of Columbia Auditor, *District of Columbia 2020 Election Administration*.

<sup>106</sup> William H. Frey, *New voter turnout data from 2022 shows some surprises, including lower turnout for youth, women, and Black Americans in some states*, Brookings Institution, 2023, <https://www.brookings.edu/research/new-voter-turnout-data-from-2022-shows-some-surprises-including-lower-turnout-for-youth-women-and-black-americans-in-some-states/>.