



**TESTIMONY OF  
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**HEARING ON**

**“AMERICAN CONFIDENCE IN ELECTIONS:  
PREVENTING NONCITIZEN VOTING  
AND OTHER FOREIGN INTERFERENCE”**

**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON HOUSE ADMINISTRATION**

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<sup>1</sup> The Brennan Center for Justice at New York University School of Law is a nonpartisan law and policy institute that works to strengthen the systems of democracy and justice so they work for all. I have led the Brennan Center since 2005. I am the author of numerous books and articles on law and democracy, including *The Fight to Vote* (Simon & Schuster, 2016, 2022) and *The Supermajority: How the Supreme Court Divided America* (Simon & Schuster, 2023, 2024). I have testified frequently before Congress on voting rights and other issues. This statement does not purport to convey the views, if any, of New York University School of Law.

Chairman Steil, Ranking Member Morelle, and Members of the Committee:

Thank you for the opportunity to testify today. Americans are deeply concerned about the health of our democracy, and rightly so. With a critical national decision approaching, it is imperative that elections be free, fair, and secure.

All in positions of responsibility should work to uphold confidence and trust in American democracy. There is much to do: Congress should enact vital legislation to protect the freedom to vote, support election officials by adequately funding elections, and restore the full strength of the Voting Rights Act to protect against discrimination. Instead, partisans and conspiracy theorists fan unfounded rumors of widespread voting by noncitizens. These scare stories have no basis in fact. Noncitizen voting is already illegal, and is vanishingly rare. But it forms the rationale for proposed legislation that would disenfranchise millions of American voters in future elections and upend the nation's voter registration system.

The rise of the election denier movement is a significant and disturbing new fact in public life. Panic over noncitizen voting is not merely a rumor distilled from the fog of social media. It is a deliberate falsehood, pressed for personal and political gain. Such falsehoods spurred the January 6 insurrection, which aimed to block the Constitution's peaceful transfer of power and led to the deaths of law enforcement officers and others. It is wrong for political leaders to lie about our elections.

This Committee and the Congress should reject this misguided approach and return to the bipartisan tradition of securing elections and protecting voting rights for the American people.

## **I. ELECTIONS ARE SECURE—ELECTION DENIAL IS THE REAL THREAT**

American elections are secure and accurate. Despite the pandemic, disruptions, and disinformation, turnout in the 2020 election was the highest since 1900, with two thirds of voting-eligible Americans casting a ballot.<sup>2</sup> And it was the most secure election in American history, according to President Trump's own Department of Homeland Security.<sup>3</sup> It was an historic civic achievement.

The response: Donald Trump's false claim of a stolen election and widespread fraud. This Big Lie was deployed to undermine the election and explain away the former president's defeat. Repeatedly it was conclusively repudiated. Indeed, sixty-three court rulings rejected this election denial, calling Trump and allies' cases "flimsy," "incorrect and not credible," and "strained legal arguments without merit and speculative accusations . . . unsupported by

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<sup>2</sup> Hannah Hartig et al., "Voter Turnout: 2018-2022," Pew Research Center, July 12, 2023, <https://www.pewresearch.org/politics/2023/07/12/voter-turnout-2018-2022/>.

<sup>3</sup> "Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees," Cybersecurity and Infrastructure Security Agency, Department of Homeland Security, November 12, 2020, <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.

evidence,” for example.<sup>4</sup> Attorney General William Barr announced that the Justice Department’s investigators “have not seen fraud on a scale that could have effected a different outcome in the election.”<sup>5</sup> (In a private conversation with Trump, Barr was even more forceful, using a barnyard epithet.)<sup>6</sup> The U.S. Supreme Court refused to hear Trump’s efforts to undo the election. More recently, in *Moore v. Harper*, in an opinion authored by Chief Justice John Roberts, it rejected the election deniers’ legal theory that state legislatures could set federal election rules without checks and balances from state constitutions, courts, governors, or voters.<sup>7</sup>

False claims about noncitizen voting were key to the attempt to overturn the 2020 results. Rudolph Giuliani, Trump’s lawyer, claimed widespread illegal voting by noncitizens in Arizona (“the bare minimum is 40 or 50,000, the reality is probably about 250,000.”)<sup>8</sup> Giuliani lost his law license after a panel of New York State appeals court judges found his assertions to be “false and misleading.”<sup>9</sup> Trump repeated these lies about Arizona in his speech on January 6, 2021, as noted in his federal criminal indictment.<sup>10</sup>

The often-frenzied election denier movement has created a hostile environment and stoked violence throughout the political system. Its falsehoods egged on the mob that stormed the Capitol on January 6, 2021. Over 1,000 of the insurrectionists have been charged for their involvement in this attack.<sup>11</sup> Election officials of both parties also endure this hostility. According to a recent Brennan Center survey, 38 percent of local election officials report experiencing threats, harassment, or abuse.<sup>12</sup> This abuse has increased in volume over the past year.

This movement has taken an ominous turn. In 2020 election denial was improvisational and shambolic. Now it is organized, systematic, and lavishly funded. It has become a central political talking point.

While in 2020 partisans floated lurid claims of voting machine companies switching votes, election workers hauling boxes of fake ballots, even Chinese-printed paper with bamboo

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<sup>4</sup> *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, No. 2020AP1920-OA (Wis. December 4, 2020) (Hagedorn, J., concurring) (“flimsy”); *Costantino v. City of Detroit*, No. 20-014780-AW (Mich. Cir. Ct. November 13, 2020) (“incorrect and not credible”); *Donald J. Trump for President Inc. v. Boockvar*, 502 F. Supp. 3d 899, 906 (M.D. Pa. November 21, 2020) (“strained legal arguments”).

<sup>5</sup> Michael Balsamo, “Disputing Trump, Barr Says No Widespread Election Fraud,” Associated Press, June 28, 2022, <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.

<sup>6</sup> Select Comm. to Investigate the January 6th Attack on the United States Capitol, H. Rept. No. 117-663, at 378 (December 22, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/pdf/GPO-J6-REPORT.pdf>.

<sup>7</sup> *Moore v. Harper*, 143 S. Ct. 2065 (2023).

<sup>8</sup> *In the Matter of Rudolph W. Giuliani*, an attorney and counselor at-law: Attorney Grievance Committee for the First Judicial Department v. Rudolph W. Giuliani, 197 A.D.3d 1 at 24 (N.Y. App. Div. 2021).

<sup>9</sup> *In the Matter of Rudolph W. Giuliani*, 197 A.D.3d 1 at 32-33.

<sup>10</sup> Indictment at 11, *United States v. Donald J. Trump*, No. 1:23-cr-00257-TSC (D. D.C. 2023), [https://www.justice.gov/storage/US\\_v\\_Trump\\_23\\_cr\\_257.pdf](https://www.justice.gov/storage/US_v_Trump_23_cr_257.pdf); Melissa Murray and Andrew Weissman, *The Trump Indictments: The Historic Charging Documents with Commentary* (New York: W.W. Norton & Company, 2024), 33.

<sup>11</sup> U.S. Attorney’s Office, District of Columbia, “30 Months Since the Jan. 6 Attack on the Capitol,” October 26, 2023, <https://www.justice.gov/usao-dc/30-months-jan-6-attack-capitol>.

<sup>12</sup> Brennan Center for Justice, *Local Election Officials Survey – May 2024*, May 1, 2024, <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-may-2024>.

fibers, this time the rumors often center on noncitizen voting.<sup>13</sup> In January, Donald Trump told an Iowa audience, “That’s why they are allowing these people to come in—people that don’t speak our language—they are signing them up to vote.”<sup>14</sup> Elon Musk, the world’s second wealthiest man, told his followers on X (formerly Twitter), “They are importing voters.”<sup>15</sup> “Treason, indeed!” Musk exclaimed. Senator J.D. Vance said that “open borders” meant “more Democrat voters pouring into the country.”<sup>16</sup> Top Republicans are already refusing to commit to accept the results of the 2024 election.<sup>17</sup>

Political muscle now backs these strategies. The Republican National Committee’s newly named senior counsel for election integrity was recently indicted in Arizona for alleged participation in the “fake elector” scheme.<sup>18</sup> According to the *Washington Post*, the RNC asks potential employees during job interviews if they believe the 2020 election was stolen.<sup>19</sup> It has pledged to dispatch “more than 100,000 volunteers and lawyers to monitor and potentially challenge the electoral process in each battleground state.”<sup>20</sup> Co-Chair Lara Trump recently told Newsmax that the RNC now has the ability to “not just have poll watchers...but people who can physically handle the ballots.”<sup>21</sup> (That would be illegal, if true.)

All this fans a miasma of rumors, whispers, and increasingly outrageous assertions.<sup>22</sup> Such claims cannot plausibly be driven by concern over election integrity. They seek to preemptively sow distrust in the next election. This time the Big Lie is being pre-deployed. These activists aim to set the stage for the next braying cries of “rigged” and a stolen election, whatever the facts. They exploit unease about the border and rising migration. They evoke the specter of shadowy hordes, directed by an unseen hand, somehow negating the votes of eligible

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<sup>13</sup> Brennan Center for Justice, “Election Rumors in 2024,” 2024, <https://www.brennancenter.org/series/election-rumors-2024>.

<sup>14</sup> “Campaign 2024, Former President Trump Holds Rally in Sioux Center, Iowa,” C-Span, January 5, 2024, <https://www.c-span.org/video/?532608-1/president-trump-holds-rally-sioux-center-iowa>; Amy Sherman, “Trump’s Claim that Millions of Immigrants are Signing Up to Vote Illegally is Pants on Fire!,” Politifact, January 12, 2024, <https://www.politifact.com/factchecks/2024/jan/12/donald-trump/trumps-claim-that-millions-of-immigrants-are-signi/>.

<sup>15</sup> Elon Musk (@elonmusk), Twitter, March 5, 2024, <https://twitter.com/elonmusk/status/1765024395217473996>.

<sup>16</sup> “Are You a Racist?,” JD Vance for Senate, April 5, 2022, YouTube video, <https://www.youtube.com/watch?v=K3qYJoSV0II>.

<sup>17</sup> Patrick Svitek, “Top Republicans, Led by Trump, Refuse to Commit to Accept 2024 Election Results,” *Washington Post*, May 9, 2024, <https://www.washingtonpost.com/elections/2024/05/08/trump-republicans-2024-election-results/>.

<sup>18</sup> Yvonne Wingett Sanchez, Amy Gardner, and Holly Bailey, “Here’s Who was Charged in the Arizona 2020 Election Interference Case,” *Washington Post*, April 24, 2024, <https://www.washingtonpost.com/national-security/2024/04/24/arizona-2020-election-charges/>.

<sup>19</sup> Josh Dawsey, “Was the 2020 Election Stolen? Job Interviews at RNC Take an Unusual Turn,” *Washington Post*, March 27, 2024, <https://www.washingtonpost.com/nation/2024/03/26/rnc-2020-election-stolen-trump-hiring/>.

<sup>20</sup> Nick Corasaniti, Alexandra Berzon, and Michael Gold, “G.O.P. Intensifies Scrutiny of Voting: ‘We’re Keeping a Close Eye on You’,” *New York Times*, April 20, 2024, <https://www.nytimes.com/2024/04/20/us/politics/trump-rnc-voting-election.html>.

<sup>21</sup> Natalie Venegas, “Lara Trump Wants RNC to ‘Physically Handle the Ballots’,” *Newsweek*, April 24, 2024, <https://www.newsweek.com/lara-trump-wants-republican-national-committee-handle-ballots-2024-election-1893517>.

<sup>22</sup> See, e.g., Ken Bensinger, “A Mysterious Flier, a Tiny Charity and a Disinformation Campaign at the Border,” *New York Times*, April 30 2024, <https://www.nytimes.com/2024/04/30/us/politics/immigration-disinformation-campaign-biden-trump.html> (false fliers amplified by Heritage Foundation and prominent political figures).

citizens. These rumors, stoked by self-interested political actors, now are the basis of a spectacularly misguided piece of legislation.

## II. WIDESPREAD NONCITIZEN VOTING IS A CONSPIRACY THEORY

Only American citizens are eligible to vote in federal elections. Indeed, with infinitesimally few exceptions only American citizens *do* vote in federal elections.<sup>23</sup> Wild claims of widespread noncitizen voting are false. They are an urban myth.

Noncitizen voting in federal elections is illegal. It has been prohibited in all states since 1926.<sup>24</sup> In 1996, Congress codified the prohibition in federal law, and made it a federal crime for noncitizens to register to vote for a federal election.<sup>25</sup> Noncitizens face up to five years in prison simply for registering to vote.<sup>26</sup> Thus, under current law, noncitizen voting in federal elections is illegal four times over: it is both a state and federal crime to register to vote, and it is both a state and federal crime to vote in federal elections.<sup>27</sup> Severe penalties apply to these crimes. Noncitizens who register and/or vote in federal elections face prison time, fines, and possible deportation—just to cast one vote, in one election.

States have multiple systems in place to prevent noncitizens from voting. For example, state laws require election officials to assess each voter’s eligibility before registering them.<sup>28</sup> All state election offices regularly work with law enforcement to identify, investigate, and prosecute suspected cases of fraud. U.S. Citizenship and Immigration Services officers are instructed to investigate crimes, including improper voting, during the naturalization process. And the Department of Justice, including U.S. Attorney’s offices in every state, has a large infrastructure to investigate and prosecute criminal election laws.

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<sup>23</sup> See Sean Morales-Doyle, “Noncitizens Are Not Voting in Federal or State Elections — Here’s Why,” Brennan Center for Justice, April 12, 2024, <https://www.brennancenter.org/our-work/analysis-opinion/noncitizens-are-not-voting-federal-or-state-elections-heres-why>.

<sup>24</sup> Jamin B. Raskin, “Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage,” *University of Pennsylvania Law Review* 141, no. 4 (1993): 1416-1417, <https://doi.org/10.2307/3312345>.

<sup>25</sup> 18 U.S.C. § 611; 18 U.S.C. § 1015(f).

<sup>26</sup> 18 U.S.C. § 1015(f).

<sup>27</sup> 18 U.S.C. § 611; 18 U.S.C. § 1015(f); see, e.g., Mich. Comp. Laws §§ 168.492 (specifying that U.S. citizenship is a required qualification to register as to vote), 168.495 (requiring voter registration applicants to certify they are citizens of the United States), 168.932a(c) (criminalizing willfully offering to vote or attempting to vote if not qualified to do so), 168.933 (criminalizing false swearing for purposes of securing registration as perjury); Iowa Code §§ 48A.5(2)(a) (specifying that U.S. citizenship is a required qualification to register as to vote), 48A.11(1)(l) (requiring that every voter registration form lists each eligibility requirement, contains an attestation that the registrant meets all of the requirements, and requires the signature of the registrant under penalty of perjury), 39A.2(1)(a)(1) (criminalizing the submission of a voter registration application known to be materially false), 39A.4(a)(3) (criminalizing the submission of a false statement as to the voter's ability to mark a ballot). North Dakota, which does not have voter registration, requires that voters confirm their U.S. citizenship at the polls.

<sup>28</sup> See, e.g., Md. Elec. Law § 3-301(a) (after a voter registration application is received by a local board of elections, requiring the board to determine whether the applicant is qualified to become a registered voter); 25 Pa. Stat. and 25 Pa. C.S.A. Elections § 1328(a) (upon receiving a voter registration application, requiring local election official to examine the application to determine whether the applicant is a qualified elector).

Moreover, federal law requires election officials to maintain voter lists to remove ineligible individuals.<sup>29</sup> Computerized lists linked to other state databases can efficiently identify potentially ineligible voters. In Colorado, for example, election officials review the voter registration database to check if anyone who is registered provided a non-U.S. credential to receive a driver's license.<sup>30</sup> Those lists are available to a wide array of political actors and the public, who can help identify and notify election officials of noncitizens on the list. Many states have formal processes for challenging voter eligibility (including processes we find overly disruptive), but all election offices receive tips and complaints.

For all these reasons, noncitizen voting is vanishingly rare. The Brennan Center conducted a study of 42 jurisdictions in the 2016 general election (*Appendix*), coauthored by Myrna Pérez, now a judge on the Second Circuit Court of Appeals. The study focused particularly on jurisdictions with large populations of noncitizens, and other jurisdictions that were the target of contemporary fearmongering on ineligible voters. It found that election officials, who oversaw the tabulation of 23.5 million votes, referred only an estimated 30 incidents of suspected noncitizen voting for further investigation or prosecution.<sup>31</sup> In other words, even suspected—not proven—noncitizen votes accounted for just 0.0001 percent of the votes cast. Forty of the jurisdictions reported no known incidents of noncitizen voting in 2016.

The libertarian Cato Institute confirmed: “Noncitizens don’t illegally vote in detectable numbers.”<sup>32</sup> Calling this claim “one of the most frequent and less serious criticisms” of elections, Cato’s expert concluded: “There are likely many problems with America’s voting system and there is no doubt that a non-zero number of non-citizens illegally voted, but there is no good evidence that noncitizens voted illegally in large enough numbers to actually shift the outcome of elections or even change the number of electoral votes.”

The federal government, too, has found no evidence of widespread illegal voting by noncitizens—and not for want of trying. After the 2016 election, Donald Trump had insisted he really had won the popular vote “if you deduct the millions of people who voted illegally.”<sup>33</sup> (Invisible voters, evidently, since nobody saw them.) He claimed falsely that 3 to 5 million illegal votes had cost him a popular majority. Trump set up a commission, chaired by Vice President Mike Pence, to investigate the claims. Trump dissolved the commission in 2018 after it

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<sup>29</sup> 52 U.S. Code §§ 20507, 21083.

<sup>30</sup> Those individuals may have later been naturalized, so a further inquiry is required before removal from the rolls. Amy Sherman, “Fact-check: Do States Verify U.S. Citizenship as a Condition for Voting?,” *Austin American-Statesman*, December 7, 2020, <https://www.statesman.com/story/news/politics/2020/12/07/do-states-verify-u-s-citizenship-condition-voting/6480041002/>.

<sup>31</sup> Christopher Famighetti, Douglas Keith, and Myrna Pérez, *Noncitizen Voting: the Missing Millions*, Brennan Center for Justice, May 5, 2017, <https://www.brennancenter.org/our-work/research-reports/noncitizen-voting-missing-millions>. (*Appendix*)

<sup>32</sup> Alex Nowrasteh, “Noncitizens Don’t Illegally Vote in Detectable Numbers,” Cato Institute, November 25, 2020, <https://www.cato.org/blog/noncitizens-dont-illegally-vote-detectable-numbers>.

<sup>33</sup> Donald J. Trump (@realDonaldTrump), Twitter, November 27, 2016, <https://x.com/realDonaldTrump/status/802972944532209664>.

failed to find evidence of widespread fraud.<sup>34</sup> (Every inflammatory allegation of potential noncitizen voting presented by members of that commission was decisively debunked.)<sup>35</sup>

When some state officials have made claims of massive noncitizen voting, it has evaporated upon contact with reality. In 2019, Texas acting Secretary of State David Whitley resigned after a botched purge of 95,000 purported noncitizen voters falsely accused thousands of eligible voters.<sup>36</sup>

Indeed, the Heritage Foundation's own database of supposed voter fraud undermines its incendiary assertions. In 2017, the Brennan Center analyzed this database and found it contained only 41 examples over four decades purporting to show noncitizen voting.<sup>37</sup> More recently, the *Washington Post* reported that since the inception of the database in 1979, two billion votes have been cast in federal elections, yet Heritage found only "85 cases involving allegations of noncitizen voting from 2002 to 2023."<sup>38</sup>

The easily debunked tale spun by election deniers is the basis for the Safeguard American Voter Eligibility Act, or the SAVE Act, introduced last week by Rep. Chip Roy (R-TX).<sup>39</sup> The legislation would require eligible Americans to produce specific forms of documentary proof of citizenship to register to vote. This would impose stringent restrictions and steep costs for little benefit.

Even the bill's sponsors cannot muster the pretense that it solves a real problem. Speaker Mike Johnson (R-LA) said recently on the Capitol steps: "We all know intuitively that a lot of illegals are voting in federal elections. But it's not been something that is easily provable."<sup>40</sup> In fact, it is easily *disprovable*. Any individual who illegally registers or votes in a federal election leaves a paper trail. They have handed evidence of the crime directly to the government and those records are public, available to all.

Voting laws should be based on facts, not vibes. And no responsible leader should press for restrictive voting laws rooted in a conspiracy theory.

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<sup>34</sup> Ed Pilkington, "Trump Scraps His Widely Denounced Commission on Voter Fraud," *Guardian*, January 4, 2018, <https://www.theguardian.com/us-news/2018/jan/03/donald-trump-election-integrity-commission-dissolved-kobach>.

<sup>35</sup> Brennan Center for Justice, "Assessing the 'Voter Fraud' Commission's Evidence," September 8, 2017, <https://www.brennancenter.org/our-work/analysis-opinion/assessing-voter-fraud-commissions-evidence/>.

<sup>36</sup> Alex Ura, "Texas Secretary of State David Whitley Departs as Legislative Session Ends," *Texas Tribune*, May 27, 2019, <https://www.texastribune.org/2019/05/27/texas-secretary-state-david-whitley-forced-leave-office/>.

<sup>37</sup> Rudy Mehrbani, *Heritage Voter Fraud Database: An Assessment*, Brennan Center for Justice, September 8, 2017, <https://www.brennancenter.org/our-work/research-reports/heritage-fraud-database-assessment>.

<sup>38</sup> Glenn Kessler, "The Truth About Noncitizen Voting in Federal Elections," *Washington Post*, March 6, 2024, <https://www.washingtonpost.com/politics/2024/03/06/truth-about-noncitizen-voting-federal-elections/>.

<sup>39</sup> Safeguard American Voter's Eligibility Act (SAVE Act), H.R. 8281, 118th Congress (2024), [https://roy.house.gov/sites/evo-subsites/roy.house.gov/files/evo-media-document/SAVE%20ACT\\_Bill%20Text.pdf](https://roy.house.gov/sites/evo-subsites/roy.house.gov/files/evo-media-document/SAVE%20ACT_Bill%20Text.pdf).

<sup>40</sup> Philip Bump, "The 2020-was-stolen Crew is Here to Stoke Fears of Noncitizen Voters," *Washington Post*, May 8, 2024, <https://www.washingtonpost.com/politics/2024/05/08/johnson-immigration-noncitizen-voters/>.

### III. THE PROPOSED “SAVE ACT” WOULD UNDERMINE ELECTION INTEGRITY

Under the proposed SAVE Act, most citizens would be required to produce a passport or certified birth certificate to register to vote.<sup>41</sup> A 2017 report by the Brennan Center (*Appendix*) compiled studies of data from the two states that had implemented this requirement, Arizona and Kansas. All found that tens of thousands of *eligible* voters had been blocked from registering and voting.<sup>42</sup> Implementing this new requirement nationwide, as the SAVE Act would do, would exclude millions of eligible voters.

A nationwide 2006 survey by the Brennan Center and Princeton’s National Opinion Research Corp. found that seven percent of the citizen voting age population, or 13 million people, did not possess documents that would prove their citizenship.<sup>43</sup> The rate was twice as high among citizens earning less than \$25,000 per year. Women who changed their names upon getting married were especially likely to lack relevant documents: a third of voting-age women did not have proof of citizenship reflecting their current names.<sup>44</sup> Other researchers reached similar results studying the effect of citizenship documentation requirements for Medicaid recipients.<sup>45</sup>

Many eligible citizens simply lack a passport or a certified birth certificate. Less than half of American adults have a valid passport, according to a 2023 survey by YouGov.<sup>46</sup> Only one third of Black Americans reported having a valid passport. In an earlier study by *The Economist* and YouGov, passport ownership increased dramatically with household income.<sup>47</sup> Millions more may not have an accessible paper copy of a birth certificate.<sup>48</sup> Birth certificates are frequently lost or destroyed, and those born outside a hospital often lack an official birth certificate. Voters who change their names, including millions of married women, often have documentation that does not match their current name. Moreover, obtaining documentary proof of citizenship—whether a passport or birth certificate—costs both money and time.

Moreover, this requirement would upend the most popular methods of voter registration in the United States. This would undermine the mail-in registration scheme of the National Voter

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<sup>41</sup> SAVE Act, H.R. 8281. The proposed statute also allows registrants to produce a military ID if it shows that the service member was born in the United States, naturalization papers, or a government ID showing place of birth. In practice, the vast majority of Americans would rely on a birth certificate or a passport.

<sup>42</sup> Ian Vandewalker, *The Effects of Requiring Documentary Proof of Citizenship*, Brennan Center for Justice, July 19, 2017, <https://www.brennancenter.org/our-work/research-reports/effects-requiring-documentary-proof-citizenship>. (*Appendix*)

<sup>43</sup> Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification*, November 2006, [https://www.brennancenter.org/sites/default/files/legacy/d/download\\_file\\_39242.pdf](https://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf).

<sup>44</sup> Vandewalker, *Documentary Proof of Citizenship*, 3.

<sup>45</sup> *Id.* at 4.

<sup>46</sup> Jamie Ballard, “Adults Under 30 are More Likely Than Older Americans to Have a Current U.S. Passport,” *YouGov*, August 31, 2023, <https://today.yougov.com/travel/articles/46028-adults-under-30-more-likely-have-us-passport>.

<sup>47</sup> Kathy Francovic, “Only One-Third of Americans Have a Valid US Passport,” *YouGov*, April 21, 2021, <https://today.yougov.com/travel/articles/35414-only-one-third-americans-have-valid-us-passport>.

<sup>48</sup> Brennan Center, *Citizens Without Proof*; Stuart Naifeh, *How Do Proof-of-Citizenship Laws Block Legitimate Voters?*, Demos, August 25, 2014, <https://www.demos.org/research/how-do-proof-citizenship-laws-block-legitimate-voters>.



Registration Act and the popular online registration option in most states. It would also stymie voter registration drives conducted by political parties and nonpartisan civic groups that add hundreds of thousands of citizens to the rolls every election cycle.<sup>49</sup>

Of note, citizens would have to prove citizenship *each time* they registered throughout a lifetime. Millions of Americans move each year.<sup>50</sup> A citizen who moved from Janesville, Wisconsin to Milwaukee and then back would have to produce a passport or birth certificate each time she registered. A 75-year-old Wisconsin resident who has voted for decades and then moves to Florida could not vote again without producing a passport or a birth certificate.

Rather than pressing for voting restrictions rooted in a malignant conspiracy theory, Congress should act to protect voters and elections.

#### IV. CONGRESS SHOULD PROTECT THE FREEDOM TO VOTE

Real threats imperil our democracy in 2024. Congress should act to bolster and modernize our election system and protect the basic principle that every eligible citizen has the right to vote. In addition to longstanding challenges such as gerrymandering, and rising abuse and threats directed at election officials, these challenges include:

*Disinformation and Artificial Intelligence.*<sup>51</sup> Just last Thursday, the FBI warned that foreign adversaries could deploy artificial intelligence to interfere in American elections and spread disinformation.<sup>52</sup> This follows earlier warnings from the Director of National Intelligence,<sup>53</sup> the Department of Homeland Security<sup>54</sup> and Microsoft,<sup>55</sup> that key adversaries—

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<sup>49</sup> Vandewalker, *Documentary Proof of Citizenship*, 4.

<sup>50</sup> Mehreen S. Ismail, “Number and Percentage of State-to-State Movers Increased Between 2021 and 2022,” United States Census Bureau, November 21, 2023, <https://www.census.gov/library/stories/2023/11/state-to-state-migration.html>.

<sup>51</sup> Lawrence Norden, Mekela Panditharatne, and David Harris, “Multiple Threats Converge to Heighten Disinformation Risks to 2024 Elections,” Brennan Center for Justice, February 20, 2024, <https://www.brennancenter.org/our-work/analysis-opinion/multiple-threats-converge-heighten-disinformation-risks-2024-elections>. (*Appendix*)

<sup>52</sup> Eric Tucker, “FBI Warns that Foreign Adversaries Could Use AI to Spread Disinformation about US Elections,” Associated Press, May 9, 2024, <https://apnews.com/article/fbi-ai-russia-china-election-security-7200abc0215e822c84f032605bed41b9>.

<sup>53</sup> Office of the Director of National Intelligence, *Annual Threat Assessment of the U.S. Intelligence Community*, February 5, 2024, [www.dni.gov/files/ODNI/documents/assessments/ATA-2024-Unclassified-Report.pdf](http://www.dni.gov/files/ODNI/documents/assessments/ATA-2024-Unclassified-Report.pdf); Cybersecurity and Infrastructure Security Agency (CISA), Federal Bureau of Investigation (FBI), and Office of the Director of National Intelligence (ODNI), “Securing Election Infrastructure Against the Tactics of Foreign Malign Influence Operations,” April 2024, [www.cisa.gov/sites/default/files/2024-04/Securing\\_Election\\_Infrastructure\\_Against\\_the\\_Tactics\\_of\\_Foreign\\_Malign\\_Influence\\_Operations\\_2024FINAL\\_508c.pdf](http://www.cisa.gov/sites/default/files/2024-04/Securing_Election_Infrastructure_Against_the_Tactics_of_Foreign_Malign_Influence_Operations_2024FINAL_508c.pdf).

<sup>54</sup> Department of Homeland Security, *Homeland Threat Assessment 2024*, September 14, 2023, [www.dhs.gov/sites/default/files/2023-09/23\\_0913\\_ia\\_23-333-ia\\_u\\_homeland-threat-assessment-2024\\_508C\\_V6\\_13Sep23.pdf](http://www.dhs.gov/sites/default/files/2023-09/23_0913_ia_23-333-ia_u_homeland-threat-assessment-2024_508C_V6_13Sep23.pdf).

<sup>55</sup> Microsoft Threat Intelligence, “Staying Ahead of Threat Actors in the Age of AI,” February 14, 2024, <https://www.microsoft.com/en-us/security/blog/2024/02/14/staying-ahead-of-threat-actors-in-the-age-of-ai/>; Microsoft Threat Analysis Center, “Nation-States Engage in US-Focused Influence Operations Ahead of US

especially Russia, China and Iran—will likely interfere in our elections through cyberattacks against election infrastructure, and influence operations that could leverage AI to decrease trust in the electoral process.

*Voter Suppression.* A Brennan Center study conducted by political scientists using a database of nearly one billion voter records tells a disturbing story: The turnout gap between white voters and nonwhite voters is growing across the country, for myriad reasons. But the racial turnout gap has grown nearly twice as quickly in jurisdictions once covered by the strong Voting Rights Act, before the Supreme Court gutted it in *Shelby County v. Holder* in 2013. Plainly, discriminatory voting practices and procedures are a leading cause of the phenomenon.<sup>56</sup>

This conclusive evidence comes after a wave of state voting laws have made it harder to vote, particularly for voters of color. The Brennan Center has found that in the past decade at least 29 states have passed nearly 100 restrictive laws that in one way or another made it harder to vote.<sup>57</sup> In 2023 alone, at least 14 states enacted 17 restrictive voting laws, each of which will be in effect for the 2024 general election.<sup>58</sup> The *Washington Post*, in an independent analysis, concluded that “new voting laws in swing states could shape [the] 2024 election.”<sup>59</sup>

*A Broken Campaign Finance System.* Since the Supreme Court’s 2010 ruling in *Citizens United*, megadonors have come to dominate political giving, despite the encouraging growth of contributions from small donors. In the 2022 midterms, the top 100 donors in federal elections collectively gave \$1.2 billion—60 percent more than all of the roughly 3.7 million small donors combined.<sup>60</sup> Undisclosed “dark money” in elections has surged. And it is becoming harder to track as dark money groups increasingly funnel campaign money through super PACs or spend it online.<sup>61</sup>

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Presidential Election,” April 17, 2024, <https://blogs.microsoft.com/wp-content/uploads/prod/sites/5/2024/04/MTAC-Report-Elections-Report-Nation-states-engage-in-US-focused-influence-operations-ahead-of-US-presidential-election-04172024.pdf>; Clint Watts, “China Tests US Voter Fault Lines and Ramps AI Content to Boost its Geopolitical Interest,” Microsoft Threat Analysis Center, April 4, 2024, <https://blogs.microsoft.com/on-the-issues/2024/04/04/china-ai-influence-elections-mtac-cybersecurity/>.

<sup>56</sup> Kevin Morris and Coryn Grange, *Growing Racial Disparities in Voter Turnout 2008-2022*, Brennan Center for Justice, March 2, 2024, <https://www.brennancenter.org/our-work/research-reports/growing-racial-disparities-voter-turnout-2008-2022>.

<sup>57</sup> Jasleen Singh and Sara Carter, “States Have Added Nearly 100 Restrictive Laws Since SCOTUS Gutted the Voting Rights Act 10 Years Ago,” Brennan Center for Justice, June 23, 2023, <https://www.brennancenter.org/our-work/analysis-opinion/states-have-added-nearly-100-restrictive-laws-scotus-gutted-voting-rights>.

<sup>58</sup> Brennan Center for Justice, *Voting Laws Roundup: 2023 in Review*, January 18, 2024, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2023-review>.

<sup>59</sup> Patrick Marley, “New Voting Laws in Swing States Could Shape 2024 Election,” *Washington Post*, April 8, 2024, <https://www.washingtonpost.com/politics/2024/04/08/voting-laws-swing-states-2024/>.

<sup>60</sup> Ian Vandewalker and Mariana Paez, “4 Takeaways About Money in the Midterms,” Brennan Center for Justice, November 16, 2022, <https://www.brennancenter.org/our-work/analysis-opinion/4-takeaways-about-money-midterms>; Ian Vandewalker, “The Money Behind January 6 Is Flowing into the 2022 Elections,” Brennan Center for Justice, June 16, 2022, <https://www.brennancenter.org/our-work/analysis-opinion/money-behind-january-6-flowing-2022-elections>. Small donors are defined as individuals who give \$200 or less to any one candidate in an election cycle.

<sup>61</sup> *Hearing on the DISCLOSE Act, before the S. Comm. on Rules and Administration*, 117th Cong. (2022) (written testimony of Daniel I. Weiner, Director, Elections and Government, Brennan Center for Justice), <https://www.brennancenter.org/our-work/research-reports/testimony-disclose-act-united-states-senate-committee-rules>.

This deregulated environment offers ample opportunity for foreign funds to come into the system. In 2010, during his State of the Union Address, President Barack Obama warned that the ruling “will open the floodgates for special interests—including foreign corporations—to spend without limit in our elections.”<sup>62</sup> Obama was right: recent years have seen numerous examples of foreign companies and oligarchs using super PACs and dark money groups as conduits for illegal campaign contributions.<sup>63</sup> Even when the dysfunctional Federal Election Commission pursues these violations, it often does so only years later, with mild penalties. (The FEC’s inspector general called the agency’s passivity “a national security risk.”<sup>64</sup>) Murky transparency for online political ads poses another significant threat, as demonstrated by the malign influence campaign Russia deployed to influence the 2016 election.

*Election Denier Threats.*<sup>65</sup> Election infrastructure—all-too-frequently outdated<sup>66</sup>—has become a target for bad actors: since 2020, there have been at least 17 reported incidents of unauthorized individuals seeking access to voting equipment and election systems,<sup>67</sup> and the 2022 midterms saw several attempted cyberattacks.<sup>68</sup> Some demand a switch to counting all ballots by hand, a long-discarded practice that is vulnerable and error-prone. Others try to block certification of election results based on false claims of election irregularities.<sup>69</sup> And in the past year alone, at least six legislatures have enacted new rules that heighten the risk of partisan interference in vote counting and other activities.<sup>70</sup>

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<sup>62</sup> Barack Obama, President of the United States, State of the Union Address (Jan. 27, 2010), <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-state-union-address>.

<sup>63</sup> Eric Lipton, “Donations Steered to Trump Super PAC by Canadian Are Found to Be Illegal,” *New York Times*, April 9, 2022, <https://www.nytimes.com/2022/04/08/us/politics/trump-super-pac-illegal-donations.html>; U.S. Attorney’s Office Southern District of New York, “Lev Parnas And Igor Fruman Charged With Conspiring To Violate Straw And Foreign Donor Bans,” press release no. 19-331, October 10, 2019, <https://www.justice.gov/usao-sdny/pr/lev-parnas-and-igor-fruman-charged-conspiring-violate-straw-and-foreign-donor-bans>; Maggie Severns, “FEC Fines Jeb Bush Super PAC over Foreign Donation,” *Politico*, March 11, 2019, <https://www.politico.com/story/2019/03/11/jeb-bush-super-pac-china-1216590>.

<sup>64</sup> Federal Election Commission, Office of the Inspector General, *Management and Performance Challenges Facing the FEC for FY 2023*, November 14, 2022, 4, <https://www.fec.gov/resources/cms-content/documents/FY-2023-Mgmt-Challenges.pdf#page=4>.

<sup>65</sup> Lauren Miller and Wendy R. Weiser, “The Election Deniers’ Playbook for 2024,” Brennan Center for Justice, May 3, 2023, <https://www.brennancenter.org/our-work/research-reports/election-deniers-playbook-2024>. (*Appendix*)

<sup>66</sup> Thirty-one states will use voting equipment that is at least a decade old during the 2024 election. See Derek Tisler and Lawrence Norden, *Securing the 2024 Election*, Brennan Center for Justice, April 27, 2023, <https://www.brennancenter.org/our-work/policy-solutions/securing-2024-election>. (*Appendix*)

<sup>67</sup> Lawrence Norden, “State Associations of Election Officials on Addressing Voting Equipment Breaches,” Statement, August 12, 2022, <https://www.brennancenter.org/our-work/research-reports/brennan-center-letter-state-associations-election-officials-addressing>.

<sup>68</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,” Associated Press, November 9, 2022, <https://apnews.com/article/2022-midterm-elections-technology-government-and-politicsbc35b0f1a68b171244bfd8c1fac3bcf>; Chuck Goudie, et al., “Election 2022: Cyberattacks that Slowed Champaign County Election Day Voting Process ‘Resolved,’” ABC7 News, <https://abc7chicago.com/amp/champaign-countyclerk-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>69</sup> Miller and Weiser, “Election Deniers’ Playbook.”

<sup>70</sup> Brennan Center for Justice, *Voting Laws Roundup: 2023 in Review*.

These challenges demand urgent attention. At the same time, millions of voters have rallied around an affirmative agenda. Many states have strengthened election laws and enacted farsighted reforms—from automatic voter registration to independent nonpartisan redistricting reform to small donor public financing.<sup>71</sup> In these laboratories of experimentation, bold democracy reforms are broadly popular across the political spectrum. They should be the basis for action going forward. We urge Congress and this Committee to enact:

The *Freedom to Vote Act* (H.R. 11/S. 1, FTVA) is transformative legislation that would set baseline national standards for voting rights and election administration.<sup>72</sup> Clear pro-voter rules would bolster trust and enhance participation. The Act would ensure that all eligible citizens can cast a ballot—guaranteeing access to vote by mail and early voting, and extending automatic voter registration nationwide. It would ban partisan gerrymandering and set clear rules for the drawing of congressional districts. It would curb the corrosive role of big money in politics, requiring dark money groups to disclose large donors and overhauling the FEC. The FTVA also would strengthen protections for election officials against intimidation, doxing, and harassment, and establish new programs to shore up election infrastructure against cyber-attacks and other forms of infiltration. The bill targets foreign influence, closing legal loopholes that foreign governments and oligarchs have exploited to influence U.S. voters. Each of these bold reforms meets an urgent need at a time of crisis for our democracy. Each has been found to work at the national, state, or local level. It would be the most significant democracy reform law in at least a half century, and would markedly improve our system of self-government.

The *John Lewis Voting Rights Act* (H.R. 14/S. 4) would restore the strength of the Voting Rights Act, the nation’s most effective civil rights law.<sup>73</sup> *Shelby County* effectively ended “preclearance,” in which jurisdictions with a history of voting discrimination had to get permission in advance from the Justice Department or a federal court to change voting laws or practices. In *Brnovich v. DNC*, the Court later gravely weakened the Act’s Section 2, which authorizes lawsuits to challenge discriminatory rules.<sup>74</sup> The John Lewis Voting Rights Act would restore geographic preclearance, requiring that states and subdivisions with a history of voter discrimination prove that a new policy would not make it harder for people of color to vote. The bill would also introduce practice-based coverage, requiring that certain practices or policies commonly used for discrimination get precleared. And the bill would clarify that voting rights can be pursued through a private right of action, as has long been the case. The last time the Voting Rights Act was reauthorized, it passed the House overwhelmingly and the Senate by 98-0. Voting rights was a bipartisan cause, and it should be again.

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<sup>71</sup> Brennan Center for Justice, “There Is a Growing Pro-Democracy Movement,” last modified December 6, 2023, <https://www.brennancenter.org/our-work/research-reports/there-growing-pro-democracy-movement>.

<sup>72</sup> Dan I. Weiner and Andrew Garber, “Pass the Freedom to Vote Act,” Brennan Center for Justice, July 17, 2023, <https://www.brennancenter.org/our-work/research-reports/pass-freedom-vote-act>; Brennan Center for Justice, “What the Freedom to Vote Act Would Do,” last modified July 13, 2023, <https://www.brennancenter.org/our-work/research-reports/freedom-vote-act>. (Appendix)

<sup>73</sup> Andrew Garber, “Pass the John R. Lewis Voting Rights Advancement Act,” Brennan Center for Justice, last modified March 8, 2024, <https://www.brennancenter.org/our-work/research-reports/pass-john-r-lewis-voting-rights-advancement-act>; Brennan Center for Justice, “The John Lewis Voting Rights Advancement Act,” last modified February 29, 2024, <https://www.brennancenter.org/our-work/research-reports/john-lewis-voting-rights-advancement-act>. (Appendix)

<sup>74</sup> *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2020).

Finally, if nothing else, Congress must at least provide an adequate and consistent stream of funding for election administration. This is a critical bulwark to protect election integrity. Even as threats have mounted, Congress has drastically cut support of election offices. More than four in five election officials say they need their budgets to grow to keep up with their administration and security needs.<sup>75</sup> Congress has provided \$205 million for election security since the 2020 election, just a quarter of the \$805 million that it provided in the three years before that (not including \$400 million for pandemic preparations in 2020).<sup>76</sup> Congress should provide \$400 million for election security in 2025, in line with what it provided election offices in 2018 and 2020.

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American democracy faces real threats and challenges. A supposed wave of noncitizen voting is not one of them. The SAVE Act pretends to solve a fictional problem. In real life it would deprive millions of legitimate voters of their fundamental right to cast a ballot. At key moments of crisis and change in the past, Congress has acted to protect access to the polls. It has done so in a bipartisan manner. We can and should bolster election integrity while ensuring free and fair elections. Congress should do so again. We urge you to reject measures that would undermine faith in our system, and to enact much needed reforms that would ratify the promise of American democracy.

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<sup>75</sup> Brennan Center for Justice, *Local Election Officials Survey – May 2024*.

<sup>76</sup> FY2024 Further Consolidated Appropriations Act, Pub. L. 118-47 (2024), <https://www.congress.gov/bill/118th-congress/house-bill/2882>; Congressional Research Service, Election Administration: Federal Grant Funding for States and Localities, R46646, May 8, 2023, <https://crsreports.congress.gov/product/pdf/R/R46646>.