



COMMITTEE ON HOUSE ADMINISTRATION
RANKING MEMBER JOE MORELLE (NY-25)

STAFF REPORT

Codifying the Big Lie: House Republicans' Anti-Democracy ACE Act

APRIL 2024 | 118TH CONGRESS, SECOND SESSION

TABLE OF CONTENTS

Introduction.....	1
Chapter 1: The Big Lie Permeates the ACE Act.....	3
The ACE Act is hostile to voting rights.....	3
<i>Shelby County dealt a catastrophic blow to voting rights in the United States.....</i>	<i>4</i>
<i>VRAA obstruction has had significant discriminatory consequences.....</i>	<i>5</i>
The ACE Act reflects Big Lie pretense and anti-voter sentiment.....	6
<i>The ACE Act is anti-voter registration.....</i>	<i>6</i>
<i>The ACE Act would limit voters' ability to vote by mail.....</i>	<i>7</i>
Despite Big Lie efforts, the 2022 midterm elections were a success.....	7
<i>In the face of growing hostility, election administrators delivered in 2022.....</i>	<i>9</i>
<i>2022 voter turnout was high, but not reflective of the reality of voting in America.</i>	<i>10</i>
<i>Americans rejected election deniers in 2022.....</i>	<i>11</i>
SB 202, Georgia's ACE Act parallel.....	12
<i>Former President Trump attempted to overturn the election in Georgia.</i>	<i>15</i>
<i>SB 202 restricts voters and hinders election administration 15 SB 202 permits</i> <i>unlimited challenges to voter eligibility.....</i>	<i>16</i>
Republican-led states continue to have democracy issues.....	18
<i>Florida.....</i>	<i>19</i>
<i>Louisiana.....</i>	<i>22</i>
<i>Ohio.....</i>	<i>22</i>
House Republicans' understanding of the Elections Clause is flawed.....	24
Chapter 2: The ACE Act Does Not Support Election Administrators	26
The significant cost of funding elections.....	26
Background on the Center for Tech and Civic Life 2020 grants.....	27
<i>CTCL grants were used to supplement COVID-19-related costs for elections</i> <i>administrators.....</i>	<i>27</i>
<i>Some conservatives have dishonestly incorporated the CTCL grants into their Big Lie</i> <i>narrative about the 2020 election.</i>	<i>29</i>
Chapter 3: The ACE Act is Pro-Dark Money	31
Disclosure rules enhance free speech.....	31
Dark money hurts people.....	33
<i>The Ohio corruption scandal.....</i>	<i>34</i>
The ACE Act is filled with pro-dark money provisions.....	35
Republican claims that donors will be harassed are inaccurate.....	36
<i>NAACP v. Alabama ex rel. Patterson.....</i>	<i>37</i>
<i>Americans for Prosperity Foundation v. Bonta.....</i>	<i>37</i>

Republicans use dark money in their efforts to suppress the vote	38
Proactive reforms are needed to improve transparency.	38
Chapter 4: The ACE Act is an Attack on Washington, D.C.	40
Voting in Washington, D.C. is already accessible and secure.....	40
<i>Washington, D.C. has the highest voter registration rate in the nation</i>	40
<i>D.C. voters can easily vote early, vote by mail, or drop a ballot at a drop box</i>	41
<i>Voting in D.C. is accessible for voters with disabilities and non-English speakers</i>	41
<i>Without statehood, Washingtonians are excluded from the political process</i>	41
The ACE Act would further disenfranchise Washington, D.C. voters.....	42
Washington, D.C. has a right to political self-determination and deserves statehood.	46
Chapter 5: The Freedom to Vote Act	48
The FTVA will improve voter access.....	48
The FTVA will strengthen election integrity.	49
The FTVA will encourage civic participation and empower voters.	50
Conclusion.....	51
Appendix. Committee Democrats’ ACE Act Dissenting Views.....	53

INTRODUCTION

In the 2020 presidential election, then-former Vice President Joseph R. Biden defeated President Trump by roughly seven million votes and 74 electoral votes. In the same election, Republicans lost control of the Senate and failed to take control of the House of Representatives.

Following months of false claims about the integrity of United States elections and methods of voting, then-President Trump—without evidence—claimed the election was stolen from him. Republicans should have been prepared for these claims. Not only is the former president known for repeated mistruths,¹ this was not the first time he had tried to undermine the outcome of an American election. In 2016, then-candidate Trump claimed that Senator Ted Cruz (R-Texas) “stole” the Republican Iowa Caucuses.² And he had indicated that he might not accept the results of the 2016 presidential election if Secretary Hillary Clinton prevailed.³

Despite the advance warning, when a defeated President Trump claimed that the 2020 election was stolen, most House Republicans ignored the oaths they swore to support and defend the Constitution against all enemies, foreign and domestic; they were either silent or endorsed President Trump’s “Big Lie,” and with it his effort to erode American democracy. In fact, 126 House Republicans, led by now-Speaker Mike Johnson, filed an *amicus curiae* brief with the Supreme Court forcefully advocating for the votes of millions of citizens to be discarded and their voices silenced, pushing the Court to forsake the clear results of a free and fair American election.⁴

On January 6, 2021, at the direct instigation of President Trump and his allies, thousands of the President’s supporters attacked the United States Capitol in a violent effort to stop the peaceful transition of power that is the bedrock of our Republic.⁵ This insurrection claimed multiple lives, and as of April 30, 2024, 14 individuals have either pled guilty to, or been convicted of, seditious conspiracy in relation to the attack. Hundreds more have been convicted of other crimes, many of them for violent attacks on law enforcement officers, and federal grand juries have indicted over 1,000 people with crimes connected to the insurrection.⁶ And, on August 1, 2023, a federal

1 Glenn Kessler, Salvador Rizzo, & Meg Kelly, *Trump's false or misleading claims total 30,573 over 4 years*, WASH. POST (Jan. 24, 2021), <https://www.washingtonpost.com/politics/2021/01/24/trumps-false-or-misleading-claims-total-30573-over-four-years/>.

2 Amy Tennery, *Trump accuses Cruz of stealing Iowa caucuses through 'fraud'*, REUTERS (Feb. 3, 2016), <https://www.reuters.com/article/us-usa-election-trump-cruz/trump-accuses-cruz-of-stealing-iowa-caucuses-through-fraud-idUSMTZSAPEC23ZBL9YS>.

3 Patrick Healy & Jonathan Martin, *Donald Trump won't say if he'll accept result of election*, N.Y. TIMES (Oct. 19, 2016), <https://www.nytimes.com/2016/10/20/us/politics/presidential-debate.html>.

4 Andrew Solender, *126 House Republicans Now Support Lawsuit To Overturn Election In Updated Brief*, FORBES (Dec. 11, 2020), <https://www.forbes.com/sites/andrewsolender/2020/12/11/126-house-republicans-now-support-lawsuit-to-overturn-election-in-updated-brief/?sh=7daf8913e5db>.

5 See *Final Report*, House Report 117-663, Select Committee to Investigate the January 6th Attack on the United States Capitol, 117th Cong. (2nd Sess. 2022) [hereinafter, *January 6th Select Committee Final Report*].

6 Shawna Chen, *Over 1,000 people now face charges in connection to Jan. 6 riots*, AXIOS (May 19, 2023), <https://www.axios.com/2023/04/06/jan6-riots-doj-charged>.

grand jury indicted former President Trump with four felonies related to his attempt to overturn the election.⁷

The worst assault on American democracy since the Civil War, the January 6 attack was either ignored or glossed over by most House Republicans—indeed, the large majority of the House Republican Conference, including now-Speaker Johnson and then-Republican Leader (and former Speaker) Kevin McCarthy, voted to overturn the freely and fairly cast electoral votes of several states the evening of January 6 once Congress was able to safely return to the ransacked Capitol.

The evidence is clear—there was no widespread fraud in the 2020 election; Republicans know this.⁸ But the roots of anti-democracy President Trump spread so easily throughout the Republican Party predate his presidency and his candidacy. While the disenfranchisement of wide swaths of Americans dates to the founding of our country (when only land-holding white men were legally entitled to vote), the last two centuries of our history have been devoted to the expansion of suffrage. Not so for the modern Republican Party, whose efforts to restrict access to the ballot have grown markedly over the last two decades.⁹ Attempts across the Union to disenfranchise voters of color have increased dramatically—often pushed by conservative groups like The Heritage Foundation—which rely on dishonest, light-on-the-detail talking points about “election integrity” when disseminating ghost-written anti-voter laws to state lawmakers.¹⁰ In 2020, President Trump’s baseless claims of fraud fit neatly within a worldview that has been crystalizing on the right for decades—that some voters, despite being eligible American citizens, are suspect, and that elections in which Democrats prevail are inherently illegitimate.¹¹

This report details how the *American Confidence in Elections Act*, a “partisan power grab masquerading as a defense of election integrity,”¹² is just one more step in House Republicans’ ongoing strategy to undermine the rule of law, the right to vote, and American democracy itself.

7 Tierney Sneed et al., *Donald Trump has been indicted in special counsel’s 2020 election interference probe*, CNN (Aug. 1, 2023), <https://www.cnn.com/2023/08/01/politics/donald-trump-indictment-grand-jury-2020-election/index.html>.

8 David Folkenflik, *Off the air, Fox News stars blasted the election fraud claims they peddled*, NPR (Feb. 16, 2023), <https://www.npr.org/2023/02/16/1157558299/fox-news-stars-false-claims-trump-election-2020>; Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, AP (June 28, 2022), <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>; Zach Schonfeld, *Conservative group finds ‘absolutely no evidence of widespread fraud’ in 2020 election*, The Hill (July 14, 2022), <https://thehill.com/homenews/campaign/3559758-conservative-group-finds-absolutely-no-evidence-of-widespread-fraud-in-2020-election/>; Jan Wolfe, *Factbox: Trump’s false claims debunked: the 2020 election and Jan. 6 riot*, Reuters (Jan. 6, 2022), <https://www.reuters.com/world/us/trumps-false-claims-debunked-2020-election-jan-6-riot-2022-01-06/>; Mike Emanuel & Sally Persons, *Prominent conservatives say election was lost, not stolen*, Fox News (July 14, 2022), <https://www.foxnews.com/politics/prominent-conservatives-election-lost-not-stolen>.

9 See *infra* Part I. The Big Lie and Voter Suppression Efforts Permeate the ACE Act.

10 Ari Berman & Nick Surgey, *Leaked Video: Dark Money Group Brags About Writing GOP Voter Suppression Bills Across the Country*, MOTHER JONES (May 13, 2021), <https://www.motherjones.com/politics/2021/05/heritage-foundation-dark-money-voter-suppression-laws/>.

11 Jamelle Bouie, *Opinion: The G.O.P has some voters it likes and some it doesn’t*, N.Y. TIMES (Mar. 30, 2021), <https://www.nytimes.com/2021/03/30/opinion/voter-suppression.html>.

12 Editorial Board, *Opinion: House GOP election bill expands dark money and curtails D.C. autonomy*, WASH. POST (July 11, 2023), <https://www.washingtonpost.com/opinions/2023/07/11/house-republican-confidence-elections-dc/>.

Chapter 1: The Big Lie Permeates the ACE Act

Millions of Americans are concerned about the integrity of American elections precisely because the Republican Party tells them—repeatedly, emphatically—that our democracy is something to fear. They are overwhelmed by false allegations of fraud, panicked about fictional suitcases full of illegal ballots,¹³ distrusting of voting machines (and voting machine manufacturers), and suspicious of election results from cities like Atlanta, Detroit, Milwaukee, Philadelphia, and Phoenix—at core, told by congressional Republicans to fear voters who think and feel and look different.

Using the cover of the Big Lie, which even President Trump knows is entirely fabricated,¹⁴ House Republicans are using their *American Confidence in Elections Act* (“ACE Act”)¹⁵ as a vehicle to push their anti-democratic priorities. This includes further restricting the ability of millions of Americans—disproportionately voters of color—to participate in our elections or fully exercise their democratic rights. Republicans also hope this bill will increase the influence of billionaire donors and dark money organizations that attempt to hide in the shadows while propping up extreme candidates and even more extreme policies.

In short, former President Trump’s unlawful and premeditated attempt to overturn the 2020 election has given Republicans an excuse to advance their radical, restrictive, anti-voter, pro-dark money agenda.

The ACE Act is hostile to voting rights.

On March 7, 1965, a young civil rights leader named John R. Lewis led close to 600 marchers southeast out of the city of Selma, Alabama—across the Edmund Pettus Bridge—headed for Montgomery. These Americans, mostly Black, demanded from their government the ability to answer the sacred call to vote, a “fundamental political right”¹⁶ denied by conservative Southern Democrats and their Jim Crow policies since the end of Reconstruction. As Lewis and the marchers peacefully crossed the bridge, they were met by Alabama state troopers and an all-white posse of civilians, organized by Sheriff Jim Clark. The violence done by the segregationists was immediate and brutal. In a day that would come to be known as “Bloody Sunday,” scores of marchers were wounded; a state trooper beat Lewis to within an inch of his life, fracturing his skull, an injury from which he would bear scars for the rest of his life. The world was horrified. Much of the American public was outraged by the carnage, and Congress

13 Jane C. Timm, *Georgia poll workers targeted by Trump are cleared of false election fraud claims*, NBC News (June 21, 2023), <https://www.nbcnews.com/politics/elections/georgia-poll-workers-targeted-trump-cleared-false-election-fraud-claim-rcna90350> (relaying the results of the investigation by the Georgia State Election Board clearing the Georgia election workers targeted by the former president of any wrongdoing).

14 Maanvi Singh, *Trump privately admitted he lost 2020 election, top aides testify*, GUARDIAN (Oct. 13, 2022), <https://www.theguardian.com/us-news/2022/oct/13/trump-admission-election-aides-january-6-panel>.

15 H.R. 4563, 118th Cong. (1st Sess. 2023) (this report concerns the ACE Act as introduced July 10, 2023).

16 *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

soon passed—and President Lyndon Johnson signed—the Voting Rights Act of 1965 (“VRA”), “the single most effective piece of civil rights legislation ever passed by Congress.”¹⁷

After the initial enactment of the VRA, there was a brief period of American political history when, according to Associate Justice of the United States Supreme Court Antonin Scalia, no sane politician wanted to be seen opposing voting rights.¹⁸ But following the bipartisan reauthorization of the VRA in 2006, Republican hostility to voting began to grow.¹⁹ While every VRA amendment and reauthorization post-1965 had received the support of a majority of congressional Republicans—and every VRA amendment and reauthorization was signed into law by a Republican president—those days are now past. Once President Barack Obama—a Democrat, and the nation’s first Black Commander in Chief—took office on an unprecedented wave of support from Black voters, congressional Republicans largely opposed any attempts to pass federal voting rights legislation. Many House and Senate Republicans who had formerly supported the VRA now oppose it.²⁰

Shelby County dealt a catastrophic blow to voting rights in the United States.

In *Shelby County v. Holder*, 570 U.S. 529 (2013) (“*Shelby County*”), a slim 5-to-4 majority²¹ of the Supreme Court gutted the enforcement mechanism of Section 5—a critical piece of the VRA. Section 5 of the VRA had previously required certain states, counties, or municipalities with a demonstrated history of widespread racial discrimination in voting—determined by a formula prescribed in Section 4(b) of the VRA—to certify, with the United States Department of Justice (“DOJ”) or a federal court, any proposed change to local voting laws to ensure the changed rules were not racially discriminatory. This process, known as preclearance, prevented over 1,000 discriminatory laws and policies from taking effect.²² In the *Shelby County* decision, the Supreme Court determined that the Section 4(b) coverage formula that allowed Section 5 preclearance to function was predicated on outdated state and local data, and was therefore unconstitutional. The Supreme Court, however, expressly invited Congress to pass a new coverage formula based on more current information.²³

17 *Introduction To Federal Voting Rights Laws*, U.S. Dep’t of Justice (Aug. 6, 2015), <https://www.justice.gov/crt/introduction-federal-voting-rights-laws-0>.

18 Sarah A. Binder, *Reading Congressional Tea Leaves from the 2006 Renewal of the Voting Rights Act*, BROOKINGS (July 1, 2013), <https://www.brookings.edu/opinions/reading-congressional-tea-leaves-from-the-2006-renewal-of-the-voting-rights-act/>.

19 *Id.*

20 Mariana Alfaro, *Republicans who supported Voting Rights Act now oppose bill Democrats say would strengthen its provisions*, WASH. POST (June 19, 2022), <https://www.washingtonpost.com/politics/2022/01/19/republicans-voting-rights/>.

21 Every justice who voted to hobble the VRA was appointed by a Republican president.

22 *The Voting Rights Act: Protecting Voters for Nearly Five Decades*, BRENNAN CTR. FOR JUSTICE (Feb. 26, 2013), [https://www.brennancenter.org/our-work/research-reports/voting-rights-act-protecting-voters-nearly-five-decades#:~:text=Between%201982%20and%202006%20\(when,effect%20and%20harmed%20minority%20voters.](https://www.brennancenter.org/our-work/research-reports/voting-rights-act-protecting-voters-nearly-five-decades#:~:text=Between%201982%20and%202006%20(when,effect%20and%20harmed%20minority%20voters.)

23 *Shelby County*, 570 U.S. at 557.

In response to *Shelby County*, congressional Democrats²⁴ drafted and attempted to pass an updated VRA, known as the *John R. Lewis Voting Rights Advancement Act* (“VRAA”).²⁵ Congressional Republicans, however, stonewalled.

VRAA obstruction has had significant discriminatory consequences.

Republican obstruction of the VRAA means that states and local jurisdictions with a history of discrimination have had almost free rein to restrict the franchise. Without a functioning Section 5, jurisdictions that were previously covered by the preclearance regime of the VRA can enact discriminatory voting laws without scrutiny or delay. Within one day of the *Shelby County* decision, Texas announced it would implement a restrictive voting law that would not have survived VRA review pre-*Shelby County* and days later, Alabama announced it would enforce a voter ID law it previously refused to submit for preclearance.²⁶ The North Carolina state legislature enacted a restrictive voter ID law that the United States Court of Appeals for the Fourth Circuit eventually determined targeted Black voters with “almost surgical precision.”²⁷ Given the 2013 timing of *Shelby County*, and the decennial nature of the United States census, the 2022 elections were the first to occur after a legislative redistricting cycle that transpired without the full protections of the VRA.

The consequences of this blatant discrimination were disastrous. For example, prior to *Shelby County*, the state of Alabama was entirely covered by Section 5.²⁸ Without preclearance, Alabama was able to enact a congressional map in the 2021 redistricting cycle that the Supreme Court ruled illegally discriminated against Black voters.²⁹ Because this decision came in June 2023, it was too late to prevent the Alabama legislature from illegally diluting the votes of millions of Black Alabamians during the 2022 midterms through the discriminatory congressional map.³⁰ Voters in other states were similarly forced to cast their ballots for the 2022 midterm election in congressional districts that undermine their political power and likely discriminate on the basis of race. Following the 2021 redistricting cycle, in lawsuits brought by Black voters, state and federal courts in Florida, Georgia, Louisiana, and South Carolina found

24 As well as a small number of courageous congressional Republicans, including now-former Congressman Jim Sensenbrenner (R-Wisconsin).

25 In 1987, John Robert Lewis, injured on Bloody Sunday, was elected to the United States House of Representatives as a Democrat from Georgia. The clarity of his vision of justice was steadfast, as it was in 1965 on the Edmund Pettus Bridge. He beseeched his colleagues to match the courage shown by their predecessors from congresses past, urging them to support the VRAA. But House Republicans refused. The VRAA is named for the late Congressman Lewis, a civil rights hero and the conscience of Congress.

26 Terri Sewell, *Opinion: Congress Must Restore Voting Rights the Supreme Court Took Away*, NEWSWEEK (Jun 25, 2023), <https://www.newsweek.com/congress-must-restore-voting-rights-supreme-court-took-away-opinion-1808540> (Congresswoman Sewell (D-Alabama) is the Ranking Member of the Committee’s Subcommittee on Elections).

27 N.C. State Conference of the NAACP v. McCrory, 831 F.3d 204, 214 (4th Cir. 2016).

28 *Jurisdictions Previously Covered By Section 5*, U.S. Dep’t of Justice (May 17, 2023), <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>.

29 *Allen v. Milligan*, 599 U.S. __ (2023).

30 Alabama’s population is roughly 27 percent Black. Despite this, six of Alabama’s seven congressional districts have white representatives. In, a federal court found that Alabama’s Republican legislature had, through the enactment of the congressional map, diluted the voting power of Black Alabamians. The court ordered the legislature to draw a new map, ahead of the 2024 congressional election, with a second district in which Black Alabamians would have the ability to elect a candidate of their choice.

congressional districts in those states to be racially discriminatory. The Supreme Court's decision in *Milligan* makes clear that the congressional and legislative maps in several states are unlawful and dilute the voting power of Black voters. And a vote delayed is a vote denied; that voters in at least five states were forced to cast ballots under plainly discriminatory maps in 2022 further demonstrates the dire consequences of Congress's failure to pass the VRAA.

The ACE Act, which would do nothing to prevent state level discriminatory laws and policies like the Republican-enacted and racially discriminatory map in Alabama, shows how much contempt most modern congressional Republicans have for voting rights in the United States. Rather than pass legislation to eradicate the scourge of racial discrimination in voting, Republicans' ACE Act would make it harder for people of color to vote.

The ACE Act reflects Big Lie pretense and anti-voter sentiment.

Democrats on the Committee on House Administration ("Committee") are deeply concerned by most sections of the ACE Act. This report highlights the provisions of this damaging piece of legislation that best demonstrate how disturbingly suffused in the Big Lie this profoundly anti-democratic bill truly is.

The ACE Act is anti-voter registration.

The ACE Act explicitly prohibits the promotion of voter registration by federal agencies and bars agencies' use of federal fund for registration efforts.³¹ In so doing, the ACE Act would repeal an executive order by President Biden that promotes voter participation by directing federal agencies to "consider ways to expand citizens' opportunities to register to vote and to obtain information about, and participate in, the electoral process."³² This executive order has a simple but important purpose—directing existing federal resources, like department websites or agency social media accounts, to encourage more people to register to vote. By using existing infrastructure, the implementation of this executive order does not cost the taxpayer an additional penny. It directs the Department of Commerce to analyze existing barriers that voters with disabilities face. It directs the Department of Defense to implement an end-to-end tracking system for military ballots, and "offer each member of the Armed Forces on active duty the opportunity to register to vote in federal elections, update voter registration, or request an absentee ballot."³³ Crucially, through the executive order, the Department of Interior has been improving voter registration access for Native Americans who have long been excluded from full democratic participation, including by raising awareness

31 H.R. 4563, 118th Cong. § 132 (1st Sess. 2023).

32 *Exec. Order No 14019*, The White House (Mar. 7, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/07/executive-order-on-promoting-access-to-voting/>.

33 *Fact Sheet: President Biden to Sign Executive Order to Promote Voting Access*, The White House (Mar. 7, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/07/fact-sheet-president-biden-to-sign-executive-order-to-promote-voting-access/>.

about barriers Native voters face by translating a report from the Interagency Steering Group on Native American Voting Rights into six Native languages, both in writing and by audio.³⁴

By repealing this executive order, House Republicans make plain their disdain for voters with disabilities, overseas armed forces voters, and Native voters. The ACE Act makes no attempt to make voter registration easier or more accessible—its intention is to keep Americans unregistered and voiceless.

The ACE Act would limit voters' ability to vote by mail.

The ACE Act would strip away federal election administration funds from states, “unless the state imposes certain restrictions” on the transmission of mail ballots.³⁵ Millions of Americans vote by mail every election. Former Speaker McCarthy was elected to Congress from a state that mails every registered voter a ballot.³⁶ Former President Trump voted by mail in the 2020 election.³⁷ There is no evidence that the use of mail ballots increases voter fraud or reduces the security of our elections.³⁸

Republicans are intent on portraying vote-by-mail as rife with fraud, even when relied upon by their own voters. House Republicans are trapped—if they acknowledge that mail voting is safe and effective, then they would have to concede that the 65 million ballots cast by mail in the 2020 presidential election,³⁹ in which President Biden defeated former President Trump, were legitimate. Because, however, the political identity of the modern Republican Party is so tightly enmeshed with former President Trump's election lies, they are unable to admit this objective truth, and instead attempt to codify the Big Lie through ACE Act restrictions on mail voting.

Despite Big Lie efforts, the 2022 midterm elections were a success.

Despite efforts, discussed below, to roll back access to the ballot and to continue to push conspiracy theories and election denialism, there were successes in the 2022 midterm

34 Press Release, U.S. Dep't of Interior, Interior Department Takes Steps to Increase Voter Registration in Indigenous Communities (Mar. 24, 2022), <https://www.doi.gov/pressreleases/interior-department-takes-steps-increase-voter-registration-indigenous-communities>.

35 *ACE Act Bill Summary*, Comm. on House Admin., https://mcusercontent.com/67fba463240fdd948eb636b35/files/886e37c8-cef9-16d2-8054-a57164dfc516/ACE_Act_Bill_Summary.pdf; see also H.R. 4563, 118th Cong. §§ 135, 324, 330 (1st Sess. 2023).

36 *Vote by Mail*, California Secretary of State, <https://www.sos.ca.gov/elections/voter-registration/vote-mail> (last visited Apr. 2, 2024).

37 Miles Parks, *Trump, While Attacking Mail Voting, Casts Mail Ballot Again*, NPR (Aug. 19, 2020), <https://www.npr.org/2020/08/19/903886567/trump-while-attacking-mail-voting-casts-mail-ballot-again>.

38 Sudiksha Kochi, *Fact check: False claim that mail-in voting is connected to bad actors, fraudulent ballots*, USA TODAY (Nov. 8, 2022), <https://www.usatoday.com/story/news/factcheck/2022/11/08/fact-check-no-tie-between-mail-voting-and-election-fraud/8269630001/>.

39 Drew DeSilver, *Most mail and provisional ballots got counted in past U.S. elections—but many did not*, PEW RESEARCH CENTER (Nov. 10, 2020), <https://www.pewresearch.org/short-reads/2020/11/10/most-mail-and-provisional-ballots-got-counted-in-past-u-s-elections-but-many-did-not/>.

elections.⁴⁰ Millions of Americans went to the polls to cast their vote, and those votes were counted. There remains no evidence of widespread fraud in United States elections—whether in 2022 or 2020. Our elections are secure.⁴¹

Republicans have adopted the phrase “easy to vote, hard to cheat” to describe their approach to voting laws.⁴² The fact is, it is already hard to “cheat” in American elections.⁴³ There is no evidence of widespread voter fraud, no evidence to justify the enactment of restrictive voting laws seen across the country in the wake of the 2020 election, and the continuation of this narrative only perpetuates the idea that elections can be—or were—stolen.

The false claims foundational to the former president’s Big Lie were used by legislatures in many states to enact restrictive voting laws ahead of the 2022 election.⁴⁴ According to analysis done by the Brennan Center for Justice (the “Brennan Center”), between January 1 and December 7, 2021, at least 19 states passed 34 laws restricting access to voting.⁴⁵ In 2022, at least eight states enacted 11 restrictive voting laws and at least seven states enacted 12 election interference laws; by contrast, at least 12 states and the District of Columbia enacted 23 laws that expand access to the ballot.⁴⁶ The anti-voting campaign in state legislatures did not stop in 2023—between January 1 and December 31, 2023, at least 14 states enacted 17

40 Though, as Damon T. Hewitt explained to the Committee, “we must be clear about what that success was, and what it took to achieve.” Though overall turnout was generally high, “there were significant disparities between White and Black turnout in several states.” Further,

[the 2022 election] was not successful in terms of the ease of voting. The “success” of the 2022 election was built on the shoulders of those who expended time, money, and effort that was needed to overcome unnecessary burdens to voting. The “success” occurred despite onerous government restrictions on ballot access and tremendous pressure and threats directed towards the administrators and workers, who were instrumental in helping the elections run smoothly. The elections were “successfully” certified, despite attacks based on racist stereotypes and lies.

2022 Midterms Look Back Series: Successes in the 2022 Midterm Elections: Hearing before the Subcomm. on Elections of the H. Comm. on House Admin, 118th Cong. 3–4 (2023) (statement of Damon T. Hewitt, President and Executive Director, The Lawyers’ Committee for Civil Rights Under Law) [hereinafter, *Hewitt testimony*].

41 Sareen Habeshian, No evidence of voter fraud found in midterms: cybersecurity officials, *Axios* (Nov. 9, 2022), <https://www.axios.com/2022/11/09/midterms-homeland-security-no-voter-fraud>.

42 Lauren Henning, *Steil likens Jan. 6 attack to Kenosha riots, says the COVID vaccine ‘is safe’*, *JOURNAL TIMES* (Aug. 7, 2021), https://journaltimes.com/news/local/steil-likens-jan-6-attack-to-kenosha-riots-says-the-covid-vaccine-is-safe/article_17b82182-2d40-549a-908a-45b202efcf6d.html.

43 The highest profile example of election fraud in recent American history was a 2018 scheme in North Carolina, hatched and executed by a Republican Party operative on behalf of a Republican candidate for the United States House of Representatives. The perpetrators were caught and prosecuted; when election fraud is actually committed in the United States, investigators are able to find real evidence. See Gabriella Borter, *North Carolina Republican operative charged in election fraud scheme*, *REUTERS* (Feb. 27, 2019), <https://www.reuters.com/article/us-usa-election-north-carolina/north-carolina-republican-operative-charged-in-election-fraud-scheme-idUSKCN1QG2FS>.

44 See, e.g., D. SB 202, Georgia’s ACE Act parallel *infra*.

45 *Voting Laws Roundup: December 2021*, BRENNAN CTR. FOR JUSTICE (Jan. 12, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021>.

46 *Voting Laws Roundup: December 2022*, BRENNAN CTR. FOR JUSTICE (Feb. 1, 2023), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2022>.

restrictive laws, and at least six states enacted seven election interference laws.⁴⁷ By contrast, at least 23 states enacted 47 expansive laws.⁴⁸ The Big Lie, which inspired these restrictive laws, lies at the bedrock of the ACE Act as well.

For an examination of Georgia's particularly egregious voter suppression law, enacted in the wake of former President Trump's Big Lie, see **SB 202, Georgia's ACE Act parallel** on page 12.

In the face of growing hostility, election administrators delivered in 2022.

Between the 2020 and 2022 elections, election officials faced a torrent of threats and harassment. A 2021 survey commissioned by the Brennan Center found that one in three election workers felt unsafe because of their job, and nearly one in five listed threats to their lives as a job-related concern.⁴⁹ A more recent study found that intimidation has remained consistently and unacceptably high—in a 2023 survey, the Brennan Center found that nearly one in three election officials have been harassed, abused, or threatened because of their job, and more than one in five are concerned about being physically assaulted on the job in future elections.⁵⁰

According to the DOJ, between the initiation of task force to address threats to election workers on June 1, 2021, and August 1, 2022, the task force reviewed over 1,000 contact reports that election workers deemed hostile or harassing and determined approximately 11 percent met federal criteria for federal criminal investigation. The DOJ also shared that, during that fourteen-month period, five matters related to the task force were federally charged.⁵¹ These numbers encompass only those instances that are reported to the federal government. Election officials have described to the Committee the issue of election workers leaving their jobs and the struggle to find people willing to fill these roles—positions necessary for running elections.⁵²

Despite this, the 2022 elections were administered—for the most part—effectively and efficiently, in large part due to the determination of voters and the resiliency of many of our nation's election officials. But election officials must be supported if our democracy is to survive.

47 A law is defined as an election interference law “if it either threatens the people and processes that make elections work or increases opportunities for partisan interference in election results or administration.” *Voting Laws Roundup: 2023 in Review*, BRENNAN CTR. FOR JUSTICE (Jan. 18, 2024), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2023-review>.

48 *Id.*

49 *Election Officials Under Attack*, BRENNAN CTR. FOR JUSTICE (June 16, 2021), https://www.brennancenter.org/sites/default/files/2021-06/BCJ-129%20ElectionOfficials_v7.pdf.

50 Ruby Edlin & Lawrence Norden, *Poll of Election Officials Shows High Turnover Amid Safety Threats and Political Interference*, BRENNAN CTR. FOR JUSTICE (Apr. 25, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/poll-election-officials-shows-high-turnover-amid-safety-threats-and>.

51 Press Release, U.S. Dep't of Justice, Readout of Election Threats Task Force Briefing with Election Officials and Workers (Aug. 1, 2022), <https://www.justice.gov/opa/pr/readout-election-threats-task-force-briefing-election-officials-and-workers>.

52 *American Confidence in Elections: The Path to Election Integrity Across America: Hearing Before the H. Comm. on House Admin.*, 118th Cong. 1 (2023) (statement of Cathy Woolard, former Chair, Fulton County Board of Registration and Elections).

2022 voter turnout was high, but not reflective of the reality of voting in America.

Data from the 2022 election shows that voter turnout in the midterms roughly matched turnout in the 2018 midterms—around 47 percent.⁵³ Republicans have repeatedly pointed to high voter turnout numbers as alleged proof that the restrictive voting laws enacted by many states in the wake of the 2020 election are not in fact restrictive. But this is a false narrative, which overlooks the strenuous efforts of voters and organizers to overcome those barriers. Democrats and voting rights advocates know that voters’ ability to overcome barriers and successfully cast ballots is not proof that the barriers do not exist, nor does it mean the barriers are fair or justified.

Wisconsin saw one jarring example of Republican anti-voter efforts in 2022. Robert Spindell, the Republican Vice Chair of the Wisconsin Elections Commission, publicly praised Republican efforts in the state to drive down Black and Latino turnout in the 2022 election. In a post-election email to Republican supporters in Milwaukee, Spindell wrote that Republicans “can be especially proud of the City of Milwaukee (80.2% Dem Vote) casting 37,000 less [sic] votes than cast in the 2018 election with the major reduction happening in the overwhelming Black and Hispanic areas.”⁵⁴ According to Spindell, “this great and important decrease in Democrat[ic] votes in [Milwaukee]” was due to a “well thought out multi-faceted plan,” that included negative commercials targeting Black voters that were “run last few weeks of the election cycle straight at Dem Candidates . . . [and a] substantial & very effective Republican Coordinated Election Integrity program resulting with [sic] lots of Republican paid Election Judges & trained Observers & extremely significant continued Court Litigation.”⁵⁵

Due to pro-voter efforts of some state governments in recent years, however, many voters faced expanded ballot access in 2022. This likely accounts in part for the relatively high national voter turnout in the midterms. For example, Maine and New York lowered barriers to voting after the 2018 midterms.⁵⁶ In 2022, voters in Connecticut and Michigan approved expansive voting ballot measures.⁵⁷ Connecticut law now empowers the state legislature to establish early voting for all voters.⁵⁸ Michigan added several expansive voting policies to its state constitution, including a permanent absentee voter list, minimum availability for drop boxes and early voting, and prepaid return for mail ballots.⁵⁹ New York recently passed legislation that lengthens the deadline to return voter registrations.⁶⁰ Virginia implemented same-day voter registration for the first time

53 Monica Potts, *Turnout Was High Again. Is This The New Normal?*, FIVETHIRTYEIGHT (Nov. 15, 2022), at <https://fivethirtyeight.com/features/turnout-was-high-again-is-this-the-new-normal/>.

54 Scott Bauer, *Wisconsin Elections Commission member Robert Spindell blasted for voting comments*, PBS Wis. (Jan. 11, 2023), <https://pbswisconsin.org/news-item/wisconsin-elections-commission-member-robert-spindell-blasted-for-voting-comments/>.

55 Bruce Murphy, *GOP Leader Thrilled to Suppress City Vote*, URBAN MILWAUKEE (Jan. 10, 2023), <https://urbanmilwaukee.com/2023/01/10/murphys-law-gop-leader-thrilled-to-suppress-city-vote/>.

56 *Id.*

57 *Voting Laws Roundup: December 2022*, *supra* note 46.

58 *Id.*

59 *Id.*

60 *Id.*

in 2022. More than 25,000 Virginians cast a ballot via same-day registration in its first year.⁶¹ Of those, 96 percent were counted as legitimate votes.⁶²

Americans rejected election deniers in 2022.

Because the anti-democracy narrative surrounding voting generally—and the 2020 election in particular—is so unpopular with most Americans, many election deniers lost their races for critical statewide offices in 2022. For example, in Arizona, Michigan, Minnesota, Nevada, Pennsylvania, and Wisconsin, election deniers lost their races for critical positions such as governor, attorney general, and secretary of state.⁶³ In Arizona, Republican election officials in Maricopa County held firm in the face of conspiracy theories about and stood by the results and integrity of the state's election; Trump-backed gubernatorial candidate, conspiracy theorist, and election denier Kari Lake lost legal battles attempting to challenge the results of the election.⁶⁴ In fact, a federal court ordered Lake's legal team to pay more than \$122,000 in sanctions for bringing a frivolous lawsuit contesting voting methods in Arizona,⁶⁵ and Lake has declined to defend a defamation lawsuit brought by the Maricopa County Recorder in response to her repeated lies about the existence of fraud in the 2022 election.⁶⁶

Following Election Day, NBC News reported that “[n]early every single candidate in battleground state races who denied or questioned the results of the 2020 election was defeated for positions that oversee, defend and certify elections.”⁶⁷ Of the 94 races for governor, secretary of state, and attorney general in 2022, “just 14 election deniers were elected into office (five in Alabama, Idaho, Indiana, Kansas and Wyoming) or won re-election (nine in Alabama, Florida, Iowa, Idaho, Kansas, South Carolina, Tennessee and Texas).”⁶⁸

These election results make the ACE Act's trumpeting of the manufactured lack of voter confidence particularly curious—the American people clearly understand that it is Republican candidates who are engaging in behavior that threatens the integrity of American elections (like attempting to obstruct justice, interfering with an official proceeding, and inciting insurrection), and they have routinely rejected such candidates. Committee Republicans seem

61 Graham Moomaw, *Virginia saw more than 25,000 ballots cast via same-day registration in law's first year*, VA. MERCURY (Mar. 8, 2023), <https://www.virginiamercury.com/2023/03/08/virginia-saw-more-than-25k-ballots-cast-via-same-day-registration-in-laws-first-year/>.

62 *Id.*

63 Adam Edelman, *Election deniers overwhelmingly lost in battleground states*, NBC NEWS (Nov. 16, 2022), <https://www.nbcnews.com/politics/2022-election/election-deniers-overwhelmingly-lost-battleground-states-rcna57058>.

64 Jacques Billeaud, *Kari Lake loses appeal in Arizona governor race challenge*, AP (Feb. 16, 2023), <https://apnews.com/article/politics-kari-lake-katie-hobbs-arizona-862fcc3bea34bd46b697f5ba0ea41bce>.

65 Nick Robertson, *Kari Lake's team ordered to pay more than \$122K in sanctions over Maricopa lawsuit*, THE HILL (July 14, 2023), <https://thehill.com/regulation/court-battles/4098759-kari-lakes-team-ordered-to-pay-more-than-122k-in-sanctions-over-maricopa-lawsuit/#:~:text=In%20May%2C%20Lake's%20legal%20team,spreading%20misinformation%20about%20election%20integrity.&text=Copyright%202024%20Nexstar%20Media%20Inc,All%20rights%20reserved>.

66 Jonathan J. Cooper, *Kari Lake declines to defend defamation lawsuit filed by Arizona election official*, AP (Mar. 27, 2024), <https://apnews.com/article/kari-lake-stephen-richer-defamation-lawsuit-1feafd7656310f0dc1f8d91e7e376d00>.

67 Edelman, *supra* note 63.

68 *Id.*

intent on following in the disastrous footsteps of election deniers like Donald Trump, Kari Lake, Herschel Walker, and Doug Mastriano.

SB 202, Georgia’s ACE Act parallel.

On July 10, 2023, the Committee held a field hearing in Atlanta, Georgia, entitled “American Confidence in Elections: The Path to Election Integrity Across America.” At the hearing, Committee Republicans—and many witnesses—hawked Georgia-flavored conspiracy theories and anti-voter narratives.⁶⁹ Insidiously, Committee Republicans and certain witnesses held up Senate Bill 202 (“SB 202”), a law enacted in Georgia in the wake of the 2020 presidential election, as model legislation that states should emulate to ameliorate the mythical lack of national election integrity.⁷⁰

The Big Lie origins of SB 202 mirror the Big Lie origins of House Republicans’ ACE Act. And the damaging effects of SB 202 on Georgia voters—from restricting access to the ballot for millions of voters to overburdening already underfunded and understaffed elections administrators—will be imposed upon all Americans if the ACE Act is enacted nationally. House Democrats’ Freedom to Vote Act (“FTVA”), by contrast, would set accessible baseline voter access standards for all Americans—including the voters of Georgia. For more on the pro-voter, pro-transparency provisions of the FTVA, see Part V. The Freedom to Vote Act below.

This subpart D. SB 202, Georgia’s ACE Act parallel presents an examination of SB 202 because the actions of Georgia lawmakers serve as a warning to Americans across the nation. Through the ACE Act, House Republicans want to infect the election laws of every state with the type of anti-voter, anti-democracy rules already in effect in Georgia.

Former President Trump attempted to overturn the election in Georgia.

In the 2020 presidential election in Georgia, President Biden defeated former President Trump by 11,779 votes out of almost five million ballots cast. Former President Trump insisted—without evidence—that the election in Georgia (and nationwide) was marred by widespread voter fraud in favor of President Biden.⁷¹

Former President Trump loudly promoted allegations that misleadingly edited video footage from a ballot counting center at State Farm Arena in Fulton County, Georgia proved election fraud. He did this despite multiple investigations into the video, as well as the vote tabulation at State Farm Arena generally, showing that no fraud occurred—at that location

69 *American Confidence in Elections: The Path to Election Integrity Across America: Hearing Before the H. Comm. on House Admin.*, 118th Cong. (2023) (statement of Hans von Spakovsky, Manager, Elections Law Reform Initiative & Senior Legal Fellow, on behalf of The Heritage Foundation).

70 *Id.*

71 Eric Tucker & Mark Sherman, *AP Fact Check: Trump’s made-up claims of fake Georgia votes*, AP (Jan. 3, 2021), <https://apnews.com/article/ap-fact-check-donald-trump-georgia-elections-atlanta-c23d10e5299e14daee6109885f7dafa9>.

or any other.⁷² The former president's attorney, Rudy Giuliani,⁷³ presented Georgia legislators with the doctored footage, which he claimed showed illegal ballots, stashed in suitcases under tables at the arena, being repeatedly counted to add votes to President Biden's total. Investigators from Georgia Secretary of State Brad Raffensperger's office, as well as from the Federal Bureau of Investigation ("FBI"), DOJ, and the Georgia Bureau of Investigation ("GBI"), all determined that a full accounting of the footage proved that in reality, the video showed election workers legally processing ballots—as required by law—that had been opened, but not yet counted, and placed in sealed boxes under tables.⁷⁴ Multiple times, however, former President Trump falsely claimed that the selectively edited video was smoking gun evidence of fraud. In a December 2020, speech, President Trump claimed that "if you just take the crime of what those Democrat[ic] workers were doing [at State Farm Arena]... [t]hat's 10 times more than I need to win [Georgia]."⁷⁵ Dangerously, the former president revealed the name of one of the election workers, calling her "a professional vote scammer and hustler."⁷⁶

The former president publicly smeared other individuals in Georgia as well. Despite—or, more likely, because of—Georgia having a Republican governor and secretary of state, former President Trump was particularly virulent when discussing the state's elected officials; the former president was angry that Republican public servants in Georgia prioritized their fidelity to the rule of law over their loyalty to Donald Trump's perverse personal interests. He repeatedly tweeted criticisms of Governor Brian Kemp and Secretary Raffensperger, demanding they overturn the will of Georgia voters. For example, former President Trump requested that Georgia reject a court settlement mandating procedures for Georgia officials to verify voter signatures on absentee ballots.⁷⁷ He called Secretary Raffensperger "a so-called Republican (RINO)."⁷⁸ He also retweeted posts asking, "[w]ho needs Democrats when you have Republicans like Brian Kemp," and "why bother voting for Republicans if what you get is [Arizona's Republican Governor Doug] Ducey and Kemp?"⁷⁹

Alongside his Twitter tantrums, former President Trump and his campaign team engaged in a concerted effort to directly pressure public officials in Georgia to improperly change the results of the presidential election. For example, Giuliani drafted a document that outlined the Trump campaign's efforts to bully and intimidate state legislators across the country—including in Georgia—to overturn the election. The document created a plan to "call upon legislators and Members of Congress to disregard the ['fraudulent'] vote count and certify

72 *January 6th Select Committee Final Report*, *supra* note 5, at 224–26.

73 On August 14, 2023, the Fulton County District Attorney indicted Giuliani and 17 other people—including former President Trump—on numerous charges related to the scheme to illegally overturn the 2020 election in Georgia. See Katie Brumback & Jonathan J. Cooper, *A look at the 19 people charged in the Georgia indictment connected to Trump election scheme*, AP (Aug. 15, 2023), <https://apnews.com/article/trump-georgia-indictment-meadows-giuliani-084efc6796becf3714196cee3854cf6>.

74 *January 6th Select Committee Final Report*, *supra* note 5, at 225.

75 *Id.* at 224.

76 *Id.*

77 *Id.* at 273.

78 *Id.*

79 *Id.*

the duly-elected President Trump.”⁸⁰ The plan specifically focused on officials in swing states including Georgia, and named as “targets” Speaker of the Georgia House of Representatives David Ralston, Majority Leader of the Georgia Senate Mike Dugan, and President Pro Tempore of the Georgia Senate Butch Miller.⁸¹ The former president and his senior advisors made multiple efforts to contact Georgia state legislators and other officials to browbeat them into not certifying President Biden’s victory in the state, decertifying President Biden’s victory once certified, and appointing Trump-pledged electors to the Electoral College for consideration during Congress’s joint session on January 6, 2021.⁸²

Further, infamously, former President Trump illegally⁸³ pressured Georgia officials to “find” enough ballots in favor of the former president to overturn the outcome of the election in the state. On January 2, 2021, former President Trump spoke to Secretary Raffensperger by phone:

During the call, [former] President Trump went through his litany of false election-fraud claims and then asked [Secretary] Raffensperger to deliver him a second term by “finding” just enough votes to ensure victory. The [former] President said, “I just want to find 11,780 votes, which is one more than we have because we won the State.” He reiterated it several different ways: “fellas, I need 11,000 votes.”⁸⁴

White House Chief of Staff Mark Meadows⁸⁵ personally spoke to Georgia’s Deputy Secretary of State Jordan Fuchs and Secretary Raffensperger’s chief investigator, Frances Watson, as part of this illicit lobbying campaign. Meadows connected Watson with former President Trump, who declared in their conversation that he had rightfully won the 2020 election and asked her to publicly agree.⁸⁶

Despite this abrasive and illegal pressure campaign, election officials certified President Biden as the winner of the 2020 presidential election in Georgia. A statewide hand recount of all ballots, ordered by Secretary Raffensperger, confirmed President Biden’s victory and the total lack of significant voter fraud.⁸⁷ But it was in this atmosphere of public presidential persecution of election administrators and rampant proliferation conspiracy theories by certain Republican officials in Georgia and nationally that the Georgia legislature began consideration of SB 202.

80 *January 6th Select Committee Final Report*, *supra* note 5, at 297.

81 *Id.*

82 *Id.* at 291.

83 Kate Brumback & Eric Tucker, *Trump and 18 allies charged in Georgia election meddling as former president faces 4th criminal case*, AP (Aug. 15, 2023), <https://apnews.com/article/trump-georgia-election-investigation-grand-jury-willis-d39562cedfc60d64948708de1b011ed3>.

84 *January 6th Select Committee Final Report*, *supra* note 5, at 292–93.

85 The Fulton County District Attorney indicted Meadows on multiple felony counts related to his efforts to illegally overturn the 2020 presidential election in Georgia. *See* Brumback & Cooper *supra* note 83.

86 *January 6th Select Committee Final Report*, *supra* note 5, at 292–93.

87 Barbara Sprunt, *Georgia’s Recount Confirms Biden’s Lead; AP Declares Him State’s Winner*, NPR (Nov. 19, 2020), <https://www.npr.org/sections/live-updates-2020-election-results/2020/11/19/936647882/georgia-releases-hand-recount-results-affirming-bidens-lead>.

SB 202 restricts voters and hinders election administration.

In response to the former president's lies, and despite the dearth of evidence of significant voter fraud or election security failures—in Georgia or elsewhere—Georgia's legislature proposed and passed SB 202 in the winter and spring of 2021.

SB 202 is an omnibus voter suppression bill that affects almost every method of voting in Georgia. During the legislature's consideration of SB 202, many Georgians condemned the bill as discriminatory and restrictive. Former President Jimmy Carter—who served on the 2005 Carter-Baker Commission that Republicans selectively reference when pushing anti-voter narratives—said he was “disheartened, saddened, and angry,” by the state legislature, which he felt sought “to turn back the clock through legislation that will restrict access to voting for many Georgians.”⁸⁸ The CEO of Delta Air Lines declared that “the final bill is unacceptable and does not match Delta's values.”⁸⁹ And Major League Baseball relocated its annual All-Star Game—scheduled to be played at Truist Park, the Atlanta Braves' home field in Cobb County—out of the state.⁹⁰

The bill has numerous provisions that hinder voter access. Specifically, SB 202 shortens the deadline to request absentee ballots, tightens the state's voter ID requirements for mail ballots, and drastically reduces the number of drop boxes voters can use to return their ballots. Further, the law decreases the amount of time for in-person early voting prior to runoff elections and bans individuals and groups from giving out food or water to voters waiting in line to vote.⁹¹

SB 202 also imposes drastic changes to election administration and ballot counting procedures. It places an unnecessary burden on election administrators and limits the ability of voters to cast provisional ballots. While overwhelming local officials, the law additionally shifts power and authority away from local administrators—in practice likely disproportionately impacting majority Black regions—to the state government. Specifically, SB 202 empowers the State Elections Board to replace a county election board following a performance review.⁹²

SB 202 permits unlimited challenges to voter eligibility.

Another particularly damaging aspect of SB 202 is the provision that allows any voter to challenge the eligibility of any other voter—with no limit on the number of challenges allowed. One man alone in Forsyth County, Georgia, has challenged the eligibility of over 13,000 valid

88 *President Carter Statement on Efforts to Restrict Voting Access*, CARTER CTR. (Mar. 9, 2021), <https://www.cartercenter.org/news/pr/2021/pres-carter-statement-030921.html>.

89 Leslie Josephs, *Delta CEO blasts Georgia voting law as 'unacceptable' and 'based on a lie' after backlash*, NBC News (Mar. 31, 2023), <https://www.cnbc.com/2021/03/31/delta-ceo-blasts-georgia-voting-law-after-backlash-on-social-media.html>.

90 Ronald Blum, *MLB All-Star Game yanked from Georgia over voting law*, AP (Apr. 2, 2021), <https://apnews.com/article/mlb-baseball-rob-manfred-georgia-voting-rights-e1cf72c8b2d61afad049cae498ccbbe0>.

91 Mac Brower, *Georgia's S.B. 202 Unpacked*, DEMOCRACY DOCKET (Mar. 24, 2023), <https://www.democracydocket.com/analysis/georgias-s-b-202-unpacked/>.

92 *Id.*

voters—roughly 8 percent of the voting population of the county.⁹³ The man’s alleged concerns were unfounded; the Forsyth County Board of Registration and Elections later unanimously voted to dismiss the totality of the challenges.⁹⁴

According to the Atlanta Journal-Constitution, “Georgians who identify themselves as conservatives or election skeptics have challenged over 65,000 voter registrations across the state this year, based on a belief that voter lists are inaccurate and vulnerable to fraud.”⁹⁵

Rather than relying on concrete and particularized knowledge of a challenged voter’s eligibility, the Georgians who have filed voter challenges “often rely on change-of-address records or addresses that do not match residential properties.”⁹⁶

Indeed, a report by ProPublica found that of the 100,000 voters whose eligibility has been challenged in Georgia since the enactment of SB 202, “about 89,000 . . . were submitted by just six right-wing activists . . . [and a]nother 12 people accounted for most of the rest [of the challenges].”⁹⁷

SB 202’s voter challenge provision arose after the conservative group True the Vote⁹⁸ worked with the Georgia Republican Party to challenge the eligibility of more than 360,000 Georgia voters in December 2020, in an underhanded attempt to disqualify voters in advance of the January 2021 United States Senate runoff elections.⁹⁹

In addition to allowing indiscriminate voter challenges, SB 202 requires county boards of election to hold a hearing on every challenge within ten business days, overwhelming counties with baseless voter challenges, hindering the ability of the county to do other vital election work.¹⁰⁰

The result of SB 202’s voter challenges provision has been a tremendous amount of added work for local election administrators. And this work is often futile: Despite Republican claims that Georgia’s voter rolls are laden with ineligible voters and therefore vulnerable to fraud,

93 Shannon McCaffrey, *Eligibility of more than 13,000 voters challenged in Forsyth County*, ATLANTA J.-CONST. (May 11, 2022), <https://www.ajc.com/politics/eligibility-of-more-than-13000-voters-challenged-in-forsyth-county/NTVJZWLO5NFQJG7TQBEIWP3RZ4/>.

94 Nathan Layne & Kia Johnson, *Facing Trump-inspired voter limits, Democrats gird for legal battles*, REUTERS (May 16, 2022), <https://www.reuters.com/world/us/facing-raft-trump-inspired-new-voter-limits-democrats-gird-legal-battles-2022-05-16/>.

95 Mark Niesse, *Eligibility challenges impede several Georgia voters at the polls*, ATLANTA J.-CONST. (Nov. 2, 2022), <https://www.ajc.com/politics/several-georgia-voters-report-hurdles-after-eligibility-challenges/WOUAH77TLRBD5A5HLLFSJV3S44/>.

96 *Id.*

97 Doug Bock Clark, *Close to 100,000 Voter Registrations Were Challenged in Georgia — Almost All by Just Six Right-Wing Activists*, PROPUBLICA (July 13, 2023), <https://www.propublica.org/article/right-wing-activists-georgia-voter-challenges>.

98 True the Vote is an organization that has allegedly “engaged in a series of questionable [financial] transactions that sent more than \$1 million combined to its founder, a longtime board member romantically linked to the founder, and the group’s general counsel.” See Cassandra Jaramillo, *True the Vote Raised Millions to Combat Voter Fraud — But No One Really Knows Where the Money Went*, MOTHER JONES (June 8, 2022), <https://www.motherjones.com/politics/2022/06/catherine-engelbrecht-true-the-vote-raised-millions-to-combat-voter-fraud-but-no-one-really-knows-where-the-money-went/>.

99 Mark Niesse, *Eligibility of 364,000 Georgia voters challenged before Senate runoff*, ATLANTA J.-CONST. (Dec. 22, 2020), <https://www.ajc.com/politics/several-georgia-voters-report-hurdles-after-eligibility-challenges/WOUAH77TLRBD5A5HLLFSJV3S44/>.

100 Mark Niesse, *How Georgia’s voting law works*, ATLANTA J.-CONST. (May 6, 2021), <https://www.ajc.com/politics/how-georgias-new-voting-law-works/GF6PLR44PNESPKR5FXCBE7VEOY/>.

voter challenges have thus far produced no evidence of any significant issues. In Fulton County, Georgia's most populous county, after an exhaustive review of voter challenges, "[n]o illegal voting has been discovered."¹⁰¹ One Fulton County resident, Jason Frazier, challenged—to no avail—the eligibility of almost 10,000 voters, in some instances “because their addresses were incorrectly listed with double street names, such as ‘drive drive’ or ‘street street.’”¹⁰² Frazier even challenged the eligibility of Dr. Kathleen Ruth, a member of the Fulton County Board of Registration and Elections.¹⁰³ As an example of Republicans' anti-voter fanaticism, The Georgia Republican Party recently nominated Frazier to the Fulton County Board of Registration and Elections (though, for now, the Fulton County Board of Commissioners has rejected his nomination).¹⁰⁴

Other counties in Georgia have been inundated with erroneous voter challenges as well. In October 2022, the Cobb County Board of Elections and Registration rejected challenges to the eligibility of 1,350 voters. The board found all 1,350 Cobb County, Georgia challenges lacked merit, meaning every single voter registration was valid.¹⁰⁵ Likewise, in Gwinnett County, Georgia, the Gwinnett County Board of Registration and Elections voted to dismiss all remaining challenges to voter eligibility that had been filed by conservative residents who alleged 22,000 voter registration records were invalid.¹⁰⁶

And Georgia Republicans are hungry for more voter disenfranchisement: In March 2024, Republicans in the state legislature “passed a wide-ranging elections measure that would ... broaden abilities to challenge voter eligibility.”¹⁰⁷ These laws, which target voters of color, are further evidence that Republicans—obsessed with their defeat in 2020—intend to keep using the specter of “fraud” to try to undermine the outcome of future elections. Committee Republicans, with their undemocratic ACE Act, have taken this playbook from Georgia and run with it on a national stage.

101 Mark Niese, *Search for ineligible voters ends up verifying most of them in Fulton*, ATLANTA J.-CONST. (June 9, 2023), <https://www.ajc.com/politics/election-officials-confirm-fulton-registrations-after-voter-challenges/Q6JLXUVWB5BYLFE3B56UES7PRU/>.

102 *Id.*

103 *American Confidence in Elections: The Path to Election Integrity Across America: Hearing Before the H. Comm. on House Admin.* 118th Cong. 1 (2023).

104 Niese, *supra* note 101.

105 Mark Niese, *Voter eligibility challenges dismissed in Cobb County*, ATLANTA J.-CONST. (Oct. 10, 2022), <https://www.ajc.com/politics/voter-eligibility-challenges-dismissed-in-cobb-county/HTEIG75KLJFT5EZJEDR335I3DE/>.

106 Mark Niese, *Mass Georgia voter challenges thrown out in Gwinnett*, ATLANTA J.-CONST. (Oct. 4, 2022), available at <https://www.ajc.com/politics/gwinnett-election-board-votes-to-dismiss-voter-challenges/3JY2QZ6VBVCYBFEQLI6VTIRRMA/#:~:text=Mass%20Georgia%20voter%20challenges%20thrown%20out%20in%20Gwinnett&text=The%20Gwinnett%20County%20Board%20of,voter%20registration%20records%20were%20invalid.>

107 Rebecca Shabad & Jane C. Timm, *Georgia legislature passes broad elections bill with 2024 implications*, NBC News (Mar. 29, 2024), https://www.nbcnews.com/politics/politics-news/georgia-legislature-passes-broad-elections-bill-2024-implications-rcna145596?cid=sm_npd_nn_tw_ma&taid=6606d77592b73300016ea47c&utm_campaign=trueanthem&utm_medium=social&utm_source=twitter.

Republican-led states continue to have democracy issues.

Rather than push the ACE Act, a flawed piece of legislation inspired by the lies of election deniers and the myth of widespread voter fraud, House Republicans should ensure that their own house is in order.¹⁰⁸ While the 2020 and 2022 elections were largely a success for democracy, there was anti-democratic backsliding in several Republican controlled jurisdictions in addition to the problems in Georgia, discussed in subpart D. SB 202, Georgia's ACE Act parallel above. For example, a small number of counties refused to certify their results in the weeks that followed Election Day, despite no evidence of voter fraud.¹⁰⁹ This reckless move exposed them to lawsuits and court orders forcing them to sign-off on the count.¹¹⁰ Earlier in 2022, for example, a county in New Mexico initially refused to certify the results of the state's summer primary, which led to a lawsuit by the New Mexico Secretary of State and a New Mexico Supreme Court order requiring the county to certify.¹¹¹ Counties failing to certify elections was largely unprecedented before 2022, and illustrates the chaos that is caused when election denialism seeps into the local boards that run elections.

Additionally, voters of color in multiple states with newly imposed restrictive, anti-voter measures saw setbacks in their ability to freely cast a ballot. Texas, for example, “rejected roughly one out of every eight mail ballots in the 2022 primaries due to onerous administrative requirements, such as requiring that voters list the same identification number they originally used to register; the impact fell disproportionately on Latino and Black voters.”¹¹² The Texas statistics are stark: The single voter ID provision, enacted in 2021, “led to tens of thousands of rejected ballots in the 2022 primaries . . . [with v]oters of color experience[ing] much higher rejection rates — 16 percent for Black and Latino voters and 19 percent for Asian voters.”¹¹³ And Georgia, as part of SB 202, enacted “new restrictive measures that targeted and limited voting methods, like early in-person voting, voting by absentee ballot, and ballot drop boxes, all of which were used much more extensively by voters of color,” saw “a 13.3 percentage point gap between White (58.3%) and Black (45.0%) turnout of registered voters, which was significantly greater than the 8.3 percentage point gap (62.2% to 53.9%) of the previous midterm election in 2018.”¹¹⁴

108 This report cites at least 20 separate sources—relying on public reporting, fact-based evidence, exhaustive analyses of election results, statewide recounts from across the country, statewide audits from across the country, non-profit organizations, election experts, current federal judges, former federal judges, local law enforcement investigations, federal law enforcement investigations, cybersecurity experts, statements of election administrators (both Democratic and Republican), dismissed lawsuits on behalf of the former president, public statements by Republican officials, public statements by Trump administration officials, private statements by Republican officials, private statements by Trump administration officials, private statements of Fox News hosts, and private statements by former President Trump himself—that prove there was absolutely, without question, no fraud that affected the outcome 2020 presidential election or cost former President Trump a second term. There are no reputable sources that indicate otherwise.

109 Zach Montellaro, *Lawsuits likely after handful of counties refuse to certify midterm results*, POLITICO (Nov. 28, 2022), <https://www.politico.com/news/2022/11/28/lawsuits-certifying-midterm-election-results-2022-00070992>.

110 *Id.*

111 *Id.*

112 *Hewitt testimony*, *supra* note 40, at 6.

113 *American Confidence in Elections: The Path to Election Integrity in the District of Columbia: Hearing before the H. Comm. on House Admin. & H. Comm. On Oversight & Accountability*, 118th Cong. 6 (2023) (statement of Wendy Weiser, Vice President for Democracy, The Brennan Center for Justice).

114 *Hewitt testimony*, *supra* note 40, at 6.

The state legislatures that imposed restrictive laws like these knew or should have known the disproportionate impact these discriminatory laws would have on voters of color. But they imposed them nonetheless in response to Big Lie mis- and disinformation about alleged election insecurities. The midterm elections were only a relative success because millions of voters of color persevered in the face of these discriminatory laws.

The paranoia around alleged or potential voter fraud continues to spread like a virus through Republican governed states. Despite the widely acknowledged success of the 2022 midterm elections state lawmakers in at least 45 states pre-filed or introduced 325 restrictive voting bills during 2023.¹¹⁵ Beyond Georgia, discussed above, other Republican-led states such as Florida, Louisiana, and Ohio have pushed a particularly aggressive anti-voter agenda. If House Republicans truly cared about public confidence in American elections, they would disavow the conspiracy theories and reactionary petit authoritarians that constantly malign—without evidence but with duplicity—our election systems. But they do not.

Florida

On May 6, 2021, Florida enacted Senate Bill 90 (“SB 90”), an omnibus bill that made changes to mail-in voting, in-person voting, and several other aspects of the state’s election law. The bill also made voter registration more difficult, modified rules for observers in ways that could disrupt election administration, and restricted the ability of individuals and organizations to provide snacks and water to voters waiting in line to vote.¹¹⁶ SB 90 restricted mail-in voting by requiring voters to provide a state ID number or the last four digits of a Social Security number to obtain a mail-in ballot, providing no alternative should a voter have neither, as well as shortened the time during which a voter can remain on the state’s vote-by-mail list, which entitles them to receive a mail ballot automatically.¹¹⁷

The law also placed new restrictions on voters’ access to secure ballot drop boxes and made it more difficult for voters to receive assistance with the request for and return of mail-in ballots, including by creating criminal penalties for any person who possesses two or more mail-in ballots other than the person’s own ballot and the ballot of an immediate family member.¹¹⁸ It also prohibited state and local officials from sending a mail-in ballot to voters who did not request one, among other restrictive measures.¹¹⁹

Additionally, in April 2022, Governor Ron DeSantis (R-Florida) signed into law the creation of a new, stand-alone election police force.¹²⁰ The new law created an “Office of Election Crimes and Security” in the Florida Department of State, and authorized the use of additional

115 *Voting Laws Roundup: October 2023*, BRENNAN CTR. FOR JUSTICE (Oct. 19, 2023), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2023>.

116 Eliza Sweren-Becker, *Florida Enacts Sweeping Voter Suppression Law*, BRENNAN CTR. FOR JUSTICE (May 6, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/florida-enacts-sweeping-voter-suppression-law>.

117 *Id.*

118 *Id.*

119 *Id.*

120 Gary Fineout, *DeSantis signs bill creating one of the nation’s only election police units*, POLITICO (Apr. 25, 2022), <https://www.politico.com/news/2022/04/25/desantis-florida-election-police-units-00027577>.

investigators who work in the Florida Department of Law Enforcement to investigate potential election crimes.¹²¹ The office was created despite the Governor himself saying that Florida's 2020 election was secure and Republicans in the legislature producing no evidence of widespread fraud.¹²² The bill establishing the new office—Senate Bill 524—also contained several components restricting voting, on top of those passed in 2021. It raised the penalty for individuals who help their neighbors vote by making ballot collection assistance a felony, and it raised the cap on fines that could be imposed on third-party voter registration groups.¹²³ The law also mandated that election supervisors screen voter rolls on a yearly basis to find voters who may have moved or are no longer eligible, which could increase the risk of erroneous voter purges because the data used to make these determinations has historically been inaccurate.¹²⁴

While officials claimed the law was necessary to make Florida elections more secure, there is no evidence to support this claim—election fraud is exceedingly rare. While more than 11.1 million ballots were cast in Florida during the 2020 general election and 3.8 million in the primary,¹²⁵ the Secretary of State of Florida reported receiving a mere 262 fraud complaints during that year, with just 75 of the complaints referred to law enforcement.¹²⁶ The new law raised the risk of confusion, deterrence, and intimidation for voters and election administrators alike.

Despite all of this, with no evidence of widespread fraud, Governor DeSantis doubled down on the election police force. In August 2022, the Governor announced the arrest of 20 people with past convictions who allegedly voted unlawfully.¹²⁷ According to work by the Brennan Center, the accused individuals did not knowingly commit voter fraud, but appear to have been confused or misled about their eligibility when they allegedly voted in 2020.¹²⁸ Several of the charges have since been dismissed, but not before the wrongfully arrested individuals suffered irreparable harm at the hands of Governor DeSantis.¹²⁹

Some local prosecutors have declined to bring charges pursuant to Governor DeSantis's voter intimidation laws. In response, however, the state government changed state law to tighten Governor DeSantis's control over the prosecution of alleged "voter fraud" identified by the

121 *Id.*

122 *Id.*

123 *Id.*

124 *Id.*

125 Florida Department of State Division of Elections, Nov. 3, 2020 General Election, *Official Results, Voter Registration and Turnout*, <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/3/2020&DATAMODE=> (last visited Apr. 2, 2024); Florida Department of State Division of Elections, Aug. 18, 2020 Primary Election, *Official Results, Voter Registration and Turnout*, <https://results.elections.myflorida.com/Index.asp?ElectionDate=8/18/2020&DATAMODE=> (last visited Apr. 2, 2024).

126 Fredreka Schouten, *DeSantis signs bill creating new Florida election police force*, CNN (Apr. 25, 2022), <https://www.cnn.com/2022/04/25/politics/desantis-florida-election-bill-signing/index.html>.

127 Patrick Berry & Gabriella Sanchez, *Florida Changes Law to Boost Unjust 'Voter Fraud' Prosecutions*, BRENNAN CTR. FOR JUSTICE (Feb. 23, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/florida-changes-law-boost-unjust-voter-fraud-prosecutions>.

128 *Id.*

129 Angie DiMichele, *Fourth South Florida voter fraud case dismissed by Broward judge*, S. FLA. SUN-SENTINEL (Apr. 1, 2023), <https://www.sun-sentinel.com/2023/04/01/fourth-south-florida-voter-fraud-case-dismissed-by-broward-judge/>.

new office.¹³⁰ Senate Bill 4-B, which Governor DeSantis signed into law on February 15, 2023, expands the authority of statewide prosecutors so they can prosecute alleged voter fraud identified by the state's election police.

In 2023, Secretary of State Cord Byrd¹³¹ (R-Florida) ended Florida's participation in the multi-state voter-roll-matching program known as the Electronic Registration Information Center ("ERIC"). ERIC, a non-partisan organization that is "one of its most powerful tools for keeping ballot fraud at bay," has been "straining lately under the weight of accusations and misinformation from election deniers[,] . . . some of whom have aligned themselves with the false stolen-election narrative of former president Donald Trump."¹³² Republican secretaries of state, like Secretary Byrd and others, are sabotaging the collaborative pro-democracy efforts of ERIC, which "requires member states to share data with one another from their voter-registration rolls . . . and to periodically use the reports that ERIC compiles to help [states] remove from their rolls people who have died or moved away . . . [and] identify and prosecute those who have double-voted across state lines."¹³³ By doing so, extremists like Secretary Byrd are making fraud easier and making the maintenance of accurate voter rolls more difficult. They are undermining our election security—the most important democratic infrastructure we have—based on disproven conspiracy theories and the rabid demands of former President Trump's supporters.

Louisiana

In the wake of the Big Lie and the 2020 election, Secretary of State Kyle Ardoin (R-Louisiana) and others in Louisiana elevated conspiracy theories around the state's Dominion voting machines, delaying the award of a new contract for voting machines worth about \$100 million.¹³⁴ Secretary Ardoin made this decision amid pressure from pro-Trump, anti-machine activists, including Mike Lindell of My Pillow.¹³⁵ Most of the state's Dominion voting machines were bought in 2005.¹³⁶ In June 2022, at a Louisiana Voting System Commission meeting, Lindell told state officials that America will be lost "if we keep even one machine in this country

130 *Id.*

131 Secretary Byrd's wife, Esther Byrd, is a member of the Florida State Board of Education, appointed by Governor DeSantis. On her Facebook page after the January 6 insurrection, Esther Byrd said that the violent attack on law enforcement and the United States Capitol was merely a "peaceful[] protest" by supporters of former President Trump. She also wrote: "In the coming civil wars (We the People vs the Radical Left and We the People cleaning up the Republican Party), team rosters are being filled . . . Every elected official in DC will pick one. There are only 2 teams . . . With Us [or] Against Us . . . We the People will NOT forget!" She also offered support for the Proud Boys—the Trump-supporting far-right fascist organization of which multiple members, including its leader, have been convicted of seditious conspiracy—after then-President Trump urged the group to "stand back and stand by" ahead of the 2020 election. Secretary Byrd has repeatedly defended his wife's comments. See A.G. Gancarski, *Cord Byrd defends wife's 'passionate' praise of Capitol rioters, other extreme elements*, FLA. POLITICS (May 22, 2022), <https://floridapolitics.com/archives/526852-esther-cord/>.

132 Amy Gardner, *Election deniers take aim at group that helps states maintain voter rolls*, WASH. POST (Mar. 6, 2023), <https://www.washingtonpost.com/politics/2023/03/06/election-deniers-voter-rolls/>.

133 *Id.*

134 Helen Coster, *Special Report: Voting-system firms battle right-wing rage against the machines*, REUTERS (Nov. 7, 2022), <https://www.reuters.com/world/us/voting-system-firms-battle-right-wing-rage-against-machines-2022-11-06/>.

135 *Id.*

136 *Id.*

going forward.”¹³⁷ The state’s Republican National Committeewoman also called for Louisiana to cease using Dominion machines. In 2021, Secretary Ardoin, abandoned Louisiana’s effort to buy new machines amid protests from election deniers and anti-machine activists and complaints about the bidding process.¹³⁸

Reuters reported that, in August 2022, Secretary Ardoin appeared on an episode of Lindell’s web show, saying that he had sent a letter ordering local Louisiana election officials to preserve records from the 2020 election as potential fraud evidence.¹³⁹ He reportedly stopped short of alleging widespread fraud in 2020, but said a “travesty of manipulation” had “changed the outcome,” and referred to election law changes before the vote, including expansions of mail voting and ballot drop boxes.¹⁴⁰

Additionally, in early 2022, Louisiana suspended its participation in ERIC, as other Republican-led states have done. Secretary Ardoin reportedly arrived at this decision unilaterally, saying that the decision was made “amid concerns raised by citizens, government watchdog organizations and media reports.”¹⁴¹

Ohio

On January 6, 2023, Governor Mike DeWine (R-Ohio), signed a new Republican-backed voting law that made significant changes to the state’s election procedures, enacting one of the most restrictive voter-ID laws in the country.¹⁴² Republican state leaders who support the law have argued that it is necessary to quicken the pace of ballot counting and to reduce fraud—even though there is no evidence of fraud in Ohio’s elections.¹⁴³

Before the new law, Ohio required voters to show ID at the polls, but accepted several alternatives. Under the new law, the only acceptable forms of ID include an Ohio driver’s license, state ID card, interim ID form, United States passport, or federal military ID card—and the ID cannot be expired.¹⁴⁴ Even Texas’ voter ID law allows for the use of expired ID, except for a United States citizenship certificate, so long as it has not been expired for more than four years.¹⁴⁵ The Ohio law also reduces the number of days county election boards can count mailed ballots after Election Day from ten to four, and prohibits curbside voting unless the voter is “physically unable” to enter the building, among other new measures.¹⁴⁶

137 *Id.*

138 *Id.*

139 *Id.*

140 Coster, *supra* note 134.

141 *Louisiana’s reasons for withdrawing from ERIC don’t add up*, ELECTION LAW BLOG (Feb. 19, 2022), <https://electionlawblog.org/?p=127762>.

142 Meryl Kornfield, ‘Clear as mud’: Ohio’s new voting restrictions from GOP raise alarm, WASH. Post (Jan. 19, 2023), <https://www.washingtonpost.com/politics/2023/01/19/ohio-strict-voter-id-law/>.

143 *Id.*

144 *Id.*

145 *ID Laws*, NATIONAL CONF. OF STATE LEG. (Mar. 9, 2023), <https://www.ncsl.org/elections-and-campaigns/voter-id>.

146 Kornfield, *supra* note 142.

The Northeast Ohio Coalition for the Homeless, Ohio Federation of Teachers, Ohio Alliance for Retired Americans, Union Veterans Council, and Civic Influencers, Inc., filed suit against Secretary of State Frank LaRose (R-Ohio) and the state's 88 county boards of elections in January 2023, challenging provisions of the law and arguing that it will severely restrict Ohioans' access to the polls and imposes needless and discriminatory burdens on Ohioans' fundamental right to vote.¹⁴⁷

In their initial filing, plaintiffs cite Secretary LaRose's repeated celebration of the state's election system as the gold standard in America and the fact that voter fraud is exceedingly rare. The plaintiff's filing also highlights how Secretary LaRose lauded the execution of the 2020 and 2022 elections as fair, accurate, and a model for other states to follow.¹⁴⁸ In a statement released a week after the 2022 election, Secretary LaRose called Ohio's election officials "the best in the nation" and that they managed "a very successful statewide election."¹⁴⁹

Despite his statements that Ohio's election were successful, Secretary LaRose this year planned to appear at a national conservative political conference as the lone election official on a panel called "They Stole it From Us Legally."¹⁵⁰ Secretary LaRose was scheduled to speak alongside Hogan Gidley, a former Trump campaign aide, Abe Hamadeh, who sought to overturn the results of his failed bid for Arizona Attorney General, and former Congressman Lee Zeldin.¹⁵¹ A spokesperson for Secretary LaRose's said that the event's title was not how the panel had initially been described when Secretary LaRose agreed to participate.¹⁵²

Additionally, Secretary LaRose flew to Washington, D.C.—on the taxpayers' dime—to testify in his official capacity as Secretary of State of Ohio before the Committee at a March 10, 2023, hearing entitled "Successes of the 2022 Midterm Elections," but departed the hearing early, before all Committee members had the opportunity to ask him questions, and before of the Committee's Democrats could ask questions.

In March 2023, Ohio withdrew from the multi-state ERIC.¹⁵³ This comes after earlier withdrawals from ERIC numerous other Republican-led states, including Florida, Missouri, and West Virginia.¹⁵⁴

147 *Ohio H.B. 458 Challenge: Northeast Ohio Coalition for the Homeless v. LaRose*, DEMOCRACY DOCKET (filed Jan. 6, 2023), <https://www.democracydocket.com/cases/ohio-h-b-458-challenge/>.

148 *Id.*

149 *After Another Successful Election, LaRose Announces Next Steps to Keep Ohio the Gold Standard*, OHIO SEC. OF STATE (Nov. 15, 2022), <https://www.ohiosos.gov/media-center/press-releases/2022/2022-11-15/>.

150 Andrew J. Tobias, *Ohio Secretary of State Frank LaRose plans D.C. fundraiser with Congress members ahead of conservative conference*, CLEVELAND.COM (Feb. 28, 2023), <https://www.cleveland.com/news/2023/02/ohio-secretary-of-state-frank-larose-plans-dc-fundraiser-with-congress-members-ahead-of-conservative-conference.html>.

151 *Id.*

152 *Id.*

153 Miles Parks, *Ohio becomes latest Republican state to leave a key voting data partnership*, NPR (Mar. 17, 2023), <https://www.npr.org/2023/03/17/1164364142/ohio-eric-voter-roll-compact-larose>.

154 Jeremy Pelzer, *Secretary of State Frank LaRose threatens to pull Ohio out of anti-voter fraud group targeted by conservatives*, CLEVELAND.COM (Mar. 6, 2023), <https://www.cleveland.com/news/2023/03/secretary-of-state-frank-larose-threatens-to-pull-ohio-out-of-anti-voter-fraud-group-targeted-by-conservatives.html>.

House Republicans' understanding of the Elections Clause is flawed.

The ACE Act misrepresents the Constitution, and Congress's role in regulating federal elections. The bill asserts that “[a]ccording to Article 1, Section 4 of the Constitution . . . the States have the primary role in establishing ‘(t)he Times, Places and Manners of holding Elections for Senators and Representatives’, while Congress has a purely secondary role in this space.”¹⁵⁵ Republicans on the Committee, however, have left a key element of the Elections Clause out of their bill text, obfuscating the true authority of the Elections Clause: “the Congress may at any time by Law make or alter such Regulations.”¹⁵⁶ By implying that this language denotes a “purely secondary” role for Congress is to ignore both the plain text and the history of the Constitution.

Without a doubt, the intent of the framers of the Constitution was that Congress would have plenary authority over the election of its members. Indeed, when eloquently arguing on behalf of constitutional ratification, Alexander Hamilton made quite clear the “plain proposition, that every government ought to contain in itself the means of its own preservation.”¹⁵⁷ The Supreme Court has also long upheld Congress's power under the Elections Clause—since *Ex parte Siebold*, 100 U.S. 371 (1879), the Supreme Court has repeatedly held that Congress's power over congressional elections is “paramount.”¹⁵⁸ Justice Scalia, writing for the majority in *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1 (2013), reaffirmed the “broad” and “comprehensive” scope of the Congress' authority under the Elections Clause.¹⁵⁹

Congress's authority over elections also extends far beyond the Elections Clause. Since the end of the Civil War and the beginning of Reconstruction, there have been seven constitutional amendments expanding the right to vote—six of them expressly granting Congress the authority to enact election-related legislation. In fact, more amendments to the Constitution concern the right to vote than any other constitutional right.¹⁶⁰

Additional damaging provisions of the ACE Act are described more fully in other sections of this report. For example, Committee Republicans' hostility to election administrators in the United States is detailed in **The ACE Act Does Not Support Election Administrators**.

Further, changes to the law that would severely limit transparency and disclosure rules in our campaign finance system, allowing foreign donations and even more dark money to pollute our election system, are discussed in **The ACE Act is Pro-Dark Money**.

155 H.R. 4563, 118th Cong. § 3(1) (1st Sess., 2023).

156 U.S. Const., art. I, § 4, cl. 1.

157 THE FEDERALIST NO. 59 (Alexander Hamilton).

158 *The Elections Clause: Constitutional Interpretation and Congressional Exercise: Hearing Before the H. Comm. on House Admin.*, 117th Cong. 1 (2021) (written testimony on Daniel P. Tokaji).

159 *Id.*

160 The 14th Amendment (providing citizenship, including equal protection and the right to vote, to recently enslaved men), the 15th Amendment (clarifying that state actions to deny the right to vote on the basis of race are unconstitutional), the 17th Amendment (establishing direct election of United States senators), the 19th Amendment (prohibiting the denial of voting rights on the basis of sex), the 23rd Amendment (establishing presidential electors for the District of Columbia), the 24th Amendment (prohibiting the revocation of the franchise due to non-payment of a poll tax), and the 26th Amendment (expanding the voting age to include all citizens over the age of 18).

25 Codifying the Big Lie: House Republicans' Anti Democracy ACE Act

For the ways the ACE Act would trample the democratic rights and self-determination of the people of Washington, D.C., see **The ACE Act is an Attack on Washington, D.C.**

Chapter 2: The ACE Act Does Not Support Election Administrators

Election administration is woefully underfunded in the United States, and this Committee’s time and energy should be spent guaranteeing that the people who manage our elections—the very cornerstone of our Republic—have the resources necessary to ensure the safety of their staffs and the security of our democracy. Indeed, election administrators face significant challenges, from the spread of mis- and disinformation to the rise of artificial intelligence election interference, and Committee Republicans should have worked in a bipartisan manner to solve these urgent problems rather than focusing on Big Lie conspiracy theories.

The significant cost of funding elections.

The safe and secure elections upon which our democracy rests require significant resources. According to the United States Election Assistance Commission, between 2003 and September 30, 2021, over \$4 billion in federal funds were awarded across the 50 states, the District of Columbia, and the five U.S. territories.¹⁶¹ In 2018 and 2020, Congress appropriated a combined \$805 million to improve federal election administration, with an emphasis on security enhancements to election systems—\$380 million in 2018 (which was the first time since 2010 that Congress made resources available through the Help America Vote Act in support of federal election improvements¹⁶²) and \$425 million in 2020—including \$400 million under the CARES Act in for improvements or supplements necessary in response to the COVID-19 pandemic.¹⁶³ The funds appropriated under the CARES Act, however, required jurisdictions to match federal funding with state or municipal funds,¹⁶⁴ a potentially significant expenditure for jurisdictions with financial limitations. By 2023, various states had returned over \$63 million of the \$400 million in CARES Act funding to the federal government.¹⁶⁵

Because of the magnitude of the pandemic and the unique scale of the support needed by election administrators in 2020, even with the substantial CARES Act investment, “Congress did not fully fund local election departments during the pandemic.”¹⁶⁶ Even before the pandemic, the quality of election administration in the United States diverged significantly from jurisdiction to jurisdiction: “An election department in an impoverished jurisdiction—funded by that impoverished jurisdiction’s tax revenue—will usually have fewer voting locations, worse communication to voters, and fewer staff members.”¹⁶⁷ With the onset of the pandemic, and the extreme costs associated with running an election during a once-in-

161 *2021 Grant Expenditure Report: October 1, 2020 – September 30, 2021*, U.S. ELEC. ASSIST. COMM. (July 2022), at https://www.eac.gov/sites/default/files/paymentgrants/expenditures/EAC_2021_Grant_Expenditure_Report_FINAL.pdf.

162 *Id.*

163 *Id.*

164 *Guidance on Meeting Match in CARES Act Grants under HAVA*, U.S. ELECTION ASSISTANCE COMM’N (Mar. 31, 2023), <https://www.eac.gov/grants/guidance-meeting-match-cares-act-grants-under-hava>.

165 *Quarterly Report to the Pandemic Response Accountability Committee*, U.S. ELECTION ASSISTANCE COMM’N (July 10, 2023), https://www.eac.gov/sites/default/files/2023-07/15011_Quarterly_Report_on_CARES_Funding_Due_July_10_2023.pdf.

166 *Final Report on 2020 COVID-19 Response Grant Program and CTCL 990s*, CTR. FOR TECH & CIVIC LIFE (Dec. 15, 2021), <https://www.techandcivicliflife.org/2020covidsupport/> [hereinafter, CTCL Final Report].

167 *Id.*

a-century health crisis, many jurisdictions were unable to meet the COVID-19-related service burden.¹⁶⁸

The funding crisis for election administrators has not abated since 2020. In 2022, Congress appropriated \$75 million for Election Security Grants for the 2023 fiscal year to help states secure election systems and improve election administration, and also provided \$75 million in election security grant funding. But even with this money, “elections offices are left with limited options to meet urgent gaps in equipment, personnel, and facilities.”¹⁶⁹ President Biden’s budget request for fiscal year 2024 proposed \$5 billion in new election assistance funding allocated over the next 10 years; in response, Congress appropriated \$55 million in election security grants¹⁷⁰—a good start, but not nearly enough to ensure the smooth and safe administration of our elections nationwide.

Election officials have consistently told the Committee that they need additional, sustained funding to support the proper administration of elections.

Background on the Center for Tech and Civic Life 2020 grants.

The Center for Tech and Civic Life (“CTCL”) is a non-partisan 501(c)(3) non-profit organization founded in 2015 and based in Chicago, Illinois. CTCL seeks to “connect Americans with the information they need to become and remain civically engaged, and ensure that our elections are more professional, inclusive, and secure.”¹⁷¹ CTCL’s leadership team and Board of Directors include former election administrators.¹⁷²

CTCL grants were used to supplement COVID-19-related costs for elections administrators.

On September 1, 2020—in the face of the global COVID-19 pandemic—Mark Zuckerberg (Facebook co-founder) and his wife, Priscilla Chan (philanthropist and former pediatrician), donated \$300 million to “to promote safe and reliable voting in states and localities.”¹⁷³ Chan and Zuckerberg stated:

Due to the unprecedented challenges COVID-19 will have on voting across the country, election officials are working around the clock to make sure that every voter has the ability to participate safely and have their vote counted. Many counties and states are strapped financially and working to determine how to staff and fund operations that will allow for

168 See generally Charles Stewart III, *The Cost of Conducting Elections*, MIT ELECTION DATA + SCIENCE LAB (May 2022), <https://electionlab.mit.edu/sites/default/files/2022-05/TheCostofConductingElections-2022.pdf>.

169 *League Urges Congress to Preserve funding for elections*, LEAGUE OF WOMEN VOTERS (Sept. 28, 2023), <https://www.lwv.org/expanding-voter-access/league-urges-congress-preserve-funding-elections>.

170 Tami Lubhy & Katie Lobosco, *What’s in the \$1.2 trillion government funding package*, CNN (Mar. 21, 2024), <https://www.cnn.com/2024/03/21/politics/government-funding-bill-explained/index.html>.

171 *Our Story*, CTR. FOR TECH & CIVIC LIFE, <https://www.techandciviclife.org/our-story/> (last visited Apr. 2, 2024).

172 *Our Team*, CTR. FOR TECH & CIVIC LIFE, <https://www.techandciviclife.org/our-team/> (last visited Apr. 2, 2024).

173 Press Release, Ctr. for Tech & Civic Life, Priscilla Chan and Mark Zuckerberg Commit \$300 Million Donation to Promote Safe and Reliable Voting During Covid-19 Pandemic (Sept. 1, 2020), <https://s3.documentcloud.org/documents/7070695/CTCL-CEIR-Press-Release-9-1-20-FINAL.pdf>.

ballots to be cast and counted in a timely way. These donations will help to provide local and state officials across the country with the resources, training and infrastructure necessary to ensure that every voter who intends to cast a ballot is able to, and ultimately, to preserve the integrity of our elections.¹⁷⁴

Of the \$300 million, Chan and Zuckerberg committed \$250 million to CTCL and \$50 million to the Center for Election Innovation and Research.¹⁷⁵ On October 13, 2020, Chan and Zuckerberg contributed an additional \$100 million to CTCL “to meet overwhelming demand.”¹⁷⁶

CTCL distributed the \$350 million donation from Chan and Zuckerberg, in the form of grants, “to nearly 2,500 U.S. election departments spanning 47 states.”¹⁷⁷ Republicans sometimes refer to these grants as “Zuckerbucks.” Jurisdictions were able to apply for the grants, but no jurisdiction was required to accept grant money from CTCL.¹⁷⁸ There were no partisan questions on the grant application and CTCL did not make grant decisions on a partisan basis; jurisdictions spanning the political spectrum received money.¹⁷⁹ Every Republican on the Committee represents at least one county or city that accepted CTCL money during the 2020 election.¹⁸⁰

There was initially bipartisan enthusiasm for the donation from Chan and Zuckerberg. For example, in response to the donation Ben Ginsberg, the former national counsel to the 2000 and 2004 campaigns of President Bush and a longtime Republican election attorney, declared that:

The [Chan-Zuckerberg] private money is needed. The reality is that elections are rarely a priority of the state and local jurisdictions that must pay for them . . . Congress appropriated \$400 million in emergency elections funds at the beginning of the year under the CARES relief act but did not heed the requests of local and state jurisdictions for more. Both Republicans and Democrats have said it’s not enough . . . Into this void have, laudably, stepped private donors.¹⁸¹

And when the funds were distributed, Ohio Secretary of State Frank LaRose, a Republican and a majority witness at the Committee’s March 10, 2023, Subcommittee on Elections hearing, declared that “Americans need to know now more than ever how to make their voice heard in this fall’s election. That requires getting them the information they need from trusted sources,

174 *Id.*

175 *Id.*

176 Press Release, CTCL Receives Additional \$100M Contribution to Support Critical Work of Election Officials (Oct. 13, 2020), <https://www.techandcivicle.org/100m/>.

177 *10 Facts About CTCL & the COVID-19 Response Grant Program*, CTR. FOR TECH & CIVIC LIFE (Oct. 14, 2021), <https://www.techandcivicle.org/10-facts-about-ctcl-grants/>.

178 CTCL Final Report, *supra* note 166.

179 *Id.*

180 *CTCL Program Awards Over 2,500 COVID-19 Response Grants*, CTR. FOR TECH & CIVIC LIFE (Oct. 29, 2021), <https://www.techandcivicle.org/grant-awards/>.

181 Ben Ginsberg, *A powerful way for the GOP to show they care about voting*, CNN (Oct. 30, 2020), <https://www.cnn.com/2020/10/30/opinions/election-2020-private-funds-vote-ginsberg/index.html>.

and these dollars [from Chan and Zuckerberg] are going to go a long way to making that happen.”¹⁸²

As CTCL observed,¹⁸³ the money the organization distributed was, at least in part, effective in helping election administrators run safe elections in the midst of the pandemic: The 2020 election was “the most secure in United States history,”¹⁸⁴ with voter turnout soaring across the United States.¹⁸⁵

Some conservatives have dishonestly incorporated the CTCL grants into their Big Lie narrative about the 2020 election.

In the months leading up to the 2020 election—and especially in the wake of President Biden’s victory—mis- and disinformation about the outcome of the election spread as part of former President Trump’s Big Lie. The CTCL grants were not exempt from conspiracy mongering. The primary misleading claim about the grants was that:

During the 2020 Election, Mark Zuckerberg poured \$350 million into CTCL, a left-leaning non-profit run by former Obama staffers. CTCL then funneled this money directly to local Boards of Elections, completely bypassing any accountability or oversight from state legislatures or local governments. CTCL said at the time this money was for [PPE], but anecdotal information and investigative reports have showed that these funds were used for just about everything but PPE. As election officials have since admitted, this includes Get Out the Vote campaigns, mailers to registered voters, online voter registration drives, among other uses. These activities, which were heavily concentrated in Democrat-leaning areas, likely drove higher Democratic voter turnout.¹⁸⁶

In the conservative media ecosystem, insinuations of illegality related to CTCL were widespread, but these conspiracy theories have been thoroughly debunked.¹⁸⁷ A judge in Dane County, Wisconsin noted that “[t]here is nothing . . . demonstrating that the CTCL money was used to disadvantage certain populations over others.”¹⁸⁸ The Federal Election Commission voted unanimously—including all three Republican commissioners—to find “no reason to

182 Maggie Miller, *Mark Zuckerberg, Priscilla Chan donate \$300M to promote safe, secure elections*, THE HILL (Sept. 1, 2020), <https://thehill.com/policy/cybersecurity/514593-mark-zuckerberg-priscilla-chan-donate-300-million-to-promote-safe-and/> (emphasis added).

183 CTCL *Final Report*, *supra* note 166.

184 Press Release, Cybersecurity & Infrastructure Security Agency, Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees (Nov. 12, 2020), <https://www.cisa.gov/news-events/news/joint-statement-elections-infrastructure-government-coordinating-council-election>.

185 Drew DeSilver, *Turnout soared in 2020 as nearly two-thirds of eligible U.S. voters cast ballots for president*, PEW RESEARCH CTR. (Jan. 28, 2021), <https://www.pewresearch.org/short-reads/2021/01/28/turnout-soared-in-2020-as-nearly-two-thirds-of-eligible-u-s-voters-cast-ballots-for-president/>.

186 Press Release, Rep. Claudia Tenney (R-NY), New Information Confirms Zuckerberg-Connected Group Funneled Majority of Election Payments to Democrat-Leaning Counties (Dec. 20, 2021), <https://tenney.house.gov/media/press-releases/new-information-confirms-zuckerberg-connected-group-funneled-majority-election> (emphasis added).

187 Walter Olson, “Zuckerbucks” Didn’t Throw the 2020 Election, CATO INST. (Sept. 12, 2022), <https://www.cato.org/blog/zuckerbucks-didnt-throw-2020-election>.

188 Scott Bauer, *Wisconsin judge upholds legality of private election grants*, AP (June 1, 2022), <https://apnews.com/article/2022-midterm-elections-covid-health-chicago-lawsuits-4f9318cf7cbc01cd117a21395b44615d>.

believe that Priscilla Chan and Mark Zuckerberg” violated federal law.¹⁸⁹ A joint report from AEI and the MIT Election Data + Science Lab determined that “[d]espite some concerns that these funds may have been given with partisan intent, there is no evidence that the funds were distributed on a political basis.”¹⁹⁰ And a magistrate judge in Colorado sanctioned attorneys who brought a lawsuit on the basis of, among other things, conspiracy theories about CTCL, writing that the lawsuit was “filed in bad faith.”¹⁹¹ Despite the mountain of evidence, many conservatives—including a number of House Republicans—claim that the CTCL grants undermined the outcome of the 2020 election.

The ACE Act would prohibit philanthropic support to election administrators—like the CTCL grants during 2020—while doing nothing to provide public servants the support they need to run fair, safe, and secure elections. Like everything else in this noxious bill, the provisions of the ACE Act focused on election administration are poisoned by the former president’s Big Lie, utterly failing to address the pressing needs of public officials, instead chasing disproven rumors and ugly fabrications.

189 Factual and Legal Analysis at 1, MURs 7854, 7946, https://www.fec.gov/files/legal/murs/7854/7854_25.pdf.

190 *Lessons Learned from the 2020 Election: Report to the U.S. Election Assistance Commission*, AEI & MIT ELECTION DATA + SCIENCE LAB (Sept. 2021), <https://electionlab.mit.edu/sites/default/files/2021-09/Lessons-Learned-in-the-2020-Election.pdf>.

191 Order Granting Defendants’ Motions for Sanctions, *O’Rourke et al. v. Dominion Voting Systems et al.* (D. Colo. 2021), <https://storage.courtlistener.com/recap/gov.uscourts.cod.203235/gov.uscourts.cod.203235.136.0.pdf>.

Chapter 3: The ACE Act is Pro-Dark Money

The ACE Act includes several provisions Republicans allege focus on the protection of political speech and campaign finance reform.¹⁹² The ACE Act, however, neither reforms our system nor protects speech. The ACE Act sections that purport to “protect” political speech in practice shield the identity of donors to certain organizations (for example, 501(c)(4) social welfare organizations) from disclosure. These provisions protect dark money. They empower dark money organizations and deprive voters of meaningful and necessary information. The ACE Act’s campaign finance provisions also deregulate campaign finance law, building upon a decade of deregulation stemming from the Supreme Court’s decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

In the wake of *Citizens United*, dark money has become one of the biggest challenges for our campaign finance system. That decision made it possible for new types of entities to spend virtually limitless funds on electoral advocacy—including many organizations that are not subject to most federal campaign disclosure rules, allowing them to conceal their sources of funding. These so-called “dark money” groups have spent billions to elect federal candidates, either themselves, or by funneling money to super PACs and other groups.

According to an analysis by OpenSecrets, “[o]utside spending to influence federal elections has topped \$9 billion” since *Citizens United*, with “[m]ore than \$2.6 billion of that com[ing] from unknown sources, with secretly funded nonprofits accounting for over \$1 billion of the outside spending reported to the Federal Election Commission [(“FEC”)] since the 2010 cycle.”¹⁹³ That spending deprives voters of critical information essential to making informed electoral decisions.

Although *Citizens United* supercharged dark money in American elections, the decision held, by an 8-to-1 vote, that campaign disclosure rules are constitutionally permitted, and even preferred to many other forms of regulation.¹⁹⁴ Indeed, the Supreme Court appears to have presumed that the new entities, now permitted to spend unlimited amounts on electoral advocacy, would be required to operate transparently.

Disclosure rules enhance free speech.

More than a century ago, Associate Justice of the United States Supreme Court Louis Brandeis declared that “[s]unlight is said to be the best of disinfectants.”¹⁹⁵ This wise counsel, encouraging transparency and promoting good governance, remains vitally important to any strong civil society today. Transparency about who is seeking to influence federal elections

192 H.R. 4563, 118th Cong. §§ 300–60 (1st Sess. 2023).

193 Anna Massoglia, ‘Dark money’ groups have poured billions into federal elections since the Supreme Court’s 2010 *Citizens United* decision, OPENSECRETS (Jan. 24, 2023, 4:56 P.M.), <https://www.opensecrets.org/news/2023/01/dark-money-groups-have-poured-billions-into-federal-elections-since-the-supreme-courts-2010-citizens-united-decision/#:~:text=OpenSecrets%20has%20tracked%20over%20%242.6,Court's%202010%20Citizens%20United%20decision.>

194 See *Citizens United*, 558 U.S. at 367–71.

195 Louis D. Brandeis, *What Publicity Can Do*, in OTHER PEOPLE’S MONEY AND HOW BANKERS USE IT 92, 92 (1914).

is critical to democratic self-governance. Yet a common refrain from conservatives is that campaign finance laws in general—and disclosure laws in particular—have an unlawful chilling effect on political speech.¹⁹⁶

Beginning with *Buckley v. Valeo*, 471 U.S. 1 (1976), campaign finance decisions from the federal courts have tended to view campaign finance laws as burdening First Amendment interests, rather than furthering constitutional values served through regulation of the political process.¹⁹⁷

Disclosure laws, however, have enjoyed a unique status in this otherwise hostile jurisprudence because *Buckley* and its progeny have recognized that the disclosure of campaign finance information “further[s] First Amendment values” critical to our democracy.¹⁹⁸ Consequently, the Court has consistently assessed disclosure using a less rigorous standard of review than the scrutiny applied to campaign spending restrictions and contributing limits, reasoning that disclosure requirements do not quantitatively limit political speech.¹⁹⁹ This judicial appreciation of disclosure recognizes the potential impact of disclosure on constitutionally protected activities in conjunction with the countervailing “First Amendment interests of individual citizens seeking to make informed choices in the political marketplace.”²⁰⁰

A central aim of the United States Constitution is to ensure meaningful self-governance by citizens in our representative democracy.²⁰¹ In its campaign finance decisions, the Court has repeatedly acknowledged the connection between political transparency and democratic self-governance. *Buckley* recognized that disclosure “provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office.”²⁰² Similarly, *Citizens United* described how disclosure promotes self-governance by supplying information that “enables

196 See, e.g., *The DISCLOSE Act: Hearing before the S. Comm. On Rules & Admin.*, 117th Cong. (2022) (statement of David Keating, President, Institute for Free Speech) (arguing that the DISCLOSE Act would “impose unconstitutionally overbroad regulations on speech about policy issues and judicial nominees” and “would subject many organization donors to excessive and irrelevant reporting requirements, thereby inviting retaliation and harassment, chilling speech, and deterring financial support.”).

197 See Deborah Hellman, *Resurrecting the Neglected Liberty of Self-Government*, 164 U. PA. L. REV. ONLINE 233, 235 (2016) (“*Buckley v. Valeo* and its progeny neglect the positive liberty of self-government. Restrictions on spending money to speak and giving money to candidates in elections do implicate the negative liberty of free speech. But these restrictions are also especially important exercises of the positive liberty of self-government.”).

198 *Buckley*, 424 U.S. at 82 (emphasis added); see also *McConnell v. Fed. Election Comm’n*, 540 U.S. 93, 197 (2003) (“Plaintiffs’ argument for striking down BCRA’s disclosure provisions . . . ignores the competing First Amendment interests of individual citizens seeking to make informed choices in the political marketplace.”); *Citizens United*, 558 U.S. at 371 (“The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”).

199 *Citizens United*, 558 U.S. at 366–67 (requiring “‘a substantial relation’ between the disclosure requirement and a ‘sufficiently important’ governmental interest”) (quoting *Buckley*, 424 U.S. at 64); see also *Buckley*, 424 U.S. at 64 (“Unlike the overall limitations on contributions and expenditures, the disclosure requirements impose no ceiling on campaign-related activities.”).

200 *McConnell*, 540 U.S. at 197 (quoting 251 F. Supp. 2d at 237).

201 Stephen Breyer, *Our Democratic Constitution*, 77 N.Y.U. L. REV. 245, 247 (2002) (“[T]he Constitution, considered as a whole, creates a framework for a certain kind of government. Its general objectives can be described abstractly as including . . . democratic self-government.”).

202 *Buckley*, 424 U.S. at 66 (footnote and quotations omitted).

the electorate to make informed decisions and give proper weight to different speakers and messages.”²⁰³ Importantly, the Court has credited the value of disclosure by candidates and by independent sources of political speech, both of which “help[] voters to define more of the candidates’ constituencies” and “promote[] informed choices in the political marketplace.”²⁰⁴

Accordingly, disclosure laws enhance, rather than constrain, the free speech necessary to sustain our democracy. As the Supreme Court has explained, “[i]n a republic where the people are sovereign, the ability of the citizenry to make informed choices [in elections] is essential.”²⁰⁵ Disclosure laws thus bolster the core principles of the First Amendment—“secur[ing] the widest possible dissemination of information from diverse and antagonistic sources” and facilitating “uninhibited, robust, and wide-open” public debate on political issues.”²⁰⁶

Empirical research confirms disclosure laws serve the democratic values animating the First Amendment, especially that knowing the sources of election messaging is a “particularly credible” informational cue for voters seeking to make decisions consistent with their policy preferences.²⁰⁷ These cues help voters make informed decisions, a critical component of democratic self-governance.

Critically, disclosure laws do not limit campaign expenditures or contributions (e.g., spending money to influence elections). As the Supreme Court has held, “[d]isclaimer and disclosure requirements . . . impose no ceiling on campaign-related activities . . . and do not prevent anyone from speaking.”²⁰⁸ Weighing against claims of chilled speech is an equally important First Amendment interest—that of individual citizens making informed choices in the political marketplace. Disclosure laws add to robust debate by providing the public with critical information—i.e., more speech—about the persons behind campaign spending and contributions. They promote the values and principles that underlie the First Amendment. The right to free speech enables self-government, ensures responsive officeholders, and prevents the corruption of democratic processes.

Dark money hurts people.

There have been several recent developments at the state level related to the impact of dark money and campaign finance deregulation. A notable instance in Ohio is discussed below.

The Ohio corruption scandal.

On March 9, 2023, a federal jury convicted Larry Householder (R-Ohio), former Speaker of the Ohio House of Representatives, and Matthew Borges, former Ohio Republican Party chair,

203 *Citizens United*, 558 U.S. at 371.

204 *Id.* at 369; *Buckley*, 424 U.S. at 81.

205 *Buckley*, 424 U.S. at 14–15.

206 *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 266, 270 (1964).

207 Elizabeth Garrett & Daniel A. Smith, *Veiled Political Actors and Campaign Disclosure Laws in Direct Democracy*, 4 *ELECTION L.J.* 295, 296 (2015).

208 *Citizens United*, 558 U.S. at 366 (citations and quotation marks omitted).

of participating in a racketeering conspiracy involving a \$60 million bribery scheme.²⁰⁹ The crime centered around a \$1 billion bailout of two nuclear power plants operated by utility company FirstEnergy Corp.²¹⁰ As part of its deferred prosecution agreement, FirstEnergy admitted to using a network of dark money organizations to direct funds to Householder's 501(c)(4), Generation Now, in exchange for former Speaker Householder working to ensure that legislation went into effect that would save the two plants from closing.²¹¹ The funds were also used to successfully defeat a ballot initiative seeking to overturn the legislation.²¹²

The funds that were funneled into Generation Now were used “to support Householder’s political bid to become Speaker, to support House candidates they believed would back Householder, and for their own personal benefit.”²¹³ Although the 501(c)(4) organization was established to promote energy independence generally, the criminal complaint against Householder detailed phone conversations stating that “Generation Now is the Speaker’s (c) (4),” indicating that the organization was controlled by Householder. The Generation Now funds were used to support 21 candidates in the 2018 primary and general elections. The effect of the dark money spending by FirstEnergy was clearly significant, as most of the candidates ultimately won and all those candidates went on to support Householder for Speaker.²¹⁴

On June 30, 2023, a federal judge sentenced Borges to five years in prison for participating in a racketeering conspiracy.²¹⁵ The same judge sentenced Former Speaker Householder to 20 years in prison for his role.²¹⁶

209 Press Release, U.S. Att’y Off., S. Dist. Ohio, Jury convicts former Ohio House Speaker, former chair of Ohio Republican Party of participating in racketeering conspiracy (Mar. 9, 2023), <https://www.justice.gov/usao-sdoh/pr/jury-convicts-former-ohio-house-speaker-former-chair-ohio-republican-party>.

210 Pack Forrest and Sydney Kashiwagi, *Former Ohio House Speaker convicted in \$60 million bribery scheme*, CNN (Mar. 10, 2023), <https://www.cnn.com/2023/03/09/politics/larry-householder-ohio-speaker-convicted-bribery/index.html>.

211 *Ohio House Speaker, former chair of Ohio Republican Party, 3 other individuals & 501(c)(4) entity charged in federal public corruption racketeering conspiracy involving \$60 million*, U.S. Attorney for Southern District of Ohio (July 21, 2020), <https://www.justice.gov/usao-sdoh/pr/ohio-house-speaker-former-chair-ohio-republican-party-3-other-individuals-501c4-entity>.

212 *Id.*

213 *Id.*

214 *Id.*

215 Julie Carr Smyth, *Ex-Ohio GOP chair, lobbyist Matt Borges shows remorse, gets 5 years for role in \$60M bribery scheme*, AP (June 30, 2023), <https://apnews.com/article/bribery-investigation-ohio-borges-sentencing-firstenergy-55ed095d2e6e83e820d9de514c85e96b>.

216 Press Release, U.S. Att’y Off., S. Dist. Ohio, Former Ohio House Speaker sentenced to 20 years in prison for leading racketeering conspiracy involving \$60 million in bribes (June 29, 2023), <https://www.justice.gov/usao-sdoh/pr/former-ohio-house-speaker-sentenced-20-years-prison-leading-racketeering-conspiracy>.

The ACE Act is filled with pro-dark money provisions.

The ACE Act includes several provisions that shield donors from disclosure.²¹⁷ For example, Section 325 purports to repeal the requirement of “persons” (any political spender not registered with the FEC as a political committee) making independent expenditures (public communications supporting or opposing federal candidates’ election) to report information about certain donors.

For example, a 501(c)(4) social welfare organization that is not registered with and reporting to the FEC but is broadcasting political ads supporting or opposing certain candidates would not need to report their donors. This section of the law responds to a recent 2018 federal court decision finding an FEC non-disclosure rule as in conflict with FECA, invalidating the FEC rule. On August 21, 2020, the D.C. Circuit affirmed the district court decision that struck down the FEC’s non-disclosure rule.²¹⁸ The FEC released interim guidance on how groups making independent expenditures should report donor information following these decisions.²¹⁹

Yet, on June 8, 2022, the FEC’s Republican Commissioners released a “Policy Statement”²²⁰ expressing their position that the statute is “effectively unenforceable” without the Commission pursuing “clear direction” in the form of new regulation and an intent to dismiss enforcement matters brought for failing to disclose donors (e.g., exercise prosecutorial discretion) for conduct before releasing their statement in June 2022—1,343 days after the Commission’s October 4, 2018 press release providing guidance on how to comply with the statute. This amounted to a years-long free pass for dark money groups to spend money directly influencing elections and not report donors as required by FECA and in furtherance of congressional intent.

Section 341 of the ACE Act prohibits the Securities and Exchange Commission (“SEC”) from finalizing, issuing, or implementing any rule, regulation, or order regarding the disclosure of political contributions, contributions to tax exempt organizations, or dues paid to trade associations. Since 2015, Republicans have included an appropriations rider on the SEC blocking the commission from issuing corporate political spending disclosure rules.²²¹

A rule requiring corporate political spending disclosures, such as the one supported by Chair of the SEC Gary Gensler,²²² could require shed light on a company’s general policies around political activity, board oversight over political spending decisions, and details on the

217 See, e.g., H.R. 8528, 117th Cong. §§ 307, 308, 325, 341 (2nd Sess. 2022).

218 See 316 F. Supp. 3d 349 (D.D.C. 2018), *aff’d*, 971 F.3d 340 (D.C. Cir. 2020).

219 Press Release, Fed. Election Comm’n, FEC provides guidance following U.S. District Court decision in *CREW v. FEC*, 316 F. Supp. 3d 349 (D.D.C. 2018) (Oct. 4, 2018), <https://www.fec.gov/updates/fec-provides-guidance-following-us-district-court-decision-crew-v-fec-316-f-supp-3d-349-ddc-2018/>.

220 POL’Y STMT. OF CHAIRMAN ALLEN DICKERSON & COMM’RS SEAN J. COOKSEY & JAMES E. “TREY” TRAINOR, III CONCERNING THE APPLICATION OF 52 U.S.C. § 30104(c) at 5, 6 (June 8, 2022), https://www.fec.gov/resources/cms-content/documents/CREW_contributions_earmarked_political_purposes_Dickerson_Cooksey_Trainor_06082022.pdf.

221 Bill Flook, *Senate’s SEC Budget Removes Political Spending Rule Block*, REUTERS (Oct. 20, 2021), <https://tax.thomsonreuters.com/news/senates-sec-budget-removes-political-spending-rule-block/>.

222 Zachary Warmbrodt, *Gensler: SEC should consider corporate political spending disclosures*, POLITICO (Mar. 2, 2021), <https://www.politico.com/news/2021/03/02/gensler-sec-corporate-political-spending-472607>.

expenditures themselves that go beyond current disclosures requirements. Instead, the ACE Act would impose by statute the same appropriation prohibition on the SEC from finalizing, issuing, or implementing any rule related to such political disclosure.

An interlocking component of this strategy to shield donors from disclosure is a technical change in Section 322 of the ACE Act, which increases the qualifying threshold and establishes a purpose standard for political committees.²²³ Section 322 seeks to raise the qualifying threshold of raising or spending \$1,000 to \$25,000, and more importantly, defines “major purpose” in a way to allow most dark money groups to avoid registration requirements.²²⁴

Republican claims that donors will be harassed are inaccurate.

Republicans frequently argue that disclosure laws would subject many donors to excessive and irrelevant reporting requirements, which will thereby invite retaliation and harassment, chilling speech, and deterring financial support. In testimony before the Senate Committee on Rules and Administration concerning the Democracy Is Strengthened by Casting Light On Spending in Elections Act (“DISCLOSE Act”), Institute for Free Speech President David Keating argued that, in the context of funding a dark money nonprofits organizations, “the right to associate oneself with a nonprofit group’s mission and to support the group financially in private is a bedrock principle of the First Amendment that the government may not abridge casually,” and that “[t]his is as with abortion, gun control, LGBTQ rights, or civil rights—and association with either side on such issues may subject a member or donor to retaliation, harassment, threats, and even physical attack.”²²⁵

These arguments are misguided. First, the Supreme Court has consistently found that disclosure provisions further an important First Amendment interest of individual citizens seeking to make informed choices in the political marketplace. Second, disclosure laws already include provisions exempting individuals from disclosure due to harassment. For example, the DISCLOSE Act permits the FEC to exempt donors’ names and addresses from reporting “if the inclusion of the information would subject the person to serious threats, harassment, or reprisals.”

The Supreme Court in *Doe v. Reed*, 561 U.S. 186 (2010) rejected requests to impose a low barrier to trigger disclosure exceptions. When concurring with the *Reed* majority, Justice Scalia observed that he does “not look forward to society which, thanks to the Supreme Court, campaigns anonymously and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism,” famously commenting that this future “does not resemble the Home of the Brave.”²²⁶

223 H.R. 8528, 117th Cong. § 322 (2nd Sess. 2022).

224 Section 322 provides that major purpose includes groups whose “central organization purpose is to expressly advocate for the nomination, election, or defeat of a candidate,” or “a group for which the majority of its spending throughout its lifetime of existence has been on contributions, expenditures, or independent expenditures.”

225 The DISCLOSE Act: Hearing before the S. Comm. On Rules & Admin., 117th Cong. (2022), at 8 (statement of David Keating, President, Institute for Free Speech).

226 *Reed*, 561 U.S. at 228 (Scalia, J., concurring).

NAACP v. Alabama ex rel. Patterson

In debates about donor disclosure, conservatives often cite the Supreme Court decision in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), which held that Alabama could not require the National Association for the Advancement of Colored People (“NAACP”) to disclose its membership list, as a basis for restricting political donor disclosure. In that decision, Associate Justice of the United States Supreme Court John Marshall Harlan II wrote that, “[t]his court has recognized the vital relationship between freedom to associate and privacy in one’s associations.” Conservatives rely upon that principle when seeking to challenge disclosure rules.

Applying this holding’s reasoning to protect donors to 501(c)(4) social welfare organizations engaged in electoral advocacy, however, strains credulity. The concrete risk of harm facing NAACP members during the Ku Klux Klan’s terror campaign is not comparable to the speculative social criticism associated with supporting a conservative social or political agenda.

Americans for Prosperity Foundation v. Bonta

In *Americans for Prosperity foundation v. Bonta*, 594 U.S. ____ (2021), the Supreme Court struck down a California law requiring charities, as part of their annual registration with the state, to disclose details about individuals who contributed \$5,000 or more during the year.²²⁷ The 6-to-3 decision held that California law burdened First Amendment associational rights, and was therefore invalid because state lawmakers had not tailored the regulation narrowly to achieve an important governmental interest. The Court’s opinion relied on the district court’s findings of fact that California had not sufficiently protected the private information against inadvertent third-party disclosure.²²⁸

This decision, however, did not pertain to electoral advocacy. As the Supreme Court recognized in *Buckley*, “disclosure requirements certainly in most applications appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist.” In *Citizens United*, the Court reiterated that “disclosure is a less restrictive alternative to more comprehensive regulations of speech.”²²⁹ No subsequent decision has called these holdings into question, including the Court’s decision in *Americans for Prosperity Foundation v. Bonta*. That case did not involve campaign finance disclosure, and the Court did not overturn its longstanding recognition of the substantial interests furthered by such disclosure.

227 John R. Vile, *Americans for Prosperity Foundation v. Bonta* (2021), FIRST AMEND. ENCYCLOPEDIA, MID. TENN. UNIV., <https://w1.mtsu.edu/first-amendment/article/1933/americans-for-prosperity-foundation-v-bonta> (July 2, 2021).

228 *Id.*

229 *Citizens United*, 558 U.S. at 369.

Republicans use dark money in their efforts to suppress the vote.

According to reporting by The Guardian, all four of the Republican witnesses at the Committee’s April 27, 2023, hearing (entitled “American Confidence in Elections: State Tools to Promote Voter Confidence”) attended a private, partisan meeting of conservative activists, secretaries of state, and congressional staff hosted by three dark money organizations, including The Heritage Foundation.²³⁰ A key architect of that convening, (and a witness at the Committee’s April 27 and July 10 hearings) Hans von Spakovsky, also spearheaded The Heritage Foundation’s efforts to draft and disseminate model voter suppression laws, with several states adopting versions of these laws, including SB 202 in Georgia.²³¹

Organizers of the conference went to great lengths to ensure secrecy. When a Texas official asked von Spakovsky for details about the event, von Spakovsky replied, “[t]here is no livestream. This is not a public event. It is a private, confidential meeting of the secretaries. I would rather you not send out a press release about it.”²³² The conference agenda included a partisan-oriented litigation update, polling on election reform, and mapping of the “opposition,” among other items. Following the orders of their dark money patron, no participating secretary of state sent out a press release confirming their participation.

As noted by The Guardian, the implicit goal of this February 2023 convening was to “dampen Democratic turnout and help Republican candidates to victory.” Tax-exempt 501(c)(3) organizations, like The Heritage Foundation, are absolutely prohibited from engaging in campaign intervention, and the content of the convening raises the questions whether the organizers should register and report as political committees with the FEC.

Proactive reforms are needed to improve transparency.

House Democrats understand how urgently the American people demand fair, open, and honest elections—specifically elections that are not soaked in dark money and muddled by concealed corporate interests. House Democrats will continue to advance pro-voter, pro-transparency measures. A few examples are:

The DISCLOSE Act: The Democracy Is Strengthened by Casting Light on Spending in Elections Act (“DISCLOSE Act”) closes loopholes in our campaign finance system’s disclosure laws left open since Citizens United. The DISCLOSE Act requires covered organizations—corporations, non-profit organizations, Section 527 organizations, and others—to report their campaign-

230 Ed Pilkington & Jamie Corey, *Dark money groups push election denialism on US state officials*, GUARDIAN (Apr. 5, 2023), <https://www.theguardian.com/us-news/2023/apr/05/heritage-foundation-election-voting-rights-republican-states>.

231 Berman & Surgey, *supra* note 10. von Spakovsky was a political appointee to President George W. Bush’s DOJ. In his role at DOJ, he overruled nonpartisan staff to push a partisan agenda and anonymously published articles in support of his own personal policy preferences, a practice that possibly ran afoul of DOJ ethics rules and the professional responsibilities of attorneys. He also served on former President Trump’s “Commission on Election Integrity,” which he contended should exclude Democrats and “mainstream Republican officials and/or academics.” Then-Secretary of State Kris Kobach (R-Kansas) relied upon von Spakovsky’s work to support debunked claims that illegal voting by non-citizens had swung various United States elections; under questioning, von Spakovsky admitted that he could not name a single election in the United States where non-citizens determined the outcome. The court gave “little weight to Mr. von Spakovsky’s opinion.” *Id.*

232 Pilkington & Corey, *supra* note 230.

related spending if they spend more than an aggregate of \$10,000 in an election cycle. Campaign-related spending is defined to include independent expenditures, electioneering communications, federal judicial nomination communications, covered transfers, and advertisements that promote, attack, support, or oppose the election of candidates.

The Honest Ads Act: The Honest Ads Act²³³ updates the rules that apply to online political advertising by incorporating disclosure and disclaimer concepts that apply to traditional media, while providing regulatory flexibility for new forms of digital advertising. This will help ensure that voters make informed decisions at the ballot box and know who is spending money on digital political advertisements.

Empower non-partisan enforcement at the FEC/FTVA: Empowers the nonpartisan FEC General Counsel's office to bring enforcement actions for campaign finance violations unless the Commission overrules the General Counsel's determination—turning agency gridlock on its head.

For more information on House Democrats' legislative efforts to fight back against the spread of dark money, see Part V. The Freedom to Vote Act below.

233 H.R. 2599, 118th Cong. (1st Sess. 2023) (introduced by the Subcommittee on Modernization Ranking Member Derek Kilmer (D-Washington)).

Chapter 4: The ACE Act is an Attack on Washington, D.C.

Once again, Republicans are suborning an attack on our nation’s capital. The ACE Act weaponizes unfounded claims of voter fraud—the same mis- and disinformation that led to the Big Lie and the January 6 insurrection—to restrict the ability of Americans to cast their ballots.

D.C. should not be directly subjected to House Republican whims. Through the ACE Act, House Republicans intend to misuse and abuse Congress’ constitutional authority over the District of Columbia to restrict voters’ options and further disenfranchise D.C. residents. If elections in Washington, D.C. lack integrity, it is not because of fraud or insecure election procedures—it is because more than half a million D.C. residents are denied full voting representation in Congress.

Voting in Washington, D.C. is already accessible and secure.

Elections in Washington, D.C. are some of the most accessible in the United States; they are also among the most secure. This fact alone is evidence that pro-voter policies do not lead to voter fraud, and that elections in D.C. are already secure. Republicans wrongfully insist that congressional promulgation of restrictive voter rules, through the ACE Act, is necessary to prevent fraud and increase public confidence in elections. Washington, D.C. elections prove otherwise.

This section provides an overview of the myriad ways D.C. election laws assist D.C. voters in casting their ballots.

Washington, D.C. has the highest voter registration rate in the nation.

Washington, D.C. allows automatic voter registration,²³⁴ registration online or by mail,²³⁵ same day voter registration,²³⁶ pre-registration by 16- and 17-year-olds who will turn 18 before the next general election,²³⁷ and permits an expansive list of sources of documentation that voters can use to prove their identity when registering to vote.²³⁸ These pro-voter registration policies have a dramatic effect—D.C. has the highest voter registration rate in the nation at almost 96 percent.²³⁹

234 D.C. Code § 1-1001.07(c).

235 D.C. Code § 1-1001.07(B)(2); see also Voter Registration Application, D.C. Bd. of Elections, https://vr.Dcboe.Org/213324797239968?Agency_code=12 (last visited Apr. 2, 2024).

236 D.C. Code § 1-1001.07(g)(5).

237 D.C. Code § 1-1001.07(a-2).

238 *Register/Update Voter Registration*, D.C. Bd. of Elections, <https://www.dcboe.org/Voters/Register-To-Vote/Register-to-Vote> (last visited Apr. 2, 2024).

239 *Elections Performance Index*, MIT ELECTION DATA & SCI. Lab, <https://elections.mit.edu/#/data/indicators> (last visited Apr. 2, 2024).

D.C. voters can easily vote early, vote by mail, or drop a ballot at a drop box.

Voters in Washington, D.C. can take advantage of numerous opportunities to vote leading up to and including Election Day. D.C. law requires that at least eight early vote centers operate for up to 12 days before Election Day.²⁴⁰ Not only does D.C. allow no-excuse vote by mail,²⁴¹ the D.C. Board of Elections (“DCBOE”) mails a ballot to every registered voter in the city.²⁴² Voters can return their ballots in postage prepaid envelopes provided by the DCBOE, or they may also return their ballots via one of the many drop boxes located throughout D.C. (there were 55 drop boxes in D.C. for the November 2022 election).²⁴³ Even with all of these options for receiving and casting a ballot, no significant instances of voter fraud that would have determined the outcome of an election has occurred in Washington, D.C., despite constant Republican agitation that early voting, vote by mail, and drop boxes expose our elections process to fraud and abuse.

Voting in D.C. is accessible for voters with disabilities and non-English speakers.

In addition to D.C.’s extensive use of mail ballots, D.C. voters with a disability, illness, or who are seniors may arrange to cast a ballot from their car through the use of curbside voting.²⁴⁴ Voters with disabilities may also use an accessible remote ballot marking system “to vote privately and independently.”²⁴⁵ The DCBOE also provides sound amplifiers, translated voting material, multi-language signs and posters, and interpreters in American Sign Language and at least six other non-English languages.²⁴⁶ By overruling D.C. voting laws through the ACE Act, Republicans would strip away many of these essential tools that allow so many D.C. residents to participate in our democracy.

Without statehood, Washingtonians are excluded from the political process.

Despite the accessible options that exist for voters, voter turnout in Washington, D.C. is generally lower than in many states. This is not because of difficulty accessing the ballot box—as noted above, D.C. has the highest voter registration rate in the country and D.C. voters have numerous opportunities to cast a ballot early, by mail, or in person. D.C.’s turnout rate may be a response to the capital’s lack of full voting representation in Congress.²⁴⁷

Rather than inflict draconian restrictions on D.C.—restrictions imposed without consent given the inability of Washingtonians to elect fully voting representatives in Congress—House Republicans should encourage voter participation in our nation’s capital.

240 D.C. Code § 1-1001.09(b-1).

241 D.C. Code § 1-1001.09(b)(2).

242 Section 512 – *Election Procedures: Mail Ballot*, D.C. PUBLIC EMPLOYEE RELATIONS BOARD, <https://perb.dc.gov/page/section-512-election-procedures-mail-ballots> (last visited Apr. 2, 2024).

243 *Id.*

244 *Accessible Voting and Language Access*, D.C. Bd. OF ELECTIONS, <https://www.dcboe.org/voters/accessible-voting/accessible-voting-and-language-access> (last visited Apr. 2, 2024).

245 *Id.*

246 *Id.*

247 James Wright Jr., *D.C. Turnout Rate Decreases During Recent Midterm Election*, WASH. INFORMER (Nov. 16, 2022), <https://www.washingtoninformer.com/d-c-voter-turnout-decreases-during-recent-midterm-election/>.

The ACE Act would further disenfranchise Washington, D.C. voters.

Despite Republicans' claims that Democrats are proposing radical changes to—or a federal “take over” of—elections, many of the pro-voter, pro-democracy policies included in the previously House-passed For the People Act²⁴⁸ and the FTVA have already been adopted by states across the country. Conversely, these same policies have been under attack in many Republican-led states, and in Congress, in response to the Big Lie and as part of the backlash to increased voter turnout.

For example, 46 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the United States Virgin Islands offer early in-person voting options, though the time period varies from state to state (this includes states with all-mail elections).²⁴⁹ Only Alabama, Connecticut, New Hampshire, and Mississippi do not currently offer early in-person voting, though Connecticut recently passed a law to implement 14 days of early voting for general elections.²⁵⁰

Twenty-two states and the District of Columbia have implemented same-day voter registration, which allows any qualified resident of the state to register to vote and cast a ballot at the same time—of those, 20 states and D.C. offer Election Day registration, which means voters can both register and vote on Election Day.²⁵¹

Thirty-five states and the District of Columbia allow any qualified voter to vote by an absentee or mail ballot without requiring the voter to provide a qualifying excuse. Of these states, eight automatically mail a ballot to every eligible voter (California, Colorado, Hawaii, Nevada, Oregon, Utah, Vermont, and Washington).²⁵² The remaining states require an excuse to vote by absentee or mail ballot. Some states offer a permanent absentee ballot list—once a voter has been added to the list, they will automatically receive a mail ballot for all future elections. Millions of Americans cast their ballot by mail every election—in fact, Republican Chair of the United States Election Assistance Commission, Christy McCormick, told the Senate Committee on Rules and Administration that she has voted by mail.²⁵³

While Republicans—led most notably by former President Trump in the lead up to the 2020 election—have decried absentee and mail-in ballots as ripe for fraud, voters have been casting ballots by mail since the Civil War. Oregon was the first state to implement all mail elections in 2000. The State of Washington has been conducting elections by mail since 2012, Colorado

248 H.R. 1, 117th Cong. (1st Sess. 2021).

249 *Early In-Person Voting*, NAT'L CONF. OF STATE LEG. (June 13, 2023), <https://www.ncsl.org/elections-and-campaigns/early-in-person-voting> (four states—Alabama, Connecticut, Mississippi, and New Hampshire—do not offer pre-Election Day in-person voting options for all voters, though they may offer pre-Election Day in-person voting options for eligible absentee voters).

250 *Connecticut Senate passes early voting bill, new system allows up to 14 days of in-person voting*, AP (May 31, 2023), <https://apnews.com/article/connecticut-senate-early-voting-absentee-ballots-ffa22210c31ef9d4268ff73207400cd9>.

251 *Same-Day Voter Registration*, NAT'L CONF. OF STATE LEG. (Jan. 31, 2023), <https://www.ncsl.org/elections-and-campaigns/same-day-voter-registration>.

252 *Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options*, NAT'L CONF. OF STATE LEG. (July 12, 2022), <https://www.ncsl.org/elections-and-campaigns/voting-outside-the-polling-place>.

253 At the June 7, 2023, hearing, Chair McCormick also referred to instances of voter fraud as “pretty minimal.” *Oversight of the U.S. Election Assistance Commission: Hearing before the S. Comm. on Rules & Admin.*, 118th Cong. (2023).

since 2014, and all counties in Utah opted into conducting all-mail elections in 2019.²⁵⁴ Numerous Republicans have been elected to office in elections conducted by mail with no evidence that mail-in ballots are rife with fraud.

Despite no evidence that these measures lead to a lack of integrity in American elections, Republicans' ACE Act contains the American Confidence in Elections: District of Columbia Election Integrity and Voter Confidence Act,²⁵⁵ through which Republicans would impose their wish list of restrictive voting policies upon the District of Columbia. Republicans have positioned this portion of the bill as “model legislation” for states to adopt, “which would serve as an example to the States of effective election administration.”²⁵⁶ A model legislation, Republicans would happily see these policies imposed across the nation.

Among the provisions included in this section of the bill are:

- a requirement all voters present photo voter ID or the last four digits of their Social Security number to vote in person or to request an absentee or mail ballot;
- a requirement that DCBOE include photos or digital images of registered voters in the poll books;
- a requirement that DCBOE conduct voter roll list maintenance annually and a prohibition on same day registration;
- a prohibition on ballot harvesting and certain restrictions on the use of ballot drop boxes;
- a prohibition on mailing ballots except upon voter's request;
- a prohibition on non-citizen voting;
- a requirement for meaningful observer access;
- a requirement for a signature verification process for mail ballots and a requirement for signatures to be dated;
- a requirement that the DCBOE receive all ballots except military and overseas ballots by the close of polls and that election officials report unofficial results no later 12 hours after polls close on Election Day;
- a requirement that after the closing of polls on the date of an election, the District make available on a publicly accessible website the total number of voted ballots in the possession of election officials in the District of Columbia as of the time of the closing of polls and publish the total number of ballots requested or received in accordance with the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), including UOCAVA ballots received that may have been sent pursuant to law without a request;

254 Table 18: *States With All-Mail Elections*, NAT'L CONF. OF STATE LEG. (Feb. 3, 2022), <https://www.ncsl.org/elections-and-campaigns/table-18-states-with-all-mail-elections>.

255 H.R. 4563, 118th Cong. §§ 141–45 (1st Sess. 2023) [hereinafter, *ACE Act D.C. takeover*].

256 *ACE Act Bill Summary*, *supra* note 35.

- a requirement that provisional ballots only be counted when cast in the correct precinct; and
- a requirement that an audit be conducted following each election before the time to contest the election expires.

Concerningly, beyond the bizarre inclusion of photos of voters in poll books, the ACE Act demands that “[i]f a photograph or digital image of an individual who votes in person at a polling place is not included in the poll book . . . the appropriate election official shall take a photograph of the individual.” House Republicans would force election workers to photograph voters, lined up at their local polling place, who simply wish to participate in American democracy. And not only would they force this upon D.C. voters—they suggest this bill’s D.C.-centric voter restrictions could be used as “model legislation” for voter restrictions nationwide.²⁵⁷ House Republicans would like poll workers to photograph every voter who arrives at their polling place, transmitting the images to a central governmental repository. George Orwell would be horrified.

These provisions restrict the access to the ballot that Washingtonians deserve. For example, prohibiting same-day voter registration would roll back the District’s current policy of allowing voters to register to vote and cast a ballot on the same day.

The bill would also restrict a voter’s choice on who can assist them in returning their ballot by limiting the scope of who can collect and transmit another voter’s ballot to a narrow group of people.²⁵⁸ In Washington, D.C. and across the country, voters—especially the elderly, voters with disabilities, and Native American voters²⁵⁹—rely on community groups and neighbors to coordinate the return of valid, legal ballots,²⁶⁰ a practice that the ACE Act would severely curtail.

The ACE Act would similarly make mail voting less accessible in Washington, D.C. Requiring all ballots except for those cast by UOCAVA voters to be received by close of polls on Election Day would roll back the District’s current policy of allowing ballots postmarked on or before Election Day and received within seven days of Election Day to be counted. Requiring DCBOE to receive ballots by the close of polls to be valid disenfranchises voters whose ballot was not timely delivered by the United States Postal Service, even though they cast their ballot on or before Election Day. The ACE Act also significantly restricts vote by mail, a method of voting used by a growing number of voters. Extensive research shows that mail ballots are a secure and essential way to conduct an election. The District of Columbia mailed each registered D.C. voter a mail ballot for the 2020 election and over 200,000 residents voted by mail, with no

257 See *ACE Act D.C. takeover*, *supra* note 255.

258 “Ballot harvesting” is Republicans’ moniker for what is otherwise known as third-party ballot collection.

259 *Native American Rights Fund, Opposition to the Ban on So-Called ‘Ballot Harvesting’* (Mar. 5, 2019), <https://narf.org/ballot-harvesting-amendment/>.

260 Darrell L. Hill, *Written Testimony of Darrell Hill*, Comm. on House Admin. Subcommittee on Elections Field Hearing on Voting Rights and Election Administration in Arizona (Oct 1, 2019), <https://docs.house.gov/meetings/HA/HA08/20191001/110040/HHRG-116-HA08-Wstate-HillD-20191001-U1.pdf>.

evidence of fraud.²⁶¹ The ACE Act would prohibit D.C. from mailing a ballot to voters unless the voter requests one and require a voter to provide photo ID to request an absentee ballot, significantly changing the way D.C. handles mail-in voting.

The ACE Act makes every effort to restrict the ability of Washingtonians to cast a ballot by setting incredibly tight timelines on when D.C. voters can cure ballot deficiencies and how long a voter must be inactive before DCBOE must begin Republican-mandated voter purge procedures. For example, the ACE Act states that, if a voter does not cure with DCBOE a discrepancy “between the signature on . . . a ballot and the signature on the official list of registered voters . . . prior to the expiration of the 48-hour period which begins on the date the official notifies the individual of the discrepancy, the ballot will not be counted.”²⁶² This two-day period is incredibly short—neighboring Virginia allows for three days for a voter to cure a ballot discrepancy,²⁶³ and even notoriously restrictive Texas provides voters six days to fix certain deficiencies in their ballots.²⁶⁴ Similarly, the ACE Act forces the DCBOE to begin steps to remove any D.C. voter “who has failed to vote in a District of Columbia election during a period of two consecutive years” from the eligible voter list.²⁶⁵ This means that a voter who misses just one election will face the initiation of a Republican-required voter purge—a severely short period of time.

For the November 2022 election, the District of Columbia had more than 50 ballot drop boxes throughout the city.²⁶⁶ Republicans' ACE Act would prohibit the use of a drop box to accept voted ballots unless the drop box is located inside a D.C. government building or facility, the drop box received 24-hour remote or electronic surveillance, and the DCBOE collects any ballots in the drop boxes each day after 5:00 p.m. In 2022, the DCBOE placed drop boxes at locations throughout the community, including at libraries, outside recreation centers, shopping centers, and D.C. Metro stops. Many of the drop box locations DCBOE used in 2022 would not qualify as drop box sites under the ACE Act's restrictions, significantly limiting the ability of D.C. voters to return their ballots via drop box.

Washington, D.C. has a right to political self-determination and deserves statehood.

In 1764, political activist James Otis wrote “the very act of taxing, exercised over those who are not represented, appears to me to be depriving them of one of their most essential rights, as freemen; and if continued, seems to be in effect an entire disfranchisement of every civil

261 Marin Austermuhle, *Mail-In Votes Outpaced In-Person Voting Two To One This Election*, DCist (Nov. 5, 2020), <https://dcist.com/story/20/11/05/election-ballots-2020-mail-votes-counting-dc/>.

262 *ACE Act D.C. takeover*, *supra* note 255.

263 Va. Code Ann. § 24.2-709.1.

264 Tex. Election Code § 87.0411.

265 *ACE Act D.C. takeover*, *supra* note 255.

266 *Mail Ballot Drop Box Locations*, D.C. Bd. of Elections, <https://www.dcboe.org/voters/find-out-where-to-vote/mail-ballot-drop-box-locations> (last visited Apr. 2, 2024).

right.”²⁶⁷ A striking indictment of the British crown’s oppression of the American colonies,²⁶⁸ this clarion call for political representation has reverberated through the centuries. The principles of no taxation without representation and consent of the governed helped launch the American Revolution and are enshrined in the Declaration of Independence. Yet, D.C. residents, who pay federal taxes, do not have full voting representation in Congress, and the Constitution gives Congress plenary authority over their lives.

The Admissions Clause of the Constitution gives Congress the authority to admit new states.²⁶⁹ Congress has admitted all 37 new states by simple legislation.²⁷⁰ The Constitution does not establish any prerequisites for new states, but Congress has generally considered three factors in evaluating new states: (1) commitment to democracy, (2) support for statehood, and (3) sufficient population and resources. D.C. meets all three criteria.²⁷¹

D.C. residents have been petitioning for voting representation in Congress and local self-government for more than two centuries.²⁷² On November 8, 2016, D.C. residents approved a referendum advising the D.C. Council to petition Congress for statehood. The referendum passed by an overwhelming vote of 244,134 to 40,779.²⁷³

D.C. has a larger population than two states.²⁷⁴ D.C. pays more federal taxes than 23 states²⁷⁵ and pays more per capita federal taxes than any state.²⁷⁶ D.C. has a higher per capita personal income than any state.²⁷⁷ D.C. has a larger gross domestic product than 16 states and a higher per capita gross domestic product than any state.²⁷⁸ The District’s general obligation bonds

267 NCC Staff, *On this day: “No taxation without representation!”*, NAT’L CONST. CTR. (Oct. 7, 2022), <https://constitutioncenter.org/blog/no-taxation-without-representation>.

268 The phrase “no taxation without representation” had already been in use for several decades in British-occupied Ireland. See DAVID McCULLOUGH, JOHN ADAMS 61 (2001).

269 U.S. Const. art. IV, § 3, cl. 1.

270 CONG. RESEARCH SERV., R47101, DC STATEHOOD: CONSTITUTIONAL CONSIDERATIONS FOR PROPOSED LEGISLATION 3 (May 12, 2022), <https://crsreports.congress.gov/product/pdf/R/R47101>.

271 See *D.C. Statehood: Hearing on H.R. 51 Before the Subcomm. on Fiscal Affairs & Health of the H. Comm. on the District of Columbia*, 100th Cong. 228 (1987) (statement of Senator Edward Kennedy) (noting the three historically recognized conditions for admission to statehood).

272 See AUGUSTUS B. WOODWARD, CONSIDERATIONS ON THE GOVERNMENT OF THE TERRITORY OF COLUMBIA: AS THEY RECENTLY APPEARED IN THE NATIONAL INTELLIGENCER (1801).

273 *Minutes of the Board of Elections Regular Meeting*, D.C. Bd. OF ELECTIONS (Nov. 18, 2016), <https://www.dcboe.org/CMSPages/GetFile.aspx?guid=0c23f3d5-dae7-4389-94ae-f3a1e091404b>.

274 *State Population Totals and Components of Change: 2020–2022*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html>.

275 Press Release, Congresswoman Eleanor Holmes Norton, Norton announces new IRS data show D.C. pays more federal taxes than 23 states and more federal taxes per capita than any state (June 22, 2022), <https://norton.house.gov/media-center/press-releases/norton-announces-new-irs-data-show-dc-pays-more-federal-taxes-than-23>.

276 GOVERNMENT OF THE DISTRICT OF COLUMBIA, DISTRICT OF COLUMBIA TAX COMPARISONS 7 (June 2022), https://ora-cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/Tax%20Comparisons_June%202022.pdf.

277 Jeff Clabaugh, *DC per capita income 25 percent higher than national average*, WTOP (Mar. 29, 2017), <https://wtop.com/business-finance/2017/03/dc-per-capita-income-25-percent-higher-national-average/#:~:text=When%20compared%20to%20states%2C%20D.C.,rate%20outpaced%20the%20national%20average>.

278 *GDP by State*, U.S. BUREAU OF ECONOMIC ADVISORS (Mar. 31, 2023), <https://www.bea.gov/data/gdp/gdp-state>.

have the highest rating (Aaa) from Moody's Investors Service, which notes that D.C.'s strong rating is based on the District's "exemplary fiscal governance."²⁷⁹

In the 116th and 117th congresses, the House of Representatives passed the D.C. statehood bill. The bill would have admitted the State of Washington, Douglass Commonwealth into the Union and reduced the size of the federal district. The State would have consisted of 66 of the 68 square miles of the current federal district and the federal district would have consisted of the other two square miles, including the White House, the Capitol complex, the Supreme Court, the principal federal monuments, and the federal buildings adjacent to the National Mall.

279 *Moody's Affirms District of Columbia Aaa*, MOODY'S INVESTMENT SERVICES (Oct. 29, 2021), https://www.moody's.com/research/Moodys-affirms-District-of-Columbia-Aaa-and-assigns-Aaa-to--PR_907439145?cy=spa&lang=es; see also Press Release, Exec. Off. of the Mayor, Moody's Upgrades District General Obligations Bonds to the Highest Possible Rating-Triple A (Aaa) (July 12, 2018), <https://mayor.dc.gov/release/moodys-upgrades-district-general-obligations-bonds-highest-possible-rating-triple-aaa>.

Chapter 5: The Freedom to Vote Act

The ACE Act is anti-voter and bad for democracy. By Republicans’ own admission, it would fundamentally transform elections in our nation—upon introduction of the ACE Act, Committee Republicans hailed the bill as “the most conservative election integrity bill”²⁸⁰ in decades.

In contrast, House Democrats’ FTVA²⁸¹ improves access to the ballot for all Americans, advances common-sense election integrity reforms, supports the election workers and administrators who buttress our Republic, and protects our democracy from emerging threats. The FTVA also puts an end to partisan gerrymandering, and roots out the undue influence of dark, special interest money in our politics, re-amplifying the voices of the American people.

The FTVA will improve voter access.

The ACE Act does nothing to making voting easier; in fact, House Republicans seem intent on adding further roadblocks to impede voters. The FTVA, by contrast, will remove these obstacles and ensure every eligible American can participate in our democracy.

The FTVA will modernize voter registration opportunities by implementing automatic voter registration at state department of motor vehicle offices,²⁸² allowing for persons who do not wish to register to opt out. The bill will also ensure that voters in all states have access to online voter registration. The FTVA will also provide for nationwide same-day voter registration opportunities because no eligible American should be turned away from the ballot booth.

Beyond voter registration, the FTVA will also add opportunities for voters to meaningfully exercise their right to vote. For example, the FTVA will make Election Day a federal holiday. The FTVA will set minimum, nationwide standards for voting opportunities by setting a uniform floor of days and hours for early voting, set minimum standards for access to ballot drop boxes, and a nationwide standard of no-excuse absentee voting. With so many millions of Americans voting by mail, the FTVA will improve the delivery of election mail so that every voter can be confident that their ballot will be safely delivered and strengthens protections for voters to ensure their ballot is counted by creating notice and due process requirements before a voter’s mail-in ballot can be disqualified.

House Democrats understand that public trust in our democracy is essential, so the FTVA will promote voter confidence by setting uniform standards for states that require voter identification to vote. To ensure that no eligible voter is removed from voter rolls, the FTVA will

280 Press Release, Comm. on H. Admin., Chairman Steil Introduces American Confidence in Elections Act (July 10, 2023), <https://cha.house.gov/media/press-releases/chairman-steil-introduces-american-confidence-elections-act#:~:text=ATLANTA%2C%20Ga.,House%20in%20over%2020%20years>.

281 As previously introduced; H.R. 5746, 117th Cong. (1st Sess. 2021).

282 United States Election Assistance Commission Chair McCormick, a Republican, referred to automatic voter registration as “a good way to do [voter registration].” *Oversight of the U.S. Election Assistance Commission: Hearing before the S. Comm. on Rules & Admin.*, 118th Cong. (2023).

fortify voter list maintenance standards by requiring that the removal of voters from the rolls is done based on reliable and objective evidence, prohibiting the use of returned mail sent by third parties to remove voters. Further, Americans trust election outcomes when they know every eligible person was able to vote, so the FTVA will ensure every citizen has the right to vote by restoring the right to vote in federal elections for people who have served their time for felony convictions and are no longer incarcerated, and will improve access for voters with disabilities, military, and overseas voters.

The FTVA will strengthen election integrity.

The FTVA will prevent state election subversion by establishing federal protections to insulate non-partisan election officials who administer federal elections from undue partisan interference or control. It also protects election records, election infrastructure, and ballot tabulation by strengthening protections for federal election records and election infrastructure to protect the integrity and security of ballots and voting systems.

To ensure that Americans can trust the final vote counts, the FTVA will implement voter-verifiable paper ballots, reliable audits, and voting system upgrades by requiring states to use voting systems that use paper ballots that can be verified by voters and to implement reliable post-election audits. The bill also provides grants for states to purchase new and more secure voting systems and make cybersecurity improvements.

Critically, House Democrats recognize that election workers support and defend our democracy through the often-thankless work they do to ensure our elections run smoothly and safely. In 2020, President Trump and his supporters targeted two election workers in Georgia—Ruby Freeman and her daughter, Shaye Moss. The former president and his allies spread malicious rumors, terrifying and traumatizing the women who faced significant harassment. An investigation into the former President's allegations by Secretary Raffensperger, the FBI, and the GBI determined that “all allegations made against [Freeman and Moss] were unsubstantiated and found to have no merit.”²⁸³ The women were vindicated, but the harms inflicted upon them were unforgivable. The FTVA seeks to protect election workers like the mother and daughter pair and ensure that such harassment is never again a feature of our elections. The FTVA will also improve non-partisan election official recruitment and training by tasking the United States Election Assistance Commission with developing model training programs to recruit a new generation of election workers and provides dedicated grants for training and recruitment.

Further, we must guarantee that our election systems are secure and free from interference. The FTVA will implement comprehensive voting system security protections by putting in place election vendor cybersecurity standards, including standards for manufacturing and assembling voting machines, among other key security measures. And after the 2016 presidential campaign saw “[a] total of 272 contacts between [candidate] Trump's team

283 Sarah Fortinsky, *Georgia election board dismisses 'unsubstantiated' 2020 fraud claim*, THE HILL (June 20, 2023), <https://thehill.com/homenews/4059400-georgia-election-board-dismisses-unsubstantiated-2020-fraud-claim/>.

and Russia-linked operatives,” with “[n]one of these contacts . . . ever reported to the proper authorities,”²⁸⁴ the FTVA will also establish a duty to report foreign election interference by creating a reporting requirement for federal campaigns to disclose certain foreign contacts.

To clarify that every ballot cast by an eligible voter should be counted, the FTVA will protect the right to vote by establishing due process standards for curing provisional ballots and standards for counting of provisional ballots and setting forth a right to vote for all Americans.

The FTVA will encourage civic participation and empower voters.

Whereas House Republicans’ ACE Act would provide cover for billionaire donors while swamping our elections with even more dark money, the FTVA seeks to encourage civic participation and empower voters. For example, the FTVA will ensure every American has an equal voice in our democracy by ending partisan gerrymandering and establishing specific criteria for congressional redistricting to ensure fair legislative maps.

Additionally, the FTVA will combat dark money and election interference by requiring super PACs, 501(c)(4) groups, and other organizations spending money in elections to disclose donors and will shut down the use of financial transfers between organizations to cloak the identity of contributors. It will require that political advertisements sold online have the same transparency and disclosure requirements as advertisements sold on television, radio, and satellite.

Finally, the FTVA will establish a self-sustaining State Election Assistance an Innovation Fund to finance critical investments in state-led innovations for our democracy and election infrastructure. The fund is financed through an additional assessment paid on federal fines, penalties, and settlements for certain tax crimes and corporate malfeasance. States would be allotted an annual distribution for eligible democracy and election-related investments. States could choose to access their full distribution or a partial distribution or roll over their distribution for future use. The fund also reduces the deficit.

284 Sam Berger & Talia Dessel, *Trump's Russia Cover-Up By the Numbers*, MOSCOW PROJECT (2019), <https://cdn.themoscowproject.org/content/uploads/2019/06/17140607/MoscowProjectContacts-6.17-Final-PDF.pdf>.

Conclusion

If anyone is fomenting a crisis in confidence in our elections it is former President Trump and his Republican supporters in Congress.²⁸⁵ In truth, if anything, this “crisis” is a byproduct of the Republican Party’s complicity in former President Trump’s Big Lie. Instead of a lack in confidence in our elections, the American people fear autocracy. They are worried that the Republican Party will continue to roll back voting rights, impose partisan election administration, and only accept electoral results in limited circumstances—if they win.

Concerns about Republican hostility toward democracy are not fanciful. The repetition of lies and mis- and disinformation about our elections led directly to an insurrection at the United States Capitol and an attempt to stop the certification of a free, fair, and secure election. Nonpartisan experts agree—the 2020 election was the most secure election in history.²⁸⁶

Every single witness to appear under oath in front of the Committee—Democrat and Republican—that was asked by Ranking Member Joe Morelle (D-New York) whether President Biden won the 2020 presidential election answered in the affirmative. Despite this, all eight Republicans on the Committee voted against an amendment to the ACE Act, offered by Ranking Member Morelle, clarifying that President Biden won the 2020 election. The continued failure by House Republicans to acknowledge or accept President Biden’s victory is what undermines voter confidence and perpetuates dangerous behavior on the part of vigilante actors and those who seek to mine doubt in elections for their own profit.

In 2020 and 2021, the former president and his lawyers filed dozens of election-related lawsuits that were ultimately thrown out of court for lack of merit.²⁸⁷ Indeed, many of his lawyers were eventually sanctioned by courts for bringing these frivolous claims.²⁸⁸ Some of his lawyers now face criminal charges in relation to their shameful efforts to steal the 2020 election, as does the former president himself.²⁸⁹ Simultaneously, former President Trump’s campaign raised millions of dollars from donors in supposed legal funds to fight a “stolen election.” This onslaught did not stop at grift, however—President Trump and his advisors repeatedly asked Department of Homeland Security (“DHS”) and DOJ officials about seizing

285 *Washington Post* Editorial Board, *supra* note 12 (“[T]he fanfare with which Republicans rolled [this legislation] out illustrates the degree to which their base, egged on by former president Donald Trump, is pressuring GOP leaders to address phony allegations of widespread fraud.”).

286 Eric Tucker and Frank Bajak, *Repudiating Trump, officials say election ‘most secure’*, AP (Nov. 13, 2020), <https://apnews.com/article/top-officials-elections-most-secure-66f9361084ccbc461e3bbf42861057a5>.

287 Alexander Harriet, *Trump-appointed judges among 86 who have so far dismissed election fraud law suits*, TELEGRAPH (Jan. 31, 2023), <https://www.telegraph.co.uk/news/2020/12/13/trump-appointed-judges-among-86-have-far-dismissed-election/>.

288 Tatyana Monnay, *Federal judge imposes sanctions on Sidney Powell, Lin Wood and other pro-Trump lawyers*, POLITICO (Aug. 25, 2021), <https://www.politico.com/news/2021/08/25/powell-wood-trump-sanctions-506910>.

289 Eric Tucker, *Lawyers indicted with Trump say they were doing their jobs. But that may be a tough argument to make*, AP (Aug. 29, 2023), <https://apnews.com/article/trump-georgia-indictment-election-giuliani-95f5451f6b038c98db7bb14b1e0cd4e2>.

voting machines, premised on the Big Lie, knowing that DHS lacked the legal authority to do so.²⁹⁰ It is actions like these that truly undermine public confidence in our elections.

There are two views of the world—the one chosen by House Republicans is cynical, and seeks to exclude and impede, to build barriers and keep voters out of the voting booth. This view led to an attack not only on our Congress and on our Capitol, but on our very democracy itself. This is the ideological foundation upon which the ACE Act is built.

The other view of the world—the one House Democrats hold dearly—is aspirational, optimistic, and inclusive. For House Democrats, policies concerning voter access and voting rights are about securing our democracy and empowering every single eligible American voter. This is a vision of the Constitution so many Americans have embraced since before the Civil War. Americans who saw the urgent necessity of extending the right to vote to formerly enslaved people, women, and so many others. Courageous Americans who labored, organized, and fought to realize that vision.

The city of Rochester, New York, is a compelling example of this legacy. It is the home and burial place of Frederick Douglass. It is the location of Susan B. Anthony's historic vote in the 1872 Presidential Election, for which she was arrested for trying to participate in our democracy, and it is her burial place as well. House Democrats are proud to continue in this tradition to walk the long—but always righteous—path toward real, full enfranchisement that so many throughout our nation's history have walked before. This is the bedrock upon which the FTVA is built.

290 At an April 27, 2023, Committee hearing, former Acting Deputy Secretary of Homeland Security Ken Cuccinelli contradicted the testimony that former Acting Deputy Attorney General of the United States Richard Donoghue repeatedly and consistently provided to the January 6th Select Committee. Donoghue testified twice before the January 6th Select Committee in 2021 that during a December 31, 2020, Oval Office meeting, President Trump spoke to Cuccinelli on the phone about seizing voting machines in the wake of his failed 2020 reelection campaign. At the Committee's April 27 hearing, Cuccinelli suggested that this December 31 telephone call never took place. Subcommittee on Oversight Ranking Member Norma Torres (D-California) sought clarification from Cuccinelli, which he never provided. Committee Democrats are concerned that Cuccinelli's April 27 sworn testimony was untruthful.

Appendix

Committee Democrats' ACE Act Views

DISSENTING VIEWS

Procedural Concerns in Committee and Their Troubling Precedent

In addition to opposing H.R. 4563, as amended, on policy grounds, we also take objection to some of the meeting's procedural events, as the Committee Republicans established a number of troubling precedents over the course of the markup to avoid debate. Notably, the Chair ruled that an amendment dealing primarily with early voting¹ was not germane and was instead within the Rule X jurisdiction of the Committee on Education and the Workforce, merely because the amendment incorporated definitions found in the Higher Education Act of 1965 (20 U.S.C 1002).

Committee Republicans continued to undermine the Committee's authority when they ruled out of order multiple amendments aimed at ensuring candidates for Congress do not lie to the public about their educational background, military history, or employment history.² These amendments were introduced as a standalone bill on January 12, 2023, as H.R. 350: The SANTOS Act, which received a referral to the Committee on House Administration as **the only committee of jurisdiction**.³ Despite this, Committee Republicans insisted on a point of order that the provisions were outside of the Committee's jurisdiction. The point of order was well taken by the Chair and sustained on appeal, further muddying our understanding of what Committee Republicans believe the Committee has authority to act upon despite explicit guidance from the Office of the Parliamentarian.

To be sure, the standing rules of the House task the Committee on House Administration with jurisdiction over, *inter alia*, the "Election of the President, Vice President, Members, Senators, Delegates, or the Resident Commissioner; corrupt practices; contested elections; credentials and qualifications; and **Federal elections generally**."⁴ Committee Democrats strongly disagree with the ruling of the Chair severely curtailing this Committee's jurisdiction. Even so, if Committee Republicans insist on ceding this Committee's jurisdiction to another committee, that is their prerogative (though the Rules Committee is likely a more appropriate forum for that ill-advised endeavor).

1 See Appendix I.

2 See Appendix II.

3 See Appendix III.

4 House Rule X, clause 1(k)(12) (emphasis added); see also Appendix IV.

In yet another procedural curiosity, Committee Republicans attempted to object to consideration of an amendment that simply affirmed President Joe Biden’s victory because of the contents of the title of the amendment.⁵ After the Chair correctly proceeded to a vote on the germane amendment, Committee Republicans struck it down, putting their position on the outcome of the 2020 presidential election at odds with even the most fringe right-wing witnesses they have invited to testify before the Committee this Congress.⁶

Even more puzzling, the amendment in the nature of a substitute used, as base text for the proceeding, an amended provision of the underlying bill—Section 413—which clearly invokes the jurisdiction of the Committee on Homeland Security. By the majority’s own germaneness standard, the substitute amendment should have been out of order.

Committee Democrats would have appreciated—and the American people would have benefited from—a more fulsome debate on the proposed amendments to the bill. Instead, Committee Republicans refused to even consider many of Committee Democrats’ substantive amendments, and in the process severely weakened the Committee’s ability to make jurisdictional claims over election policy in the future. The committee room is not a vacuum, and those decisions will live on long after the 118th Congress has dissolved.

Unfortunately, this kind of uneven and inconsistent application of House and Committee rules and precedent is not isolated to the markup of H.R. 4563. Indeed, Committee Democrats have already objected to previous instances of failure to treat the Committee’s minority equitably, as is our right. Although Committee Republicans ignored those objections, we renew them here along with the objections outlined above. We encourage the majority to return to regular order for the good of this Committee and the House.

Objections to the Constitutional Understanding Advanced by the ACE Act

Introduction

The policy grounds upon which Committee Democrats disagree with this bill are legion.⁷ In this instance, however, we limit our objection to the bill’s findings regarding Article I, Section 4, Clause 1 of the Constitution of the United States (the “Elections Clause”). Akin to our significant procedural concerns, Committee Democrats strenuously object to the majority’s posture on Congress’s constitutional authority because of its dangerous precedential nature. We address this in detail here because these misguided views—which conflict with the plain

5 *House Practice*, § 2 (“The scope of a measure is determined by its provisions and not by the phraseology of its formal title.”).

6 See Appendix V.

7 Committee Democrats offered fifty thoughtful amendments during the ACE Act mark-up, only one of which was adopted. The first amendment offered, by Ranking Member Morelle, was an amendment in the nature of a substitute with the text of the *Freedom to Vote Act*, as passed by the House during the 117th Congress. *The Freedom to Vote Act*, unlike the ACE Act, expands voter access and promotes transparency in political spending.

meaning of the Elections Clause, congressional practice, and Supreme Court precedent—threaten reverberating consequences for Article I governance well into the future should they be codified with the enactment of the ACE Act.

In sum, the ACE Act misrepresents the Constitution and Congress's role in regulating federal elections. The bill asserts that “[a]ccording to Article 1, Section 4 of the Constitution of the United States, the States have the primary role in establishing ‘(t)he Times, Places and Manners of holding Elections for Senators and Representatives’, while Congress has a purely secondary role in this space and must restrain itself from acting improperly and unconstitutionally.”⁸ Certainly, Congress must never act “improperly or unconstitutionally.” Committee Republicans, however, have left a key element of the Elections Clause out of their bill text, obfuscating the true authority of the Elections Clause: “the Congress may at any time by Law make or alter such Regulations.”⁹ Implying that this language provides a “purely secondary” role for Congress is to ignore both the plain text and the history of the Constitution.

Without a doubt, the intent of the framers of the Constitution was that Congress would have plenary authority over the election of its members. Indeed, eloquently arguing on behalf of constitutional ratification, Alexander Hamilton made quite clear the “plain proposition, that every government ought to contain in itself the means of its own preservation.”¹⁰ In the 117th Congress, Stanford University historian Jack Rakove testified that the adoption of the Elections Clause, “reflected the serious misgivings about the state legislatures that many framers of the Constitution shared,” and that “anyone concerned with the original meaning of the [Elections] Clause, as it was understood in the late 1780s, needs to take this attitude into account.”¹¹ The drafters of the ACE Act, unfortunately, divert from this original meaning of the Elections Clause.

The Supreme Court has long upheld Congress's power under the Elections Clause—since *Ex Parte Siebold*, 100 U.S. 371 (1879), the Supreme Court has repeatedly held that Congress's power over congressional elections is “paramount.”¹² A decade ago, the late Associate Justice of the Supreme Court of the United States Antonin Scalia reaffirmed the “broad” and “comprehensive” scope of the Congress' authority under the Elections Clause.¹³ In fact, Congress's powers pursuant to the Elections Clause are even broader than those in other parts of the Constitution. Article I, Section 4, Clause 1 of the Constitution grants “Congress . . . broad power under the Elections Clause to regulate federal elections, unchecked by the

8 H.R. 4563, 118th Cong. § 3(1) (1st Sess., 2023) (as amended).

9 U.S. Const. art. I, § 4, cl. 1.

10 *THE FEDERALIST* No. 59 (Alexander Hamilton).

11 *The Elections Clause: Constitutional Interpretation and Congressional Exercise: Hearing Before the H. Comm. on House Admin.*, 117th Cong. 1–2 (2021) (written testimony of Jack Rakove). Professor Rakove, a scholar of the origins of the American Revolution and Constitution, the political practice and theory of James Madison, and the role of historical knowledge in constitutional litigation, has won the Delancey K. Jay Prize, the Fraunces Tavern Museum Book Award, the Society of the Cincinnati Book Prize, and the Pulitzer Prize in History.

12 *The Elections Clause: Constitutional Interpretation and Congressional Exercise: Hearing Before the H. Comm. on House Admin.*, 117th Cong. 1 (2021) (written testimony of Daniel P. Tokaji).

13 *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 5–6 (2013).

federalism concerns that have stymied” other congressional authorities based in different fonts of constitutional power.¹⁴

What is clear is this: The Constitution of the United States grants explicit and broad authority to Congress to regulate federal elections and to uphold our democratic processes. If enacted, the ACE Act—by abdicating what is both a legal prerogative and a constitutional responsibility—would open the door to state-based anti-democratic and discriminatory legislation across the United States. It would also set a destructive precedent by surrendering Congress’s Article I authority against the express intentions of the Founders of this Nation. Committee Democrats object.

The Background of the Elections Clause

In the wake of a stunning military victory over the British crown, followed by eight years inefficiency and tumult under the Articles of Confederation, by 1787 the American states clambered for a system of government that would protect their hard-won but nascent independence. An experiment in democratic self-governance, the unsteady country demanded both liberty and stability. A new governing document was needed, but debate over what that document would be, and how it would be structured, was spirited, attracting input from every corner on the inchoate nation; it was, however, understood by all to be of critical importance.¹⁵

The immediate needs of the 13 states were chiefly economic and military. Without a centralized power to direct the collected efforts of the several state governments, the first non-native independent American nation was in disarray. The country could not pay its existing war debts, nor could it finance its government. It had no centralized defense force; threatening European powers loomed large, and ships that left American ports of call were left undefended against pirates.¹⁶ But in the eyes of many of the nation’s leaders, what clarified the need for a fundamental governmental overhaul was the 1786–1787 Shays’ Rebellion in which thousands of western Massachusetts farmers—many of them veterans of the Continental Army—protested in force a significant tax burden and a rise in land foreclosures. The national army, under the Articles of Confederation, was unable to subdue the rebellion, and an appalled George Washington asked: “What stronger evidence can be given of the want of energy in our government than these disorders?”¹⁷

In response to this growing national crisis, delegates met in Philadelphia during the summer of 1787 to debate, draft, and submit to the several states for ratification a new Constitution of the United States. The drafters and delegates arrived at the Constitutional Convention with divergent motivations and sometimes conflicting interests, but the conclave had an overriding purpose—to secure the survival of the fledgling nation. They had seen, during the course

14 Franita Tolson, *The Elections Clause and the Underenforcement of Federal Law*, 129 YALE L. J. F. 171, 183 (2019).

15 See PAULINE MAIER, *RATIFICATION: THE PEOPLE DEBATE THE CONSTITUTION, 1787–1788* (2010).

16 Ron Chernow, *WASHINGTON: A LIFE* 513–14 (2010).

17 *Id.* at 517–19.

of the 1780s, the abject failure of the fatally feeble Articles of Confederation and therefore insisted upon a stronger centralization of power “to secure the Blessings of Liberty.”¹⁸

The Elections Clause itself was heavily debated. Having witnessed the states’ prior refusal to support the confederal government, the Constitution’s drafters saw fit to give Congress—rather than the state legislatures—final authority over congressional elections out of a fear that the states could fail to hold such elections at all.¹⁹ Convention delegate Rufus King, of Massachusetts, believed that a constitutional failure to provide congressional authority over federal elections would be “dangerous” and “fatal.”²⁰ And James Madison, of Virginia, “recognizing that state lawmakers would abuse their power in ways that were impossible to predict at the time, . . . warned that the Elections Clause was needed to prevent self-interested partisans from twisting election rules to benefit their faction.”²¹ Indeed, the delegates rejected an attempt to altogether remove the phrase “but [state legislature] provisions concerning [congressional elections] may at any time be altered by the Legislature of the United States” from a draft of the Elections Clause—as Committee Republicans have done in the text of their ACE Act.²² The delegates eventually voted unanimously to adopt Elections Clause as currently drafted—not as preferred by Committee Republicans.²³ Upon the signing and publication of the full document on September 17, 1787, the Constitution was transmitted to the states for ratification.

Debates over the structure and text of pending Constitution were not confined to Independence Hall, nor was the understanding of the rights and responsibilities contained within the text restricted to lawyers’ chambers and the various state legislatures. The people of the United States were acutely invested in the outcome of the convention and in the ratification—or not—of the Constitution itself. In towns and cities throughout the 13 states, people gathered, considered, weighed, and decided.²⁴ In newspapers across the nation, essay after essay was published supporting or opposing, explaining and critiquing, the document’s text. Under the name Publius, Alexander Hamilton, James Madison, and John Jay submitted to the people compelling and thoughtful arguments in favor of constitutional ratification, but their voices were not alone: Brutus, the Federal Farmer, and A Columbian Patriot²⁵ were among the many who joined the national choir either for or against ratification.

To assume that every provision, clause, and word that found its way into the final constitutional text was not heavily analyzed and dissected is to betray a lack of knowledge about the founding of our nation. That is why, to entirely ignore a full section of the Elections Clause—

18 U.S. Const. pmb1.

19 Eliza Sweren-Becker & Michael Waldman, *The Meaning, History, and Importance of the Elections Clause*, 96 WASH. L. REV. 997, 1006 (2021).

20 *Id.* at 1007.

21 *Id.*

22 *Id.* at 1006–08.

23 *Id.* at 1008.

24 Maier, *supra* note 15, at 45–67.

25 Erick Trickey, *The Woman Whose Words Inflamed the American Revolution*, SMITHSONIAN MAGAZINE (Jun. 20, 2017), <https://www.smithsonianmag.com/history/woman-whose-words-inflamed-american-revolution-180963765/>.

indeed, one that provides explicit preemptory congressional power over the preceding state authority grant—betrays either a total ignorance of American history in the Revolutionary period or an act of legislative bad faith.

The Law of the Elections Clause

Committee Republicans, by omitting a key portion of this text, may temporarily muddy the constitutional understanding of a reader unfamiliar with the law or with American history, but they do not change the Constitution itself. The plain text of the Elections Clause should put to bed any notion that Congress does not have foremost authority over congressional elections: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.”²⁶ So too should a thorough understanding of the motivations of the Founders, and their actions during the drafting and ratification of the Constitution. But if neither this unaltered, clear language, nor this much needed historical overview, is enough to convince a skeptic of the genuine scope of the Elections Clause, perhaps nearly a century and a half of Supreme Court precedent will persuade.

Ex parte Siebold concerned the behavior of several election judges in Baltimore, Maryland who, in the commission of their official duties, interfered with the election of representatives to the 46th Congress.²⁷ Indicted “for the offence commonly known as ‘stuffing the ballot box,’”²⁸ the judges were convicted under a federal law known as the Enforcement Act, which “relate[d] to elections of members of the House of Representatives, and [was] an assertion on the part of Congress of a power to pass laws for regulating and superintending said elections and for securing the purity thereof, and the rights of citizens to vote thereat peaceably and without molestation.”²⁹ The election judges filed with the Supreme Court a writ of habeas corpus, alleging that Congress had no constitutional authority to enact a law criminalizing behavior related to elections in conjunction with existing state law; Congress must either usurp all elections power or depart the field entirely, they alleged.³⁰ The Supreme Court flatly rejected this contention:

There is no declaration that the regulations shall be made either wholly by the State legislatures or wholly by Congress. If Congress does not interfere, of course, they may be made wholly by the State; but if it chooses to interfere, there is nothing in the words to prevent its doing so, either wholly or partially.³¹

26 U.S. Const. art. I, § 4, cl. 1.

27 *Ex parte Siebold*, 100 U.S. 371, 373 (1879).

28 *Id.* at 379.

29 *Id.* at 382.

30 *Id.*

31 *Id.* at 383 (emphasis added).

Indeed, the Court continued that “Congress has plenary and paramount jurisdiction over the whole subject” of congressional elections,³² and this power “may be exercised as and when Congress sees fit,” and “so far as it extends and conflicts with the regulations of the State, necessarily supersedes them.”³³

Six years later, the Supreme Court was again presented with an Elections Clause question after a Georgia federal court convicted a group of white men of the beating of Berry Saunders, a Black United States citizen, “with the intent to prevent and hinder his free exercise and enjoyment of the right to vote at an election for a lawfully qualified person as a member of the Congress of the United States of America.”³⁴ Like the Baltimore election judges in *Ex parte Siebold*, the petitioners in *Ex parte Yarbrough*, sought a writ of habeas corpus pursuant to the theory that the federal statute under which they were convicted was an unconstitutional exercise of congressional power.³⁵ In response, the Court asked: “Can it be doubted that Congress can, by law, protect the act of voting, the place where it is done, and the man who votes[?]”³⁶ The answer to this question was, unequivocally, no.³⁷ The Court went even further, however, by specifying that constitutional power is not a matter of use it or lose it; even when Congress restrains itself, for periods of time, from exercising Elections Clause authority, its power to predominate over state regulations in the realm of federal elections does not abate.³⁸

In the 1930s, the Supreme Court again decided a major case related to the Elections Clause. In *Smiley v. Holm*, the governor of Minnesota had, after legislative redistricting to reflect population changes in the 1930 United States census, vetoed the congressional map enacted by the Minnesota legislature.³⁹ Despite the gubernatorial rejection, the congressional map was “deposited with the Secretary of State of Minnesota . . . [and a] suit was brought by the petitioner as a ‘citizen, elector and taxpayer’ of the state to obtain a judgment declaring invalid all fillings for nomination for the office of representative in Congress.”⁴⁰ The Secretary of State of Minnesota “demurred . . . [and] maintained the validity of [the map] by virtue of the authority conferred upon the legislature by article 1, § 4, of the Federal Constitution.”⁴¹ The Supreme Court determined that the governor did, in fact, have the power to veto the congressional map,⁴² but it also expounded on the scope of Elections Clause authority generally:

The subject matter is the “times, places and manner of holding elections for senators and representatives.” It cannot be doubted that these comprehensive words embrace authority

32 *Id.* at 388.

33 *Ex parte Siebold*, 100 U.S. 371, 384 (1879).

34 *Ex parte Yarbrough*, 110 U.S. 651, 656–57 (1884).

35 *Id.* at 654.

36 *Id.* at 661.

37 *Id.* at 662.

38 *Id.*

39 *Smiley v. Holm*, 285 U.S. 355, 361 (1932).

40 *Id.*

41 *Id.* at 362.

42 *Id.* at 367–68.

to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns[—]in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.⁴³

The Court made special note of the exact provision of the Elections Clause that Committee Republicans omitted from their bill:

This view is confirmed by the second clause of Article I, § 4, which provides that ‘the Congress may at any time by law make or alter such regulations,’ with the single exception [for the places of choosing senators] stated. The phrase ‘such regulations’ plainly refers to regulations of the same general character that the legislature of the state is authorized to prescribe with respect to congressional elections. In exercising this power, the Congress may supplement these state regulations or may substitute its own. It may impose additional penalties for the violation of the state laws or provide independent sanctions. It ‘has a general supervisory power over the whole subject.’⁴⁴

In the ACE Act bill text, Committee Republicans manipulate the final sentence of this quotation by inserting the word “merely” before the quoted phrase “a general supervisory power.”⁴⁵ This inappropriate alteration would fundamentally change the meaning of the holding of *Smiley* and *Ex parte Siebold*. “Merely” denotes insignificance, and implies Congress has nothing more than a vague administrative function in this sphere.⁴⁶ The full quotation, as reproduced herein, shows the Supreme Court’s true understanding of the extended scope of Congress’s Elections Clause authority, not a modified comprehension, furtively reworked to fit partisan ends.

The Supreme Court has reaffirmed this perpetual understanding of Congress’s broad authority under the Elections Clause more recently. In *Arizona v. Inter Tribal Council of Arizona, Inc.*, the Supreme Court faced a question related to voter registration requirements in Arizona. The federal National Voter Registration Act “require[d] States to ‘accept and use’ a uniform federal form to register voters for federal elections.”⁴⁷ The uniform federal form did not require registrants to provide documentary evidence of citizenship.⁴⁸ When Arizona enacted a law prohibiting election officials from accepting any voter registration form that did not include evidence of citizenship, a conflict arose—the Arizona law directly collided with the requirements of the National Voter Registration Act. Writing for the majority, Justice Scalia affirmed that the “substantive scope” of the Elections Clause is “broad,” and that “Times, Places, and Manner” are “comprehensive words which embrace authority to provide for

43 *Id.* at 366.

44 *Id.* at 366–67 (quoting *Ex parte Siebold*, 100 U.S. at 387).

45 H.R. 4563, 118th Cong. § 101(b)(13) (1st Sess., 2023) (as amended).

46 Webster’s Third New International Dictionary defines the adverb “merely” as “nothing more than.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (1976).

47 *Inter Tribal Council of Arizona*, 570 U.S. at 1.

48 *Id.*

a complete code for congressional elections.”⁴⁹ Justice Scalia continued: “The power of Congress over the Times, Places and Manner of congressional elections is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith.”⁵⁰

Again, just this year, the Supreme Court reconfirmed congressional authority pursuant to the Elections Clause. Writing for the majority in *Moore v. Harper*, Chief Justice of the Supreme Court of the United States John Roberts declared that, among other cases, “*Smiley* . . . ‘rejected the contention that the Elections Clause vests state legislatures with exclusive and independent authority when setting the rules governing federal elections.’”⁵¹ In the 144 years since the decision in *Ex parte Siebold*, the Supreme Court has delivered, consistently and with great precision, its entrenched constitutional understanding: The Constitution of the United States vests particular authority over congressional elections to Congress.

With each of the abovementioned decisions, a constitutional throughline continues unabated from our founding—Congress’s broad constitutional authority over the states, as related to federal elections, is not secondary, nor is it “limited,” a “fail-safe,” or “intended to be, and as a matter of constitutional fact is, limited to addressing the worst imaginable issues.”⁵² Such an understanding, as exhibited by Committee Republicans, is flatly wrong.

The ACE Act’s Constitutional Misunderstanding

It would be helpful to deconstruct here, for a moment, a portion of the ACE Act in which Committee Republicans despoil the Elections Clause: “According to Article 1, Section 4 of the Constitution of the United States, the States have the primary role in establishing ‘(t)he Times, Places and Manners of holding Elections for Senators and Representatives’, while Congress has a purely secondary role in this space and must restrain itself from acting improperly and unconstitutionally.”⁵³ Let us compare this provision to the language used by one of the signatories of the Constitution—in reference to the Elections Clause, Alexander Hamilton wrote:

It will, I presume, be as readily conceded, that there were only three ways in which this power could have been reasonably modified and disposed: that it must either have been lodged wholly in the national legislature, or wholly in the State legislatures, or primarily in the latter and ultimately in the former. The last mode has, with reason, been preferred by the convention.⁵⁴

49 *Id.* at 5 (internal quotation marks and citations omitted).

50 *Id.* at 6 (internal quotation marks and citations omitted).

51 *Moore v. Harper*, slip op. at 4, 600 U.S. __ (2023).

52 H.R. 4563, 118th Cong. §§ 101(b)(10), (14), (15) (1st Sess., 2023) (as amended).

53 H.R. 4563, 118th Cong. § 3(1) (1st Sess., 2023) (as amended) (emphasis added). The ACE Act additionally makes reference to the Elections Clause elsewhere, see, e.g., H.R. 4563, 118th Cong. § 101 (1st Sess., 2023) (as amended).

54 THE FEDERALIST No. 59 (Alexander Hamilton) (emphasis added).

While Committee Republicans correctly use the adjective primary (slightly amending Hamilton’s adverbial “primarily”) to describe the day-to-day role of the state legislatures in administering federal elections, they make a troubling and ill-hidden change to the portrait of congressional power. Where Committee Republicans say this authority is “purely secondary,” Hamilton specified that Congress’s power was ultimate (to borrow Committee Republicans’ adverb-to-adjective modification). “Ultimate” and “purely secondary,” of course, have very different meanings.

As written in the Constitution’s text, as elucidated by its authors, as understood by its framers, as explained by the Supreme Court—the power of Congress over federal elections is, indeed, paramount. It is not subservient to state legislatures because the very idea of such deference is incongruent with the purpose of the Elections Clause—and the Constitution of the United States more broadly. The federal government could not rely on the states to ensure a democratic form of government, necessary for the continued survival of the budding Republic, to every person.

The views of Committee Democrats herein rely heavily on history and on past Supreme Court decisions because the meaning of the Constitution cannot be understood, nor can the purpose of the Constitution be effectuated, without a firm grasp of American history. But this history is also urgently important because our entire system of government is precedential—the choices of one president, one court, one Congress reverberate through history, binding the hands of some while unleashing the power of others. An even cursory examination of American history and law shows the purpose and power of the Elections Clause. But the mistakes of one errant Congress can weaken our republican system for generations. It would be a grave error for our nation to enact a bill containing such an injudicious constitutional renunciation as the ACE Act attempts to achieve.

Conclusion

The Constitution of the United States carries, inextinguishably alight within its soul, much more indelible than the parchment upon which it is written, the most important idea in the history of humanity—that a people, through a collective promise to one another, would forge a government that guarantees to every one of us a life free from insecurity and injustice. That each of us, through courageous determination, luck, or providence, are now and forever inheritors of that covenant because we are among the seemingly impossible few who have been privileged to say: I am a citizen of these United States.

The tendrils of this essential concept are deeply rooted in the Constitution, wrapped around the document’s every extant provision. But the text itself, as we know, is blemished. It reflects the original sins of our nation—the enslavement of one people and the genocide of another. Upon ratification, it sanctioned the bondage and sale of humans, and excluded from its righteous terms more than half of us. It is imperfect because humans are imperfect, but it has

been the foundational charge of this nation—and the legacy of us, its people—to “form a more perfect Union.”⁵⁵

For much of American history, our national debate concerned less what our rightful liberties were and more who was fortunate enough to count among our people, who got to partake in the feast of freedom. Beginning with the end of Civil War, however, the Constitution’s core meaning has become buttressed by its text.⁵⁶ And almost simultaneously—ending with the beginning of the Civil War—the unassailable notion that individual states had a right to oppress began to crumble.⁵⁷ With amendment after amendment, the definition of the word “people,” for the purposes of constitutional rights and privileges, grew. This expansion helped transform into reality—slowly but surely—the promise of the Constitution.

Every member of the United States House of Representatives—and every Republican member of this Committee—is a warden of this promise through the oath they swore upon taking office. This piece of legislation, however, falls short. It cedes the distorted argument that constitutional rights, though universal, are neither expansive nor inviolable. It surrenders Congress’s constitutional role as the guarantor of freedom.⁵⁸ And this is a perilous time to be making such a concession—last year, for the first time in American history, a constitutionally protected right was ripped away from American women; per the conservative political activist Supreme Court, states may now disregard the foundational promise of liberty inherent to the Constitution if and when they seek to control the bodies of women.

This piece of legislation makes the same constitutional mistake. It relinquishes Congress’s responsibility to protect a fundamental right—the right to vote—to the states, who may not always act to ensure those rights are equitably shared. This flawed perception of the Constitution gives states license to discriminate, and it does so with an understanding divorced from both the evolutionary history and the legal purpose of the Constitution. But Committee Democrats recognize their constitutional duty, and the responsibilities they bear to ensure that every American, in every state in the Union, can exercise the rights afforded to them under the Constitution. Committee Democrats are faithful stewards of the Founding

55 U.S. Const. pmb.

56 When examining the arguments put forward by the petitioners in *Ex parte Yarbrough*, the Supreme Court was confronted with a claim that because the Constitution does not expressly provide Congress with the authority to protect voters from violence, such a power does not exist. This argument, the Court explained, destroys at one blow, in construing the Constitution of the United States, the doctrine universally applied to all instruments of writing, that what is implied is as much a part of the instrument as what is expressed. This principle, in its application to the Constitution of the United States, more than to almost any other writing, is a necessity by reason of the inherent inability to put into words all derivative powers[—]a difficulty which the instrument itself recognizes by conferring on Congress the authority to pass all laws necessary and proper to carry into execution the powers expressly granted, and all other powers vested in the government or any branch of it by the Constitution. *Ex parte Yarbrough*, 100 U.S. at 658. The rights intrinsic to the Constitution live within its very essence.

57 This pernicious idea remains entrenched among some today, as exhibited by the ACE Act.

58 Republicans will argue that the states, rather than Congress, are tasked with protecting our constitutional rights. This is plainly wrong. The Constitution explicitly grants Congress the authority to supersede the laws of the individual states when it comes to federal elections and the right to vote broadly—not just pursuant to the Elections Clause, but in six separate amendments. The Constitution would not reiterate congressional authority over the right to vote—a right “preservative of all rights,” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)—so many times (indeed, more often than any other right or privilege referred to in the Constitution) if Congress was not the national underwriter of constitutional rights and liberties. See U.S. Const. art. I, § 4, cl. 1.; U.S. Const. amend. XIV, § 5; U.S. Const. amend. XV, § 2; U.S. Const. amend. XIX, § 1, cl. 2; U.S. Const. amend. XXIII, § 2; U.S. Const. amend. XIV, § 2; U.S. Const. amend. XXVI, § 2.

era's "deepest political ambitions."⁵⁹ And Committee Democrats also know that, even when faced with another setback in the enduring fight for justice: "The work goes on. The cause endures. The hope still lives. And the dream shall never die."⁶⁰

59 Rakove, *supra* note 11, at 17.

60 Senator Edward Kennedy, Address at the 1980 Democratic National Convention: The Dream Shall Never Die (Aug. 12, 1980).



DEMOCRATS-CHA.HOUSE.GOV