

Statement of Hon. Kenneth T. Cuccinelli, II

Chairman, Election Transparency Initiative

Former Virginia Attorney General

Former Acting Deputy Secretary, Department of Homeland Security

Chairman Steil, thank you for inviting me today to discuss what's working and what does not work in our State voting systems. I am Ken Cuccinelli and I previously served as the Attorney General of Virginia. I currently serve as the national chairman of the Election Transparency Initiative, where we work every day to help improve the transparency, security, accessibility and accountability of elections in every state, so that every American – regardless of color, creed or party affiliation – has confidence in the outcome of every election.

Fair, free, secure, transparent elections are not a “threat to democracy” – they are in fact the foundation of our constitutional republic.

Prohibiting Voter ID or other security measures does not “save Democracy” – in fact such steps undermine confidence in the quality of our elections.

It is the right of every legal, voting-age American citizen to vote in free, fair, secure, transparent elections, and to know their vote is properly counted and not cancelled by an improper or illegal vote. How is this achieved? That is what we will focus on today. And that begins with understanding the role and responsibility of the States and Federal Government in elections.

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

There are two concepts I'd like to focus on that help achieve fair, free, secure, and transparent elections: that states are primarily responsible for the execution of our elections and that the federal government needs to take steps to make it easier for the states to carry out our elections.

I. States have primary responsibility for elections under our Constitution.

The best place to start, given the focus of this hearing, is a list of some things that make states' elections work well.

Voter Roll Maintenance & Registration

- States should require all voter registration applications to be received at least 30 days before voting starts.
- States should regularly verify the accuracy of voter registration lists against local, state, and federal databases. And this process can and should use private sector tools to assist in such verification.
- Voter registration lists should be transparent and easily available.
- Registering to vote should be an intentional act by the voter, i.e., nobody should automatically be registered to vote.

Citizens-Only Voting

- Illegal aliens and non-citizens should not be voting in U.S. elections.
- States should require proof of citizenship to register to vote, as well as verify the citizenship of registered voters. The federal government should make this as simple and cost-effective for states to accomplish as possible.

- When election officials discover that a registered voter is not a U.S. citizen, they should be required by state law to remove that individual from the voter registration roll.

Voter ID & Ballot Security

- Voting absentee should not have fewer protections than in-person voting. A voter should be required to validate his or her identity with an appropriate government- issued photo ID.
- Government-issued IDs should be free for those who cannot afford one.
- There should be no affidavit or other exceptions to the photo ID requirement.
- All absentee ballots should require notarization or the signature of a witness, and the printed name, address, and telephone number of the witness.
- The signatures of voters on absentee ballots should be compared to the signatures of the voters on their registration files. It should be noted that this method is not as easy or effective as other voter confirmation methods, e.g., last four of SSN.

Absentee Voting

- Absentee ballots should be reserved to individuals who are sick or too disabled to vote in person or who will be out of town on Election Day and all Early Voting Days. Put differently, there should not be so-called ‘no excuse’ absentee voting.
- The deadline for the receipt of all absentee ballots should be the closing of polls on Election Day.
- There should be no permanent absentee ballot lists and no automatic or unsolicited ballot mailings to any voters.
- States should prohibit the use of unsecure COVID-era ballot drop boxes, and if not completely banned, require individuals returning ballots to provide ID at the time of the delivery. Anyone who might use such a method can vote in person-early or use absentee ballots.
- Locality or county election offices should be required to provide all absentee mail ballot information, including requests, transmittal and receipt of ballots and the check-in of early voters, to state election databases for same-day public reporting.

Ballot Trafficking

- Only a voter, a member of his or her immediate family, or a designated caregiver should be allowed to mail an absentee ballot on behalf of a voter.
- There should be no ballot trafficking of any kind under any circumstances. There is never a legitimate reason for such practices, when absentee voting is available, as it is in every state.

Accountability & Transparency

- States should require that election observers and poll watchers receive full, meaningful, uniform and nondiscriminatory access to all stages of the election process.
- States should adopt criminal penalties for election officials who intentionally interfere with or knowingly refuse to accept a qualified poll watcher, or knowingly violate any other election laws.
- States should require that election officials provide legislative notice of and gain approval for any emergency changes to existing state election laws.
- State legislatures must ensure that they have legal standing to intervene in election lawsuits at any time, and be notified at the beginning of any election-related lawsuit.
- States should allow for a District Attorney to investigate and prosecute an alleged violation of voter fraud in neighboring jurisdictions if a District Attorney in the county where it was committed fails to investigate. Overlapping jurisdiction with state-level authorities serves a similar purpose.

Outside Influence in Elections

- States should prohibit municipal and county government election officials from accepting or spending funding from private individuals, outside groups, and non-profits for election administration.
- States should require legislative approval before disbursing or using any federal funding received for election purposes.
- States should prohibit ranked-choice voting statewide and pre-empt local jurisdictions from adopting the confusing procedure.

Vote Counting

- States should allow jurisdictions to begin processing (but not counting) absentee ballots seven days before Election Day and provide voters the opportunity to correct any errors found with their ballots.
- No electronic voting or tabulation machines should be connected to the Internet.
- Once commenced, the counting of ballots should continue without pause until all votes have been counted.
- To avoid premature release of election results, the counting of ballots, including absentee and early votes, should not begin until Election Day.
- All electronic voting machines should use open-source coding that is open for inspection by any registered voter.

What creates doubt, insecurity and fears of an unfair, insecure election?

- Lack of transparency in any part of the voting system (with the exception of not observing how voters vote).
- Ranked Choice Voting.
- Allowing voting without meaningful ID.
- Allowing legal or illegal non-citizens to vote.
- Allowing people below Federal Voting Age to vote.
- Same-day voting registration and/or party-switching.
- Allowing “Zuckerbucks” — outside funding from private citizens, groups or non-profits to be injected into the election system.
- Flawed, sloppy, poorly maintained or outdated voter registration lists.
- Allowing unrestricted absentee voting.
- Mass-mailing out mail-in/absentee ballots.
- Counting absentee/early ballots before election day.
- Lengthy delays in reporting election results.
- Computer glitches and other “technical issues” that raise questions about the security of the election.
- Ballot harvesting.
- Open primaries.
- Unmanned and improperly supervised drop boxes.

...to name just a few.

So, what can be done?

Study where it is done right. This committee has the opportunity to hear just what works, and what doesn't from states across the political spectrum. It is often said that the States are the “Laboratory of

Democracy”. In light of that, the Constitutional directive that the states have the primary responsibility for elections bears exceptional fruit. Take the extraordinary example of Georgia.

When Georgia passed new election laws in 2021, the liberal response was hysterical. Major League Baseball pulled the All-Star Game from Atlanta at the insistence of the left. The Liberal Left, Big Media and Big Corporations wailed and hollered and threatened Georgia (mostly without reading the legislation themselves). And President Biden proclaimed it was “Jim Crow 2.0”.

But even the far-left Washington Post had to give President Biden it’s “4 Pinocchios” rating (i.e, “pants on fire”) for his Jim Crow 2.0 defamatory attack on Georgia’s new laws. And what was the result of Georgia’s election reforms? Georgia had all time turnout records, record breaking early voting turnout, and record breaking absentee by mail voting.

And Voter Suppression?

In a University of Georgia poll: 0% of black respondents said their voting experience in Georgia was poor in the 2022 midterm election. ZERO PERCENT. 73 percent of black voters said their voting experience was excellent, equal to the 73 percent of white voters who said the same.

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

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

II. Congress needs to fix federal statutes that interfere with the States’ abilities to properly administer their elections, and ensure legitimate federal functions related to elections are used to support, not restrict, the States’ conduct of their elections.

The American Confidence in Elections Act (the ACE Act) is built on a principle of federalism, and a finding that the “States have the primary role in establishing election law and administering elections.” This is a refreshing perspective to see in Washington, D.C. In addition, the ACE Act addresses several provisions of federal law that actually keep states from being able to properly administer their elections, which I urge this Committee and this Congress to remedy as it considers the ACE Act during this Congress.

Some important federal statutory amendments are necessary to restore the public’s confidence in the integrity of their elections:

- Update the National Voter Registration Act (NVRA) to give the states better ability to clean their voter rolls.
- Improve voter identification processes and requirements in the Uniformed and Overseas Citizens Voting Act (UOCAVA) and the MOVE Act.
- Direct appropriate federal agencies to assist state and local election offices with list maintenance and require federal databases to be made available free of charge.

National Voter Registration Act (“Motor Voter”)(NVRA). The NVRA is 30 years old next month. Adopted in 1993, Congress created a framework in which certain state agencies, most notably the

Departments of Motor Vehicles and social services agencies in the states, would engage in voter registration as part of their assigned duties. The NVRA also requires election offices to maintain an accurate list of registered voters. NVRA needs a facelift. Some important amendments are needed:

- Eliminate the ‘blackout’ periods prohibiting states and local election offices from removing known ineligible or no longer accurate registrations.
- With the trend pushed by many Democrats to mail ballots – not applications – to everyone on the registered voter lists, it is imperative that states have the ability to clean and update their voter lists whenever they become aware of an inaccurate or ineligible registrant. The months preceding the election are the *most* important times for making the voter rolls as accurate as possible – the very time periods when federal law prohibits updating the voter rolls for the election.
- Congress has in the NVRA enacted an arbitrary prohibition against removing an inaccurate registration for four federal election cycles. That is eight years that a local election office must maintain a known bad registration on its voter rolls. That provision should be stricken from the NVRA altogether. Let the States decide how to maintain their voter rolls and the process and time periods by which an inactive voter can be removed from the voter list.
- Allow states to decide how they wish to communicate with registrants who have not voted for purposes of confirming whether the voter is still at an address, has moved, died, or is no longer eligible. NVRA requires election offices to send a letter that is FORWARDABLE to a voter notifying him/her of questions about the voter’s current address, status and continued eligibility. That provision should be repealed altogether.

Uniformed & Overseas Citizens Absentee Voting Act (UOCAVA) and the MOVE Act. Congress has enacted these laws and procedures to facilitate overseas citizens and military voting. These laws need a number of updates, including:

- They must be strengthened to require proof of identification and US citizenship of all who utilize this process for registration and voting in US elections.
- Presently, an applicant is ostensibly required to provide a state ID number or a social security number when completing the voter registration or application for a ballot; however, if the applicant has neither, they are allowed to just check a box and move on. There is no requirement that an overseas voter have any relationship with the US or the state where he/she is voting, nor is there a requirement that the registrant have any connection to a particular address in the United States. These are extraordinary weaknesses.

Direct Appropriate Federal Agencies to Assist State and Local Election Offices. Congress should direct federal agencies to assist states and local election offices with list maintenance by requiring federal databases to be made available to the state and local election offices regularly, free of charge:

- The USPS should be statutorily required to provide to local and state election offices free of charge on a regular, ongoing basis, electronic files of residents who have moved (National Change of Address – NCOA), the database of Vacant Addresses, and other databases that are developed and maintained by the USPS.
- The USPS recently announced a program whereby persons filing a Change of Address form may register to vote at their new address simultaneously with the filing of the COA. The USPS should ensure that the new registration includes a notice of change of registration to be sent to the state election office from which the voter is moving.
- Department of Transportation: The DOT also maintains a database of residential addresses that should be made available at no charge to state and local election offices on an ongoing basis.
- Department of Homeland Security: The SAVE Database should be made available at no cost to states, on an ongoing basis, in a format that allows States to run their statewide voter registration database against the SAVE database.

- Social Security Administration: The Social Security deaths database should be provided on an ongoing basis, free of charge, to states for the purpose of removing dead voters from their voter registration database.
- Other federal agencies who develop and maintain address information of US residents should make that information available to states free of charge on an ongoing basis to assist in maintaining accurate voter rolls.

Additional Responsibilities Should Be Assigned to USPS Regarding the Processing of Election Mail and the Sharing of Data by the USPS with State and Local Election Offices. In addition to sharing with the states and local election offices the NCOA and the Vacant Addresses Databases, USPS should be directed by Congress to modify its procedures and reporting obligations with regard to the processing of election mail, to-wit:

- USPS should develop a program for transmitting to the local election office an electronic file of all election mail that is either undeliverable or which has an address different from the address on the election mail within ten days of attempted delivery.
- USPS must establish protocols and procedures whereby USPS complies with state law prohibiting the forwarding of ballots or other election mail.
- USPS must develop and publish its chain of custody procedures for all Election Mail, and ensure that the protocols in the chain of custody are followed.
- All undeliverable Election Mail should be returned to the election office which sent the mailing and be processed in a manner that generates a chain of custody report for each piece of election mail.
- Any and all systems failures by the USPS to timely deliver election mail such that any voter fails to receive a ballot in time to vote by mail should be documented and published in a report to Congress following each election.

Finally, it is time that Congress reiterated that the federal election date is established under the US Code. Title 2 USC §7 provides:

“The Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter.”

Congress should make that date a federal holiday and require that the national Election Day be honored as provided in federal law, even if that means eliminating some other federal holiday.

The American Confidence in Elections Act (ACE) is an important step forward for our elections and properly amended can do what the title suggests: ensure that Americans of all parties and political persuasions can have confidence in our election systems, regardless of the outcome of any particular election. It remains to the States to have primary responsibility for determining the time, place, and manner of conducting and administering the elections.

But Congress has work to do to fix problems that Congress has created in the federal statutes that I have referenced in my testimony today. The Election Transparency Initiative stands ready to assist in fixing the problems that serve as barriers to the States’ ability to ensure honest and accurate elections.

Thank you.